

EIGHTY-SECOND DAY

FRIDAY, MAY 30, 2003

PROCEEDINGS

The Senate met at 8:30 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.

Gregg Matte, Breakaway Ministries, College Station, offered the invocation as follows:

Lord, we come to open this session in prayer. Let this be more than a spiritual token but a starting focus today. May Your will be done in the affairs of the State of Texas. Thank You for the men and women of this government and their commitment and sacrifice. I pray they would trust in the fact that there is no authority except that which God has established and they are God's servant to do the people good. So that their love may abound more and more in knowledge and depth of insight, in order that they may be able to discern what is best, grant them great wisdom and faith, draw their hearts to You. In Your precious and holy name. 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.

MOTION TO RECESS

On motion of Senator Whitmire, the Senate at 8:54 a.m. agreed to recess, upon conclusion of today's Joint Session, until 11:00 a.m. today.

JOINT SESSION

(Memorial Day tribute to fallen Texas soldiers of Operation Iraqi Freedom)

The President announced the time had arrived for the Joint Session as provided by **HCR 252**.

The President of the Senate and the Senators present, escorted by the Sergeant-at-Arms, proceeded to the Hall of the House of Representatives for the Memorial Day tribute to fallen Texas soldiers of Operation Iraqi Freedom.

The President was announced and, on invitation of the Speaker, occupied a seat at the Speaker's Rostrum.

The Senators were announced and were admitted and escorted to seats prepared for them along the aisle.

Lieutenant Governor David Dewhurst called the Senate to order and announced a quorum present.

Speaker Craddick called the House to order and announced a quorum present.

The Honorable Rick Perry was announced and was escorted to the Speaker's Rostrum by Senator Leticia Van de Putte and Representative Frank Corte.

Speaker Craddick stated the purpose for which the House and the Senate were in Joint Session.

The colors were posted and the Lone Star Girl Scout Council and Billy Russell, Eagle Scout, Troop 405, led the pledge of allegiance.

The national anthem was played by the Air Force Band of the West from Lackland Air Force Base.

The invocation was offered by Father Bill Davis, Immaculate Heart of Mary Catholic Church, Houston.

HCR 261 was read by the House Reading Clerk.

Speaker Craddick introduced Lieutenant Governor Dewhurst, who addressed the Joint Session briefly and introduced Governor Perry.

Governor Perry addressed the Joint Session.

Senator Van de Putte and Representative Corte read the names of the fallen Texas soldiers.

A 21-gun salute was conducted by the Texas Army National Guard Salute Battery.

Taps was played by the Air Force Band of the West.

Lieutenant Governor Dewhurst introduced Gregg Matte, Breakaway Ministries, College Station, who offered the benediction.

The Lieutenant Governor at 9:47 a.m. announced that the purpose for which the Joint Session had been called had been completed and, pursuant to a previously adopted motion, the Senate would stand recessed until 11:00 a.m. today.

The Speaker announced that the House would stand At Ease pending the departure of its guests.

AFTER RECESS

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

MESSAGES FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 30, 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 245, Addressing issues relative to small community water systems that face exceptional physical or financial circumstances in attempting to comply with federal Safe Drinking Water Act requirements relating to naturally occurring materials.

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

HB 1131 (non-record vote)

HB 1839 (non-record vote)

HB 2425 (House concurs by a vote of 132 yeas, 0 nays, 4 pnv)

HB 2892 (non-record vote)

HB 3306 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 3554 (House concurs by a vote of 143 yeas, 0 nays, 2 pnv)

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

HB 7

House Conferees: Heflin - Chair/Keffer, Jim/Luna/Turner/Wohlgemuth/

HB 471

House Conferees: Pickett - Chair/Gutierrez/Hamric/Jones, Elizabeth/Krusee/

HB 1119

House Conferees: Goodman - Chair/Branch/Hughes/Merritt/Wolens/

HB 1129

House Conferees: Farrar - Chair/Bohac/Callegari/Nixon/Thompson/

HB 1163

House Conferees: Thompson - Chair/Davis, Yvonne/Ellis/Laubenberg/Taylor/

HB 1278

House Conferees: Zedler - Chair/Crabb/Grusendorf/Hill/Mowery/

HB 1493

House Conferees: Solomons - Chair/Elkins/Giddings/Hughes/Marchant/

HB 1541

House Conferees: Callegari - Chair/Escobar/Hardcastle/King/Puente/

HB 1566

House Conferees: Telford - Chair/Brown, Fred/Goolsby/Homer/Morrison/

HB 1576

House Conferees: Gallego - Chair/Castro/Marchant/McCall/Villarreal/

HB 1695

House Conferees: Denny - Chair/Bohac/Harper-Brown/Howard/Uresti/

HB 1817

House Conferees: Ritter - Chair/Cook, Robby/Deshotel/Kolkhorst/Morrison/

HB 1865

House Conferees: Bonnen - Chair/Keffer, Bill/Seaman/Thompson/Wilson/

HB 2020

House Conferees: Farabee - Chair/Canales/Keffer, Bill/Keffer, Jim/West, George "Buddy"/

HB 2075

House Conferees: Hilderbran - Chair/Hupp/McClendon/Taylor/Zedler/

HB 2359

House Conferees: Ritter - Chair/Delisi/Grusendorf/Hill/King/

HB 2588

House Conferees: Goodman - Chair/Baxter/Dutton/Morrison/Reyna/

HB 2593

House Conferees: Homer - Chair/Cook, Robby/Phillips/Swinford/Truitt/

HB 3015

House Conferees: Morrison - Chair/Brown, Fred/Heflin/Menendez/Pitts/

HB 3420

House Conferees: Garza - Chair/Chavez/Escobar/Griggs/Guillen/

HB 3459

House Conferees: Pitts - Chair/Grusendorf/Gutierrez/Heflin/McCall/

HB 3546

House Conferees: Hamric - Chair/Davis, Yvonne/Luna/Mowery/Talton/

HB 3622

House Conferees: Brown, Betty - Chair/Callegari/Geren/Hardcastle/Homer/

HJR 28

House Conferees: Pickett - Chair/Gutierrez/Hamric/Jones, Elizabeth/Krusee/

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 246, Memorializing the U.S. congress to provide funding or statutory relief relating to naturally occurring materials and associated regulatory effects on small community water systems.

HCR 247, Memorializing the congress of the United States to modify the Federal Internal Revenue Code to allow retirees to pay for health care costs on a pre-tax basis.

SB 4, Relating to the establishment and operation of the Texas B-On-time student loan program; authorizing the issuance of bonds.

(Amended)

SB 76, Relating to the provision of subsidized child-care services.

(Committee Substitute/Amended)

SB 270, Relating to the continuation and functions of the Texas Lottery Commission.

(Committee Substitute/Amended)

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

(Amended)

SB 600, Relating to the reimbursement of compensation and expenses of certain appointed counsel filing an application for a writ of habeas corpus in a capital case.

(Amended)

SB 618, Relating to the consequences of a public school's being considered low-performing.

(Committee Substitute/Amended)

SB 671, Relating to the determination of school district property values and the accountability of appraisal district operations.

(Amended)

SB 734, Relating to the power of appointment in certain municipalities having city managers.

(Amended)

SB 782, Relating to the authority of a county or municipality to contract for collection services in criminal cases and certain cases involving the parking or stopping of motor vehicles.

(Amended)

SB 800, Relating to the establishment of Texas A&M University–San Antonio and Texas A&M University–Central Texas.

(Amended)

SB 820, Relating to the certification of maximum medical improvement and assignment of an impairment rating for an employee receiving workers' compensation benefits.

(Committee Substitute/Amended)

SB 929, Relating to regional education service centers.

(Committee Substitute/Amended)

SB 1054, Relating to presentence investigation and postsentence treatment and supervision of certain sex offenders.

(Amended)

SB 1108, Relating to academic achievement in public schools.

(Committee Substitute/Amended)

SB 1131, Relating to funding of certain emergency medical services, trauma facilities, and trauma care systems.

(Amended)

SB 1152, Relating to the use of TexasOnline.

(Amended)

SB 1173, Relating to prescription drug benefits under the group health benefit programs for certain governmental employees and retired employees.

(Amended)

SB 1184, Relating to the enforcement of commercial motor vehicle safety standards.

(Amended)

SB 1303, Relating to certain employment matters affecting a county auditor, assistant auditor, or court reporter.

(Amended)

SB 1336, Relating to the liability of a criminal defendant and the defendant's sureties on a personal bond or bail bond and to certain procedures in connection with bond forfeiture.

(Amended)

SB 1369, Relating to certain group benefits for retired school employees.

(Committee Substitute/Amended)

SB 1477, Relating to restrictions on the disclosure of certain criminal records and to the duty of law enforcement agencies regarding records associated with certain defendants receiving deferred adjudication; providing a civil penalty.

(Amended)

SB 1664, Relating to private activity bonds.

(Committee Substitute/Amended)

SB 1678, Relating to the organization and duties of the Board of Pardons and Paroles.

(Committee Substitute/Amended)

SB 1696, Relating to the issuance of obligations by certain municipalities to pay unfunded liabilities to public pension funds.

(Amended)

SB 1701, Relating to the Department of Information Resources' management of certain electronic and telecommunications projects.

(Amended)

SB 1835, Relating to testing for communicable diseases certain people who are arrested.

(Amended)

SCR 1, Memorializing Congress to restore the federal income tax deductibility of state and local sales taxes.

SCR 48, Directing the Texas Workers' Compensation Commission to complete a study of prescription drug costs provided under the system, promulgate regulations defining payment methodology, and streamline procedures for claims.

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

(Amended)

HCR 277, Instructing the enrolling clerk of the senate to make technical corrections to Senate Joint Resolution No. 42.

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

HB 2292

House Conferees: Wohlgemuth - Chair/Davis, John/Ellis/Gutierrez/Truitt/

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Brimer was recognized and introduced to the Senate Michael Young, assistant basketball coach at the University of Houston, accompanied by his wife, Tina.

The Senate welcomed its guests.

SENATE BILL 1923 WITH HOUSE AMENDMENT

Senator Ogden called **SB 1923** 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.

Floor Amendment No. 1

Amend **SB 1923** as follows:

(1) On page 1, line 12, insert "42nd," between "38th," and "43rd".

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 1923**.

The motion prevailed by a viva voce vote.

PHYSICIAN OF THE DAY

Senator Carona was recognized and presented Dr. T. Dale Ragle of Dallas as the Physician of the Day.

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

SENATE RESOLUTION 983

Senator West offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Dr. Laurence Craig Thomas, who is being honored as Optometrist of the Day on May 30, 2003; and

WHEREAS, A native of Houston, Dr. Thomas received his doctor of optometry degree from the University of Houston in 1983 and opened practice in Dallas that same year; and

WHEREAS, For many years, Dr. Thomas has been a regular guest on KHVN 97 AM radio; appearing on a popular program, he has offered listeners his expertise on a wide range of health issues; and

WHEREAS, A well-known lecturer, Dr. Thomas has spoken on many different topics to students at Dallas County public schools, including Madison and South Oak Cliff high schools, John B. Hood Middle School, and Merrifield Elementary School; and

WHEREAS, An exemplary citizen, Dr. Thomas has served on the board of directors of an interfaith group housed at the Jubilee United Methodist Church; the group has reached out to the community by offering lectures on teen pregnancies, dating, marriage, and divorce; and

WHEREAS, Dr. Thomas received the 2001 Optometrist of the Year Award from the Texas Optometric Association; he was also recognized with the 1991 Outstanding Texan Award from the Texas Legislative Black Caucus and with the 1992 Top Cat Award from the Dallas Independent School District; and

WHEREAS, A highly respected gentleman, Dr. Thomas has distinguished himself in his profession and as a leader in the Dallas community, and he deserves recognition for his hard work and his many accomplishments; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby commend Dr. Laurence Craig Thomas for his exceptional achievements and extend to him congratulations on being honored as Optometrist of the Day; 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.

GUEST PRESENTED

Senator West was recognized and introduced to the Senate Dr. Laurence Craig Thomas of Dallas.

The Senate welcomed its guest.

SENATE BILL 315 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 315** 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 No. 1

Amend Section 1 of **SB 315** by amending Sec. 130.0661(a) to read as follows:

(a) This section applies only to a junior college district that:

(1) includes within its territory all or part of a municipality with a population of 250,000 or more that borders the Gulf of Mexico; and

(2) has a service area established by Subchapter J that includes four or more whole counties; or

(3) includes within its territory a school district with an enrollment of 180,000 or more that is within a county that borders a tributary bay to the Gulf of Mexico.

Floor Amendment No. 2

Amend **SB 315** as follows:

(1) In subsection (a) of SECTION 1 of the bill on line 14, strike "; or" and insert ";" after counties.

(2) In subsection (a) of SECTION 1 of the bill, strike "(3) includes within its territory a school district with an enrollment of 180,000 or more that is within a county that borders a tributary bay to the Gulf of Mexico."

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 315**.

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

Nays: Lucio.

SENATE BILL 1272 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1272** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1272** as follows:

(1) In SECTION 3 of the bill, following proposed Section 382.05198(a)(17), Health and Safety Code (House committee printing page 4, line 19), strike "and".

(2) In SECTION 3 of the bill, in proposed Section 382.05198(a)(18), Health and Safety Code, between "line" and the underlined period (House committee printing page 4, line 23), insert the following:
; and

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

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

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

Floor Amendment No. 2

Amend **SB 1272** (House committee printing) by adding the following SECTION, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) The siting, location, and operation of a facility, as defined by Section 382.003, Health and Safety Code, for which an application for a permit to construct the facility is pending with the Texas Commission on Environmental Quality on the effective date of this Act are governed by Chapter 382, Health and Safety Code, as that chapter existed on the date the application was filed.

(b) This section prevails over any conflicting Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment.

Floor Amendment No. 1 on Third Reading

Amend Floor Amendment No. 1 by Callegari to **SB 1272** on third reading as follows:

(1) On page 1, line 13 of the amendment, strike the colon.

(2) On page 1, strike lines 14-17 of the amendment and substitute the following: "an area that is not subject to municipal zoning regulation"

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **SB 1272**.

The motion prevailed by a viva voce vote.

SENATE BILL 1273 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1273** 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 1273** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to suspension and alternatives to suspension of alcoholic beverage licenses and permits.

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

SECTION 1. Section 11.61, Alcoholic Beverage Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(h) The length of a suspension may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

SECTION 2. Section 11.64, Alcoholic Beverage Code, is amended to read as follows:

Sec. 11.64. ALTERNATIVES TO SUSPENSION, CANCELLATION. (a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended, unless the basis for the suspension is a violation of Section 11.61(b)(14), 22.12, 28.11, 61.71(a)(5), 61.71(a)(6), 61.74(a)(14), 69.13, 71.09, 101.63, 106.03, 106.06, or 106.15 or an offense relating to prostitution or gambling, in which case the commission or administrator shall determine whether the permittee or licensee may have the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission shall adopt rules addressing when suspension may be imposed pursuant to this section without the opportunity to pay a civil penalty. In adopting rules under this subsection, the commission shall consider the type of license or permit held, the type of violation, any aggravating or ameliorating circumstances concerning the violation, and any past violations of this code by the permittee or licensee. In cases in which a civil penalty is assessed, the commission or administrator shall determine the amount of the penalty [~~and in doing so shall consider the economic impact a suspension would have on the permittee or licensee~~]. The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, the commission or administrator shall impose the suspension.

(b) In the case of a violation of this code by a permittee or a [~~retail dealer's off premise~~] licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than \$75 nor more than \$500, if the commission or administrator finds that any of the circumstances described in Subsection (c) [~~of this section~~] exists.

(c) The following circumstances justify the application of Subsection (b) [~~of this section~~]:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped;

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code; ~~(5)~~

(5) that the permittee or licensee has demonstrated good faith, including the taking of actions to rectify the consequences of the violation and to deter future violations; or

(6) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the [~~confiscated liquor fund until the unexpended and unencumbered balance contained in the confiscated liquor fund on September 1, 1983, and the~~

~~amount deposited in the fund from all sources on or after September 1, 1983, totals \$2.4 million. Thereafter, fees and civil penalties received by the commission under this section shall be deposited in the] general revenue fund.~~

SECTION 3. Subchapter C, Chapter 11, Alcoholic Beverage Code, is amended by adding Section 11.641 to read as follows:

Sec. 11.641. AMOUNT OF CIVIL PENALTY. (a) The amount of the civil penalty under Section 11.64 must be appropriate for the nature and seriousness of the violation. In determining the amount of the civil penalty, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(b) The amount of the civil penalty may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

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

SECTION 4. Section 61.71, Alcoholic Beverage Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) The length of a suspension must be appropriate for the nature and seriousness of the violation. In determining the length of a suspension, the commission or administrator shall consider:

(1) the type of license or permit held;

(2) the type of violation;

(3) any aggravating or ameliorating circumstances concerning the violation, including those enumerated in Section 11.64(c); and

(4) the permittee's or licensee's previous violations.

(i) The length of a suspension may not be based on:

(1) the volume of alcoholic beverages sold;

(2) the receipts of the business;

(3) the taxes paid; or

(4) the financial condition of the permittee or licensee.

SECTION 5. This Act takes effect September 1, 2003.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **SB 1273**.

The motion prevailed by a viva voce vote.

SENATE BILL 1276 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1276** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1276** as follows:

(1) In SECTION 1 of the bill, in amended Section 1(a), Chapter 186, Acts of the 50th Legislature, Regular Session, 1947 (Senate engrossed version, page 2, line 9), strike "development, generation, distribution," and substitute "financing of and aiding in the development of facilities located on lands owned by the District for the generation, transmission,".

(2) In SECTION 2 of the bill, in proposed Section 2(o), Chapter 186, Acts of the 50th Legislature, Regular Session, 1947 (Senate engrossed version, page 7, line 3), between "generation" and the semicolon, insert ", to the extent authorized by Section 1(a) of this Act".

(3) In SECTION 2 of the bill, in proposed Section 2(p), Chapter 186, Acts of the 50th Legislature, Regular Session, 1947 (Senate engrossed version, page 7, line 21), between "facility" and the semicolon, insert "to the extent authorized by Section 1(a) of this Act".

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **SB 1276**.

The motion prevailed by a viva voce vote.

(President in Chair)

SENATE BILL 1570 WITH HOUSE AMENDMENT

Senator Madla called **SB 1570** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **SB 1570** by inserting the following:

(f) The district shall not prohibit the sale, purchase, lease, or trade of groundwater by a private well owner under this section.

The amendment was read.

Senator Madla moved to concur in the House amendment to **SB 1570**.

The motion prevailed by a viva voce vote.

SENATE BILL 1494 WITH HOUSE AMENDMENT

Senator Madla called **SB 1494** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1

Amend **SB 1494** (Engrossed Version) by striking lines 1 through 12 on page 8 and substituting the following new SECTION 3:

SECTION 3. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (Article 8280-126 Vernon's Civil Statutes) is amended by adding SECTION 5A to read as follows:

Sec. 5A(1) The district's boundaries for purposes of the exercise of its powers and duties is defined in Section 5, Chapter 306, Acts of the 49th Legislature, 1945 (Article 8280-126 Vernon's Texas Civil Statutes).

(2) In conformity with the Court's Judgment dated April 22, 1996 in Cause No. SA96CA0335, Rios v. Bexar Metropolitan Water District et al., (U.S. District Court - W.D. Texas), and for the purpose of the exercise of its current retail water utility services, the District's boundaries shall include the territory defined in all or applicable portions of census tracts or property situated within any area certificated by the Texas Commission on Environmental Quality to the District on the date of passage of this Act pursuant to Certificates of Convenience and Necessity Nos. 10675, 12759, and 12760.

The amendment was read.

Senator Madla moved to concur in the House amendment to **SB 1494**.

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

SENATE RESOLUTION 883

Senator Whitmire offered the following resolution:

SR 883, In memory of the Honorable Searcy Bracewell of Houston.

The resolution was again read.

Senator Whitmire was recognized and introduced to the Senate family members of the Honorable Searcy Bracewell: his daughter, Betsy Bracewell Machac, and her husband, David Machac; and his grandson, Jacob Machac.

The Senate welcomed its guests and extended its sympathy.

The resolution was previously adopted on Thursday, May 15, 2003.

In honor of the memory of the Honorable Searcy Bracewell of Houston, the text of **SR 883** is printed at the end of today's *Senate Journal*.

(Senator Armbrister in Chair)

SENATE BILL 1522 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 1522** 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 1522** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuous eligibility of certain children for medical assistance benefits.

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

SECTION 1. Section 10(c), Chapter 584, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) The Health and Human Services Commission or the appropriate state agency operating part of the medical assistance program under Chapter 32, Human Resources Code, shall adopt rules required by Section 32.0261, Human Resources Code, as added by this Act, so that the rules take effect in accordance with that section not earlier than September 1, 2002, or later than June 1, 2005 [2003]. The rules must provide for a 12-month period of continuous eligibility in accordance with that section for a child whose initial or continued eligibility is determined on or after the effective date of the rules.

SECTION 2. Section 32.025(e), Human Resources Code, is amended to read as follows:

(e) The department shall permit an application requesting medical assistance for a child under 19 years of age to be conducted by 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 requiring an application for a child described by this subsection to be conducted through a personal interview with a department representative only if the department determines that information needed to verify eligibility cannot be obtained in any other manner.

SECTION 3. Section 32.026, Human Resources Code, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(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.

(g) Notwithstanding any other provision of this code, the department may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Transportation's vehicle registration record database.

SECTION 4. 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.

SECTION 5. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 6. 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 1522**, in SECTION 1 of the bill, in amended Section 10(c), Chapter 584, Acts of the 77th Legislature, Regular Session, 2001 (House committee printing, page 1, lines 12-13), by striking "June 1, 2005 [~~2003~~]" and substituting "September 1, 2005 [~~June 1, 2003~~]".

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 1522**.

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

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate her godson, Weston Huff, serving today as an Honorary Senate Page, accompanied by his parents, Live Oak County Judge Jim Huff and Derri Lyn Huff from George West.

The Senate welcomed its guests.

SENATE BILL 1765 WITH HOUSE AMENDMENT

Senator Deuell called **SB 1765** 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 1765** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the zoning authority of a county in areas surrounding Lake Ralph Hall.

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

SECTION 1. The heading to Subchapter G, Chapter 231, Local Government Code, is amended to read as follows:

SUBCHAPTER G. ZONING AROUND LAKE ALAN HENRY,
LAKE COOPER, LAKE RALPH HALL, AND POST LAKE

SECTION 2. Section 231.131(a), Local Government Code, is amended to read as follows:

(a) The legislature finds that:

(1) the areas that surround Lake Alan Henry, Lake Cooper, Lake Ralph Hall, and Post Lake are or will be frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings in the area that will be frequented for resort or recreational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

SECTION 3. Section 231.132, Local Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) This subchapter applies to:

(1) those parts of Garza County located within one mile of the high water marks established for Lake Alan Henry and Post Lake except land located in Garza County and owned by the White River Municipal Water District;

(2) those parts of Kent County located within one mile of the high water marks established for Lake Alan Henry; ~~and~~

(3) the area within 10,000 feet of where the shoreline of Lake Cooper would be if the lake were filled to its storage capacity; and

(4) the area within 5,000 feet of where the shoreline of Lake Ralph Hall would be if the lake were filled to its storage capacity.

(c) The application of this subchapter to the area described by Subsection (a)(4) expires on September 1, 2013, unless the permit necessary for the construction of Lake Ralph Hall is issued before that date. This subsection prevails over Subsection (b) to the extent of any conflict.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Deuell moved to concur in the House amendment to **SB 1765**.

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

SENATE BILL 1460 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1460** 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 1460** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to county fire marshals and county fire protection; providing penalties.

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

SECTION 1. Sections 352.013, 352.014, and 352.016, Local Government Code, are amended to read as follows:

Sec. 352.013. INVESTIGATION OF FIRES. (a) The county fire marshal shall:

(1) investigate the cause, origin, and circumstances of fires ~~[each fire]~~ that occur ~~[occurs]~~ within the county but outside the municipalities in the county and that destroy ~~[destroys]~~ or damage ~~[damages]~~ property or cause injury; and

(2) determine whether a ~~[the]~~ fire was the result of negligent or intentional conduct.

(b) The commissioners court of a county, with the advice of the county fire marshal, shall adopt rules and procedures for determining which fires warrant investigation by the county fire marshal. The county fire marshal shall begin an ~~[this]~~ investigation within 24 hours after the receipt of information regarding a fire that warrants investigation under commissioners court rules and procedures. The 24-hour period does not include a Sunday.

(c) In the performance of official duties, the county fire marshal, at any time of day, may enter and examine a structure where a fire has occurred and may examine adjacent premises. ~~[The marshal shall conduct this examination in a manner designed to impose the least inconvenience to any persons living in the building.]~~

Sec. 352.014. RECORD OF INVESTIGATION. The county fire marshal shall keep a record of each fire that the marshal is required to investigate. The record must include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss. Each fire department and state or local agency that provides emergency medical services must submit reports requested by the county fire marshal in a timely manner.

Sec. 352.016. INSPECTION OR REVIEW OF PLAN FOR FIRE OR LIFE SAFETY HAZARDS. (a) In this section, "fire or life safety hazard" means any condition ~~[of the following conditions]~~ that endangers ~~[endanger]~~ the safety of a structure or its occupants and promotes ~~[promote]~~ or causes ~~[cause]~~ fire or combustion, including:

(1) the presence of a flammable substance;

(2) a dangerous or dilapidated wall, ceiling, or other structural element;

(3) improper electrical components ~~[lighting]~~, heating, or other building services or facilities;

(4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring; ~~[or]~~

(5) dangerous storage, including storage or use of hazardous substances; or

(6) inappropriate means of egress, fire protection, or other fire-related safeguard.

(b) In the interest of safety and fire prevention, the county fire marshal may inspect for fire or life safety hazards any structure, appurtenance, fixture, or real property located within 500 [~~200~~] feet of a structure, appurtenance, or fixture. The marshal shall inspect a structure for fire or life safety hazards if called on to do so. In the absence of a county fire code, the county fire marshal may conduct an inspection using any nationally recognized code or standard adopted by the state. If the marshal determines the presence of a fire or life safety hazard, the marshal may order the owner or occupant of the premises to correct the hazardous situation. If ordered to do so, an owner or occupant shall correct the hazardous situation in accordance with the order.

(b-1) In the interest of safety and fire prevention, the county fire marshal shall, if required, and may, if requested, review the plans of a business, single-family residence, multi-family dwelling, or commercial property for fire or life safety hazards.

(c) The commissioners court by order may authorize the county fire marshal to charge a fee to the owner of a business, a multi-family dwelling, or commercial property for a plan review or [~~fire~~] inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the plan review or inspection.

(d) The commissioners court by order may authorize the county fire marshal to charge a fee to the owner of a single-family residence for a plan review or [~~fire~~] inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the plan review or inspection, if the plan review or inspection is requested by the owner of the property.

SECTION 2. Subsection (b), Section 352.017, Local Government Code, is amended to read as follows:

(b) Service of process required by this subchapter shall be made by a peace officer [~~constable or sheriff~~] and shall be signed by the county fire marshal or the fire marshal's deputy.

SECTION 3. Section 352.019, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (e), (f), and (g) to read as follows:

(b) The county fire marshal shall coordinate the work of the various fire-fighting and fire prevention units in the county. On request, the county fire marshal may assist a rural fire prevention district or emergency services district located wholly or partially in the county to accomplish its powers and duties.

(b-1) If the commissioners court establishes procedures for firefighter certification under Subsection (b), the commissioners court must ensure that the procedures are at least as stringent as the minimum qualifications set by the Texas Commission on Fire Protection under Section 419.032, Government Code. This subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

(c) The county fire marshal or the county fire marshal's designee may perform as the incident commander in a major event if the incident commander of the responsible fire department consents. The county fire marshal may not enforce orders

and decrees within a municipality in the county unless specifically required to do so by interlocal agreement and may act in a cooperative and advisory capacity there only on request.

(e) A county commissioners court may authorize the fire marshal to provide training programs and operate a training facility for the various fire-fighting and fire prevention units in the county. The county may establish and collect a reasonable fee for the training programs, use of the facility, and services provided by the facility.

(f) The commissioners court and county fire marshal may jointly adopt voluntary guidelines, including voluntary funding guidelines, for fire departments located in unincorporated areas of the county, including fire departments located within rural fire prevention districts or emergency services districts, regarding participation in the Texas Fire Incident Reporting System (TXFIRS) or the National Fire Incident Reporting System (NFIRS), or both. The commissioners court may establish model procedures for voluntary use by the various fire departments in the county with respect to:

- (1) emergency incident management;
- (2) firefighter certification; and
- (3) automatic mutual aid.

(g) If a commissioners court authorizes a fire marshal to provide training programs and operate a training facility under Subsection (e), the fire marshal must ensure that the training programs and operation of the training facility are at least as stringent as the minimum qualifications set by the Texas Commission on Fire Protection under Section 419.032, Government Code. This subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

SECTION 4. Subsection (b), Section 352.021, Local Government Code, is amended to read as follows:

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$2,000 [~~\$25~~].

SECTION 5. Section 352.022, Local Government Code, is amended to read as follows:

Sec. 352.022. PENALTY FOR FAILURE TO COMPLY WITH ORDER. An owner or occupant who is subject to an order issued under Section 352.016 commits an offense if that person [he] fails to comply with the order. Each refusal to comply is a separate offense. The offense is a Class B misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted two or more times under this section, in which event the offense is a state jail felony. [~~Each refusal to comply is a separate offense.~~]

SECTION 6. Article 12.01, Code of Criminal Procedure, as amended by Chapters 12, 1479, and 1482, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

- (1) no limitation:
 - (A) murder and manslaughter; [~~or~~]

(B) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(C) ~~and~~ an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to a child, elderly individual, or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code; ~~or~~

(E) sexual assault, except as provided by Subdivision (1) or (5); or

(F) arson;

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception; or

(C) a violation under Sections 153.403(22)-(39), Tax Code;

(4) five years from the date of the commission of the offense:

(A) theft, burglary, robbery; ~~or~~

(B) ~~arson;~~

~~(C)~~ kidnapping;

(C) ~~(D)~~ injury to a child, elderly individual, or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code; or

(D) ~~(E)~~ abandoning or endangering a child;

(5) ten years from the 18th birthday of the victim of the offense:

(A) indecency with a child under Section 21.11(a)(1) or (2), Penal Code; or

(B) except as provided by Subdivision (1), sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code; or

(6) three years from the date of the commission of the offense: all other felonies.

SECTION 7. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) 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.

(c) The change in law made by this Act to Article 12.01, Code of Criminal Procedure, does not apply to an offense if the prosecution of that offense became barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 8. This Act takes effect September 1, 2003.

The amendment was read.

Senator Lindsay moved to concur in the House amendment to **SB 1460**.

The motion prevailed by a viva voce vote.

SENATE BILL 1465 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1465** 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 1465** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the establishment of criminal law magistrates in Harris County.

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

SECTION 1. Chapter 54, Government Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. CRIMINAL LAW MAGISTRATES IN HARRIS COUNTY

Sec. 54.1201. DEFINITIONS. In this chapter, "drug court" has the meaning assigned by Section 469.001, Health and Safety Code.

Sec. 54.1202. APPOINTMENT. (a) The judges of the district courts of Harris County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Harris County, may appoint the number of magistrates set by the commissioners court to perform the duties associated with the administration of drug courts and acceptance and sentencing on agreed plea bargains as authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of the majority of the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of the appointing judges, each magistrate shall serve equally in the courts of those judges.

Sec. 54.1203. QUALIFICATIONS. A magistrate must:

(1) be a resident of this state and of Harris County; and

(2) have been licensed to practice law in this state for at least four years.

Sec. 54.1204. COMPENSATION. A magistrate is entitled to the salary determined by the Commissioners Court of Harris County.

Sec. 54.1205. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Sec. 54.1206. TERMINATION OF SERVICES. The services of a magistrate may be terminated by a majority vote of the appointing judges of the district courts of Harris County that give preference to criminal cases.

Sec. 54.1207. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to a magistrate:

(1) a criminal case for drug court proceedings; and

(2) a criminal case involving an agreed plea bargain recommendation as to punishment or an agreed recommendation for a presentence investigation report in which the plea will be accepted by the magistrate and the sentence determined by the judge.

(b) A magistrate may not preside over a contested trial on the merits, regardless of whether the trial is before a jury.

Sec. 54.1208. ORDER OF REFERRAL. (a) To refer one or more cases to a drug court magistrate or a magistrate accepting an agreed plea bargain recommendation, a judge or board of judges trying criminal cases must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report on specific issues and perform particular acts;

(2) set the time and place for the hearing;

(3) provide a date for filing the magistrate's findings;

(4) designate proceedings for more than one case over which the magistrate

shall preside;

(5) direct the magistrate to call the court's docket; and

(6) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

Sec. 54.1209. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a drug court case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for hearings;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on preliminary motions;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate proceedings in a hearing;

(13) in a case referred under Section 54.1207(a)(1):

(A) accept an agreed plea of guilty or an agreed plea bargain recommendation;

(B) enter a finding of guilt and impose or suspend sentence under an agreed plea bargain recommendation; or

(C) defer adjudication of guilt under an agreed plea bargain recommendation; and

(14) perform any act and take any measure necessary and proper for the efficient performance of the drug court or the duties required by the order of referral.

(b) Except as limited by an order of referral, a magistrate to whom an agreed plea bargain recommendation is referred may:

(1) in a case referred under Section 54.1207(a)(2):

(A) accept an agreed plea bargain recommendation related to punishment;

(B) accept an agreed recommendation for a presentence investigation report in which the plea will be accepted by the magistrate and the sentence determined by the judge;

(C) enter a finding of guilt and impose or suspend sentence under an agreed plea bargain recommendation; or

(D) defer adjudication of guilt under an agreed plea bargain recommendation; and

(2) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(c) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues.

Sec. 54.1210. RECORD OF PROCEEDINGS. At the request of a party, the court shall provide that the proceedings before the magistrate be recorded.

Sec. 54.1211. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A supervising judge or judges may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.1212. PAPERS TRANSMITTED TO THE JUDGE. At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54.1213. JUDICIAL ACTION. (a) The supervising judge or judges of a drug court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the supervising judge or judges do not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the supervising judge or judges shall enter a decree on the minutes of the referring court adopting the actions of the magistrate of which the court approves.

Sec. 54.1214. CRIMINAL LAW MAGISTRATES. (a) If a criminal law magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another criminal law magistrate to serve for the absent magistrate.

(b) A criminal law magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom he is serving.

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

The amendment was read.

Senator Lindsay moved to concur in the House amendment to **SB 1465**.

The motion prevailed by a viva voce vote.

SENATE BILL 1725 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 1725** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **SB 1725** by adding the appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS appropriately:

SECTION _____. Section 1.03(d), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(d) ~~On a municipality's annexation of any of the authority's territory, the annexed territory is excluded from the authority's territory. The authority shall continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the board and the governing body of the municipality provides otherwise~~ Except to the extent the authority agrees in writing, a municipality's annexation of territory within the authority has no effect on the authority's ability to assess and collect inside the territory annexed by the municipality the types of fees, rates, charges, or special assessments that the authority was assessing and collecting at the time the municipality initiated the annexation; provided, however, that the authority's ability to assess and collect such fees, rates, charges, or special assessments shall terminate on the later to occur of (i) the date of final payment or defeasance of any bonds or other indebtedness (including any refunding bonds) that are secured by such fees, rates, charges, or special assessments or (ii) the date that the authority no longer provides services inside the annexed territory. The authority shall continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the board and the governing body of the municipality provides otherwise.

Committee Amendment No. 2

Amend **SB 1725** by striking SECTION 1 of the bill (Senate engrossed version, page 1, lines 4-20) and substituting the following:

SECTION 1. Section 2.02(c), Chapter 1029, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(c) In the manner described by Section 49.103(d), Water Code, the board shall redraw the single-member voting districts as required by law as soon as practicable after:

(1) each federal decennial census; and

(2) any change in the boundaries of the authority[-] which increases the total area of the authority by more than 20 percent.

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 1725**.

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

GUESTS PRESENTED

Senator Deuell was recognized and introduced to the Senate Girl Scouts and their leader from Mesquite.

The Senate welcomed its guests.

SENATE BILL 688 WITH HOUSE AMENDMENT

Senator West called **SB 688** 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.

Committee Amendment No. 1

Amend **SB 688** by inserting the following between the word "board" and the period on page 1, at line 23:
"that may be adopted under general law by any other school district"

The amendment was read.

Senator West moved to concur in the House amendment to **SB 688**.

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

SENATE BILL 1007 WITH HOUSE AMENDMENTS

Senator West called **SB 1007** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **SB 1007** as follows:

(1) In SECTION 3 of the bill, strike the introductory language (Senate engrossment, page 3, lines 7-9) and substitute "Subsections (f) and (j), Section 56.307, Education Code, are amended to read as follows:".

(2) In SECTION 3 of the bill, immediately after amended Subsection (f), Section 56.307, Education Code (Senate engrossment, page 3, between lines 14 and 15), insert the following:

(j) An institution may use other available sources of financial aid, other than a loan [~~or a Pell grant~~], to cover any difference in the amount of a TEXAS grant and the actual amount of tuition and required fees at the institution.

Amendment No. 2

Amend **SB 1007** (Senate Engrossment) as follows:

(1) In SECTION 3 of the bill, in the introductory language (page 3, line 7), strike "Subsection (f)" and substitute "Subsections (f) and (h)".

(2) In SECTION 3 of the bill, in the introductory language (page 3, line 9), strike "is" and substitute "are".

(3) At the end of SECTION 3 of the bill (page 3, between lines 14 and 15), insert the following:

(h) The total amount of grants that a student may receive in an academic year under this subchapter and under Section 61.221 may not exceed the total amount of tuition and required fees charged to the student for the academic periods for which one or more of the grants were awarded [~~maximum amount authorized under Section 61.227~~].

(4) In SECTION 4 of the bill, immediately after "SECTION 4." (page 3, line 15), insert "(a)".

(5) At the end of SECTION 4 of the bill (page 3, between lines 20 and 21), insert the following:

(b) The change in law made by this Act to Section 56.307, Education Code, applies beginning with the 2003-2004 academic year.

The amendments were read.

Senator West moved to concur in the House amendments to **SB 1007**.

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

SENATE BILL 1318 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1318** 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 1318** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to authorization of securities lending for governmental entities.

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

SECTION 1. Subchapter A, Chapter 2256, Government Code, is amended by adding Section 2256.0115 to read as follows:

Sec. 2256.0115. AUTHORIZED INVESTMENTS: SECURITIES LENDING PROGRAM. (a) A securities lending program is an authorized investment under this subchapter if it meets the conditions provided by this section.

(b) To qualify as an authorized investment under this subchapter:

(1) the value of securities loaned under the program must be not less than 100 percent collateralized, including accrued income;

(2) a loan made under the program must allow for termination at any time;

(3) a loan made under the program must be secured by:

(A) pledged securities described by Section 2256.009;

(B) pledged irrevocable letters of credit issued by a bank that is:

(i) organized and existing under the laws of the United States or any other state; and

(ii) continuously rated by at least one nationally recognized investment rating firm at not less than A or its equivalent; or

(C) cash invested in accordance with Section:

- (i) 2256.009;
- (ii) 2256.013;
- (iii) 2256.014; or
- (iv) 2256.016;

(4) the terms of a loan made under the program must require that the securities being held as collateral be:

- (A) pledged to the investing entity;
- (B) held in the investing entity's name; and
- (C) deposited at the time the investment is made with the entity or with

a third party selected by or approved by the investing entity;

(5) a loan made under the program must be placed through:

(A) a primary government securities dealer, as defined by 5 C.F.R. Section 6801.102(f), as that regulation existed on September 1, 2003; or

(B) a financial institution doing business in this state; and

(6) an agreement to lend securities that is executed under this section must have a term of one year or less.

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

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1318**.

The motion prevailed by a viva voce vote.

SENATE BILL 1820 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1820** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1820** as follows:

(1) Strike lines 5 and 6 on page 1 and substitute the following:

SECTION 1. Subsections (b) and (c), Section 39.072, Education Code, are amended to read as follows:

(2) Add the following between lines 1 and 2 on page 2:

(c) The agency shall evaluate against state standards and shall report the performance of each campus in a district and each open-enrollment charter school on the basis of the campus's performance on the indicators adopted under Sections 39.051(b)(1) through (7). Consideration of the effectiveness of district programs under subsections (b)(2) or (3) must be based on data collected through the Public Education Information Management System for purposes of accountability under this chapter and include the results of assessments required under Section 39.023.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1820**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 111

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 111** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 111** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Carona, Harris, Gallegos, and Shapleigh.

SENATE BILL 103 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 103** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 103** by adding the following section and renumbering subsequent sections accordingly:

SECTION _____. (a) Section 46.15(b), Penal Code, as amended by Chapters 1221 and 1261, Acts of the 75th Legislature, Regular Session, 1997, is amended to read as follows:

(b) It is an exception to the application of Section 46.02 that the ~~[does not apply to a]~~ person ~~[who]~~:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) is on the person's own premises or premises under the person's control unless the person is an employee or agent of the owner of the premises and the person's primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event the person must comply with Subdivision (5);

(3) is traveling;

(4) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, if the weapon is a type commonly used in the activity;

(5) holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) the person is engaged in the performance of the person's duties as a security officer or traveling to and from the person's place of assignment;

(B) the person is wearing a distinctive uniform; and

(C) the weapon is in plain view;

(6) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code [Article 4413(29ee), Revised Statutes], to carry a concealed handgun of the same category as the handgun the person is carrying;

(7) holds a security officer commission and a personal protection authorization issued by the Texas Board of Private Investigators and Private Security Agencies and who is providing personal protection under Chapter 1702, Occupations Code [the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes)]; or

(8) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises.

(b) The change in law made by this section in amending Section 46.15(b), Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is 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 subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 103** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Van de Putte, Chair; Whitmire, Ogden, Williams, and Ratliff.

SENATE BILL 970 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 970** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 2

Amend **SB 970** in SECTION 1 of the bill, in added Chapter 122, Agriculture Code (House committee printing, page 1, between lines 18 and 19) by inserting the following:

Sec. 122.0011. APPLICABILITY. This chapter applies only to a county all or part of which is located in the Chihuahua Desert.

Floor Amendment No. 3

Amend **SB 970** as follows:

(1) In SECTION 1 of the bill, strike Section 122.003, Agriculture Code (committee printing, page 1, lines 22-24, and page 2, lines 1-3), and substitute the following:

Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORT. Unless a person is registered as provided by Section 122.004, a person may not:

- (1) sell the plant;
- (2) offer the plant for sale; or
- (3) transport the plant out of this state.

(2) In SECTION 1 of the bill, strike Sections 122.005, 122.006, 122.007 and 122.008(a), Agriculture Code (committee printing, page 2, lines 16-27, and page 3, lines 1-9), and substitute the following:

Sec. 122.005. STOP-SALE ORDER. In enforcing this chapter, the department may issue and enforce a written or printed order to stop the sale of a desert plant or a shipment of desert plants sold or transported by a person who is not registered as provided by Section 122.004. If an order is issued, a person may not sell the plant or shipment until the person has been properly registered.

Sec. 122.006. AUTHORITY TO SEIZE PLANTS. In enforcing this chapter, the department with or without process may seize a desert plant or a shipment of desert plants that is intended:

- (1) for sale or shipment by a person who is not registered as provided by Section 122.004; and
- (2) for transfer out of this state.

Sec. 122.007. PENALTY. (a) A person commits an offense if the person:

- (1) advertises, sells, or offers for sale a desert plant or a shipment of desert plants; and
- (2) the person is not registered as provided by Section 122.004.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 970** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Duncan, Barrientos, Hinojosa, and Lucio.

SENATE BILL 1952 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 1952** 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 1952** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the reorganization of, efficiency in, and other reform measures applying to state government.

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

PART 1. GENERAL MATTERS AFFECTING STATE
AGENCIES, INCLUDING CONSOLIDATION OF
FUNCTIONS AND ENTITIES

ARTICLE 1A. ADJUTANT GENERAL

SECTION 1A.01. Section 431.022(b), Government Code, is amended to read as follows:

(b) The adjutant general is appointed by the governor, with the advice and consent of the senate if in session, to a term expiring February 1 of each odd-numbered year. To be qualified for appointment as adjutant general a person must:

(1) when appointed be serving as a federally recognized officer of not less than field grade in the Texas National Guard;

(2) have previously served on active duty or active duty for training with the army, ~~or~~ air force, or marines; and

(3) have completed at least 10 years' service as a federally recognized reserve or active duty commissioned officer with an active unit of the United States armed forces, the National Guard, or the Texas National Guard, including at least five years with the Texas National Guard.

ARTICLE 1B. USE OF HEALTH REIMBURSEMENT
ARRANGEMENTS

SECTION 1B.01. Chapter 3, Insurance Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. HEALTH REIMBURSEMENT ARRANGEMENTS

Art. 3.99. HEALTH REIMBURSEMENT ARRANGEMENTS. Notwithstanding any other provision of law, any agency of this state that provides a program of health insurance or health benefits shall provide that program in accordance with the revenue ruling of the United States Internal Revenue Service that authorizes health reimbursement arrangements (Rev. Ru. 2002-41) and may adopt appropriate rules to implement the program in accordance with this article.

ARTICLE 1C. PUBLIC INFORMATION

SECTION 1C.01. Subchapter C, Chapter 401, Government Code, is amended by adding Section 401.0446 to read as follows:

Sec. 401.0446. BUDGETARY WORKING PAPERS. (a) In this section "budgetary working paper" means information, other than a uniform budget estimate form, that is created, received, considered, or otherwise used by a governmental body in estimating revenues or in considering or preparing a draft or final biennial state fiscal budget, including a draft, a working paper, supporting material, research material, or an internal or external communication relating to that budget.

(b) A budgetary working paper that is collected, assembled, or maintained by the governor, lieutenant governor, comptroller, speaker of the house of representatives, Legislative Budget Board, senate finance committee, senate state affairs committee, house appropriations committee, or house ways and means committee, is excepted from required public disclosure under Chapter 552 or any other law of this state. Section 552.022 does not apply to information excepted from required public disclosure by this section.

ARTICLE 1D. MEMBERS OF TEXAS WORKERS'
COMPENSATION COMMISSION

SECTION 1D.01. Section 402.002(a), Labor Code, is amended to read as follows:

(a) Members of the commission hold office for two-year [~~staggered six-year~~] terms[~~with the terms of one member representing employers and one member representing wage earners~~] expiring on February 1 of each odd-numbered year.

SECTION 1D.02. The current terms of the members of the Texas Workers' Compensation Commission expire on February 1, 2005.

ARTICLE 1E. MEMBERS OF BOARD OF PARDONS AND PAROLES
POLICY BOARD

SECTION 1E.01. Sections 508.036(a) and (b), Government Code, are amended to read as follows:

(a) The governor shall designate seven [~~six~~] members of the board to serve as the Board of Pardons and Paroles Policy Board. The governor shall designate the presiding officer of the board as one of the seven [~~six~~] members of the policy board, and the presiding officer of the board shall serve as presiding officer of the policy board. Service on the policy board is an additional duty of office for members appointed to the policy board.

(b) Members of the board designated as members of the policy board serve on the policy board for six-year terms that are concurrent with their six-year terms on the board, with the service of two or three members expiring February 1 of each odd-numbered year.

SECTION 1E.02. As soon as possible on or after September 1, 2003, the governor shall appoint an additional member to the Board of Pardons and Paroles Policy Board under Section 508.036(a), Government Code, as amended by this Act, for a term expiring February 1, 2009.

ARTICLE 1F. MEMBERS OF TEXAS VETERANS COMMISSION

SECTION 1F.01. Section 434.003(c), Government Code, is amended to read as follows:

(c) A person having a less than honorable discharge from military service is not eligible to be a member. No two members may reside in the same senatorial district[~~and not more than one member may be from a senatorial district composed of a single county~~].

[ARTICLE 1G. RESERVED]

ARTICLE 1H. EXECUTIVE ORDERS RELATING TO
STATE AGENCIES

SECTION 1H.01. Subchapter F, Chapter 401, Government Code, is amended by adding Section 401.105 to read as follows:

Sec. 401.105. EXECUTIVE ORDERS TO MAKE CERTAIN CHANGES TO STATE AGENCIES FOR EFFICIENT ADMINISTRATION AND OPERATIONS.

(a) In this section, "state agency" includes an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college. The term does not include a state agency that is headed by a statewide-elected official.

(b) The governor may issue an executive order to change the organization and operations of a state agency in the executive branch of state government if:

(1) the governor considers the change to be necessary for efficient administration; and

(2) the change is not inconsistent or incompatible with the Texas Constitution or a state statute.

(c) An executive order issued by the governor under this section has the force and effect of law.

(d) The governor may amend or rescind an executive order issued under this section at any time.

ARTICLE 1I. TEXAS HIGHER EDUCATION
COORDINATING BOARD

SECTION 1I.01. Section 61.022, Education Code, is amended to read as follows:

Sec. 61.022. MEMBERS OF BOARD; APPOINTMENT; TERMS OF OFFICE. The board shall consist of nine ~~[18]~~ members appointed by the governor so as to provide representation from all areas of the state with the advice and consent of the senate, and as the constitution provides. Members of the board serve staggered six-year terms. The terms of one-third of the members expire August 31 of each odd-numbered year. ~~[Of the initial appointments to the board six shall be for terms which shall expire August 31, 1967, six for terms which shall expire August 31, 1969, and six for terms which shall expire on August 31, 1971, or at such time as their successors are appointed and have qualified. Thereafter, the governor shall appoint members for terms of six years. Members of the Texas Commission on Higher Education are eligible for appointment to the board.]~~ No member may be employed professionally for remuneration in the field of education during his term of office.

SECTION 1I.02. To achieve an orderly transition from 18 to 9 positions on the Texas Higher Education Coordinating Board, the governor on August 31, 2003, or September 1, 2003, shall appoint only three persons to the coordinating board for terms expiring on August 31, 2009. On, or as soon as possible after, August 31, 2005, the governor shall appoint only four members to the coordinating board for terms expiring on August 31, 2011. On, or as soon as possible after, August 31, 2007, the governor shall appoint only two members to the coordinating board for terms expiring on August 31, 2013. As terms on the coordinating board expire on and after August 31, 2009, the governor shall appoint three members to the coordinating board in accordance with Section 61.022, Education Code, as amended by this Act.

ARTICLE 1J. ABOLITION OF CERTAIN AGENCIES AND
TRANSFER OF POWERS AND DUTIES TO

TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION 1J.01. Section 51.052(a), Occupations Code, is amended to read as follows:

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

SECTION 1J.02. Section 51.055(a), Occupations Code, is amended to read as follows:

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

SECTION 1J.03. Section 651.001, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

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

SECTION 1J.04. Subchapter A, Chapter 651, Occupations Code, is amended by adding Sections 651.004 and 651.005 to read as follows:

Sec. 651.004. TEXAS DEPARTMENT OF LICENSING AND REGULATION.

(a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter or other law to the Texas Funeral Service Commission means the department.

Sec. 651.005. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.05. Section 1071.002, Occupations Code, is amended by adding Subdivision (3-a) to read as follows:

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

SECTION 1J.06. Subchapter A, Chapter 1071, Occupations Code, is amended by adding Sections 1071.005 and 1071.006 to read as follows:

Sec. 1071.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter or other law to the Texas Board of Professional Land Surveying means the department.

Sec. 1071.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.07. Section 1201.003(7), Occupations Code, is amended to read as follows:

(7) "Department" means the Texas Department of Licensing and Regulation [~~Housing and Community Affairs~~].

SECTION 1J.08. Subchapter A, Chapter 1201, Occupations Code, is amended by adding Section 1201.009 to read as follows:

Sec. 1201.009. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.09. Section 1301.002(1), Occupations Code, is amended to read as follows:

(1) "Department" [~~"Board"~~] means the Texas Department of Licensing and Regulation [~~State Board of Plumbing Examiners~~].

SECTION 1J.10. Subchapter A, Chapter 1301, Occupations Code, is amended by adding Sections 1301.004 and 1301.005 to read as follows:

Sec. 1301.004. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the Texas State Board of Plumbing Examiners means the department.

Sec. 1301.005. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.11. Section 1601.001, Occupations Code, is amended by adding Subdivision (4-a) to read as follows:

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

SECTION 1J.12. Subchapter A, Chapter 1601, Occupations Code, is amended by adding Sections 1601.005 and 1601.006 to read as follows:

Sec. 1601.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the State Board of Barber Examiners means the department.

Sec. 1601.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.13. Section 1602.001, Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

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

SECTION 1J.14. Subchapter A, Chapter 1602, Occupations Code, is amended by adding Sections 1602.005 and 1602.006 to read as follows:

Sec. 1602.005. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the commission or a reference in other law to the Texas Cosmetology Commission means the department.

Sec. 1602.006. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.15. Section 1951.002, Occupations Code, is amended by adding Subdivision (6-a) to read as follows:

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

SECTION 1J.16. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Sections 1951.008 and 1951.009 to read as follows:

Sec. 1951.008. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this chapter. If in administering this chapter there is a conflict between a provision of this chapter and a provision of Chapter 51, the provision of Chapter 51 controls.

(b) A reference in this chapter to the board or a reference in other law to the Texas Structural Pest Control Board means the department.

Sec. 1951.009. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this chapter.

SECTION 1J.17. Section 1.02(1), Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Department" [~~"Board"~~] means the Texas Department of Licensing and Regulation [~~Board of Professional Geoscientists~~].

SECTION 1J.18. Subchapter A, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), is amended by adding Sections 1.05 and 1.06 to read as follows:

Sec. 1.05. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The department shall administer this Act. If in administering this Act there is a conflict between a provision of this Act and a provision of Chapter 51, Occupations Code, the provision of Chapter 51 controls.

(b) A reference in this Act to the board or a reference in other law to the Texas Board of Professional Geoscientists means the department.

Sec. 1.06. ADVISORY COMMITTEE. The governor shall appoint an advisory committee of seven persons to advise the department in administering this Act.

SECTION 1J.19. On September 1, 2003, the following laws are repealed:

- (1) Sections 651.001(2), 651.002, and 651.153, Occupations Code;
- (2) Subchapters B, C, and E, Chapter 651, Occupations Code;
- (3) Sections 1071.002(1) and 1071.003, Occupations Code;
- (4) Subchapters B, C, and E, Chapter 1071, Occupations Code;
- (5) Sections 1301.003, 1301.204, 1301.252, 1301.301, and 1301.303, Occupations Code;
- (6) Subchapter C, Chapter 1301, Occupations Code;
- (7) Sections 1601.001(3), 1601.004, and 1601.153, Occupations Code;
- (8) Subchapters B, C, and E, Chapter 1601, Occupations Code;
- (9) Sections 1602.001(1), 1602.004, and 1602.152, Occupations Code;
- (10) Subchapters B, C, and E, Chapter 1602, Occupations Code;
- (11) Sections 1951.002(2), 1951.007, and 1951.206, Occupations Code;
- (12) Subchapters C, D, and F, Chapter 1951, Occupations Code;
- (13) Sections 1.03, 3.01, 3.02(a), 3.03, 3.04, 3.05, and 3.06, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes); and

(14) Subchapters B and E, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes).

SECTION 1J.20. Not later than November 1, 2003, the governor shall appoint an additional member to serve on the Texas Commission of Licensing and Regulation, as required by Section 51.052(a), Occupations Code, as amended by this article. The new member's term shall expire on February 1, 2007.

SECTION 1J.21. On September 1, 2003:

(1) all functions and activities relating to Chapter 651, Occupations Code, performed by the Texas Funeral Service Commission immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Funeral Service Commission that relates to Chapter 651, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Funeral Service Commission that relates to Chapter 651, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Funeral Service Commission that is related to Chapter 651, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Funeral Service Commission in an action or proceeding to which the Texas Funeral Service Commission is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Funeral Service Commission related to Chapter 651, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Funeral Service Commission related to Chapter 651, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Funeral Service Commission related to Chapter 651, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.22. On September 1, 2003:

(1) all functions and activities relating to Chapter 1071, Occupations Code, performed by the Texas Board of Professional Land Surveying immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Board of Professional Land Surveying that relates to Chapter 1071, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Board of Professional Land Surveying that relates to Chapter 1071, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Board of Professional Land Surveying that is related to Chapter 1071, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Board of Professional Land Surveying in an action or proceeding to which the Texas Board of Professional Land Surveying is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Board of Professional Land Surveying related to Chapter 1071, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.23. On September 1, 2003:

(1) all functions and activities relating to Chapter 1201, Occupations Code, performed by the Texas Department of Housing and Community Affairs immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Department of Housing and Community Affairs that relates to Chapter 1201, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Department of Housing and Community Affairs that relates to Chapter 1201, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Department of Housing and Community Affairs that is related to Chapter 1201, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Department of Housing and Community Affairs in an action or proceeding to which the Texas Department of Housing and Community Affairs is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Department of Housing and Community Affairs related to Chapter 1201, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.24. On September 1, 2003:

(1) all functions and activities relating to Chapter 1301, Occupations Code, performed by the Texas State Board of Plumbing Examiners immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas State Board of Plumbing Examiners that relates to Chapter 1301, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas State Board of Plumbing Examiners that relates to Chapter 1301, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas State Board of Plumbing Examiners that is related to Chapter 1301, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas State Board of Plumbing Examiners in an action or proceeding to which the Texas State Board of Plumbing Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas State Board of Plumbing Examiners related to Chapter 1301, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.25. On September 1, 2003:

(1) all functions and activities relating to Chapter 1601, Occupations Code, performed by the State Board of Barber Examiners immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the State Board of Barber Examiners that relates to Chapter 1601, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the State Board of Barber Examiners that relates to Chapter 1601, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the State Board of Barber Examiners that is related to Chapter 1601, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the State Board of Barber Examiners in an action or proceeding to which the State Board of Barber Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the State Board of Barber Examiners related to Chapter 1601, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the State Board of Barber Examiners related to Chapter 1601, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the State Board of Barber Examiners related to Chapter 1601, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.26. On September 1, 2003:

(1) all functions and activities relating to Chapter 1602, Occupations Code, performed by the Texas Cosmetology Commission immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Cosmetology Commission that relates to Chapter 1602, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Cosmetology Commission that relates to Chapter 1602, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Cosmetology Commission that is related to Chapter 1602, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Cosmetology Commission in an action or proceeding to which the Texas Cosmetology Commission is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Cosmetology Commission related to Chapter 1602, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.27. On September 1, 2003:

(1) all functions and activities relating to Chapter 1951, Occupations Code, performed by the Texas Structural Pest Control Board immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Structural Pest Control Board that relates to Chapter 1951, Occupations Code, is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Structural Pest Control Board that relates to Chapter 1951, Occupations Code, means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Structural Pest Control Board that is related to Chapter 1951, Occupations Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Structural Pest Control Board in an action or proceeding to which the Texas Structural Pest Control Board is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Structural Pest Control Board related to Chapter 1951, Occupations Code, is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.28. On September 1, 2003:

(1) all functions and activities relating to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) performed by the Texas Board of Professional Geoscientists immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the Texas Board of Professional Geoscientists that relates to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) is a rule or form of the Texas Department of Licensing and Regulation and remains in effect until amended or replaced by that department;

(3) a reference in law or an administrative rule to the Texas Board of Professional Geoscientists that relates to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) means the Texas Department of Licensing and Regulation;

(4) a complaint, investigation, or other proceeding before the Texas Board of Professional Geoscientists that is related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Board of Professional Geoscientists in an action or proceeding to which the Texas Board of Professional Geoscientists is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) are transferred to the Texas Department of Licensing and Regulation;

(6) all property in the custody of the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) is transferred to the Texas Department of Licensing and Regulation; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Board of Professional Geoscientists related to the Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes) is transferred to the Texas Department of Licensing and Regulation.

SECTION 1J.29. Not later than November 1, 2003, the governor shall appoint the advisory committees required by Sections 651.005, 1071.006, 1201.009, 1301.005, 1601.006, 1602.006, and 1951.009, Occupations Code, as added by this Act, and Section 1.06, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), as added by this Act.

ARTICLE 1K. ABOLITION OF OFFICE OF STATE-FEDERAL RELATIONS

SECTION 1K.01. Sections 751.001(1) and (4), Government Code, are amended to read as follows:

(1) "Board" means the [~~Office of~~] State-Federal Relations Advisory [~~Policy~~] Board.

(4) "State agency" means a state board, commission, department, institution, or officer in the executive branch of state government having statewide jurisdiction, including a state college or university.

SECTION 1K.02. Section 751.002, Government Code, is amended to read as follows:

Sec. 751.002. OFFICE OF STATE-FEDERAL RELATIONS. [~~(a)~~] The Office of State-Federal Relations is a division of the office of the governor [~~an agency of the state and operates within the executive department.~~

[~~(b) The office is subject to the administrative procedure law, Chapter 2001.~~

SECTION 1K.03. The heading to Section 751.004, Government Code, is amended to read as follows:

Sec. 751.004. APPOINTMENT [~~AND TERM~~] OF DIRECTOR.

SECTION 1K.04. Section 751.004(a), Government Code, is amended to read as follows:

(a) The governor [~~, with the advice and consent of the senate,~~] shall appoint a director of the office.

SECTION 1K.05. Section 751.005(b), Government Code, is amended to read as follows:

(b) The director shall:

(1) help coordinate state and federal programs dealing with the same subject;

(2) inform the governor, the lieutenant governor, and the speaker of the house of representatives [~~legislature~~] of federal programs that may be carried out in the state or that affect state programs;

(3) provide federal agencies and the United States Congress with information about state policy and state conditions on matters that concern the federal government;

(4) regularly provide the governor, the lieutenant governor, and the speaker of the house of representatives [legislature] with information useful in measuring the effect of federal actions on the state and local programs; and

(5) prepare and supply to the governor, the lieutenant governor, and the speaker of the house of representatives [and all members of the legislature] an annual report that:

(A) describes the office's operations;

(B) contains the office's priorities and strategies for the following year;

(C) details projects and legislation pursued by the office;

(D) discusses issues in the following congressional session of interest to this state; and

(E) contains an analysis of federal funds availability and formulae[; ~~and~~

~~[(6) prepare annually a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year].~~

SECTION 1K.06. The heading to Section 751.006, Government Code, is amended to read as follows:

Sec. 751.006. STAFF[; ~~PERSONNEL POLICIES~~].

SECTION 1K.07. Section 751.006(a), Government Code, is amended to read as follows:

(a) The director may employ staff necessary to carry out the director's powers and duties under this chapter. ~~[The director or the director's designee shall provide to office employees, as often as necessary, information regarding their qualification for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.]~~

SECTION 1K.08. The heading to Section 751.010, Government Code, is amended to read as follows:

Sec. 751.010. ~~[OFFICE OF]~~ STATE-FEDERAL RELATIONS ADVISORY ~~[POLICY]~~ BOARD.

SECTION 1K.09. Section 751.010, Government Code, is amended by amending Subsections (a), (e), and (f) and adding Subsection (g) to read as follows:

(a) The governor may appoint members to an advisory board to assist in the administration of this chapter ~~[Office of State Federal Relations Advisory Policy Board consists of:~~

~~[(1) the governor;~~

~~[(2) the lieutenant governor; and~~

~~[(3) the speaker of the house of representatives].~~

(e) The board may ~~[shall]~~ meet before the beginning of each congressional session and at the call of the director ~~[presiding officer]~~.

(f) The board may ~~[shall]~~ work with the director to hold periodic meetings ~~[in the city of Austin at times determined by the presiding officer]~~ to discuss upcoming federal activities and issues with state agency representatives.

(g) A member of the advisory board may not receive compensation, but is entitled to reimbursement of the member's necessary and actual expenses incurred while performing duties under this chapter, subject to any applicable limitation on reimbursement provided by general law or the General Appropriations Act.

SECTION 1K.10. Sections 751.012(c) and (e), Government Code, are amended to read as follows:

(c) A contract under this section must include provisions under which staff of the other state agency:

- (1) report directly to the director;
- (2) report [~~directly~~] to the other state [~~that~~] agency's administrative head or the presiding officer of the other state [~~that~~] agency's governing body;
- (3) [~~(2)~~] have an officially recognized role in the other state [~~that~~] agency's budget planning process;
- (4) [~~(3)~~] provide periodic updates of activities to the other state [~~at meetings of that~~] agency's governing body; and
- (5) [~~(4)~~] receive a salary established under Subsection (d).

(e) A state agency identified by the Legislative Budget Board or the governor's office of budget, planning, and policy as receiving significant federal funding or being significantly affected by federal policy decisions, other than a state agency that is headed by a statewide-elected official, shall:

- (1) develop a plan of state-federal coordination;
- (2) study the benefits of entering a contract under Subsection (a); and
- (3) submit the coordination plan and study to the office and to the Legislative Budget Board.

SECTION 1K.11. Chapter 751, Government Code, is amended by adding Section 751.015 to read as follows:

Sec. 751.015. AGENCY COMMUNICATIONS. A state agency must, to the extent practicable, contact the office before the agency provides information to a federal agency or to the United States Congress about a state policy or state circumstances. This section does not apply to a state agency that is headed by a statewide-elected official.

SECTION 1K.12. Subchapter B, Chapter 751, Government Code, is transferred to Chapter 401, Government Code, redesignated as Subchapter G, Chapter 401, Government Code, and amended to read as follows:

SUBCHAPTER G [~~B~~]. FEDERAL FUNDS MANAGEMENT

Sec. 401.151 [~~751.021~~]. DEFINITION. In this subchapter, "federal formula funds" means only those funds coming to the state based on federal funding formulas or as otherwise legislated by congress, excluding those funds known as federal discretionary grant funds.

Sec. 401.152 [~~751.022~~]. POWERS AND DUTIES. (a) The governor's office of budget, planning, and policy has primary responsibility for monitoring, coordinating, and reporting on the state's efforts to ensure receipt of an equitable share of federal formula funds.

- (b) The governor's office of budget, planning, and policy shall:
- (1) serve as the state's clearinghouse for information on federal formula funds;
 - (2) prepare reports on federal funds and earned federal formula funds;
 - (3) analyze proposed and pending federal and state legislation to determine whether the legislation would have a significant negative effect on the state's ability to receive an equitable share of federal formula funds;

(4) make recommendations for coordination between state agencies and local governmental entities and between state agencies; and

(5) adopt rules under the rule-making procedures of the administrative procedure law, Chapter 2001, Government Code, as necessary to carry out the responsibilities assigned by this subchapter.

(c) The governor's office of budget, planning, and policy shall annually prepare a comprehensive report to the governor and legislature on the effectiveness of the state's efforts to ensure a receipt of an equitable share of federal formula funds for the preceding federal fiscal year. The report must include:

(1) an executive summary that provides an overview of the major findings and recommendations included in the report;

(2) a comparative analysis of the state's receipt of federal formula funds relative to other states, prepared using the best available sources of data;

(3) an analysis of federal formula funding trends that may have a significant effect on resources available to the state; and

(4) recommendations, developed in consultation with the Legislative Budget Board, the Office of State-Federal Relations [~~Governor's Office of Budget and Planning~~], and the comptroller, for any state legislative or administrative action necessary to increase the state's receipt of federal formula funds.

~~[Sec. 751.023. AGENCY COMMUNICATIONS. A state agency shall, to the extent practicable, contact the office before the agency provides information to a federal agency or to the United States Congress about state policy or conditions. This section does not apply to a state agency that is headed by a statewide-elected official.]~~

Sec. 401.153 [751.024]. REPORTS CONCERNING GRANT FUNDS. (a) Each agency and each institution of higher education shall report to [~~the office,~~] the Legislative Budget Board[;] and the governor's office of budget, planning, and policy [~~budget division of the governor's office~~]:

(1) each application or request made to the United States government for grant funds;

(2) the award or designation, by the United States government, of any funds for expenditure by a state agency; and

(3) waivers of grant requirements.

(b) In consultation with the governor's office of budget, planning, and policy [~~director~~], the Legislative Budget Board may prescribe reporting procedures and time schedules necessary to implement Subsection (a).

SECTION 1K.13. Section 322.004, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The director may maintain office space at locations chosen by the director, including at locations outside of the state.

SECTION 1K.14. (a) The heading to Subchapter A, Chapter 751, Government Code, is repealed.

(b) The following sections of the Government Code are repealed:

(1) Section 751.003;

(2) Section 751.005(d);

(3) Sections 751.006(b)-(f);

(4) Section 751.008;

- (5) Sections 751.010(b)-(d);
- (6) Section 751.011; and
- (7) Section 751.012(b).

SECTION 1K.15. On September 1, 2003:

(1) all powers, duties, obligations, rights, contracts, records, real and personal property, funds, appropriations, money, and authorized full-time equivalent (FTE) positions of the Office of State-Federal Relations are transferred to the office of the governor;

(2) an employee of the Office of State-Federal Relations becomes an employee of the office of the governor;

(3) a rule, policy, procedure, report, or decision of the Office of State-Federal Relations continues in effect as a rule, policy, procedure, report, or decision of the office of the governor until superseded by an act of the office of the governor; and

(4) a reference in another law to the Office of State-Federal Relations means the office of the governor.

ARTICLE 1L. STATEWIDE COORDINATION OF PUBLIC TRANSPORTATION

SECTION 1L.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, or 453.

(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, or 453.

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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.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 1L.13. Any funds that are used by the Texas Department of Transportation to implement the transportation services provided in Sections 1L.02, 1L.04, 1L.05, 1L.06, 1L.07, 1L.08, 1L.09, 1L.10, and 1L.11 of this article 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.

ARTICLE 1M. GOVERNOR'S BUDGET AUTHORITY

SECTION 1M.01. Section 401.0445(b), Government Code, is amended to read as follows:

(b) In the budget, the governor shall show:

(1) the list of appropriations for the current year preceding the biennium for which appropriations are sought and recommended;

(2) expenditures for ~~[each of]~~ the year ~~[two full years]~~ preceding the current year; and

(3) the amounts requested by the various agencies and the amounts recommended by the governor for each of the years of the biennium.

SECTION 1M.02. Section 401.046(a), Government Code, is amended to read as follows:

(a) The governor shall deliver a copy of the governor's budget to each member of the legislature before the governor gives the message to the legislature required by Section 9, Article IV, Texas Constitution, at the commencement ~~[not later than the sixth day]~~ of each regular legislative session.

SECTION 1M.03. Section 401.047, Government Code, is repealed.

SECTION 1M.04. Chapter 2053, Government Code, is repealed.

ARTICLE 1N. COMMISSIONER OF INSURANCE

SECTION 1N.01. Section 31.022(a), Insurance Code, is amended to read as follows:

(a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a one-year ~~[two-year]~~ term that expires on February 1 ~~[of each odd-numbered year]~~.

SECTION 1N.02. Section 31.023, Insurance Code, is amended to read as follows:

Sec. 31.023. QUALIFICATIONS. The commissioner must~~±~~

~~[(1) be a competent and experienced administrator;~~

~~[(2)]~~ be well informed and qualified in the field of insurance and insurance regulation~~±~~ and

~~[(3) have at least 10 years of experience as an executive]~~ in the administration of business or government ~~[or as a practicing attorney or certified public accountant, with at least five years of that experience in the field of insurance or insurance regulation]~~.

SECTION 1N.03. Section 31.027(a), Insurance Code, is amended to read as follows:

(a) It is a ground for removal from office if the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 31.023;

(2) ~~[does not maintain during service as commissioner the qualifications required by Section 31.023;~~

~~[(3)]~~ violates a prohibition established by Section 33.001, 33.003, 33.004, or 33.005; or

~~(3) [(4)]~~ cannot, because of illness or disability, discharge the commissioner's duties for a substantial part of the commissioner's term.

SECTION 1N.04. The change in law made by this Act to Sections 31.022, 31.023, and 31.027, Insurance Code, applies only to the appointment of the commissioner of insurance on or after the effective date of this Act. A commissioner of insurance appointed before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for this purpose.

ARTICLE 10. REVIEW OF UNIVERSITY SYSTEM ADMINISTRATION

SECTION 10.01. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0515 to read as follows:

Sec. 61.0515. REVIEW OF UNIVERSITY SYSTEM ADMINISTRATION. (a) The board shall perform a review of the organization and operations of each university system office to:

(1) identify appropriate organizational structures for university systems and system offices;

(2) identify and quantify workforce and other resources at each system office used to provide services and functions common to each system office; and

(3) determine the extent to which system administration employees are performing services and functions that are also provided by employees of individual component institutions of each university system.

(b) In the review, the board shall identify the number and types of administrative and executive positions in the administration of each university system, and shall examine each major function, service, or activity performed by university system offices, including:

(1) central administration;

(2) academic affairs coordination and support;

(3) general counsel and other legal services;

(4) budgeting, accounting, and data reporting;

(5) fiscal management;

(6) facilities planning and construction;

(7) governmental relations;

(8) audit services;

(9) real estate management;

(10) information technology services; and

(11) aircraft operation and usage.

(c) Not later than November 1, 2004, the board shall prepare a report of the review and deliver the report to the governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, and chair of the standing committee of each house of the legislature with primary jurisdiction over higher education. In the report, the board shall state its findings and identify opportunities for legislative and administrative action relating to:

(1) the reorganization of university system offices and functions;
(2) the consolidation or reorganization of university systems; and
(3) the consolidation or centralization of functions, services, or activities of university system offices.

(d) In the report, the board shall identify potential reductions in personnel and other cost savings associated with each legislative or administrative action the board identifies under Subsection (c).

(e) This section expires September 1, 2005.

ARTICLE 1P. ABOLITION OF TEXAS COMMISSION ON
PRIVATE SECURITY

SECTION 1P.01. Subchapter A, Chapter 1702, Occupations Code, is amended by adding Section 1702.005 to read as follows:

Sec. 1702.005. COMMISSION ABOLISHED AND FUNCTIONS TRANSFERRED. (a) The commission is abolished, and all powers, duties, personnel, property, assets, and obligations of the commission are transferred to the Department of Public Safety of the State of Texas. The validity of a prior action of the commission is not affected by the abolishment.

(b) All rules of the commission relating to a transferred power or duty remain in effect as rules of the Department of Public Safety of the State of Texas until amended or repealed by the Department of Public Safety of the State of Texas.

(c) A reference in this chapter or another law to the commission means the Department of Public Safety of the State of Texas.

ARTICLE 1Q. MEMBERS OF PARKS AND WILDLIFE COMMISSION

SECTION 1Q.01. Section 11.012(d), Parks and Wildlife Code, is amended to read as follows:

(d) In making appointments under this section, the governor:

(1) shall:

(A) attempt to include persons with expertise in diverse fields, including fields such as historic preservation, conservation, and outdoor recreation; and

(B) consider the commission's composition in terms of:

(i) the geographical areas represented by members of the commission; and

(ii) the appropriate balance of representatives from rural and urban areas; and

(2) may include persons who have an interest in and knowledge of hunting, fishing, wildlife, environmental concerns, land or water use issues, or water quality issues.

SECTION 1Q.02. (a) As soon as possible on or after September 1, 2003, the governor shall appoint nine members to the Parks and Wildlife Commission under Section 11.012, Parks and Wildlife Code, as amended by this Act. The governor shall designate:

(1) three members, including one public member, for terms expiring February 1, 2005;

(2) three members, including one public member, for terms expiring February 1, 2007; and

(3) three members, including one public member, for terms expiring February 1, 2009.

(b) The governor may reappoint a person who served as a member of the Parks and Wildlife Commission before September 1, 2003.

(c) The position of a member of the Parks and Wildlife Commission serving immediately before September 1, 2003, is abolished at the time five or more of the newly appointed directors qualify for office. Until the abolition of the members' positions occurs under this section, the members serving immediately before September 1, 2003, have the same powers and duties that the members had immediately before that date and the commission continues to be composed in the way it was composed before that date, and the former law is continued in effect for that purpose.

ARTICLE 1R. DESIGNATION OF PRESIDING OFFICERS

SECTION 1R.01. Chapter 651, Government Code, is amended by adding Section 651.008 to read as follows:

Sec. 651.008. APPOINTMENT OF PRESIDING OFFICERS BY GOVERNOR. (a) In this section, "state agency" means a department, commission, board, office, council, authority, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including:

(1) a university system or institution of higher education as defined by Section 61.003, Education Code; and

(2) a river authority as defined by Section 30.003, Water Code.

(b) Notwithstanding other law, the governor may designate a member of the governing body of each state agency as the presiding officer of that governing body to serve in that capacity at the pleasure of the governor.

ARTICLE 1S. ADMINISTRATION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

SECTION 1S.01. Chapter 493, Government Code, is amended by adding Sections 493.0022 and 493.0023 to read as follows:

Sec. 493.0022. REPORT TO THE LEGISLATURE. The department shall report to the legislature not later than December 31, 2004, on the costs and feasibility of providing cognitive behavior training to corrections officers. This section expires January 1, 2005.

Sec. 493.0023. STUDY REGARDING EFFICIENT ADMINISTRATION. (a) The department, in consultation with representatives from The University of Texas or Texas A&M University who are specialists in corporate reorganization and efficiency, shall conduct a study to evaluate the organizational arrangement and efficient administration of the department. The study shall include an evaluation of possible means by which to:

(1) reduce inmate transportation costs as well as costs incurred in transporting food and other consumables to prison units;

(2) maximize the profitable and productive use of manufacturing capital investments; and

(3) reduce costs and prevent idleness of inmates by aggressive use of inmate labor in performing construction, repairs, and maintenance.

(b) The department shall conduct an analysis of complaint procedures and policies to eliminate repetitive complaints for which there is a substantive basis. As part of the analysis, the department shall:

(1) determine the number of complaints the department receives in various subject area categories;

(2) propose policy changes to eliminate the basis for most basic complaints without endangering public safety or efficient operations; and

(3) seek to reduce the number of complaints received by the department and the time required to respond to those complaints.

(c) The department shall submit an annual report to the legislature on the progress of the study and the analysis conducted under this section not later than December 1, 2003, and December 1, 2004.

(d) This section expires January 1, 2005.

PART 2. FEES AND OTHER FINANCIAL ISSUES

ARTICLE 2A. TEXAS ENTERPRISE FUND

SECTION 2A.01. Subchapter E, Chapter 481, Government Code, is amended by adding Section 481.078 to read as follows:

Sec. 481.078. TEXAS ENTERPRISE FUND. (a) In this section, "account" means the Texas Enterprise Fund.

(b) The Texas Enterprise Fund is an account in the general revenue fund.

(c) The account consists of:

(1) money appropriated by the legislature for the purposes of this section;

(2) money transferred to the account at the direction of the legislature; and

(3) gifts, grants, and other donations received by the governor or the department intended for the account.

(d) Money in the account may be used only for economic development, infrastructure development, community development, job training programs, job creation programs, and business incentives. Money in the account may be used by the comptroller temporarily for cash management purposes.

(e) Interest earned on the principal of the account shall be deposited to the credit of the economic stabilization fund.

(f) The governor may negotiate on behalf of the state regarding awarding by grant money appropriated from the account. The governor may award money appropriated from the account only with the express written prior approval of the lieutenant governor and the speaker of the house of representatives.

(g) Before awarding a grant under this section, the governor and the entity to be awarded the grant money may enter into a written agreement that specifies that:

(1) if all or any portion of the amount of the grant is used to build a capital improvement:

(A) the state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) the recipient of the grant shall, if the capital improvement is sold:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to other terms provided by the agreement; and

(ii) share with the state a proportionate amount of any profit realized from the sale; and

(2) if, as of a date certain as provided in the agreement, the grant recipient has not used grant money awarded under this section for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest to the state at the agreed rate and terms.

ARTICLE 2B. FEES FOR RAIL SAFETY PROGRAM

SECTION 2B.01. Article 6448a, Revised Statutes, is amended to read as follows:

Art. 6448a. IMPLEMENTATION OF FEDERAL RAILROAD SAFETY ACT OF 1970.

Sec. 1. The Railroad Commission of Texas is hereby authorized to perform any act and issue any rules and orders as permitted by the Federal Railroad Safety Act of 1970 (45 U.S.C.A. 431 et seq.).

Sec. 2. (a) The Railroad Commission of Texas by rule shall adopt and provide for the collection of reasonable fees to be assessed annually against railroads operating within this state. The amount of a fee imposed under this article may not exceed an amount estimated by the commission to be sufficient in the aggregate to recover the costs of administering the commission's rail safety program.

(b) To provide for the equitable allocation of the cost of administering the commission's rail safety program among railroads, the commission may consider the gross ton miles for railroad operations within this state for each railroad operating in the state when assessing a fee.

(c) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

ARTICLE 2C. FINANCING OF STATE FACILITY EXPENDITURES

SECTION 2C.01. Chapter 2113, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. RESTRICTIONS ON CAPITAL EXPENDITURES

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

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

(A) the maintenance of a state-owned or state-leased building or facility; or

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

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

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

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

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

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

ARTICLE 2D. SALES TAX ON MOTOR VEHICLES

SECTION 2D.01. Section 152.002, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding Subsection (a), the total consideration of a used motor vehicle is the amount on which the tax is computed as provided by Section 152.0412.

SECTION 2D.02. Section 152.041(a), Tax Code, is amended to read as follows:

(a) The tax assessor-collector of the county in which an application for registration or for a Texas certificate of title is made shall collect taxes imposed by this chapter, subject to Section 152.0412, unless another person is required by this chapter to collect the taxes.

SECTION 2D.03. Subchapter C, Chapter 152, Tax Code, is amended by adding Section 152.0412 to read as follows:

Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive value" means the average retail value of a motor vehicle as determined by the Texas Department of Transportation, based on a nationally recognized motor vehicle industry reporting service.

(b) If the amount paid for a motor vehicle subject to the tax imposed by this chapter is equal to or greater than the standard presumptive value of the vehicle, a county tax assessor-collector shall compute the tax on the amount paid.

(c) If the amount paid for a motor vehicle subject to the tax imposed by this chapter is less than the standard presumptive value of the vehicle, a county tax assessor-collector shall compute the tax on the standard presumptive value unless the purchaser establishes the retail value of the vehicle as provided by Subsection (d).

(d) A county tax assessor-collector shall compute the tax imposed by this chapter on the retail value of a motor vehicle if:

(1) the retail value is shown on an appraisal certified by an adjuster licensed under Article 21.07-4, Insurance Code, or by a motor vehicle dealer operating under Subchapter B, Chapter 503, Transportation Code;

(2) the appraisal is on a form prescribed by the comptroller for that purpose;
and

(3) the purchaser of the vehicle obtains the appraisal not later than the 20th day after the date of purchase.

(e) On request, a motor vehicle dealer operating under Subchapter B, Chapter 503, Transportation Code, shall provide a certified appraisal of the retail value of a motor vehicle. The comptroller by rule shall establish a fee that a dealer may charge for providing the certified appraisal. The county tax assessor-collector shall retain a copy of a certified appraisal received under this section.

(f) The Texas Department of Transportation shall maintain information on the standard presumptive values of motor vehicles as part of the department's registration and title system. The department shall update the information at least quarterly each calendar year.

SECTION 2D.04. (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 registration and title 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 \$23 million from the state highway fund to the general revenue fund on the first day of each month after that date until the earlier of:

(1) the date the 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.

ARTICLE 2E. OVERSIGHT OF REGIONAL PLANNING COMMISSIONS

SECTION 2E.01. The heading to Section 391.009, Local Government Code, is amended to read as follows:

Sec. 391.009. ROLE OF STATE AUDITOR, GOVERNOR, AND STATE AGENCIES.

SECTION 2E.02. Section 391.009, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) To protect the public interest or promote the efficient use of public funds, the state auditor ~~governor~~ shall recommend to the governor drafts of ~~adopt~~:

(1) rules relating to the operation and oversight of a commission;

(2) rules relating to the receipt or expenditure of funds by a commission, including:

(A) restrictions on the expenditure of any portion of commission funds for certain classes of expenses; and

(B) restrictions on the maximum amount of or percentage of commission funds that may be expended on a class of expenses, including indirect costs or travel expenses;

(3) annual reporting requirements for a commission;

(4) annual audit requirements on funds received or expended by a commission from any source;

(5) rules relating to the establishment and use of standards by which the productivity and performance of each commission can be evaluated; and

(6) guidelines that commissions and governmental units shall follow in carrying out the provisions of this chapter relating to review and comment procedures.

(a-1) The governor shall review the draft rules submitted by the state auditor under Subsection (a) and shall:

(1) adopt the rules as drafted;

(2) modify the rules and adopt the modified rules; or

(3) reject the rules and return the rules to the state auditor with instructions for redrafting and resubmitting the rules.

SECTION 2E.03. Section 391.0095, Local Government Code, is amended to read as follows:

Sec. 391.0095. AUDIT AND REPORTING REQUIREMENTS. (a) The audit and reporting requirements under Section 391.009(a) shall include a requirement that a commission annually report to the state auditor ~~governor~~:

(1) the amount and source of funds received by the commission;

(2) the amount and source of funds expended by the commission;

(3) an explanation of any method used by the commission to compute an expense of the commission, including computation of any indirect cost of the commission;

(4) a report of the commission's productivity and performance during the annual reporting period;

(5) a projection of the commission's productivity and performance during the next annual reporting period;

(6) the results of an audit of the commission's affairs prepared by an independent certified public accountant; and

(7) a report of any assets disposed of by the commission.

(b) Δ [The annual audit of a] commission or the governor's office may direct that an annual audit of the commission be performed. The annual audit [be commissioned by the governor's office or by the commission, as determined by the governor's office, and] shall be paid for from the commission's funds.

(c) A commission shall submit any other report or an audit to the state auditor and [required by] the governor.

(d) If a commission fails to submit a report or audit required under this section or is determined by the state auditor ~~governor~~ to have failed to comply with a rule, requirement, or guideline adopted under Section 391.009, the state auditor shall report the failure to the governor. The governor may, until the failure is corrected:

(1) appoint a receiver to operate or oversee the commission; or

(2) withhold any appropriated funds of the commission.

(e) A commission shall send to the state auditor, the governor, the comptroller, and the Legislative Budget Board a copy of each report and audit required under this section or under Section 391.009. The state auditor shall review each audit and report and must be given access to working papers and other supporting documentation that the state auditor determines is necessary to perform the review. If the state auditor finds significant issues involving the administration or operation of a commission or its programs, the state auditor shall report its findings and related recommendations to the legislative audit committee, the governor, and the commission. ~~The [governor and the]~~ legislative audit committee, based on the recommendation of the state auditor, may direct the commission to prepare a corrective action plan or other response to the state auditor's findings or recommendations. The legislative audit committee may direct the state auditor to perform any additional audit or investigative work that the committee determines is necessary.

SECTION 2E.04. Section 391.0117(e), Local Government Code, is amended to read as follows:

(e) A commission shall submit to the state auditor ~~[governor]~~ the commission's salary schedule, including the salaries of all exempt positions, not later than the 45th day before the date of the beginning of the commission's fiscal year. If the state auditor has recommendations to improve ~~[governor objects to]~~ a commission's salary schedule or a portion of the schedule, the state auditor shall report the recommendations to the governor's office. The governor's office may not allow the portion of the schedule for which [that] the state auditor has recommendations to ~~[governor objects to may not]~~ go into effect until revisions or explanations are given that are satisfactory to the governor based on recommendations from the state auditor ~~[and the governor approves that portion of the schedule].~~

SECTION 2E.05. On the effective date of this Act, a rule, requirement, or guideline adopted by the governor relating to the oversight of regional planning commissions remains in effect until amended or repealed by the governor.

ARTICLE 2F. ECONOMIC DEVELOPMENT POWERS OF GOVERNOR

SECTION 2F.01. Subchapter F, Chapter 401, Government Code, is amended by adding Section 401.106 to read as follows:

Sec. 401.106. ECONOMIC DEVELOPMENT POWERS. (a) The governor may negotiate on behalf of the state in economic development pursuits, including the pursuit of the expansion or relocation of a business project with the potential to have a substantial impact on the economy of this state.

(b) To promote the economic development of this state, the governor may direct a state agency to use funds appropriated to the agency or to a fund or account of the agency in a manner specified by the governor that is for a purpose for which the funds are appropriated. The agency shall comply with the governor's direction. The governor may represent to a person for purposes of negotiating under this section that the governor has the authority to obligate state funds as provided by this subsection.

(c) Funds that the governor may redirect under Subsection (b) include:

(1) amounts reserved by the governor for statewide employment and training activities under 29 U.S.C. Section 2864, as amended;

(2) amounts allocated by the Texas Transportation Commission for strategic priorities;

(3) the skills development fund;

(4) the self-sufficiency fund;

(5) discretionary funds of the commissioner of education or the Texas Education Agency;

(6) the telecommunications infrastructure fund;

(7) funds appropriated for the advanced research program under Chapter 142, Education Code, or the advanced technology program under Chapter 143, Education Code; and

(8) unclaimed lottery prize money.

(d) Subsections (b) and (c) do not apply in relation to a state agency that is headed by a statewide-elected official.

ARTICLE 2G. TEXAS TRANSPORTATION INSTITUTE

SECTION 2G.01. Chapter 88, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. TEXAS TRANSPORTATION INSTITUTE

Sec. 88.301. DEFINITION. In this subchapter, "institute" means the Texas Transportation Institute, a component of The Texas A&M University System.

Sec. 88.302. FUNDING; LIMITATION ON GENERAL REVENUE. (a) General revenue of the state may not be appropriated or used to fund an activity or program of the institute if money from the state highway fund could lawfully be appropriated and used to fund the activity or program.

(b) In any request or proposal by the board to the legislature, Legislative Budget Board, or Texas Higher Education Coordinating Board for an appropriation for the institute, the board shall include a description of each major activity or program of the center and a statement of the board's opinion whether the activity or program could be lawfully funded in whole or part by money from the state highway fund.

SECTION 2G.02. Section 88.302, Education Code, as added by this article, does not affect the validity of an appropriation made to the Texas Transportation Institute before the effective date of this article or the use of the appropriated money by the institution.

ARTICLE 2H. UNCLAIMED PROPERTY

SECTION 2H.01. Section 72.101(a), Property Code, is amended to read as follows:

(a) Except as provided by this section and Sections ~~Section~~ 72.1015 and 72.102, personal property is presumed abandoned if, for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 2H.02. Subchapter B, Chapter 72, Property Code, is amended by adding Section 72.1015 to read as follows:

Sec. 72.1015. UNCLAIMED WAGES. (a) In this section, "wages" has the meaning assigned by Section 61.001, Labor Code.

(b) An amount of unclaimed wages is presumed abandoned if, for longer than one year:

(1) the existence and location of the person to whom the wages are owed is unknown to the holder of the wages; and

(2) according to the knowledge and records of the holder of the wages, a claim to the wages has not been asserted or an act of ownership of the wages has not been exercised.

ARTICLE 2I. IMPOSITION OF CERTAIN FEES

SECTION 2I.01. Subchapter B, Chapter 1052, Occupations Code, is amended by adding Section 1052.0541 to read as follows:

Sec. 1052.0541. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

SECTION 2I.02. Subchapter B, Chapter 1053, Occupations Code, is amended by adding Section 1053.0521 to read as follows:

Sec. 1053.0521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration under this chapter and the fee for the renewal of a certificate of registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

SECTION 2I.03. Subchapter D, Chapter 1071, Occupations Code, is amended by adding Section 1071.1521 to read as follows:

Sec. 1071.1521. FEE INCREASE. (a) The fee for the issuance of a certificate of registration to a registered professional land surveyor under this chapter and the fee for the renewal of a certificate of registration for a registered professional land surveyor under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

SECTION 2I.04. Subchapter B, Chapter 1152, Occupations Code, is amended by adding Section 1152.053 to read as follows:

Sec. 1152.053. FEE INCREASE. (a) The fee for the registration of a person under this chapter and the fee for the renewal of a registration under this chapter is increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

SECTION 2I.05. The change in law made by this article applies only to the issuance or renewal of a certificate of registration under Chapter 1052, 1053, or 1071, Occupations Code, or the issuance or renewal of a registration under Chapter 1151, Occupations Code, on or after the effective date of this article. A certificate of registration or registration issued or renewed before the effective date of this article is governed by the law in effect on the date of the issuance or renewal, and the former law is continued in effect for that purpose.

ARTICLE 2J. OPERATIONS OR FINANCIAL ACCOUNTABILITY OF
STATE AGENCIES

SECTION 2J.01. Chapter 322, Government Code, is amended by adding Section 322.015 to read as follows:

Sec. 322.015. DEVELOPMENT OF SYSTEM OF PERFORMANCE MEASURES. (a) The Legislative Budget Board and the governor shall develop a system of performance measures to be used by state agencies for purposes of the appropriations process.

(b) The Legislative Budget Board shall keep the House Appropriations Committee and the Senate Finance Committee informed of the board's activities related to the development of the system of performance measures.

(c) On request, a state agency shall provide information or assistance to the Legislative Budget Board and the governor to assist with the development of the system of performance measures.

SECTION 2J.02. Section 2056.002, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The Legislative Budget Board and the governor shall develop recommendations for improvement of the strategic planning process under this section. On request, a state agency shall assist the Legislative Budget Board and the governor in developing recommendations for improvement in accordance with this subsection.

SECTION 2J.03. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2115 to read as follows:

CHAPTER 2115. RISK ASSESSMENT AND FINANCIAL
CONTROL SYSTEMS

Sec. 2115.001. DEFINITION. In this chapter, "state agency" means a department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government created by the constitution or a statute of this state, including an institution of higher education as defined by Section 61.003, Education Code, except a public junior college, and a health-related institution that is associated with an institution of higher education.

Sec. 2115.002. REPORT ON RISK ASSESSMENT AND FINANCIAL CONTROL SYSTEMS. (a) Not later than September 30 of each year, the executive director of a state agency and, for a state agency governed by a board or similar body, the presiding officer of the agency's governing body shall submit to the office of the governor, the Legislative Budget Board, and the state auditor, a letter that provides assurance about the state agency's risk assessment and financial control systems.

(b) If the executive director and the presiding officer of the agency's governing body agree on the content of the letter required by this section, they shall jointly submit one letter for the state agency. If the executive director and the presiding officer do not agree on the content of the letter, they shall each submit a separate letter in accordance with this section.

(c) A person submitting or jointly submitting a letter in accordance with this section must sign the letter and, as appropriate, attest in the letter that:

(1) the person has identified and reviewed risks that may affect the state agency's operation and the achievement of its mission;

(2) the person has taken appropriate action to manage and reduce the actual and potential effects of the risks identified under Subdivision (1) on the state agency;

(3) the person has reviewed the state agency's financial control systems; and

(4) to the best of the person's knowledge after reasonable efforts to obtain accurate information:

(A) the financial control systems identified under Subdivision (3) protect the state's resources from inappropriate use and fraud to the greatest extent possible; and

(B) as of the date the letter is submitted, the financial statements and other financial information reported by the state agency fairly represent the financial condition and results of the agency's operations.

(d) If a person is unable to attest to any of the statements under Subsection (c), the person must identify in the letter the statement and the reason or reasons why the person is unable to attest to it.

(e) A letter submitted under this section must identify any ongoing or future planned actions to correct problems in or strengthen the state agency's risk assessment or financial control systems and the date the actions were, or are expected to be, implemented.

(f) If a state agency fails to timely submit a letter in accordance with this section, the state auditor shall report to any relevant legislative committees the fact of the state agency's failure to do so.

PART 3. MANAGEMENT OF STATE PROPERTY AND FACILITIES

ARTICLE 3A. FUEL SAVINGS FOR STATE AGENCIES

SECTION 3A.01. Chapter 447, Government Code, as amended by Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Sections 447.012 and 447.013 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A state agency may establish a program for agency employees to voluntarily:

(1) purchase fuel-saving technologies; and

(2) document reductions in fuel savings and air emissions.

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

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

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

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

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

(2) performing controlled field tests.

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

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

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

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

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

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

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

(1) list recommended applications of the technologies;

(2) document other negative or positive effects; and

(3) prepare a concise report of these findings.

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

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

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

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

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

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

ARTICLE 3B. FACILITIES MANAGEMENT SERVICES

SECTION 3B.01. Subchapter A, Chapter 2165, Government Code, is amended by adding Section 2165.007 to read as follows:

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

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

- (1) a facility owned or operated by an institution of higher education;
- (2) military facilities;
- (3) prison facilities;
- (4) the Capitol, including the Capitol Extension, the General Land Office building, and any museum located on the Capitol grounds; or
- (5) a facility determined by the commission to be completely residential.

SECTION 3B.02. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.057 to read as follows:

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

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

SECTION 3B.03. On September 1, 2003:

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

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

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

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

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

ARTICLE 3C. RECYCLING MARKET DEVELOPMENT

SECTION 3C.01. Section 2155.448(a), Government Code, is amended to read as follows:

(a) Each state fiscal year, the commission~~[, in coordination with the Recycling Market Development Board,]~~ by rule may identify recycled, remanufactured, or environmentally sensitive commodities or services, as those terms are defined by rule of the commission, and designate purchasing goals for the procurement of those commodities and services by state agencies for that fiscal year.

SECTION 3C.02. Section 361.423, Health and Safety Code, is amended to read as follows:

Sec. 361.423. RECYCLING MARKET DEVELOPMENT ~~[BOARD AND]~~ IMPLEMENTATION PROGRAM. (a) The governor's office, the commission, the Texas Department of Economic Development, and the Texas Building and Procurement Commission ~~[The commissioner of the General Land Office, the chairman of the commission, the executive director of the General Services Commission, and the executive director of the Texas Department of Commerce shall constitute the Recycling Market Development Board. The commissioner of the General Land Office serves as presiding officer of the Recycling Market Development Board for the first year, and after that year the members of the Recycling Market Development Board shall, in the order listed in this subsection, rotate as the presiding officer for terms of one year. The Recycling Market Development Board may designate chief executives of additional agencies as members of the board if it identifies the agencies as agencies needed to assist the board in performing its duties as outlined in Subsection (b). The Recycling Market Development Board]~~ shall ~~[provide support to and]~~ coordinate their ~~[the]~~ recycling activities ~~[of member agencies]~~ and shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The governor's office, the commission, the Texas Department of Economic Development, and the Texas Building and Procurement Commission ~~[Recycling Market Development Board]~~, on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies;

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the governor's office, the commission, the Texas Department of Economic Development, and the Texas Building and Procurement Commission [~~responsible agencies~~] may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) The General Land Office shall provide ongoing research and assistance to the governor's office, the commission, the Texas Department of Economic Development, and the Texas Building and Procurement Commission [~~Recycling Market Development Board~~] in carrying out their [its] responsibilities.

SECTION 3C.03. (a) The Recycling Market Development Board is abolished, and the offices of the members of the board and the positions of the employees of the board are abolished.

(b) The validity of an action taken by the Recycling Market Development Board before it is abolished under Subsection (a) of this section is not affected by the abolishment.

(c) On the effective date of this article, all functions and activities performed by the Recycling Market Development Board immediately before that date are transferred to the governor's office, the Texas Commission on Environmental Quality, the Texas Department of Economic Development, and the Texas Building and Procurement Commission, as provided by this article.

ARTICLE 3D. LEASE OF SPACE IN STATE-OWNED
PARKING LOTS AND GARAGES

SECTION 3D.01. Subchapter E, Chapter 2165, Government Code, is amended by adding Section 2165.2035 to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES. (a) In this section, "lease" includes a management agreement.

(b) The commission shall develop private, commercial uses for state-owned parking lots and garages located in the city of Austin at locations the commission determines are appropriate for commercial uses.

(c) The commission may contract with a private vendor to manage the commercial use of state-owned parking lots and garages.

(d) Money received from a lease under this program shall be deposited to the credit of the general revenue fund.

(e) On or before December 1 of each even-numbered year, the commission shall submit a report to the legislature and the Legislative Budget Board describing the effectiveness of the program under this section.

(f) The limitation on the amount of space allocated to private tenants prescribed by Section 2165.205(b) does not apply to the lease of a state-owned parking lot or garage under this section.

(g) Any lease of a state-owned parking lot or garage under this section must contain a provision that allows state employees who work hours other than regular working hours under Section 658.005 to retain their parking privileges in a state-owned parking lot or garage.

ARTICLE 3E. LEASE OF SPACE FOR STATE AGENCIES

SECTION 3E.01. Section 2167.001, Government Code, is amended to read as follows:

Sec. 2167.001. APPLICABILITY. (a) This chapter applies to:

- (1) office space;
- (2) warehouse space;
- (3) laboratory space;
- (4) storage space exceeding 1,000 gross square feet; ~~and~~
- (5) boat storage space;
- (6) aircraft hangar space;
- (7) vehicle parking space; and
- (8) a combination of those kinds of space.

(b) This chapter does not apply to:

- (1) ~~aircraft hangar space;~~
- ~~[(2)]~~ radio antenna space;
- ~~(2) [(3)] boat storage space;~~
- ~~[(4)] vehicle parking space;~~

~~(5)~~ residential space for a Texas Department of Mental Health and Mental Retardation program;

(3) ~~(6)~~ residential space for a Texas Youth Commission program;

(4) ~~(7)~~ space to be used for less than one month for meetings, conferences, conventions, seminars, displays, examinations, auctions, or similar purposes;

(5) ~~(8)~~ district office space for members of the legislature;

(6) ~~(9)~~ space used by the Texas Workforce ~~[Employment]~~ Commission;

(7) ~~(10)~~ residential property acquired by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation that is offered for sale or rental to individuals and families of low or very low income or families of moderate income; or

(8) ~~(11)~~ except as provided by Section 2167.007, classroom and instructional space for an institution of higher education.

SECTION 3E.02. Section 2167.005, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may revoke a delegation of authority made under this section.

SECTION 3E.03. Section 2167.007(c), Government Code, is amended to read as follows:

(c) The commission may ~~shall~~ establish a system of charges and billings to assure the recovery of the cost of providing services under Subsection (a) and may ~~shall~~ submit, after the close of each month, a purchase voucher or journal voucher to an agency for which services were provided.

SECTION 3E.04. Section 2167.054(d), Government Code, is amended to read as follows:

(d) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements and to obtain the most advantageous lease contract for the state. The commission may ~~shall~~ invite a leasing state agency to participate in discussions and negotiations conducted under this section. After receiving a proposal but before making an award, the commission may permit the offeror to revise the proposal to obtain the best final proposal.

SECTION 3E.05. Sections 2167.055(d) and (f), Government Code, are amended to read as follows:

(d) A lease contract that does not contain an option to renew may, on agreement of the parties, be renewed under terms to which all parties to the contract agree ~~[once under the provisions of the original contract for a term that does not exceed one year]~~.

(f) The obligation of the lessor to provide lease space and of the commission to accept the space is binding on the execution of the lease ~~[award of the]~~ contract.

SECTION 3E.06. Section 2167.101, Government Code, is amended to read as follows:

Sec. 2167.101. CERTIFICATION OF AVAILABLE MONEY. A state agency occupying space leased under this chapter shall certify to the commission, at least 60 days before the beginning of each fiscal biennium during the lease term, that money is available to pay for the lease until the end of the next fiscal biennium.

SECTION 3E.07. The following laws are repealed:

- (1) Section 2167.003(c), Government Code;
- (2) Section 2167.004(b), Government Code; and
- (3) Section 2167.106, Government Code.

SECTION 3E.08. A lease contract entered into by the Texas Building and Procurement Commission before September 1, 2003, under Chapter 2167, Government Code, is governed during the remaining term of the lease by Chapter 2167, Government Code, as it existed immediately before September 1, 2003, and the prior law is continued in effect for this purpose. Chapter 2167, Government Code, as amended by this article, applies to the renewal of a lease described by this section.

ARTICLE 3F. SALE OF BULL CREEK CAMPUS

SECTION 3F.01. (a) The Texas Transportation Commission may sell the tract of land comprising the Texas Department of Transportation's Bull Creek campus at Bull Creek Road and 45th Street in Austin in accordance with the procedures for disposal of surplus land acquired for highway purposes under Subchapter B, Chapter 202, Transportation Code.

(b) The commission may retain ownership and control of:

(1) the portion of the Bull Creek campus used on the effective date of this Act for the operations of the department's motor carrier division; and

(2) the parking facilities on Bull Creek Road used to serve the Bull Creek campus and the department's Camp Hubbard campus.

(c) Revenue from the sale of this property shall be deposited to the credit of the state highway fund.

(d) Before September 1, 2005, the commission may purchase or acquire by exercise of the power of eminent domain any portion of the property formerly owned by the State Aircraft Pooling Board located at the site of the former Robert Mueller Municipal Airport in Austin that the commission determines is needed:

- (1) as a replacement for property sold under Subsection (a) of this section;
- (2) for the operation of an intelligent transportation system; and
- (3) to locate other department facilities or offices.

(e) The department may relocate its displaced operations from the Bull Creek campus to the replacement property. If the property formerly owned by the State Aircraft Pooling Board is not sufficient for the department's needs to relocate displaced operations and for other facilities or offices, the commission may also purchase or acquire by exercise of the power of eminent domain any property adjacent to that property that the commission determines necessary.

(f) This section does not require the commission to relocate all or a portion of the department's displaced operations from the Bull Creek campus to property acquired under this section.

(g) Section 31.158, Natural Resources Code, does not apply to a transaction authorized by this section.

ARTICLE 3G. ALLOCATION OF OFFICE SPACE TO STATE AGENCIES

SECTION 3G.01. Section 2165.104(c), Government Code, is amended to read as follows:

(c) To the extent possible without sacrificing critical public or client services, the commission may not allocate usable office space, as defined by the commission, to a state agency under Article I, II, V, VI, VII, or VIII of the General Appropriations Act or to the Texas Higher Education Coordinating Board, the Texas Education Agency, the State Board for Educator Certification, the Telecommunications Infrastructure Fund Board, or the Office of Court Administration of the Texas Judicial System in an amount that exceeds an average of 135 ~~[453]~~ square feet per agency employee for each agency site. To the extent that any of those agencies allocates its own usable office space, as defined by the commission, the agency shall allocate the space to achieve the required ratio. This subsection does not apply to:

(1) an agency site at which there are so few employees that it is not practical to apply this subsection to that site, as determined by the commission ~~[fewer than 16 employees are located]; and~~

(2) an agency site at which it is not practical to apply this subsection because of the site's type of space or use of space, as determined by the commission ~~[warehouse space;~~

~~[(3) laboratory space;~~

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

~~[(5) library space;~~

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

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

SECTION 3G.02. This article applies only to a lease for usable office space entered into or renewed on or after September 1, 2003. A lease entered into or renewed before September 1, 2003, shall be reviewed by the Texas Building and Procurement Commission as the lease comes up for renewal to determine whether it would be cost-effective to bring the lease into compliance with Section 2165.104(c), Government Code, as amended by this article.

ARTICLE 3H. WRITTEN COMMENTS BY THE GENERAL LAND OFFICE ON TEXAS BUILDING AND PROCUREMENT COMMISSION LEASES

SECTION 3H.01. The following sections are repealed:

(1) Section 2165.154, Government Code; and

(2) Section 2165.204, Government Code.

ARTICLE 3I. DEFINITION OF RECYCLED PRODUCT

SECTION 3I.01. Section 2155.445, Government Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

PART 4. MANAGEMENT OF INFORMATION TECHNOLOGY

ARTICLE 4A. OPERATING PLANS OF STATE AGENCIES

SECTION 4A.01. Section 2054.102, Government Code, is amended to read as follows:

Sec. 2054.102. EVALUATION AND APPROVAL OF OPERATING PLANS.

(a) The Legislative Budget Board may specify procedures for the submission, review, approval, and disapproval of biennial operating plans and amendments, including procedures for review or reconsideration of the Legislative Budget Board's disapproval of a biennial operating plan or biennial operating plan amendment. The Legislative Budget Board shall review and approve or disapprove the biennial operating plan or biennial operating plan amendment not later than the 60th day after the date the plan or amendment to the plan is submitted. The plan or amendment to the plan is considered to be approved on the 61st day after the date the plan or amendment is submitted if the Legislative Budget Board does not disapprove the plan or amendment before that date.

(b) The governing board of the department shall adopt rules as necessary to establish department standards.

(c) The department shall provide the Legislative Budget Board with a list of agencies that have not complied with department standards, provisions of the state strategic plan, or corrective action plans. An agency identified on a list under this subsection shall develop a corrective action plan approved by the department that specifies the manner in which deficiencies will be corrected before components of or amendments to the agency's biennial operating plan may be approved by the Legislative Budget Board.

ARTICLE 4B. TEXASONLINE AUTHORITY

SECTION 4B.01. Section 2054.111(e), Government Code, is amended to read as follows:

(e) A state agency or local government that uses the project may charge a fee if:

(1) the fee is necessary to recover the actual costs directly and reasonably incurred by the agency or local government because of the project for:

(A) the use of electronic payment methods; or

(B) interfacing with other information technology systems;

(2) the fee does not include an amount to recover state agency or local government employee costs;

(3) the state agency or local government approves the amount of the fee using the state agency's or local government's standard approval process for fee increases;

(4) the chief financial officer for the state agency or local government certifies that the amount of the fee is necessary to recover the actual costs incurred because of the project; and

(5) ~~(2)~~ the authority approves the amount of the fee.

SECTION 4B.02. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1115 to read as follows:

Sec. 2054.1115. ELECTRONIC PAYMENTS ON TEXASONLINE. (a) A state agency or local government that uses TexasOnline may use electronic payment methods, including the acceptance of credit and debit cards, for points of sale, telephone, or mail transactions.

(b) The state agency or local government may charge a reasonable fee, as provided by Section 2054.111, to recover costs incurred through electronic payment methods used under this section.

SECTION 4B.03. Section 2054.113, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A state agency may not contract with a third party to develop an Internet application that duplicates a TexasOnline function unless the agency has notified and provided the authority the opportunity to bid on the contract at the same time as third parties are provided the opportunity to bid.

(d) The program management office may exempt a state agency from this section if the office determines that the agency has fully complied with Section 2054.111.

SECTION 4B.04. Section 2054.125, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Each state agency that maintains a generally accessible Internet site shall include a link to TexasOnline on the front page of the Internet site.

SECTION 4B.05. Section 2054.251(5), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(5) "Occupational license" means a license, certificate, registration, permit, or other form of authorization, including a renewal of the authorization, that:

(A) a person must obtain to practice or engage in a particular business, occupation, or profession; or

(B) a facility must obtain before a particular business, occupation, or profession is practiced or engaged in within the facility.

SECTION 4B.06. Section 2054.251, Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2054.251. DEFINITIONS. In this subchapter, "authority," "licensing entity," and "occupational [~~±~~]

~~[(1) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues an occupational license.~~

~~[(2) "Occupational license" have the meanings assigned those terms by Section 2054.251, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001 [means a license, certificate, registration, or other form of authorization that a person must obtain to practice or engage in a particular business, occupation, or profession].~~

SECTION 4B.07. Section 2054.252(d), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(d) The department [~~authority~~] may contract with a private vendor to implement this section.

SECTION 4B.08. Section 2054.252, Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2054.252. APPLICABILITY. (a) The following licensing entities [~~authorities~~] shall participate in the system established under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001:

- (1) State Board of Barber Examiners;
 - (2) Texas Board of Chiropractic Examiners;
 - (3) Texas Cosmetology Commission;
 - (4) Court Reporters Certification Board;
 - (5) State Board of Dental Examiners;
 - (6) Texas Funeral Service Commission;
 - (7) Texas Board of Professional Land Surveying;
 - (8) Texas State Board of Medical Examiners;
 - (9) Board of Nurse Examiners;
 - (10) Board of Vocational Nurse Examiners;
 - (11) Texas Optometry Board;
 - (12) Texas Structural Pest Control Board;
 - (13) Texas State Board of Pharmacy;
 - (14) Executive Council of Physical Therapy and Occupational Therapy Examiners;
 - (15) Texas State Board of Plumbing Examiners;
 - (16) Texas State Board of Podiatric Medical Examiners;
 - (17) Board of Tax Professional Examiners;
 - (18) Polygraph Examiners Board;
 - (19) Texas State Board of Examiners of Psychologists;
 - (20) State Board of Veterinary Medical Examiners;
 - (21) Texas Real Estate Commission;
 - (22) Texas Appraiser Licensing and Certification Board; ~~and~~
 - (23) Texas Department of Licensing and Regulation;
 - (24) Texas State Board of Public Accountancy;
 - (25) State Board for Educator Certification;
 - (26) Texas Board of Professional Engineers;
 - (27) Texas Department of Health;
 - (28) Texas Board of Architectural Examiners;
 - (29) Texas Racing Commission;
 - (30) Commission on Law Enforcement Officer Standards and Education;
- and
- (31) Texas Commission on Private Security.

(b) The authority ~~[comptroller]~~ may add additional agencies as system capabilities are developed.

(c) A licensing entity ~~[authority]~~ other than an entity ~~[authority]~~ listed by Subsection (a) may participate in the system established under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, subject to the approval of the authority ~~[department]~~.

SECTION 4B.09. Section 2054.253(a), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The authority consists of the comptroller, who serves ex officio, or the designee of the comptroller, a member of the board of the department who serves ex officio at the pleasure of the governor, and 15 members appointed[;] as follows:

(1) ~~[a representative of each of the following state officers or agencies appointed by the state officer or the governing body of the agency:~~

~~[(A) the comptroller; and~~

~~[(B) the department;~~

~~[(2)] three representatives of local governments appointed by the governor, including one representative from a junior college district;~~

~~[(2) [(3)] three representatives of businesses that are regulated by a state agency or local government, appointed by the governor, including one representative from a rural area;~~

~~[(3) [(4)] four representatives of state agencies, including an institution of higher education other than a junior college district, appointed by the governor, including one representative from a rural area; and~~

~~[(4) five [(5) three] public members appointed by the governor, including one representative from a rural area.~~

SECTION 4B.10. Section 2054.253, Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2054.253. ELECTRONIC SYSTEM FOR OCCUPATIONAL LICENSING TRANSACTIONS. (a) The authority ~~[department]~~ shall administer a common electronic system using the Internet through which a licensing entity ~~[authority]~~ can electronically:

(1) send occupational licenses and other documents to persons regulated by the authority and to the public;

(2) receive applications for occupational licenses and other documents for filing from persons regulated by the authority and from the public, including documents that can be electronically signed if necessary; and

(3) receive required payments from persons regulated by the authority and from the public.

(b) The authority ~~[department]~~ may implement this section in phases. Each licensing entity ~~[authority]~~ that participates in the system established under this section shall comply with the schedule established by the authority ~~[department]~~.

(c) The authority ~~[department]~~ may use any Internet portal established under a demonstration project administered by the authority ~~[department]~~.

~~(d) [The department may contract with a private vendor to implement this section. A contract under this subsection is payable only from fees collected under Subsection (e).]~~

~~[(e)]~~ The authority ~~[department]~~ shall charge fees to licensing entities in amounts sufficient to cover the cost of implementing this section. The authority shall ~~[department may]~~ charge[:

~~[(1) a transaction fee for each transaction performed on the system; and~~

~~[(2)] a subscription fee to be paid by each licensing entity ~~[authority that participates in the system].~~~~

(e) Each licensing entity shall increase the occupational license issuance or renewal fees imposed by the licensing entity by an amount sufficient to cover the cost of the subscription fee imposed on the licensing entity under Subsection (d) but not to exceed:

(1) \$5 per year for an occupational license;

(2) \$10 for a biennial occupational license; or

(3) the amount necessary to recover the cost of the subscription fee imposed on the licensing entity under Subsection (d) for an occupational license that is a permit or that is issued for a facility.

(f) The authority may charge a reasonable convenience fee to a license holder who who uses the system for on-line issuance or renewal of a license if the authority determines that the transaction costs exceed the maximum increase in occupational license issuance or renewal fees allowed under Subsection (e).

(g) The authority may exempt a licensing entity from the requirements of this section if the authority determines that:

(1) the licensing entity has established an Internet portal that is performing the functions described by Subsection (a); or

(2) on-line license renewal for the licensing entity would not be cost-effective or in the best interest of the project.

SECTION 4B.11. Sections 2054.254(a), (b), and (c), Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(a) The steering committee for electronic occupational licensing transactions consists of a representative of each of the following, appointed by its governing body:

(1) each licensing entity ~~[authority]~~ listed by Section 2054.252(a), as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001; and

(2) the department.

(b) The governing body of a licensing entity ~~[authority]~~ described by Section 2054.252(c), as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, may appoint a representative to the committee.

(c) A member of the committee serves at the will of the ~~entity [authority]~~ that appointed the member.

SECTION 4B.12. Section 2054.255, Government Code, is amended to read as follows:

Sec. 2054.255. PRESIDING OFFICER. The governor shall designate one member of the authority as [representing the department is] the presiding officer of the authority to serve in that capacity at the pleasure of the governor.

SECTION 4B.13. Section 2054.259, Government Code, is amended to read as follows:

Sec. 2054.259. GENERAL POWERS AND DUTIES OF TEXAS ONLINE AUTHORITY. The authority shall:

(1) develop policies related to operation of the project;

(2) approve or disapprove ~~[consider]~~ services to be provided by the project;

(3) operate and promote the project;

(4) oversee ~~[manage]~~ contract performance for the project;

(5) comply with department financial requirements;

(6) oversee money generated for the operation and expansion of the project;

(7) develop project pricing policies, including policies regarding any fees that a state agency or local government may charge for a transaction that uses the project;

(8) evaluate participation in the project to determine if performance efficiencies or other benefits and opportunities are gained through project implementation;

(9) advise the department about the project; and

(10) coordinate with the department to receive periodic security audits of the operational facilities of the project.

SECTION 4B.14. Subchapter I, Chapter 2054, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Sections 2054.268, 2054.269, 2054.270, and 2054.271 to read as follows:

Sec. 2054.268. CONTRACTS; CONFLICT OF INTEREST. A contract entered into between the authority and another state agency or a local government is not void for the sole reason that a member of the authority also serves on the governing body of the state agency or local government with whom the contract was entered.

Sec. 2054.269. INTELLECTUAL PROPERTY RIGHTS. The department may exercise all intellectual property rights regarding the project, including prevention of other persons from using names or designs similar to those used by the project to market products.

Sec. 2054.270. MOTOR VEHICLE REGISTRATIONS. For purposes of this chapter, the renewal of a motor vehicle registration is a state service.

Sec. 2054.271. AUTHENTICATION OF INDIVIDUAL IDENTITIES AND SIGNATURES; RULES. (a) The authority or another state agency or local government that uses TexasOnline may use the Department of Public Safety's or another state agency's database, as appropriate, to authenticate an individual's identity on TexasOnline.

(b) The authentication allowed by this section may be used by the state agency or local government as an alternative to requiring a notarized document, a document signed by a third party, or an original signature on a document.

(c) The authority shall propose rules, which the board may adopt, regarding the use of a standardized database for authentication under this section.

SECTION 4B.15. Sections 2054.252(e), (f), and (g), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, and Section 2054.2645, Government Code, are repealed.

SECTION 4B.16. (a) Not later than November 1, 2003, the governor shall appoint the additional public members to serve on the TexasOnline Authority, as required by Section 2054.253(a), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, and as amended by this Act. One public member's term shall expire on February 1, 2005, and the other public member's term shall expire on February 1, 2007.

(b) Not later than November 1, 2003, the governor shall appoint a member of the governing board of the Department of Information Resources to serve on the TexasOnline Authority, as required by Section 2054.253(a), Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, and as amended by this Act.

SECTION 4B.17. The Department of Information Resources shall, in cooperation with the secretary of state, study the feasibility of providing notary public services on the Internet. If the department and the secretary of state determine the

feasibility to be sound, the department shall make recommendations not later than January 1, 2005, to the 79th Legislature regarding legislation to implement notary public services on the Internet.

SECTION 4B.18. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

ARTICLE 4C. ON-LINE STATE BENEFITS SYSTEM

SECTION 4C.01. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.131 to read as follows:

Sec. 2054.131. ELECTRONIC BENEFITS ENROLLMENT AND ADMINISTRATION SYSTEM. (a) In this section, "work site benefits plan" means a plan or other arrangement to provide to officers, employees, or former officers or employees:

(1) insurance, including health, life, and disability insurance and health benefits plans;

(2) flexible spending accounts; or

(3) savings or retirement benefits.

(b) If the comptroller determines that a cost savings may be realized, the comptroller, through a private vendor selected under this section, may implement a project that establishes a common electronic infrastructure through which each state agency, including any retirement system created by statute or by the constitution, shall:

(1) require its work site benefits plan participants to electronically:

(A) enroll in any work site benefits plans provided to the person by the state or a state agency;

(B) add, change, or delete benefits;

(C) sign any payroll deduction agreements to implement a contribution made to a plan in which the participant enrolls;

(D) terminate participation in a voluntary plan;

(E) initiate account investment changes and withdrawals in a retirement plan;

(F) obtain information regarding plan benefits; and

(G) communicate with the plan administrator; and

(2) administer its work site benefits plans electronically by using the project to:

(A) enroll new plan participants and, when appropriate, terminate plan participation;

(B) generate eligibility and enrollment reports for plan participants;

(C) link plan administration with payroll administration to facilitate payroll deductions for a plan;

(D) facilitate single-source billing arrangements between the agency and a plan provider; and

(E) transmit and receive information regarding the plan.

(c) The electronic infrastructure established under Subsection (a) may include TexasOnline, the Internet, intranets, extranets, and wide area networks.

(d) If the comptroller implements an electronic infrastructure project under this section, the comptroller shall select and contract with a single private vendor to implement the project. The contract must require the application of the project to all state agencies without cost to the state until the project is initially implemented.

(e) The private vendor selected under Subsection (d) must offer existing information resources technology for use in the project that:

(1) will be available to all state agencies, including retirement systems;

(2) includes each agency's work site benefits plan participants;

(3) will use, to the extent possible, the department's information technology standards, including information security, privacy and disaster recovery, and Internet-based technology standards;

(4) includes applications and a supporting platform that are already developed and used in connection with the electronic enrollment of work site benefits plans offered by other multiple plan providers;

(5) is available for use with a wide variety of plan and benefit providers;

(6) can be easily modified to permit changes in benefits offered by the state or a state agency;

(7) provides a solution to overcome limitations caused by the incompatibility of different legacy systems used by different state agencies and plan providers;

(8) is available for use over the Internet through existing or new websites or portals; and

(9) is supported, to the extent necessary, by:

(A) laptop and desktop enrollment and administration capabilities; and

(B) a telephone call center.

SECTION 4C.02. If the electronic infrastructure under Section 2054.131, Government Code, as added by this article, is established, the comptroller as soon as reasonably possible shall develop a timetable and procedures under which each state agency shall implement the electronic infrastructure project for use by all work site benefits plan participants, including officers and employees and former officers and employees.

ARTICLE 4D. TEXAS ONLINE AUTHORITY MEETING

SECTION 4D.01. Section 2054.256, Government Code, is amended to read as follows:

Sec. 2054.256. MEETINGS. (a) The authority shall meet at least quarterly.

(b) The authority may hold an open or closed meeting by telephone conference subject to the requirements of Section 551.125(c)-(f).

ARTICLE 4E. TEXAS WORKFORCE COMMISSION COPIES

SECTION 4E.01. Section 301.082, Labor Code, is amended to read as follows:

Sec. 301.082. COPIES OF RECORDS. (a) The executive director may furnish an electronic, [a] photostatic, or certified copy of a record in the commission's possession to a person entitled to receive a copy of the record on application by the person.

(b) The executive director shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under this section. If an electronic record is furnished, the fee charged must be sufficient to recover the costs incurred in furnishing the electronic record, including the costs incurred for processing credit card and debit card transactions.

(c) The executive director shall use TexasOnline to furnish electronic records under this section. In this subsection, "TexasOnline" has the meaning assigned by Section 2054.003, Government Code.

ARTICLE 4F. INSPECTION CERTIFICATES AND VERIFICATION FORMS

SECTION 4F.01. Sections 548.251 and 548.253, Transportation Code, are amended to read as follows:

Sec. 548.251. DEPARTMENT TO PROVIDE INSPECTION CERTIFICATES AND VERIFICATION FORMS. (a) The department shall provide serially numbered inspection certificates and verification forms to inspection stations. The department may issue a unique inspection certificate for:

- (1) a commercial motor vehicle inspected under Section 548.201; or
- (2) a vehicle inspected under Subchapter F.

(b) The department may adopt rules that authorize an inspection station to purchase inspection certificates by using the TexasOnline project under Subchapter I, Chapter 2054, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 548.253. INFORMATION TO BE RECORDED ON ISSUANCE OF INSPECTION CERTIFICATE AND VERIFICATION FORM. (a) An inspection station or inspector, on issuing an inspection certificate and verification form, shall:

- (1) make a record and report as prescribed by the department of the inspection and certificate issued; and
- (2) include in the inspection certificate and verification form the information required by the department for the type of vehicle inspected.

(b) The department may adopt rules that authorize an inspection station to send a record, report, or information required by the department to the department by using the TexasOnline project under Subchapter I, Chapter 2054, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 4F.02. Subchapter H, Chapter 548, Transportation Code, is amended by adding Section 548.508 to read as follows:

Sec. 548.508. ADDITIONAL FEES INCURRED IN CONNECTION WITH USE OF TEXASONLINE PROJECT. (a) In addition to any other fee under this subchapter for inspection of a motor vehicle, including a commercial motor vehicle, an inspection station may charge and collect an amount in reasonable proportion to the costs incurred by the inspection station in connection with:

- (1) the purchase of inspection certificates from the department under a rule adopted under Section 548.251(b); or
- (2) the sending of records, reports, or information to the department under a rule adopted under Section 548.253(b).

(b) The department shall adopt rules to implement and administer this section.

PART 5. STATE CONTRACTING AND PROCUREMENT

ARTICLE 5A. OWNER-CONTROLLED INSURANCE PROGRAM

SECTION 5A.01. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.050 to read as follows:

Sec. 223.050. OWNER-CONTROLLED INSURANCE PROGRAM. (a) The department shall require each person who contracts with the department under this chapter to use the insurance program established under Subchapter F, Chapter 2158, Government Code. The department may grant an exemption to a person regarding use of the insurance program for a specific project.

(b) The department and the Texas Building and Procurement Commission shall enter into an interagency contract under which the Texas Building and Procurement Commission manages the insurance program described by Subsection (a) on behalf of the department and other users.

(c) The Texas Transportation Commission may adopt rules to implement this section.

SECTION 5A.02. Chapter 2158, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. OWNER-CONTROLLED INSURANCE FOR
PUBLIC WORKS

Sec. 2158.271. DEFINITIONS. In this subchapter:

(1) "Local government" means a county, municipality, special district, school district, junior college district, or other political subdivision of the state.

(2) "Owner-controlled insurance program" means a comprehensive and centrally controlled insurance program that provides broad and uniform insurance coverage to all participants, including subcontractors and the governmental entity, in a public works project.

(3) "Public works project" includes:

(A) a building construction or repair project undertaken by or for a governmental entity;

(B) a transportation project undertaken by or for a governmental entity, including a road or highway project; and

(C) other projects undertaken by or for a governmental entity, such as the construction or repair of a dam, water system, or sewer system, that are commonly considered public works projects.

Sec. 2158.272. OWNER-CONTROLLED INSURANCE PROGRAM. (a) The commission shall contract with one or more private vendors to develop an owner-controlled insurance program for state agencies that participate in public works projects.

(b) The owner-controlled insurance program may include insurance for workers' compensation, employer's liability, builder's risk, primary and excess liability, and environmental liability insurance coverage.

(c) The program may not include commercial auto liability coverage.

Sec. 2158.273. USE OF PROGRAM BY STATE AGENCIES. Each state agency must use the owner-controlled insurance program for its public works projects.

Sec. 2158.274. USE OF PROGRAM BY LOCAL GOVERNMENTS. A local government, subject to the commission's approval, may use the owner-controlled insurance program for its public works projects.

Sec. 2158.275. FEES. (a) The commission or the private vendor may charge a reasonable fee to a state agency, local government, or participant to use the owner-controlled insurance program, including a reasonable share of costs to implement the program.

(b) The fee may be based on a percentage of the contract or public works project value.

Sec. 2158.276. RULES. The commission may adopt rules to implement this subchapter.

SECTION 5A.03. Section 2166.258, Government Code, as amended by Chapters 614 and 1422, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2166.258. COMMON SURETY [~~OR INSURER~~]. (a) The commission or an agency whose project is exempted from all or part of this chapter under Section 2166.003 may negotiate an arrangement advantageous to the state with a surety [~~or an insurer, as appropriate,~~] authorized to do business in this state to furnish bonds[~~; insurance, or both~~] that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency.

(b) In accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may not require a contractor or subcontractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker. To the extent consistent with that law, the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding [~~or insurance~~] requirements for the project under the negotiated arrangement.

~~[(b) Except as provided by Subsection (c), notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency.]~~

(c) For the purposes of this section, the commission [~~General Services Commission~~] shall establish a program to provide surety technical assistance services for the benefit of small businesses and historically underutilized businesses. The commission may contract with insurance companies, surety companies, agents, or brokers to implement this program.

(d) [(e)] To assist historically underutilized businesses, small businesses, or any other businesses, if an agency by rule requires a proposal guaranty as a condition for bidding on a contract, the guaranty may be in the form of a:

- (1) cashier's check or money order drawn on an account with a financial entity determined by the agency;
- (2) bid bond issued by a surety authorized to do business in this state; or
- (3) any other method approved by the agency.

SECTION 5A.04. The Texas Department of Transportation is not required to use the insurance program established under Subchapter F, Chapter 2158, Government Code, as added by this Act, as required by Section 223.050, Transportation Code, as added by this Act, until the Texas Building and Procurement Commission has implemented the insurance program.

SECTION 5A.05. The change in law made by this article to Section 2166.258, Government Code, applies only to a contract for a construction project that is made on or after the effective date of this article. A contract that is made before the effective date of this article is governed by the law in effect at the time the contract is made, and that law is continued in effect for that purpose.

SECTION 5A.06. A state agency is not required to use the insurance program established under Subchapter F, Chapter 2158, Government Code, as added by this Act, until the Texas Building and Procurement Commission has implemented the program.

ARTICLE 5B. COMMISSION ON PRIVATE INITIATIVE

SECTION 5B.01. Chapter 495, Government Code, is amended to read as follows:

CHAPTER 495. CONTRACTS FOR CORRECTIONAL FACILITIES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 495.001. In this chapter, "commission" means the Commission on Private Initiative.

[Sections 495.002-495.010 reserved for expansion]

SUBCHAPTER B. COMMISSION ON PRIVATE INITIATIVE

Sec. 495.011. COMMISSION. The commission shall administer the state's participation in a program using contracts with vendors for the provision of correctional facilities and services.

Sec. 495.012. EXECUTIVE DIRECTOR. The commission shall employ an executive director to administer the day-to-day operations of the commission and perform duties imposed by this chapter and other law.

Sec. 495.013. RULEMAKING AUTHORITY. The commission may adopt rules as necessary to administer this chapter.

Sec. 495.014. GENERAL POWERS AND DUTIES. The commission is responsible for:

(1) the submission of requests for proposals for contracts under Subchapter C and Chapter 507;

(2) the negotiation of those contracts;

(3) with the assistance of the department, the oversight and monitoring of vendors participating in those contracts; and

(4) other duties assigned under this subtitle and other law.

Sec. 495.015. AUDITING AND MONITORING CONTRACTS. (a) The commission shall develop a comprehensive methodology for enhanced auditing and monitoring of all facilities operated under contract that house inmates and defendants of the department and releasees under the supervision of the department.

(b) The commission shall ensure that all new and renewed contracts described by Subsection (a) include:

(1) a provision that the commission or the department may conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance;

(2) minimum acceptable standards of performance prescribed by the commission that include provisions regarding the health, safety, and welfare of inmates, defendants, and releasees;

(3) a provision that if a review determines that a vendor is not in compliance with the contract, the commission may require that the vendor's per diem compensation be withheld until the vendor meets contract requirements or the vendor is replaced;

(4) a provision requiring a vendor not in compliance with the contract to implement a plan of corrective action approved by the commission; and

(5) a provision under which the state is indemnified for costs of litigation and for any damages in lawsuits alleging that the health, safety, or welfare of an inmate, defendant, or releasee in a contract facility is not protected.

(c) The commission shall develop an appeals process, incorporated by reference into all new and renewed contracts, under which a vendor may appeal any imposed sanction under the contract, with the appeals process including the right to a formal hearing and a right to a final determination by the board.

Sec. 495.016. PER DIEM RATE. (a) The commission shall establish a daily "price to beat" per diem rate for each facility operated by the department or operated under a contract with the department.

(b) The rate established under Subsection (a) must be based on a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a rate that provides the state with a savings of not less than five percent.

(c) The following entities shall assist the commission in establishing the per diem rate:

(1) the department;

(2) the comptroller;

(3) the state auditor;

(4) the Governor's Office of Budget and Planning; and

(5) the Legislative Budget Board.

Sec. 495.017. BIENNIAL REPORT. (a) Not later than January 1 of each odd-numbered year, the commission shall present a report to the governor, lieutenant governor, and speaker of the house of representatives. The report must state:

(1) whether the commission believes the number of beds or the percentage of beds provided to the department under contract should be decreased, remain the same, or be increased; and

(2) if the commission believes the number of beds or the percentage of beds provided to the department under contract should be increased:

(A) a list of facilities operated by the department that instead should be operated under contract; and

(B) the projected savings to the department if the beds become beds operated under contract.

(b) In addition to the information required by Subsection (a), the report must contain a qualitative and quantitative analysis of the performance of vendors operating facilities under this subtitle. The analysis must provide information on the operations of each vendor, including information about treatment programs implemented, numbers of escapes, major disciplinary events, and other matters determined to be important by the commission.

[Sections 495.018-495.040 reserved for expansion]
 SUBCHAPTER C ~~[A]~~. CONTRACTS WITH PRIVATE
 VENDORS AND COMMISSIONERS COURTS
 FOR INSTITUTIONAL DIVISION FACILITIES

Sec. 495.041 ~~[495.001]~~. AUTHORITY TO CONTRACT. (a) The commission ~~[board]~~ may contract with a private vendor or with the commissioners court of a county for the financing, construction, operation, maintenance, or management of a secure correctional facility.

(b) A facility operated, maintained, and managed under this subchapter by a private vendor or county must:

(1) ~~[hold not more than an average daily population of 1,000 inmates;~~
~~(2)]~~ comply with federal constitutional standards and applicable court orders; and

(2) ~~(3)]~~ receive and retain, as an individual facility, accreditation from the American Correctional Association.

(c) A facility authorized by this subchapter may be located on private land or on land owned by the state or a political subdivision of the state. The board may accept land donated for that purpose.

(d) ~~[The population requirements imposed by Subsection (b)(1) do not apply to a facility that is under construction or completed before April 14, 1987.]~~

~~(e)]~~ The commission ~~[board]~~ shall give priority to entering contracts under this subchapter that will provide the institutional division with secure regionally based correctional facilities designed to successfully reintegrate inmates into society through parole, prerelease, work release, and prison industries programs.

~~(f) Notwithstanding Subsection (b)(1), a facility that before December 1, 1991, was operated, maintained, and managed under this subchapter by a private vendor or county may not hold more than an average daily population of 500 inmates, unless the commissioners court of the county in which the facility is located expresses in a resolution on the subject that the limit on population imposed by this subsection should not apply to the facility.]~~

Sec. 495.042 ~~[495.002]~~. INMATES. The institutional division may confine only minimum or medium security inmates in a facility authorized by this subchapter. An inmate confined in a facility authorized by this subchapter remains in the legal custody of the institutional division.

Sec. 495.043 ~~[495.003]~~. CONTRACT PROPOSALS; QUALIFICATIONS AND STANDARDS. (a) The commission ~~[board]~~ may not award a contract under this subchapter unless the commission ~~[board]~~ requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Subsections (b), (c), and (d).

(b) A person proposing to enter a contract with the commission [~~board~~] under this subchapter must demonstrate:

(1) the qualifications and the operations and management experience to carry out the terms of the contract; and

(2) the ability to comply with the standards of the American Correctional Association and with specific court orders.

(c) In addition to meeting the requirements specified in the requests for proposals, a proposal must:

(1) provide for regular, on-site monitoring by the commission [~~institutional division~~];

(2) acknowledge that payment by the state is subject to the availability of appropriations;

(3) provide for payment of a maximum amount per biennium;

(4) [~~offer a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than 10 percent of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities;~~

[(5)] permit the state to terminate the contract for cause, including as cause the failure of the private vendor or county to meet the conditions required by this subchapter and other conditions required by the contract;

(5) [(6)] provide that cost adjustments may be made only once each fiscal year, to take effect at the beginning of the next fiscal year;

(6) [(7)] have an initial contract term of not more than three years, with an option to renew for additional periods of two years;

[(8)] if the proposal includes construction of a facility, contain a performance bond approved by the commission [~~board~~] that is adequate and appropriate for the proposed contract;

(7) [(9)] provide for assumption of liability by the private vendor or county for all claims arising from the services performed under the contract by the private vendor or county;

(8) [(10)] provide for an adequate plan of insurance for the private vendor or county and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights arising from the services performed under the contract by the private vendor or county;

(9) [(11)] provide for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor or county and to protect the state from actions by a third party against the private vendor or county, its officers, guards, employees, and agents as a result of the contract;

(10) [(12)] provide plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor or inability of the county to perform its duties under the contract; and

(11) [(13)] contain comprehensive standards for conditions of confinement.

(d) Before the commissioners court of a county proposes to enter into a contract under this subchapter, the commissioners court of the county must receive the written approval of the sheriff of the county. A sheriff may not unreasonably withhold written approval under this subsection. A correctional facility provided by a county under this subchapter is subject to the same standards and requirements as a correctional facility provided by a private vendor.

(e) The commission, if appropriate, shall request proposals for a contract providing residential infant care and parenting programs for mothers who are confined by the department. To the extent practicable, a proposal must offer a program substantially similar to the residential infant care and parenting program operated by the Texas Youth Commission ~~[Legislative Budget Board determines the costs and cost savings under Subsection (e)(4) and may consider any relevant factor, including additional costs to the state for providing the same service as a private vendor or county, indirect costs properly allocable to either the state or the private vendor or county, and continuing costs to the state directly associated with the contract].~~

Sec. 495.044 ~~[495.004]~~. LIMITATION ON AUTHORITY OVER INMATES. A private vendor or county operating under a contract authorized by this subchapter may not:

- (1) compute inmate release and parole eligibility dates;
- (2) award good conduct time;
- (3) approve an inmate for work, medical, or temporary furlough or for preparole transfer; or
- (4) classify an inmate or place an inmate in less restrictive custody than the custody ordered by the institutional division.

Sec. 495.045 ~~[495.005]~~. CIVIL LIABILITY. A private vendor operating under a contract authorized by this subchapter may not claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor or county. This section does not deprive the private vendor or the state of the benefit of any law limiting exposure to liability, setting a limit on damages, or establishing a defense to liability.

Sec. 495.046. DWI BEDS. The commission shall enter into contracts under this subchapter that provide the department with not fewer than 1,000 beds for inmates serving sentences for offenses under Chapter 49, Penal Code.

[Sections 495.047-495.060 reserved for expansion]

~~[Sec. 495.006. CONVERSION OF FACILITY. The board may not convert a facility into a correctional facility operated by a private vendor or by a county if, before April 14, 1987, the facility is:~~

- ~~(1) operated as a correctional facility by the board; or~~
- ~~(2) being constructed by the board for use as a correctional facility.~~

~~[Sec. 495.007. LIMITATION. The board may not enter into contracts under this subchapter for more than 4,580 beds.~~

~~[Sec. 495.008. AUDITING AND MONITORING CONTRACTS. (a) The department shall develop a comprehensive methodology for enhanced auditing and monitoring of all facilities operated under contract with the department that house inmates of the department and releasees under the supervision of the department. To~~

achieve this objective, the department shall first review existing auditing, monitoring, and oversight capabilities of the department to determine what further procedures and resources are necessary to achieve this goal.

~~[(b) The department shall ensure that all new and renewed contracts described by Subsection (a) include:~~

~~[(1) a provision that the department or a designee of the department may conduct periodic contract compliance reviews, without advance notice, to monitor vendor performance;~~

~~[(2) minimum acceptable standards of performance prescribed by the department that include provisions regarding the health, safety, and welfare of inmates and releasees;~~

~~[(3) a provision that if a review determines that a vendor is not in compliance with the contract, the department may require that the vendor's per diem compensation be withheld until the vendor meets contract requirements or the vendor is replaced;~~

~~[(4) a provision requiring a vendor not in compliance with the contract to implement a plan of corrective action approved by the department; and~~

~~[(5) a provision under which the state is indemnified for costs of litigation and for any damages in lawsuits alleging that the health, safety, or welfare of an inmate or releasee in a contract facility is not protected.~~

~~[(c) The department shall complete at least one enhanced audit for each facility described by Subsection (a), without regard to whether the facility is operated by a public or private vendor. The enhanced audit must include an enhanced contract compliance review of any vendors hired by a community supervision and corrections department to operate a facility.~~

~~[(d) The department, in conjunction with an advisory committee composed of state officials and private officials from within the industry, shall adopt rules to implement the requirements of this section.~~

~~[(e) The department shall develop an appeals process, incorporated by reference into all new and renewed contracts, under which a vendor may appeal any imposed sanction under the contract, with the appeals process including the right to a formal hearing and a right to a final determination by the board.~~

~~[(f) The department shall submit a report to the governor and the Legislative Budget Board not later than January 1, 2003, describing its efforts to implement the requirements of this section. The report must include a summary of contracts and vendors, compliance reviews conducted, incidents of contract noncompliance, sanctions imposed, corrective actions taken, and current contract status. This subsection expires February 1, 2003.]~~

SUBCHAPTER D [B]. MISCELLANEOUS CONTRACTS FOR CORRECTIONAL FACILITIES AND SERVICES

Sec. 495.061 [~~495.024~~]. LEASE-PURCHASE, INSTALLMENT CONTRACTS. (a) The commission [~~board~~] may contract with the commissioners court of a county to use, lease-purchase, purchase on an installment contract, or acquire in any other manner a secure correctional facility financed and constructed

under the authority of the county. The contract must be subject to specific appropriative authority in the General Appropriations Act, and the facility must be managed by the institutional division.

(b) A contract under this section is subject to review and approval by the Bond Review Board under the provisions of Chapter 1231 without regard to the amount or the duration of the contract.

Sec. 495.062 [495.022]. CONTRACTS WITH FEDERAL GOVERNMENT.

(a) The commission [~~board~~] may contract with the federal government for the lease of any military base or other federal facility that is not being used by the federal government.

(b) A facility leased under this section may be used by the institutional division for the purpose of housing inmates determined by the division to be minimum security inmates.

(c) The commission [~~board~~] may not enter into a contract under this section unless funds have been appropriated specifically for the purpose of making payments on contracts authorized under this section.

(d) The commission [~~board~~] shall attempt to enter into contracts authorized by this section that will provide the institutional division with facilities located in the various parts of the state.

(e) A facility leased under this section by the commission [~~board~~] must comply with federal constitutional standards and applicable court orders.

Sec. 495.063 [495.023]. CONTRACTS FOR DIAGNOSTIC AND EVALUATION SERVICES. (a) The commission [~~institutional division~~] shall request proposals and may award one contract to a private vendor or community supervision and corrections department to screen and diagnose, either before or after adjudications of guilt, persons who may be transferred to the division. The term of the contract may not be for more than two years. The commission [~~institutional division~~] shall award the contract if the commission [~~division~~] determines that:

(1) the person proposing to enter into the contract can provide psychiatric, psychological, or social evaluations of persons who are to be transferred to the division;

(2) the services provided will reduce the chances of misdiagnosis of mentally ill and mentally retarded persons who are to be transferred to the division, expedite the diagnostic process, and offer savings to the division;

(3) the quality of services offered equals or exceeds the quality of the same services provided by the division; and

(4) the state will assume no additional liability by entering into a contract for the services.

(b) If the commission [~~institutional division~~] enters into the contract and during or at the end of the contract period determines that the diagnostic services performed under the contract are of a sufficient quality and are cost effective, the commission [~~division~~] shall submit requests for additional proposals for contracts and award one or more contracts in the same manner as provided by Subsection (a).

Sec. 495.064 [495.024]. RELEASE OF OUT-OF-STATE INMATES. A county or a municipality or a private vendor operating a correctional facility under a contract with a county under Subchapter F, Chapter 351, Local Government Code, or a

municipality under Subchapter E, Chapter 361, Local Government Code, that enters into a contract with any entity to house in this state inmates convicted of offenses committed against the laws of another state of the United States must require as a condition of the contract that each inmate to be released from custody must be released in the sending state.

[Sections 495.065-495.090 reserved for expansion]

SUBCHAPTER E. PROVISIONS APPLICABLE TO INSTITUTIONAL
DIVISION, PAROLE, AND STATE JAIL FELONY FACILITIES

Sec. 495.091. BEDS. On a determination by the commission that an increase in the number or percentage of contract beds is cost-effective, the commission and the board may enter into an interagency contract to increase the number of beds that are provided to the department under contract.

Sec. 495.092. ENTERPRISE EFFORTS IN CONTRACT FACILITIES. (a) To the greatest extent possible, entities entering into contracts under this subtitle shall generate revenue through participation in inmate industry and agriculture programs and through the implementation of commissary programs and other appropriate revenue generating programs that foster sound corrections policy or assist in the prevention and solving of crimes, reduction in the flow of contraband, gathering of criminal intelligence data and information, suppression of gang activity, and resolution of complaints made by inmates, defendants, department employees, and employees of the entities entering into the contracts.

(b) In developing revenue-generating strategies, the entity entering into the contract, to ensure good order and public safety, shall develop written security policies consistent with existing corrections practices in the federal prison system, this state, or other states.

(c) A percentage of the profits generated from programs described by Subsection (a), as negotiated by contract, must be paid to the department, except that 100 percent of commissary program profits must be paid to the department. For purposes of this subsection, deductions from a participant's wages authorized by Section 497.0581 and paid to an entity entering into a contract with the department are considered profits.

Sec. 495.093. STATE EMPLOYEE IMPACT. In deciding whether to accept a proposal for a contract under this subtitle to provide beds to the department, the commission shall consider the effect that entering into the contract would have on state employees employed in correctional facilities.

SECTION 5B.02. Subchapter C, Chapter 497, Government Code, is amended to read as follows:

SUBCHAPTER C. COMMISSION ON PRIVATE INITIATIVE [~~SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY~~]

Sec. 497.051. PURPOSE; DEFINITION. (a) The Commission on Private Initiative [~~Sector Prison Industries Oversight Authority~~] is created to:

(1) approve, certify, and oversee the operation of private sector prison industries programs in the department, the Texas Youth Commission, and in county correctional facilities in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761; and

(2) as required by Chapter 495, administer the state's participation in a program using contracts with vendors for the provision of correctional facilities and services. ~~[The executive director shall provide the authority with clerical and technical support as necessary for the authority to perform duties imposed on the authority by this subchapter and shall ensure that the department implements the policies adopted by the authority that relate to the operation of private sector prison industries programs.]~~

(b) In this subchapter:

(1) "Commission" [~~"Authority"~~] means the Commission on Private Initiative ~~[Sector Prison Industries Oversight Authority]~~.

(2) "Participant" means a participant in a private sector prison industries program.

Sec. 497.052. MEMBERSHIP. (a) The commission ~~[authority]~~ is composed of nine members appointed by the governor:

(1) one of whom is representative of organized labor;

(2) ~~[one of whom is representative of employers;~~

~~[(3)]~~ one of whom is representative of groups advocating the rights of victims of criminal offenses;

(3) ~~[(4)]~~ one of whom is representative of groups advocating the rights of inmates~~;~~

~~[(5) one of whom is experienced in the field of vocational rehabilitation];~~

and

(4) ~~six~~ ~~[(6) four]~~ of whom are public members.

(b) The following individuals shall serve as ex officio members of the commission ~~[authority]~~:

(1) a member of the house of representatives designated by the speaker of the house;

(2) a member of the senate designated by the lieutenant governor;

(3) the chairman ~~[executive director]~~ of the Texas Board ~~[Department]~~ of Criminal Justice ~~[or the designee of the executive director]~~;

(4) the executive director of the Texas Workforce Commission or the designee of the executive director; ~~[and]~~

(5) the state auditor; and

(6) the director of the Governor's Office of Budget and Planning ~~[the executive director of the Texas Youth Commission or the designee of the executive director]~~.

(c) The governor shall appoint as an employer liaison to the commission ~~[authority]~~ one person who is an employer in the private sector prison industries program that is certified as in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761. The employer liaison is entitled to attend meetings of the commission ~~[authority]~~ and offer advice to the commission ~~[authority]~~ from the perspective of a prison industries employer. The employer liaison serves at the pleasure of the governor, is not entitled to vote on any issue considered by the commission ~~[authority]~~, and is entitled to reimbursement for travel expenses in the same manner as is a member of the commission ~~[authority]~~ under Section 497.055.

(d) A person may not be a public member of the commission [authority] if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission [authority];

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission [authority]; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the commission [authority] other than compensation or reimbursement authorized by law for commission [authority] membership, attendance, or expenses.

(e) Appointments to the commission [authority] shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 497.0521. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission [authority] and may not be a commission [an authority] 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 private sector prison industries; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of private sector prison industries.

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

Sec. 497.0522. REMOVAL PROVISIONS. (a) It is a ground for removal from the commission [authority] that a member:

(1) does not have at the time of taking office the qualifications required by Section 497.052(a);

(2) does not maintain during service on the commission [authority] the qualifications required by Section 497.052(a);

(3) is ineligible for membership under Section 497.052(d) or 497.0521(b) or (c);

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

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

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

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

Sec. 497.0523. INFORMATION: REQUIREMENTS FOR OFFICE OR EMPLOYMENT. The executive director or the executive director's designee shall provide to members of the commission [authority] and to agency employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 497.0524. TRAINING PROGRAM. (a) A person who is appointed to and qualifies for office as a member of the commission [authority] may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission [authority] until the person completes a training program that complies with this section.

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

- (1) the legislation that created the commission [authority];
- (2) the programs operated by the commission [authority];
- (3) the role and functions of the commission [authority];
- (4) the rules of the commission [authority];
- (5) the current budget for the commission [authority];
- (6) the results of the most recent formal audit of the commission [authority];
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551;
 - (B) the public information law, Chapter 552;
 - (C) the administrative procedure law, Chapter 2001; and
 - (D) other laws relating to public officials, including conflict of interest

laws; and

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

(c) A person appointed to the commission [authority] 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.

Sec. 497.0525. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commission [authority] shall develop and implement policies that clearly separate the policymaking responsibilities of the commission [authority] and the management responsibilities of the staff of the commission [authority].

Sec. 497.0526. PUBLIC ACCESS. The commission [authority] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission [authority] and to speak on any issue under the jurisdiction of the commission [authority].

Sec. 497.0527. COMPLAINTS. (a) The commission [authority] shall maintain a file on each written complaint filed with the commission [authority]. The file must include:

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

and

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

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

(c) The commission [authority], at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 497.053. TERMS. Appointed members of the commission [authority] serve staggered six-year terms, with three members' terms expiring on February 1 of each odd-numbered year.

Sec. 497.054. PRESIDING OFFICER. The governor shall designate the presiding officer from among the members of the commission [authority], and the presiding officer shall serve in that capacity at the pleasure of the governor.

Sec. 497.055. REIMBURSEMENT. A member of the commission [authority] is not entitled to compensation but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the commission [authority] as provided in the General Appropriations Act.

Sec. 497.056. PRIVATE SECTOR PRISON INDUSTRY [INDUSTRIES] EXPANSION ACCOUNT. (a) The department shall forward money collected under Section 497.0581 to the comptroller. The comptroller shall deposit the money in the general revenue fund.

(b) To construct more facilities and increase the number of participants, the private sector prison industry expansion account is created as an account in the general revenue fund. Money in the account may be appropriated only to construct work facilities, recruit corporations to participate as private sector industries programs, and pay costs of the commission [authority] and department in implementing this subchapter, including the cost to the department in reimbursing commission [authority] members and the employer liaison for expenses.

(c) On each certification by the department that an amount has been deposited to the credit of the general revenue fund from deductions from participants' wages under Section 497.0581, the comptroller shall transfer an equivalent amount from the general revenue fund to the private sector prison industry expansion account, until the balance in the account is \$2 million. On a certification occurring when the balance in the account is more than \$2 million, the comptroller shall transfer to the account an amount equal to one-half of the amount deposited to the credit of the general revenue fund from deductions from participants' wages.

(d) The department during each calendar quarter shall make a certification of the amount deposited during the previous calendar quarter to the credit of the general revenue fund from deductions from participants' wages under Section 497.0581.

Sec. 497.057. RULES. The commission [authority] shall adopt rules as necessary to ensure that the private sector prison industries program authorized by this subchapter is in compliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761.

Sec. 497.058. PREVAILING WAGE. (a) The commission [authority] by rule shall require that participants at each private sector prison industries program be paid not less than the prevailing wage as computed by the commission [authority], except that the commission [authority] may permit employers to pay a participant the minimum wage for the two-month period beginning on the date participation begins.

(b) For the purposes of computations required by this section:

(1) the prevailing wage is the wage paid by the employer for work of a similar nature in the location in which the work is performed;

(2) in the event that the employer has no employees other than those employed under this subchapter performing work of a similar nature within the location, the prevailing wage for work of a similar nature is determined by reference to openings and wages by occupation data collected by the labor market information department of the Texas Workforce Commission; and

(3) the location in which work is performed is the local workforce development area in which the work is performed.

Sec. 497.0581. PARTICIPANT CONTRIBUTIONS; ASSISTANCE ACCOUNT. (a) The commission [authority] by rule shall determine the amount of deductions to be taken from wages received by the participant under this subchapter. In determining the amount of deductions under this section, the commission [authority] shall ensure that the deductions do not place the private sector prison industries programs in the department in noncompliance with the federal prison enhancement certification program established under 18 U.S.C. Section 1761.

(b) The private sector prison industry crime victims assistance account is created as an account in the general revenue fund. Money in the account may be appropriated only to the commission [authority] for the purpose of aiding victims of crime, under rules adopted by the commission [authority].

Sec. 497.059. LIMITING IMPACT ON NON-PRISON INDUSTRY. (a) The commission [authority] may not grant initial certification to a private sector prison industries program if the commission [authority] determines that the operation of the program would result in the loss of existing jobs provided by the employer in this state.

(b) The commission [~~authority~~] shall adopt rules to determine whether a program would cause the loss of existing jobs provided by the employer in this state.

Sec. 497.060. WORKERS' COMPENSATION. The commission [~~authority~~] by rule shall require private sector prison industries program employers to meet or exceed all federal requirements for providing compensation to participants injured while working.

Sec. 497.061. RECIDIVISM STUDIES. The commission [~~authority~~], with the cooperation of the Criminal Justice Policy Council, shall gather data to determine whether participation in a private sector prison industries program is a factor that reduces recidivism among participants.

Sec. 497.062. LIMITATION ON NUMBER OF PARTICIPANTS; GOALS. (a) The commission [~~authority~~] may certify any number of private sector prison industries programs that meet or exceed the requirements of federal law and the rules of the commission [~~authority~~], but in no event may the commission [~~authority~~] permit more than 2,000 participants in the program at any one time.

(b) The commission [~~authority~~] shall establish as a goal that the program have at least 1,800 participants by January 1, 2006.

SECTION 5B.03. Section 507.001(a), Government Code, is amended to read as follows:

(a) The state jail division may operate, maintain, and manage state jail felony facilities to confine inmates described by Section 507.002, and the department may finance and construct those facilities. The Commission on Private Initiative [~~state jail division, with the approval of the board,~~] may contract with the institutional division, a private vendor, a community supervision and corrections department, or the commissioners court of a county for the construction, operation, maintenance, or management of a state jail felony facility. The community justice assistance division shall assist the commission [~~state jail division~~] to contract with a community supervision and corrections department for the construction, operation, maintenance, or management of a state jail felony facility. The Commission on Private Initiative [~~state jail division~~] shall consult with the community justice assistance division before contracting with a community supervision and corrections department under this section. A community supervision and corrections department or the commissioners court of a county that contracts under this section may subcontract with a private vendor for the provision of any or all services described by this subsection. A community supervision and corrections department that contracts under this section may subcontract with the commissioners court of a county for the provision of any or all services described by this subsection. The Commission on Private Initiative [~~board~~] may contract with a private vendor or the commissioners court of a county for the financing or construction of a state jail felony facility.

SECTION 5B.04. The governor, in making appointments to the Commission on Private Initiative as required by Section 497.052, Government Code, as amended by this article, shall appoint public members to the positions held by the employer representative and the vocational rehabilitation representative as soon as the terms for those positions expire or as those positions become vacant. The changes in law made by this article to Section 497.052, Government Code, do not affect the entitlement of a person who, immediately before the effective date of this article, holds the position on

the commission as the employer representative or as the vocational rehabilitation representative to serve for the remainder of the term to which the person was appointed.

SECTION 5B.05. (a) On September 1, 2003, funds appropriated to the Texas Department of Criminal Justice for the private facilities division are transferred to the Commission on Private Initiative.

(b) On September 1, 2003, a reference in law to the Private Sector Prison Industries Oversight Authority means the Commission on Private Initiative.

[ARTICLES 5C AND 5D. RESERVED]

ARTICLE 5E. GENERAL STATE PROCUREMENT

SECTION 5E.01. Section 2171.101(a), Government Code, is amended to read as follows:

(a) The office of vehicle fleet management shall establish a vehicle reporting system to assist each state agency in the management of its vehicle fleet. A state agency shall be required to submit the reports on a monthly basis [~~not more often than semiannually~~].

SECTION 5E.02. Sections 2171.102(a) and (b), Government Code, are amended to read as follows:

(a) The office of vehicle fleet management may, for a fee, [~~shall~~] provide routine periodic maintenance service to state agencies located in Travis County. [~~The office shall charge a fee for the service.~~]

(b) The office may [~~shall~~] negotiate contracts for major overhauls and other extensive mechanical work.

SECTION 5E.03. Sections 2171.104(c) and (d), Government Code, are amended to read as follows:

(c) The management plan must address:

(1) opportunities for consolidating and privatizing the operation and management of vehicle fleets in areas where there is a concentration of state agencies, including the Capitol Complex and the Health and Human Services Complex in Austin;

(2) the number and type of vehicles owned by each agency and the purpose each vehicle serves;

(3) procedures to increase vehicle use and improve the efficiency of the state vehicle fleet;

(4) procedures to reduce the cost of maintaining state vehicles;

(5) procedures to handle surplus or salvage [~~the sale of excess~~] state vehicles; and

(6) lower-cost alternatives to using state-owned vehicles, including:

(A) using rental cars; and

(B) reimbursing employees for using personal vehicles.

(d) The commission shall require a state agency to transfer surplus or salvage vehicles identified by the management plan to the commission and shall sell or dispose of the [~~excess~~] vehicles in accordance with the provisions of Chapter 2175 that provide for disposition of surplus or salvage property by the commission [~~identified by the management plan and deposit the proceeds from the sale into the account that the agency used to purchase the vehicles~~].

SECTION 5E.04. Section 51.9335(b), Education Code, is amended to read as follows:

(b) In determining what is the best value to an institution of higher education, the institution shall consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the institution's needs;
- (5) the vendor's past relationship with the institution;
- (6) the impact on the ability of the institution to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the institution of acquiring the vendor's goods or services; and

(8) any other relevant factor that a private business entity would consider in selecting a vendor[; ~~and~~

~~(9) the use of material in construction or repair to real property that is not proprietary to a single vendor unless the institution provides written justification in the request for bids for use of the unique material specified].~~

SECTION 5E.05. Chapter 2151, Government Code, is amended by adding Section 2151.005 to read as follows:

Sec. 2151.005. EXEMPTIONS RELATED TO LEGAL SERVICES. This subtitle does not apply to:

- (1) obtaining outside legal counsel services;
- (2) obtaining expert witnesses; or
- (3) procuring litigation-related goods and services for which competitive procurement is not feasible under the circumstances.

SECTION 5E.06. Section 2155.078(k), Government Code, is amended to read as follows:

(k) The commission shall require a reasonable number of [24] hours of continuing education [each year] to maintain a certification level. The commission may allow attendance at equivalent certification training recognized by the commission to count toward the required number of [up to 16] hours [of the continuing education requirement]. Maintenance of the certification level may be by yearly renewal or another reasonable renewal period comparable to nationally recognized certification requirements.

SECTION 5E.07. Section 2155.141, Government Code, is amended to read as follows:

Sec. 2155.141. ~~[CERTAIN OTHER]~~ PURCHASES FOR AUXILIARY ENTERPRISE NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not extend to a purchase of goods and services[; ~~or~~

- ~~[(1) for resale;~~
- ~~[(2)] for an auxiliary enterprise[; or~~
- ~~[(3) for an organized activity relating to an instructional department of an institution of higher learning or a similar activity of another state agency].~~

SECTION 5E.08. Subchapter C, Chapter 2155, Government Code, is amended by adding Section 2155.148 to read as follows:

Sec. 2155.148. CERTAIN PURCHASES FOR TEXAS STATEWIDE EMERGENCY SERVICES PERSONNEL RETIREMENT FUND. (a) The fire fighters' pension commissioner is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the state board of trustees of the Texas statewide emergency services personnel retirement fund determines relates to the fiduciary duties of the retirement fund.

(b) The fire fighters' pension commissioner shall acquire goods or services by any procurement method approved by the state board of trustees of the Texas statewide emergency services personnel retirement fund that provides the best value to the retirement fund. The fire fighters' pension commissioner shall consider the best value standards provided by Section 2155.074.

(c) The commission shall procure goods or services for the fire fighters' pension commissioner at the request of the pension commissioner, and the pension commissioner may use the services of the commission in procuring goods or services.

SECTION 5E.09. Subchapter I, Chapter 2155, Government Code, is amended by adding Section 2155.510 to read as follows:

Sec. 2155.510. REBATES. The commission may collect a rebate from a vendor under a contract listed on a schedule developed under this subchapter.

SECTION 5E.10. The heading to Subchapter B, Chapter 2157, Government Code, is amended to read as follows:

SUBCHAPTER B. CATALOG [~~CATALOGUE~~] PURCHASE METHOD

SECTION 5E.11. Section 2157.061, Government Code, is amended to read as follows:

Sec. 2157.061. USE OF CATALOG [~~CATALOGUE~~] PURCHASE METHOD REQUIRED UNLESS BEST VALUE AVAILABLE ELSEWHERE. The commission or a state agency shall purchase an automated information system through the catalog [~~catalogue~~] procedure provided by this subchapter unless the commission or state agency determines that the best value may be obtained from another purchase method authorized by this subtitle.

SECTION 5E.12. Section 2157.0611, Government Code, is amended to read as follows:

Sec. 2157.0611. REQUIREMENT TO EVALUATE THREE OFFERS [~~PROPOSALS~~] WHEN POSSIBLE. A catalog [~~catalogue~~] purchase or lease that exceeds \$2,000 or a greater amount prescribed by commission rule shall, when possible, be based on an evaluation of at least three catalog offers [~~catalogue proposals~~] made to the commission or other state agency by catalog [~~qualified~~] information systems vendors. If at least three catalog offers [~~catalogue proposals~~] are not evaluated by the commission or other state agency before a purchase or lease that exceeds the threshold amount is made, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

SECTION 5E.13. Section 2157.062, Government Code, is amended to read as follows:

Sec. 2157.062. BASIC REQUIREMENTS FOR CATALOG [APPLICATION PROCESS FOR QUALIFICATION AS] VENDOR. ~~[(a) To sell or lease an automated information system under this subchapter to a state agency, a vendor must apply to the commission for designation as a qualified information systems vendor. The commission shall prescribe the application process. The commission may allow or require a vendor to apply on line.~~

~~[(b)]~~ At a minimum, a catalog information systems vendor must [the commission shall require an applicant to submit]:

(1) maintain an Internet catalog [a catalogue] containing each product and service eligible for purchase by a state agency, including for each product or service:

- (A) a description;
- (B) the list price; and
- (C) the price to a state agency;

(2) maintain a maintenance, repair, and support plan for each eligible product or service;

(3) provide on request proof of the applicant's financial resources and ability to perform; and

(4) provide a guarantee that the vendor will make available equivalent replacement parts for a product sold to the state until at least the third anniversary of the date the product is discontinued.

SECTION 5E.14. Section 2157.063(a), Government Code, is amended to read as follows:

(a) If a purchase or lease is the best value available and is in the state's best interest, a state agency may under this subchapter purchase or lease an automated information system directly from a catalog [qualified] information systems vendor and may negotiate price and additional terms and conditions to be included in a contract relating to the purchase or lease.

SECTION 5E.15. Section 2157.066, Government Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (g) to read as follows:

(a) A catalog [vendor designated by the commission as a qualified] information systems vendor shall publish and maintain a catalog [catalogue] described by Section 2157.062(1) [2157.062(b)(1)] in the manner required by the commission.

(b) The vendor shall revise the catalog [catalogue] as necessary in the manner required by the commission.

(f) The commission may audit a catalog [qualified] information systems vendor's catalog [approved catalogue] for compliance with rules adopted under Subsection (g) [(e)].

(g) The commission shall adopt rules that specify the requirements for a catalog information systems vendor's maintenance of Internet catalogs, including:

- (1) availability;
- (2) format; and
- (3) other relevant requirements.

SECTION 5E.16. Section 2157.067(a), Government Code, is amended to read as follows:

(a) The commission shall make the catalog [~~catalogue~~] purchasing procedure available to a local government that qualifies for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code.

SECTION 5E.17. Section 2157.068(b), Government Code, is amended to read as follows:

(b) The department shall negotiate with catalog [~~qualified~~] information systems vendors to attempt to obtain a favorable price for all of state government on licenses for commodity software items, based on the aggregate volume of purchases expected to be made by the state. The terms and conditions of a license agreement between a vendor and the department under this section may not be less favorable to the state than the terms of similar license agreements between the vendor and retail distributors.

SECTION 5E.18. Chapter 2254, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. OUTSIDE LEGAL SERVICES

Sec. 2254.151. DEFINITION. In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.

Sec. 2254.152. APPLICABILITY. This subchapter does not apply to a contingent fee contract for legal services.

Sec. 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED. Subject to Section 402.0212, a state agency may contract for outside legal services.

Sec. 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT. The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.

SECTION 5E.19. Section 2262.001, Government Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Commission" means the Texas Building and Procurement Commission.

SECTION 5E.20. Sections 2262.051(a) and (b), Government Code, are amended to read as follows:

(a) In consultation with the attorney general [~~Texas Building and Procurement Commission~~], the Department of Information Resources, the comptroller, and the state auditor, the commission [~~attorney general~~] shall develop or and periodically update a contract management guide for use by state agencies.

(b) The commission [~~attorney general~~] may adopt rules necessary to develop or update the guide.

SECTION 5E.21. Section 2262.052(b), Government Code, is amended to read as follows:

(b) The state auditor shall:

- (1) periodically monitor compliance with this section;
- (2) report any noncompliance to:
 - (A) the governor;
 - (B) the lieutenant governor;
 - (C) the speaker of the house of representatives; and

(D) the team; and

(3) assist, in coordination with the commission [~~attorney general~~] and the comptroller, a noncomplying state agency to comply with this section.

SECTION 5E.22. Section 2262.053(a), Government Code, is amended to read as follows:

(a) In coordination with the [~~Texas Building and Procurement Commission, the~~] comptroller, [~~and the~~] Department of Information Resources, and [~~the~~] state auditor, the commission shall develop or administer a training program for contract managers.

SECTION 5E.23. Section 2262.054, Government Code, is amended to read as follows:

Sec. 2262.054. PUBLIC COMMENT. The commission [~~attorney general~~] by rule may establish procedures by which each state agency is required to invite public comment by publishing the proposed technical specifications for major contracts on the Internet through the information service known as the Texas Marketplace or through a suitable successor information service. The guide must define "technical specifications."

SECTION 5E.24. Section 2262.101, Government Code, is amended to read as follows:

Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) reviewing the solicitation of major contracts by state agencies;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide; and

(3) providing recommendations to the commission regarding:

(A) [~~the attorney general regarding~~] the development of the contract management guide; and

(B) [~~the state auditor regarding~~] the training under Section 2262.053.

SECTION 5E.25. Sections 2155.078(n), 2155.142, 2155.144, 2155.1441, 2157.001(2), 2157.064, 2157.065, 2157.066(c) and (d), and 2261.001(e), Government Code, are repealed.

SECTION 5E.26. The changes in law made by this article to Section 2155.141, Government Code, apply only to a purchase made on or after the effective date of this article. A purchase made before the effective date of this article is covered by the law in effect when the purchase was made, and the former law is continued in effect for that purpose.

SECTION 5E.27. (a) In this section, "commission" means the Texas Building and Procurement Commission.

(b) Not later than February 1, 2004:

(1) the attorney general and state auditor shall complete the transfer of powers and duties to the commission under Chapter 2262, Government Code, as amended by this Act;

(2) a rule or form adopted by the attorney general or state auditor under Chapter 2262, Government Code, is a rule or form of the commission and remains in effect until changed by the commission;

(3) the commission assumes, without a change in status, the position of the attorney general or state auditor with respect to any matter regarding which the duties of the attorney general or state auditor under Chapter 2262, Government Code, have been transferred to the commission;

(4) all property, including records, and rights and obligations of the attorney general and state auditor related to those entities' express duties under Chapter 2262, Government Code, are transferred to the commission; and

(5) all funds appropriated by the legislature to the attorney general and state auditor related to those entities' express powers and duties under Chapter 2262, Government Code, are transferred to the commission.

SECTION 5E.28. Section 2175.061, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may by rule determine the best method of disposal for surplus and salvage property of the state under this chapter.

SECTION 5E.29. Section 2175.134(a), Government Code, is amended to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.131, shall be deposited to the credit of the general revenue fund of the state treasury [~~appropriate appropriation item of the state agency for which the sale was made~~].

SECTION 5E.30. Section 2175.182(a), Government Code, is amended to read as follows:

(a) The commission is responsible for the disposal of surplus or salvage property under this subchapter. The commission may take physical possession of the property. [~~A state agency maintains ownership of property throughout the disposal process.~~]

SECTION 5E.31. Section 2175.185(b), Government Code, is amended to read as follows:

(b) On receiving notice under this section, the comptroller shall, if necessary, [~~(1) debit and credit the proper appropriations; and~~
~~(2)~~ adjust state property accounting records.

SECTION 5E.32. Section 2175.191(a), Government Code, is amended to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury [~~appropriate appropriation item of the state agency for which the sale was made~~].

SECTION 5E.33. Section 2175.303, Government Code, is amended to read as follows:

Sec. 2175.303. EXCEPTION FOR CERTAIN PROPERTY [~~PRODUCTS~~]. This chapter does not apply to disposition of:

(1) a product or by-product of research, forestry, agriculture, livestock, or an industrial enterprise; [~~or~~]

(2) certain recyclable materials, including paper, cardboard, aluminum cans, plastics, glass, one-use pallets, used tires, used oil, and scrap metal, when the disposition is not in the best interest of the state or economically feasible;

(3) property acquired by a state agency with money from the state highway fund; or

(4) property given or granted to a state agency.

SECTION 5E.34. Section 2175.361, Government Code, is amended to read as follows:

Sec. 2175.361. DEFINITIONS. In this subchapter:

(1) "Federal act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 541 et seq. [484]), as amended, or any other federal law providing for the disposal of federal surplus property.

(2) "Federal property" means federal surplus property acquired:

(A) by the commission or under the commission's jurisdiction under this subchapter; and

(B) under 40 U.S.C. Section 483c, 549, or 550, or under any other federal law providing for the disposal [Section 484(j) or (k)] of [the] federal surplus property [act]. [The term includes federal real property acquired under Section 484(k) of the federal act.]

SECTION 5E.35. Section 2175.362(a), Government Code, is amended to read as follows:

(a) The commission is the designated state agency under 40 U.S.C. Section 549 and any other federal law providing for the disposal [484(j)] of [the] federal surplus property [act].

SECTION 5E.36. Section 2175.364, Government Code, is amended to read as follows:

Sec. 2175.364. COMMISSION ASSISTANCE IN PROCUREMENT AND USE OF PROPERTY. The commission may:

(1) disseminate information and assist a potential applicant regarding the availability of federal real property;

(2) assist in the processing of an application for acquisition of federal real property and related personal property under 40 U.S.C. Section 550 or any other federal law providing for the disposal [484(k)] of [the] federal surplus property [act];

(3) act as an information clearinghouse for an entity that may be eligible to acquire federal property and, as necessary, assist the entity to obtain federal property;

(4) assist in assuring use of the property; and

(5) engage in an activity relating to the use of federal property by another state agency, institution, or organization engaging in or receiving assistance under a federal program.

SECTION 5E.37. Section 2175.367, Government Code, is amended to read as follows:

Sec. 2175.367. CONTRACTS. The commission may enter into an agreement, including:

(1) a cooperative agreement with a federal agency under 40 U.S.C. Section 549 or any other federal law providing for the disposal [484(n)] of [the] federal surplus property [act];

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the commission's functions under this subchapter; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the commission's functions under this subchapter.

SECTION 5E.38. Sections 2175.134(b) and 2175.191(b), Government Code, are repealed.

SECTION 5E.39. This article applies only to surplus and salvage property of the state sold on or after September 1, 2003.

SECTION 5E.40. Section 2166.2531(d), Government Code, is amended to read as follows:

(d) The commission shall prepare a request for qualifications that includes general information on the project site, project scope, ~~budget,~~ special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

SECTION 5E.41. Sections 2166.2532(e) and (g), Government Code, are amended to read as follows:

(e) The commission shall select the construction manager-at-risk in either a one-step or two-step process. The commission shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, ~~estimated budget,~~ and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the commission in its selection of a construction manager-at-risk. The commission shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the commission may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the commission may not request fees or prices in step one. In step two, the commission may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(g) At each step, the commission shall receive, publicly open, and read aloud the names of the offerors. ~~[At the appropriate step, the commission shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.]~~ Within

45 days after the date of opening the proposals, the commission or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

SECTION 5E.42. Sections 2166.2533(d) and (f), Government Code, are amended to read as follows:

(d) The commission shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, ~~estimated budget,~~ project scope, schedule, and other information that contractors may require to respond to the request. The commission shall state in the request for proposals all of the selection criteria that will be used in selecting the successful offeror.

(f) The commission shall receive, publicly open, and read aloud the names of the offerors ~~[and, if any are required to be stated, all prices stated in each proposal]~~. Within 45 days after the date of opening the proposals, the commission shall evaluate and rank each proposal submitted in relation to the published selection criteria.

SECTION 5E.43. Subchapter F, Chapter 2166, Government Code, is amended by adding Section 2166.260 to read as follows:

Sec. 2166.260. APPROVAL OF CERTAIN EXPENDITURES REQUIRED. A state agency may not spend more than the amount authorized for the cost of a project unless the governor and the Legislative Budget Board approve the expenditure. Once the cost of a project reaches the amount authorized for the project, each change to approved project plans must be approved by the governor and the Legislative Budget Board.

SECTION 5E.44. Section 2166.305(b), Government Code, is amended to read as follows:

(b) A committee appointed by the commission shall perform the review. The committee consists of:

(1) the director of facilities construction and space management appointed under Section 2152.104, who serves ~~[ex officio]~~ as the presiding officer of the committee ~~[and who votes only in case of a tie]~~;

(2) seven individuals appointed by the commission, one each from the lists of nominees submitted respectively by the:

(A) president of the Texas Society of Architects;

(B) president of the Texas Society of Professional Engineers;

(C) presiding officer of the Executive Council of the Texas Associated General Contractors Chapters;

(D) executive secretary of the Mechanical Contractors Associations of Texas, Incorporated;

(E) executive secretary of the Texas Building and Construction Trades Council;

(F) president of the Associated Builders and Contractors of Texas; and

(G) executive director of the National Association of Minority Contractors, with the list composed of persons who reside in this state;

(3) one individual appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code;

(4) one individual appointed by the commission representing a state agency that has a substantial ongoing construction program; ~~[and]~~

(5) one individual appointed by the commission representing the attorney general's office; and

(6) one individual appointed by the commission representing the interests of historically underutilized businesses.

SECTION 5E.45. Section 2166.201, Government Code, is repealed.

SECTION 5E.46. This article applies only to a Texas Building and Procurement Commission request for competitive proposals under Chapter 2166, Government Code, as amended by this article, on or after September 1, 2003.

ARTICLE 5F. WATER CONTRACTS

SECTION 5F.01. Section 11.041, Water Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

(1) that he is entitled to receive or use the water;

(2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; ~~and~~

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory; and

(5) that the petitioner has not entered into a contract with the party owning or controlling the water supply.

(h) Notwithstanding any other law, the commission may not amend, interpret, impair, or modify a written contract for the wholesale provision of water for any purpose provided by this chapter or Chapter 12 or 13.

SECTION 5F.02. Section 12.013, Water Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding any other law, the commission may not amend, interpret, impair, or modify a written contract for the wholesale provision of raw or treated water for any purpose provided by Chapter 11, this chapter, or Chapter 13.

SECTION 5F.03. Section 13.041, Water Code, is amended by adding Subsection (h) to read as follows:

(h) Notwithstanding any other law, the commission may not amend, interpret, impair, or modify a written contract for the wholesale provision of water for any purpose provided by Chapter 11 or 12 or this chapter.

SECTION 5F.04. The changes in law made by this article apply only to a contract executed on or after the effective date of this article. A contract executed before the effective date of this article is governed by the law in effect on the date the contract was executed, and the former law is continued in effect for that purpose.

ARTICLE 5G. TRAVEL SERVICES CONTRACTS

SECTION 5G.01. Sections 2171.052(b) and (c), Government Code, are amended to read as follows:

(b) The central travel office may ~~shall~~ negotiate contracts with private travel agents, with travel and transportation providers, and with credit card companies that provide travel services and other benefits to the state. The central travel office may ~~shall~~ negotiate with commercial lodging establishments to obtain the most cost-effective rates possible for state employees traveling on state business.

(c) The commission may ~~shall~~ make contracts with travel agents that meet certain reasonable requirements prescribed by the central travel office, ~~[allowing contracts to provide travel services by as many private travel agents as possible]~~ with preference given to resident entities of this state.

SECTION 5G.02. Section 2171.052(e), Government Code, is repealed.

ARTICLE 5H. ADMINISTRATION OF TEXAS BUILDING AND PROCUREMENT COMMISSION

SECTION 5H.01. Section 2152.051, Government Code, is amended to read as follows:

Sec. 2152.051. COMPOSITION OF COMMISSION. (a) The commission consists of five members appointed by the governor.

(b) Subsection (a) governs the composition of the commission after January 31, 2007. On or before that date, this subsection governs the composition of the commission. The commission consists of seven members, of whom[-

(1) three members are appointed by the governor,[-

(2) two additional members are appointed by the governor from a list of nominees submitted by the speaker of the house of representatives,[-

(3) two members are appointed by the lieutenant governor. The members serving on the commission immediately before the effective date of the Act of the 78th Legislature, Regular Session, 2003, that amended this section and added this subsection are entitled to continue to serve on the commission for the terms for which they were appointed if they are otherwise qualified for their positions. Notwithstanding Section 2152.057, for the period in which the commission consists of seven members under this subsection, two or three members' terms expire on January 31 of each odd-numbered year. If, on or before January 31, 2007, the term of any position on the commission expires or a vacancy is created in any position on the commission, the governor shall appoint a person to fill the position. However, the two positions on the commission that are filled by appointment by the governor from a list submitted by the speaker are abolished on the expiration of the positions' terms on January 31, 2007. This subsection expires September 1, 2009.

~~[(b) In making an appointment under Subsection (a)(2), the governor may reject one or more of the nominees on a list submitted by the speaker of the house of representatives and request a new list of different nominees.]~~

SECTION 5H.02. Section 2152.052(b), Government Code, is amended to read as follows:

(b) In making appointments under this section, the governor ~~[and lieutenant governor]~~ shall attempt to appoint women and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

SECTION 5H.03. Section 2152.057, Government Code, is amended to read as follows:

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

SECTION 5H.04. Section 2152.058(b), Government Code, is amended to read as follows:

(b) The commission shall meet at least quarterly [~~once each month~~]. The commission may meet at other times at the call of the presiding officer or as provided by the commission's rules.

SECTION 5H.05. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.065 to read as follows:

Sec. 2152.065. REPRESENTATION ON BOARD OR COMMITTEE. If the commission must be represented on a board or committee, the executive director or the executive director's designee shall serve as the commission's representative on the board or committee unless the presiding officer of the commission elects to personally serve as the commission's representative or appoints a specific person to serve as the commission's representative on the board or committee.

SECTION 5H.06. Section 2152.104(a), Government Code, is amended to read as follows:

(a) The commission shall have an appropriate number of [~~three~~] associate deputy directors.

SECTION 5H.07. Section 2172.001(a), Government Code, is amended to read as follows:

~~(a)~~ The commission may [~~shall~~] operate a central supply store at which only state agencies, the legislature, and legislative agencies may obtain small supply items. If the commission operates a central supply store, the commission shall devise an appropriate method of billing a using entity for the supplies.

SECTION 5H.08. Section 2172.002(a), Government Code, is amended to read as follows:

(a) The commission may [~~shall~~] maintain a facility for repairing office machines and may [~~shall~~] offer repair services to the following entities located in Austin:

- (1) state agencies;
- (2) the legislature; and
- (3) legislative agencies.

SECTION 5H.09. Section 2172.001(b), Government Code, is repealed.

[ARTICLE 5I. RESERVED]

ARTICLE 5J. STATE AGENCY LETTERHEAD

SECTION 5J.01. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.062 to read as follows:

Sec. 2054.062. STATE AGENCY LETTERHEAD. The department shall create a program that automatically generates letterhead for a state agency on an agency computer.

[PART 6. RESERVED]

PART 7. PERSONNEL AND HUMAN RESOURCES

ARTICLE 7A. RETIREMENT SYSTEM CREDIT ESTABLISHED
BY STATE EMPLOYEES

SECTION 7A.01. Section 812.003, Government Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Membership in the employee class begins on the 91st day after the first day a person is employed or holds office.

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

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

SECTION 7A.02. Subchapter F, Chapter 813, Government Code, is amended by adding Section 813.514 to read as follows:

Sec. 813.514. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE. (a) A member may establish credit under this section in the employee class only for service performed during the 90-day waiting period provided by Section 812.003(d) or (e).

(b) A member may establish service credit under this section by depositing with the retirement system, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section based on rates and tables recommended by the retirement system's actuary and adopted by the board of trustees.

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved. A member may establish not more than three months of equivalent membership service credit under this section.

(d) The retirement system shall deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account.

(e) The board of trustees may adopt rules to administer this section, including rules that impose restrictions on the application of this section as necessary to cost-effectively administer this section.

SECTION 7A.03. Section 812.003, Government Code, as amended by this article, and Section 813.514, Government Code, as added by this article, apply only to a person who is first employed by or begins to hold an office of the state on or after the effective date of this article and to a former employee or office holder who has withdrawn retirement contributions under Subchapter B, Chapter 812, Government Code, and is reemployed by or begins to again hold an office of the state on or after the effective date of this article.

ARTICLE 7B. TEXAS EMPLOYEES GROUP HEALTH BENEFIT PLAN

SECTION 7B.01. Subchapter E, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.219 to read as follows:

Sec. 1551.219. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG COVERAGE PROHIBITED. The board of trustees or a health benefit plan under this chapter that provides benefits for prescription drugs may not require a participant in the group benefits program to purchase a prescription drug through a mail order program. The board or health benefit plan shall require that a participant who chooses to obtain a prescription drug through a retail pharmacy or other method other than by mail order pay a deductible, copayment, coinsurance, or other cost-sharing obligation to cover the additional cost of obtaining a prescription drug through that method rather than by mail order.

ARTICLE 7C. STATE AGENCY HUMAN RESOURCES
STAFFING AND FUNCTIONS

SECTION 7C.01. Subtitle B, Title 6, Government Code, is amended by adding Chapter 670 to read as follows:

CHAPTER 670. HUMAN RESOURCES STAFFING AND FUNCTIONS

Sec. 670.001. DEFINITION. In this chapter, "state agency" means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

Sec. 670.002. HUMAN RESOURCES STAFFING FOR LARGE STATE AGENCIES. A state agency with 500 or more full-time equivalent employees shall adjust the agency's human resources staff to achieve a human resources employee-to-staff ratio of not more than one human resources employee for every 100 staff members.

Sec. 670.003. HUMAN RESOURCES STAFFING FOR MEDIUM-SIZED AND SMALL STATE AGENCIES; OUTSOURCING. (a) The State Council on Competitive Government shall determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform the human resources functions of state agencies that employ fewer than 500 full-time equivalent employees.

(b) If the council determines that contracting with private entities is cost-effective, the council shall issue a request for proposals for vendors to perform the human resources functions of the agencies.

(c) The council shall determine which human resources functions are subject to the contract and which functions the agency may select to perform itself.

(d) Each agency shall pay for the contracts for human resources functions out of the agency's human resources budget.

SECTION 7C.02. (a) Not later than September 1, 2003, each state agency with 500 or more full-time equivalent employees shall comply with the human resources employee-to-staff ratio requirements in Section 670.002, Government Code, as added by this article.

(b) Not later than January 1, 2004, the State Council on Competitive Government shall conduct an initial feasibility study to determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform human resources functions of state agencies under Section 670.003, Government Code, as added by this article.

ARTICLE 7D. INSURANCE FOR VOLUNTEER MEMBERS
OF STATE BOARDS

SECTION 7D.01. Section 1551.101(c), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(c) Subject to Section 1551.321, an [Am] individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual is appointed, subject to confirmation by the senate, as a member of the governing body with administrative responsibility over a statutory state agency that has statewide jurisdiction and whose employees are covered by this chapter.

SECTION 7D.02. Subchapter G, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.321 to read as follows:

Sec. 1551.321. STATE CONTRIBUTION FOR CERTAIN INDIVIDUALS. (a) The state or a state agency may not make any contribution to the cost of any coverages or benefits provided under this chapter for an individual described by Section 1551.101(c) or a dependent of the individual.

(b) An individual described by Section 1551.101(c) who participates in the group benefits program shall pay to the trustee, in the manner specified by the trustee, the full cost of the coverages or benefits provided to the individual or a dependent of the individual.

SECTION 7D.03. (a) The change in law made by this article by the addition of Section 1551.321, Insurance Code, applies only to group coverages provided under the group benefits program established under Chapter 1551, Insurance Code, on and after September 1, 2003.

(b) Not later than the 30th day after the effective date of Section 1551.321, Insurance Code, as added by this article, the Employees Retirement System of Texas shall notify each individual eligible to participate in the group benefits program under Chapter 1551, Insurance Code, in accordance with Section 1551.101(c), Insurance Code, of the applicable requirements of Section 1551.321, Insurance Code.

ARTICLE 7E. AGENCY STAFFING AND PRODUCTIVITY

SECTION 7E.01. Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.262 to read as follows:

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

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

the full amount of the recruitment payment. If the employee discontinues employment with the state agency for any reason three months or longer but less than 12 months after the date of receiving the recruitment payment, the employee shall refund to the state agency an amount computed by:

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

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

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

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

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

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

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

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

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

(4) other relevant factors.

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

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

SECTION 7E.02. Subtitle B, Title 6, Government Code, is amended by adding Chapter 670 to read as follows:

CHAPTER 670. MANAGEMENT PERFORMANCE PROGRAM

Sec. 670.001. DEFINITION. In this chapter, "state agency" means an agency in the executive branch of state government.

Sec. 670.002. UPPER MANAGEMENT PERFORMANCE AGREEMENTS. (a) The governing body of a state agency shall develop and enter into agreements with employees of the agency who serve in upper management positions, including the chief executive or chief administrator of the agency.

(b) An agreement under this section shall:

(1) communicate to the upper management employee the agency's overall organizational goals and specific strategic aims;

(2) identify the specific performance measures and targets applicable to the unique programs for which the upper management employee is responsible; and

(3) explain the procedures that will be used by the agency to hold the upper management employee accountable for performance under the agreement, including annual performance review procedures.

SECTION 7E.03. Effective September 1, 2003, Section 651.004, Government Code, is amended by adding Subsections (c-1) and (d) to read as follows:

(c-1) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2004, employ more than one full-time equivalent employee in a management position for every eight full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2005.

(d) A state agency that believes that the minimum management-to-staff ratios required by this section are inappropriate for that agency may appeal to the governor. The governor's decision regarding management-to-staff ratios is final. The governor by rule shall adopt appeal procedures.

SECTION 7E.04. Effective September 1, 2004, Section 651.004, Government Code, is amended by adding Subsection (c-2) to read as follows:

(c-2) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2005, employ more than one full-time equivalent employee in a management position for every nine full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2006.

SECTION 7E.05. Effective September 1, 2005, Section 651.004, Government Code, is amended by adding Subsection (c-3) to read as follows:

(c-3) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not, after August 31, 2006, employ more than one full-time equivalent employee in a management position for every 10 full-time equivalent employees that the agency employs in nonmanagerial staff positions. This subsection expires September 1, 2007.

SECTION 7E.06. (a) Effective September 1, 2006, Section 651.004, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A state agency in the executive branch of state government that employs more than 100 full-time equivalent employees may not employ more than one full-time equivalent employee in a management position for every 11 full-time equivalent employees that the agency employs in nonmanagerial staff positions.

(b) A state agency in the executive branch of government shall achieve the management-to-staff ratio required by Section 651.004(c), Government Code, as added by this section, not later than August 31, 2007.

SECTION 7E.07. Section 656.048(b), Government Code, is repealed.

PART 8. ENVIRONMENT

ARTICLE 8A. NONADJUDICATIVE NOTICE AND HEARING

SECTION 8A.01. Chapter 5, Water Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. NONADJUDICATIVE NOTICE AND HEARING

Sec. 5.851. APPLICABILITY. This subchapter provides procedures for providing public notice, opportunity for public comment, and an opportunity for a nonadjudicative hearing regarding commission actions relating to certain permits issued under Chapter 26 or 27 or under Chapter 361 or 382, Health and Safety Code.

Sec. 5.852. PRELIMINARY DECISION. (a) The executive director shall conduct a technical review of and issue a preliminary decision on an application for a permit.

(b) Notice of the preliminary decision must be provided as prescribed by Section 5.854.

(c) The applicant shall make available for review a copy of the application and preliminary decision at a public place in the county in which the facility is located or proposed to be located.

Sec. 5.853. NOTICE CONTENT; PUBLIC COMMENT PERIOD. (a) The commission by rule shall establish:

(1) the form, content, and timing of the notice; and

(2) the duration of the public comment period.

(b) Notice must be provided as follows:

(1) the chief clerk of the commission shall mail notice to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) any other person designated by commission rule; and

(2) the applicant shall publish notice in a newspaper of general circulation in the county in which the facility is located or proposed to be located.

(c) The notice must include:

(1) the permit application number;

(2) the applicant's name and address;

(3) the location of the facility and the nature of the proposed activity at the facility;

(4) the location at which copies of the application and preliminary decision are available for review;

(5) a description of any procedural rights of the public; and

(6) a 30-day public comment period, except as otherwise provided by commission rule.

Sec. 5.854. NONADJUDICATIVE HEARING. (a) A hearing on an application for issuance, amendment, modification, or renewal of a permit subject to this subchapter must be conducted under this section. Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

(b) The executive director shall hold a nonadjudicative hearing for an application if, after the close of the public comment period, there is significant public interest in the application.

(c) At the hearing, any person may submit an oral or written statement regarding the application for the permit. The public comment period extends to the close of the hearing.

(d) In determining whether to issue the permit and what conditions should be included if a permit is issued, the executive director shall consider all comments received during the public comment period and at the hearing.

Sec. 5.855. RESPONSE TO PUBLIC COMMENTS; PREPARATION OF FACT SHEET. (a) If necessary to satisfy a requirement for federal authorization of a state permit program, the executive director, in a manner consistent with commission rule, shall file with the chief clerk of the commission a response to each significant written public comment on the preliminary decision filed during the public comment period.

(b) For an application that is not subject to Subsection (a), the executive director shall submit to the chief clerk of the commission a statement that briefly describes the principal facts and significant legal and policy issues related to the application.

ARTICLE 8B. PUBLIC PARTICIPATION

SECTION 8B.01. Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.132 and 5.133 to read as follows:

Sec. 5.132. GENERAL PERMITS. (a) The commission may issue a general permit to authorize a regulated activity for a category of entities if the commission finds that:

(1) the types of operations of the entities are the same or substantially similar;

(2) the activity is more appropriately regulated under a general permit than under an individual permit;

(3) the general permit is enforceable;

(4) the commission can adequately monitor compliance with the terms of the general permit; and

(5) the general permit does not conflict with any requirement to maintain federal program authorization.

(b) The commission shall publish notice of a proposed general permit in the Texas Register and in a newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit. For a statewide general permit, the commission shall designate one or more newspapers of statewide or regional circulation and shall publish notice of the proposed statewide general permit in each designated newspaper in addition to the Texas Register. The notice shall invite written comments and be published not later than the 30th day before the commission issues the general permit.

(c) The commission may hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting as provided by Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment relating to issuance of a general permit, the commission may issue the general permit only after responding in writing to the comments. The commission shall issue a written response to comments on the permit at the same time the commission issues or denies the permit. The commission shall make its response available to the public and shall mail its response to each person who made a comment.

(e) A general permit must include the procedures for obtaining authorization under the terms of the general permit.

(f) The commission by rule shall establish procedures for the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit.

(g) The commission may impose a reasonable and necessary fee for authorization to use general permits under this section.

(h) The issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit or of authorization to use a general permit is not subject to Subchapters C-F, Chapter 2001, Government Code.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) The commission may delegate to the executive director the authority to issue, amend, renew, suspend, revoke, or cancel a general permit or an authorization to use a general permit.

Sec. 5.133. TIME LIMIT FOR ISSUANCE OR DENIAL OF PERMITS. (a) Except as provided in Subsection (b), all permit decisions shall be made within 180 days of the date of the receipt of the permit application or application amendment or the date of the determination of administrative completeness, whichever date is later.

(b) This section does not apply to a permit issued under a federally delegated or approved program unless allowed under that program.

SECTION 8B.02. Section 5.551, Water Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) This subchapter establishes procedures for providing public notice, an opportunity for public comment, and a contested case [~~an opportunity for public~~] hearing under [~~Subchapters C-H,~~] Chapter 2001, Government Code, regarding commission actions relating to a permit issued under Chapter 26 or 27 [~~of this code~~] or under Chapter 361 or 382, Health and Safety Code. This subchapter is procedural and does not expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and a contested case [~~an opportunity for public~~] hearing are provided under Chapter 26 or 27 [~~of this code~~] or Chapter 361 or 382, Health and Safety Code.

(d) The procedures established by this subchapter apply to permits subject to a contested case hearing and supersede any other procedural requirements in Chapter 26 or 27 and under Chapter 361 or 382, Health and Safety Code, relating to public notice, public comment, public meetings, and a request for a contested case hearing.

SECTION 8B.03. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.5515 to read as follows:

Sec. 5.5515. NOTICE CONTENT; PUBLIC COMMENT PERIOD. (a) The commission by rule shall establish the form, content, and timing of the notice and the duration of the public comment period.

(b) Notice shall be provided by the following methods:

(1) the chief clerk shall mail notice to the state senator and representative who represent the general area in which the facility is located or proposed to be located and any other persons designated by commission rule; and

(2) the applicant shall publish notice in a newspaper of general circulation in the county in which the facility is located or proposed to be located.

(c) The notice must include:

(1) the permit application number;

(2) the applicant's name and address;

(3) the location of the facility and the nature of the proposed activity;

(4) the location at which a copy of the application and preliminary decision is available for review and copying at a public place in the county in which the facility is located or proposed to be located;

(5) a description of the procedural rights and obligations of the public; and

(6) a 30-day public comment period unless otherwise provided by commission rule.

SECTION 8B.04. The heading to Section 5.553, Water Code, is amended to read as follows:

Sec. 5.553. PRELIMINARY DECISION[; ~~NOTICE AND PUBLIC COMMENT~~].

SECTION 8B.05. Section 5.553, Water Code, is amended by adding Subsection (a-1) and amending Subsection (e) to read as follows:

(a-1) Notice of the preliminary decision must be provided in accordance with Section 5.5515.

(e) The applicant shall make a copy of the application and preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

SECTION 8B.06. Section 5.554, Water Code, is amended to read as follows:

Sec. 5.554. PUBLIC MEETING. (a) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(b) The applicant shall publish notice of a public meeting in a newspaper of general circulation in the county in which the facility is located or proposed to be located at least 30 days before the public meeting unless otherwise provided by commission rule.

SECTION 8B.07. Section 5.555, Water Code, is amended to read as follows:

Sec. 5.555. RESPONSE TO PUBLIC COMMENTS; PREPARATION OF FACT SHEET. (a) If necessary to satisfy a requirement for federal authorization of a state permit program, the [The] executive director, in accordance with [procedures provided by] commission rules [rule], shall file with the chief clerk of the commission a response to each significant written [relevant and material] public comment on the preliminary decision filed during the public comment period.

(b) For applications that are not subject to Subsection (a), the executive director shall prepare a fact sheet that briefly describes the principal facts and significant legal and policy issues and shall file the fact sheet with the chief clerk of the commission [The chief clerk of the commission shall transmit the executive director's decision, the

~~executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:~~

- ~~[(1) the applicant;~~
- ~~[(2) any person who submitted comments during the public comment period; and~~
- ~~[(3) any person who requested to be on the mailing list for the permit action].~~

SECTION 8B.08. The heading to Section 5.556, Water Code, is amended to read as follows:

Sec. 5.556. REQUEST FOR ~~[RECONSIDERATION OR]~~ CONTESTED CASE HEARING.

SECTION 8B.09. Section 5.556, Water Code, is amended by amending Subsections (a), (b), (c), and (f), and by adding Subsections (d-1)-(d-9) to read as follows:

(a) A person may request that the executive director refer an application to the State Office of Administrative Hearings for ~~[commission reconsider the executive director's decision or hold]~~ a contested case hearing. A request must be filed with the chief clerk of the commission during the period provided by commission rule.

(b) The executive director ~~[commission]~~ shall act on a request during the period provided by commission rule.

(c) The executive director on receiving ~~[commission may not grant]~~ a request for a contested case hearing ~~[unless the commission determines that the request was filed]~~ by the applicant or by an affected person as defined by Subsections (d-1)-(d-5), shall refer an application to the commission's office of hearings examiners ~~[Section 5.115].~~

(d-1) For applications under Chapter 382, Health and Safety Code, an affected person is a person who:

(1) resides on or owns property within one-half mile of the facility or proposed facility if the application is for a permit or permit amendment to allow emissions below the threshold for major source or major modification, or for a permit renewal; or

(2) resides on or owns property within one mile of the facility or proposed facility if the application is for a permit or permit amendment for a major source or major modification.

(d-2) For industrial solid waste and hazardous waste applications under Chapter 361, Health and Safety Code, an affected person is a person who resides on or owns property within:

(1) one-half mile of the facility or proposed facility if the application is for a major amendment, Class 3 modification, or renewal; or

(2) one mile of the facility or proposed facility if the application is for a new permit.

(d-3) For municipal solid waste applications under Chapter 361, Health and Safety Code, an affected person is a person who resides on or owns property within:

(1) one-half mile of the facility or proposed facility if the application is for a major amendment or a modification that requires notice; or

(2) one mile of the facility or proposed facility if the application is for a new permit.

(d-4) For underground injection well applications under Chapter 27, an affected person is a person who, for a new permit, major amendment, or renewal, resides on, owns property on, or owns mineral rights:

(1) underlying the facility; or

(2) underlying property adjacent to the facility.

(d-5) For water quality applications for a new permit, major amendment, or renewal, under Chapter 26, an affected person is a person who resides on or owns property:

(1) within one-half mile downstream of a discharge or proposed discharge;

(2) within one mile downstream of a discharge or proposed discharge if the proposed discharge is for one million gallons per day or more; or

(3) that is adjacent to the property used by the applicant to dispose of or land apply waste or wastewater, or adjacent to the facility or proposed facility.

(d-6) An affected person must reside on or own the property specified in Subsections (d-1)-(d-5) on the date of the notice of preliminary decision.

(d-7) A group composed of individuals with a common interest and that is potentially affected by the application, an association that has one or more members potentially affected by the application, or a governmental entity with authority under state law over issues relating to the permit application may be an affected person. The commission by rule shall establish criteria for determining whether a group, association, or governmental entity is an affected person.

(d-8) A person whose hearing request is not referred to the commission's office of hearings examiners may appeal to the commission as provided by commission rule.

(d-9) The commission by rule may establish criteria for the amount of increase proposed to be authorized below which a request for hearing by an affected person may be denied if the commission determines that such an increase is not expected to have a negative impact on human health or the environment.

(f) This section does not preclude the executive director from referring any application for a contested case hearing and does not preclude the commission from holding a hearing if it determines that the public interest warrants doing so.

SECTION 8B.10. Sections 26.028(c), (d), (g), and (h), Water Code, are amended to read as follows:

(c) Except as otherwise provided by this section, the commission, on the motion of a commissioner, or on the request of the executive director or any affected person, shall hold a contested case ~~[public]~~ hearing on the application for a permit, permit amendment, or renewal of a permit.

(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a contested case ~~[public]~~ hearing, may approve an application to renew or amend a permit if:

(1) the applicant is not applying to:

(A) increase significantly the quantity of waste authorized to be discharged; or

(B) change materially the pattern or place of discharge;

(2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;

(3) ~~[for NPDES permits,]~~ notice and the opportunity to comment and request a nonadjudicative hearing under Subchapter S, Chapter 5, has been [public meeting shall be] given, and a nonadjudicative hearing has been held if required under Subchapter S, Chapter 5 [in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment]; [and]

(4) the commission determines that an applicant's compliance history for the preceding five years [under the method for evaluating compliance history developed by the commission under Section 5.754] raises no issues regarding the applicant's ability to comply with a material term of its permit; and

(5) for NPDES permits, the commission has considered and responded to each significant public comment that was timely received.

(g) An application to renew a permit for a confined animal feeding operation ~~[which was issued between July 1, 1974, and December 31, 1977,]~~ may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a contested case [public] hearing if the applicant does not seek to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(h) For the purposes of Subsection (c), the commission may act on the application without holding a contested case [public] hearing if all of the following conditions are met:

(1) not less than 30 days before the date of action on the application by the commission, the applicant has published the commission's notice of the application at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge;

(2) not less than 30 days before the date of action on the application by the commission, the applicant has served or mailed the commission's notice of the application to persons who in the judgment of the commission may be affected, including the county judges as required by Subsection (b). As part of the [his] application the applicant shall submit an affidavit which lists the names and addresses of the persons who may be affected by the application and includes the source of the list;

(3) within 30 days after the date of the newspaper publication of the commission's notice, neither a commissioner, the executive director, nor an affected person who objects to the application has requested a contested case [public] hearing.

SECTION 8B.11. Section 361.0666, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) A public meeting is not required for a new municipal solid waste facility that is authorized through registration.

SECTION 8B.12. Section 361.088(e), Health and Safety Code, is amended to read as follows:

(e) This subsection applies to an application for a new permit or permit modification or amendment for post-closure care or corrective action at a solid waste management facility. After complying with Sections 5.5515-5.555 [~~5.552-5.555~~], Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application described by this subsection if notice and opportunity to request a nonadjudicative hearing under Subchapter S, Chapter 5, Water Code, has been given, to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; ~~and~~

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing; and

(3) treatment, storage, or disposal of solid waste, including actions relating to post-closure or corrective action, if the renewal application does not include any changes to authorization provided by the existing permit.

SECTION 8B.13. Section 361.121(c), Health and Safety Code, is amended to read as follows:

(c) The notice and hearing provisions of Subchapter S [~~M~~], Chapter 5, Water Code, [~~as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999,~~] apply to an application under this section for a permit, a permit amendment, or a permit renewal.

SECTION 8B.14. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.123 and 361.124 to read as follows:

Sec. 361.123. PERMIT FOR DISPOSAL OF BRUSH, CONSTRUCTION AND DEMOLITION WASTE, AND OTHER NONPUTRESCIBLE WASTES IN ARID-EXEMPT LANDFILLS. This section applies only to a landfill for which an application for an initial permit is filed on or after September 1, 2003, and that is certified as arid-exempt in accordance with commission rule and is designated for the disposal of brush, construction and demolition waste, and other nonputrescible wastes. An application by a landfill for a permit or permit amendment is not subject to a contested case hearing but is subject to notice and opportunity for a nonadjudicative hearing under Subchapter S, Chapter 5, Water Code.

Sec. 361.124. PERMIT FOR ANIMAL CREMATORY FACILITY. This section applies only to a facility that stores, processes, or disposes of animal carcasses and that is not eligible for authorization through a permit by rule. An application by a facility for a permit or permit amendment is not subject to a contested case hearing but is subject to the notice and opportunity for a nonadjudicative hearing under Subchapter S, Chapter 5, Water Code.

SECTION 8B.15. Section 361.534, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The commission may hold a public meeting on ~~[shall set a hearing to be held not later than the 30th day after the date that the commission receives]~~ an application under this subchapter.

(c) Notice of the public meeting shall be mailed and published as provided by commission rule.

SECTION 8B.16. Section 382.0518(b), Health and Safety Code, is amended to read as follows:

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at a contested case ~~[any]~~ hearing ~~[held under Section 382.056(c)]~~, the commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

SECTION 8B.17. Section 382.05191, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice and provide the opportunity for nonadjudicative hearing ~~[of intent to obtain the permit]~~ in accordance with Subchapter S, Chapter 5, Water Code ~~[Section 382.056]~~. An applicant for a permit under Section 382.05186(b) shall publish notice and provide an opportunity for nonadjudicative hearing under Section 382.05197.

(e) For an application under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519, the executive director shall prepare a fact sheet that briefly describes the principal facts and significant legal and policy issues, as provided by commission rule.

SECTION 8B.18. Section 382.05197, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) An application ~~[applicant]~~ for a permit under Section 382.05194 is subject to notice and opportunity for contested case hearing ~~[shall publish notice of intent to obtain the permit in accordance with Section 382.056, except that the notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given].~~

(e) Notwithstanding Section 5.5515(c), Water Code, notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout this state. If the multiple plant permit for existing facilities will be effective for only a part of this state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given.

SECTION 8B.19. The heading to Section 382.056, Health and Safety Code, is amended to read as follows:

Sec. 382.056. NOTICE AND [~~OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW;~~] HEARING.

SECTION 8B.20. Section 382.056, Health and Safety Code, is amended by amending Subsections (a), (o), (q), and (r), and adding Subsections (a-1) through (a-3) to read as follows:

(a) An [~~Except as provided by Section 382.0518(h), an~~] applicant for a permit or permit amendment under Section 382.0518 or a permit renewal under Section 382.055 shall publish notice of a preliminary decision on [~~intent to obtain~~] the permit, permit amendment, or permit review and provide an opportunity for contested case hearing as provided by Subchapter M, Chapter 5, Water Code [~~not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 382.0365 and will not have a significant effect on air quality. The alternative procedures must be cost effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States].~~

(a-1) An amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted is subject to notice but the commission may not hold a contested case hearing on the amendment, modification, or renewal as provided by this section except as provided by Subsection (e).

(a-2) An application for a permit amendment under this section is not subject to notice and opportunity for a contested case hearing if the total emissions increase from all facilities authorized under the amended permit will meet the de minimus criteria established by commission rule and the emissions will not change in character. An application for a permit amendment for a facility affected by a rule adopted under Section 382.020 is not subject to notice and opportunity for a contested case hearing if the total emissions increase from all facilities authorized under the permit amendment

is not significant and will not change in character. A finding under this subsection that a total emissions increase is not significant must be made in the same manner as a finding made under Section 382.05196.

(a-3) The following types of applications for a permit, permit amendment, or permit renewal are not subject to the opportunity for a contested case hearing and are subject to notice and opportunity for a nonadjudicative hearing under Subchapter S, Chapter 5, Water Code:

- (1) concrete batch plants;
- (2) rock crushing facilities;
- (3) concrete crushing facilities;
- (4) hot mix asphalt plants;
- (5) cotton gins;
- (6) grain handling facilities; and
- (7) animal crematory facilities.

(o) Notwithstanding other provisions of this chapter, an application for [the commission may hold a hearing on] a permit amendment, modification, or renewal is subject to the opportunity for a contested case hearing if it [if the commission determines that the application] involves a facility for which the applicant's compliance history is unacceptable to the commission based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections].

(q) The commission [department] shall establish rules to ensure that a permit applicant complies with the notice requirement under Subchapter M, Chapter 5, Water Code [Subsection (a)].

(r) An application is not subject to notice and opportunity for a contested case hearing if the application involves [This section does not apply to]:

(1) the relocation or change of location of a portable facility to a site where an authorized portable [a] 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 portable facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

SECTION 8B.21. The heading to Section 382.0561, Health and Safety Code, is amended to read as follows:

Sec. 382.0561. FEDERAL OPERATING PERMIT: NOTICE AND HEARING.

SECTION 8B.22. Section 382.0561(f), Health and Safety Code, is amended to read as follows:

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with commission rules and include:

(1) a description of the location or proposed location of the facility or federal source;

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

(3) a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source, is entitled to request a nonadjudicative hearing from the commission; and

(4) any other information the commission by rule requires [~~Section 382.056~~].

SECTION 8B.23. Section 382.065, Health and Safety Code, as added by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (c) to read as follows:

(c) For the purposes of applying the restriction regarding the distance between a concrete crushing facility and a building under Subsection (a), the commission shall determine the location of the building as of the date the permit application is filed with the commission.

SECTION 8B.24. The following laws are repealed:

- (1) Section 5.552, Water Code;
- (2) Sections 5.553(b), (c), and (d), Water Code;
- (3) Sections 5.556(d) and (e), Water Code; and
- (4) Section 5.557, Water Code.

SECTION 8B.25. Sections 361.0791 and 361.088(d), Health and Safety Code, are repealed.

SECTION 8B.26. The following laws are repealed:

- (1) Sections 2003.047 and 2003.048, Government Code; and
- (2) Sections 361.534(b), 382.0518(h) and (i), 382.05191(b) and (c), 382.05197(b) and (c), 382.056(b)-(n) and (p), and 382.058, Health and Safety Code.

ARTICLE 8C. COMPLIANCE HISTORY

SECTION 8C.01. Subchapter Q, Chapter 5, Water Code, is repealed.

SECTION 8C.02. Section 361.0215(c), Health and Safety Code, is repealed.

SECTION 8C.03. Section 27.051(h), Water Code, as added by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 8C.04. Section 26.0281, Water Code, is amended to read as follows:

Sec. 26.0281. CONSIDERATION OF PAST PERFORMANCE AND COMPLIANCE [~~HISTORY~~]. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider any adjudicated decision or [~~the~~] compliance proceeding addressing past performance and compliance [~~history~~] of the applicant and its operator with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission [~~under the method for evaluating compliance history developed by the commission under Section 5.754~~]. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this section, "environmental management system" has the meaning assigned by Section 5.127.

SECTION 8C.05. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~is in the lowest classification under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections~~]. A hearing under this subsection is not subject to Chapter 2001, Government Code.

SECTION 8C.06. Section 27.051(d), Water Code, and Section 27.051(e), Water Code, as amended by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(d) The commission, in determining if the use or installation of an injection well is in the public interest under Subsection (a)(1), shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant and related entities [~~under the method for evaluating compliance history developed by the commission under Section 5.754 and~~] in accordance with the provisions of Subsection (e);

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available; and

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(e) The [~~Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the~~] commission shall establish a procedure by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter [~~for preparing summaries of the applicant's compliance history~~]. The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. [~~In accordance with this subsection~~

~~and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.]~~ All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit.

SECTION 8C.07. Sections 361.084(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities [~~in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code~~]. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state in the preceding five years concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
- (2) admitted into evidence subject to applicable rules of evidence.

SECTION 8C.08. Section 361.088(f), Health and Safety Code, is amended to read as follows:

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history for the preceding five years [~~under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code,~~] raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

SECTION 8C.09. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste [~~having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections~~].

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) the applicant or permit holder has a record of environmental violations in the preceding five years at the permitted site [~~compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections~~];

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; ~~or~~

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission; or

(5) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant.

(f) Before denying a permit under this section, the commission must find:

(1) that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations ~~[the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections]; or~~

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

SECTION 8C.10. Section 382.0518(c), Health and Safety Code, is amended to read as follows:

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission ~~[the applicant's compliance history in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code]~~. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

SECTION 8C.11. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) whether the [performance of the owner or operator of the] facility is or has been in substantial compliance with this chapter and the terms of the existing permit ~~[according to the method developed by the commission under Section 5.754, Water Code]; and~~

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 8C.12. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is unacceptable to the commission based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations [~~in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections~~].

SECTION 8C.13. Section 401.110, Health and Safety Code, is amended to read as follows:

Sec. 401.110. DETERMINATION ON LICENSE. In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and the applicant's or license holder's record in areas involving radiation [~~compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code~~].

SECTION 8C.14. Section 401.112(a), Health and Safety Code, is amended to read as follows:

(a) The department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;
- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including financial and technical qualifications and past operating practices [~~and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code~~];
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

[ARTICLES 8D and 8E. RESERVED]

ARTICLE 8F. CERTAIN FEES RELATED TO CLEAN AIR ACT

SECTION 8F.01. Section 382.0622, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b) Except as provided by Subsection (b-1), Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or subsequent fiscal years only for the purposes stated in Subsection (b-2).

SECTION 8F.02. Not later than December 1, 2003, the Texas Commission on Environmental Quality shall adopt any rules required for the implementation of this article.

ARTICLE 8G. OIL SPILL PREVENTION AND RESPONSE

SECTION 8G.01. Section 40.002(c), Natural Resources Code, is amended to read as follows:

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges;

~~[(3) provide for development of a state coastal discharge contingency plan through planning and coordination with the Texas Natural Resource Conservation Commission to protect coastal waters from all types of spills and discharges;] and~~

(3) ~~[(4)]~~ administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

SECTION 8G.02. Sections 40.003(13), (17), and (22), Natural Resources Code, are amended to read as follows:

(13) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(17) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(22) "Response costs" means:

(A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources; or

(B) with respect to an actual or threatened discharge of a hazardous substance, only costs incurred to supplement the response operations of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

SECTION 8G.03. Section 40.005, Natural Resources Code, is amended to read as follows:

Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL RESPONSE AND CLEANUP. The General Land Office, under the direction and control of the commissioner, is the state's lead agency for initiating response to all actual or threatened unauthorized discharges of oil. In the event of an unauthorized discharge of a hazardous substance, nothing in this chapter shall preclude the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality from at the earliest time practicable assuming response and cleanup duties pursuant to Subchapter G, Chapter 26, Water Code~~], and the state coastal discharge contingency plan~~].

SECTION 8G.04. Section 40.052, Natural Resources Code, is amended to read as follows:

Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the unauthorized discharge involves predominantly a hazardous substance, the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality shall carry out responsibility for abatement, containment, removal, and cleanup of the hazardous substances discharged, pursuant to Subchapter G, Chapter 26, Water Code~~], and to the state coastal discharge contingency plan~~].

SECTION 8G.05. Section 40.101(c), Natural Resources Code, is amended to read as follows:

(c) In order to prevent duplication of effort among state agencies, the commissioner shall utilize the expertise of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality on technical and scientific actions, including but not limited to:

- (1) taking samples in the spill area;
- (2) monitoring meteorological conditions that may affect spill response operations; and
- (3) regulating disposal of spilled material.

SECTION 8G.06. Section 40.103(b), Natural Resources Code, is amended to read as follows:

(b) Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for response costs, provided the commissioner approves compensation prior to the assistance being rendered. ~~[Prior approval for compensation may be provided for in the state coastal discharge contingency plan.]~~ The commissioner, on petition and for good cause shown, may waive the prior approval prerequisite.

SECTION 8G.07. Section 40.104, Natural Resources Code, is amended to read as follows:

Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS. (a) No action taken by any person or discharge cleanup organization to abate, contain, or remove pollution from an unauthorized discharge of oil, whether such action is taken voluntarily, or pursuant to the national contingency plan ~~[or state coastal discharge contingency plan]~~, or pursuant to a discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

(b) No person or discharge cleanup organization that voluntarily, or pursuant to the national contingency plan ~~[or the state coastal discharge contingency plan]~~, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct.

SECTION 8G.08. Section 40.107(a)(1), Natural Resources Code, is amended to read as follows:

(1) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with the trustees~~[-, according to the procedures and plans contained in the state coastal discharge contingency plan,]~~ shall create a rebuttable presumption of the amount of such damages.

SECTION 8G.09. Sections 40.107(c)(1) and (4), Natural Resources Code, are amended to read as follows:

(1) The commissioner, in conjunction with the trustees, shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by September 1, 1995~~], and shall be incorporated into the state coastal discharge contingency plan after public review and comment].~~

(4) The commissioner shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil. As developed through negotiated rulemaking with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the spill incident and the location of the natural resources affected. These procedures and protocols shall be adopted by rule, by the trustee agencies after negotiation, notice, and public comment, by June 1, 1994~~], and shall be incorporated into the state coastal discharge contingency plan].~~

SECTION 8G.10. Section 40.116, Natural Resources Code, is amended to read as follows:

Sec. 40.116. AUDITS, INSPECTIONS, and DRILLS. The commissioner may subject a vessel subject to Section 40.114 of this code~~], as a condition to being granted entry into any port in this state,]~~ or a terminal facility to an announced or unannounced audit, inspection, or drill to determine the discharge prevention and response capabilities of the terminal facility or vessels. Any vessel drill conducted by the commissioner shall be in cooperation and conjunction with the United States Coast Guard, and the commissioner's participation may not interfere with the schedule of the vessel.

SECTION 8G.11. Section 40.151(b), Natural Resources Code, is amended to read as follows:

(b) The coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Subchapter H, Chapter 33. To this fund shall be credited all fees, penalties, judgments, reimbursements, interest or income on the fund, and charges provided for in this chapter and the fee revenues levied, collected, and credited pursuant to this chapter. The fund shall not exceed \$50 million.

SECTION 8G.12. Section 40.152(a), Natural Resources Code, is amended to read as follows:

(a) Money in the fund may be disbursed for the following purposes and no others:

(1) administrative expenses, personnel and training expenses, and equipment maintenance and operating costs related to implementation and enforcement of this chapter;

(2) response costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;

(3) response costs and damages related to actual or threatened unauthorized discharges of oil;

(4) assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil;

(5) in an amount not to exceed \$50,000 annually, the small spill education program;

(6) in an amount not to exceed \$1,250,000 annually, interagency contracts under Section 40.302;

(7) the purchase of response equipment under Section 40.105 within two years of the effective date of this chapter, in an amount not to exceed \$4 million; thereafter, for the purchase of equipment to replace equipment that is worn or obsolete;

(8) ~~[an inventory under Section 40.107, to be completed by September 1, 1995, in an amount not to exceed \$6 million;~~

~~[(9)]~~ other costs and damages authorized by this chapter; ~~[and]~~

~~[(10)]~~ in an amount not to exceed the interest accruing to the fund annually, erosion response projects under Subchapter H, Chapter 33; and

(10) in conjunction with the Railroad Commission of Texas, costs related to the plugging of abandoned or orphaned oil wells located on state-owned submerged lands.

SECTION 8G.13. Section 40.254(g)(3), Natural Resources Code, is amended to read as follows:

(3) ~~[A person who fails to comply with Subdivision (2) of this subsection waives the right to judicial review.]~~ On failure of the person to comply with the order or file a petition for judicial review ~~[Subdivision (2) of this subsection]~~, the commissioner may refer the matter to the attorney general for collection and enforcement.

SECTION 8G.14. Section 40.254(h)(1), Natural Resources Code, is amended to read as follows:

(1) If a penalty is reduced or not assessed, the commissioner shall~~[-~~
~~[(A)]~~ remit to the person charged the appropriate amount of any penalty payment plus accrued interest~~[-or~~
~~[(B)]~~ execute a release of the bond if a supersedeas bond has been posted].

SECTION 8G.15. Sections 40.258(a)(1), (2), and (3), Natural Resources Code, are amended to read as follows:

(1) The commissioner shall promulgate rules ~~[and a state coastal discharge contingency plan]~~ that, to the greatest extent practicable, conform to the national contingency plan and rules promulgated under federal law.

(2) The commissioner may impose requirements under such rules ~~[and the state coastal discharge contingency plan]~~ that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements.

(3) Any request for judicial review of any rule ~~[or any provision of the state coastal discharge contingency plan based on Subdivision (1) or (2) of this subsection]~~ must be filed in a district court in Travis County within 90 days of the effective date of the rule or plan challenged.

SECTION 8G.16. Sections 40.006, 40.053, 40.110(f), 40.115, 40.117(b), 40.151(e), 40.254(g)(2), and 40.303, Natural Resources Code, are repealed.

[ARTICLE 8H. RESERVED]

ARTICLE 8I. REPORTS

SECTION 8I.01. Section 363.064(a), Health and Safety Code, is amended to read as follows:

(a) A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(8) establish recycling rate goals appropriate to the area covered by the plan;

(9) recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) include an inventory of municipal solid waste landfill units, including:

(A) landfill units no longer in operation;

(B) the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(C) a map showing the approximate boundaries of each former landfill unit, if the exact boundaries are not known;

(D) the current owners of the land on which the former landfill units were located; and

(E) the current use of the land;

(11) assess the need for new waste disposal capacity; and

(12) include a public education program~~;~~ ~~and~~
~~[(13) include waste reduction in accordance with the goal established under~~
~~Section 361.0201(d), to the extent that funds are available].~~

SECTION 8I.02. The heading to Section 5.178, Water Code, is amended to read as follows:

Sec. 5.178. ANNUAL REPORTS; BIENNIAL APPENDICES
~~[APPENDIXES].~~

SECTION 8I.03. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Section [Sections]
~~361.0219(c)[, 361.0232, 361.510, 371.063, and 382.141]~~, Health and Safety Code;

(B) the reports required by Section 26.0135(d) ~~[of this code]~~ and
 Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and

(C) a summary of the analyses and assessments required by Section
~~5.1773 [of this code].~~

SECTION 8I.04. (a) Sections 361.020, 361.0201, 361.0232, 361.0233,
 361.0234, 361.040(d), 361.0871(c), 361.510, 371.063, 382.141, Health and Safety
 Code, are repealed.

(b) Section 5.178(c), Water Code, is repealed.

[ARTICLE 8J. RESERVED]

ARTICLE 8K. ALTERNATIVE FUELS AND VEHICLES

SECTION 8K.01. The following laws are repealed:

(1) Subchapter F, Chapter 382, Health and Safety Code; and

(2) the following subchapters of the Transportation Code:

(A) Subchapter G, Chapter 451;

(B) Subchapter F, Chapter 452;

(C) Subchapter F, Chapter 453; and

(D) Subchapter E, Chapter 457.

SECTION 8K.02. Section 113.287(e), Natural Resources Code, is amended to read as follows:

(e) A state agency, county, municipality, school district, or mass transit authority or department is eligible to receive a loan, grant, or other disbursement under this subchapter to carry out an eligible conversion or infrastructure project regarding LPG or another environmentally beneficial fuel to comply with fuel requirements provided by or by rules adopted under:

(1) ~~[Subchapter F, Chapter 382, Health and Safety Code;~~

~~[(2)]~~ Subchapter A, Chapter 2158, Government Code; or

(2) [(3)] Subchapter C, Chapter 2171, Government Code~~;~~

~~[(4)]~~ Subchapter G, Chapter 451, Transportation Code;

~~[(5)]~~ Subchapter F, Chapter 452, Transportation Code; or

~~[(6)]~~ Subchapter F, Chapter 453, Transportation Code].

SECTION 8K.03. Section 2158.001, Government Code, is amended to read as follows:

Sec. 2158.001. DEFINITION. In this subchapter, "conventional gasoline" means any gasoline that does not meet specifications set by a certification under Section 211(k) of the federal Clean Air Act (42 U.S.C. Section 7545(k)), as amended ~~[has the meaning assigned by Section 382.131, Health and Safety Code]~~.

SECTION 8K.04. Section 1232.104(a), Government Code, is amended to read as follows:

(a) If the authority determines that a project is financially viable and sufficient revenue is or will be available, the authority may issue and sell obligations the proceeds of which shall be used for the financing of:

(1) the conversion of state agency vehicles and other sources of substantial energy output to an alternative fuel under Subchapter A, Chapter 2158;

(2) the construction, acquisition, or maintenance by the commission of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support state agency vehicles and other energy applications that use an alternative fuel;

(3) the conversion of school district motor vehicles and other sources of substantial energy output to an alternative fuel;

(4) the construction, acquisition, or maintenance by a school district of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support school district motor vehicles and other energy applications that use an alternative fuel;

(5) the conversion of local mass transit authority or department motor vehicles and other sources of substantial energy output to an alternative fuel ~~[under Chapters 451, 452, and 453, Transportation Code]~~;

(6) the construction, acquisition, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology by a local mass transit authority or department to support transit authority or department vehicles and other energy applications that use an alternative fuel;

(7) the conversion of motor vehicles and other sources of substantial energy output of a local government ~~[as defined by Section 382.003, Health and Safety Code]~~ to an alternative fuel ~~[under Section 382.134, Health and Safety Code]~~;

(8) the conversion of motor vehicles and other sources of substantial energy output of a hospital district or authority, a housing authority, or a district or authority created under Section 52, Article III, Texas Constitution, or Section 59, Article XVI, Texas Constitution, to an alternative fuel;

(9) the construction, acquisition, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support motor vehicles and other energy applications that use an alternative fuel by a county, a municipality, or an entity described by Subdivision (8);
or

(10) a joint venture between the private sector and a state agency or political subdivision that is required under law to use an alternative fuel in the agency's or subdivision's vehicles or other energy applications to:

- (A) convert vehicles or other sources of substantial energy output to an alternative fuel;
- (B) develop fueling stations and resources for the supply of alternative fuels and engine-driven applications;
- (C) aid in the distribution of alternative fuels; and
- (D) engage in other projects to facilitate the use of alternative fuels.

SECTION 8K.05. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year shall include, in addition:

- (1) the commission's recommendations for necessary and desirable legislation; and
- (2) the following reports:
 - (A) the assessments and reports required by Sections 361.0219(c), 361.0232, 361.510, and 371.063[~~, and 382.141~~], Health and Safety Code;
 - (B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; and
 - (C) a summary of the analyses and assessments required by Section 5.1773 of this code.

SECTION 8K.06. Title 2, Agriculture Code, is amended by adding Chapter 16 to read as follows:

CHAPTER 16. FUEL ETHANOL AND BIODIESEL PRODUCTION

Sec. 16.001. DEFINITIONS. In this chapter:

- (1) "Account" means the fuel ethanol and biodiesel production account.
- (2) "ASTM" means the American Society for Testing and Materials.
- (3) "Biodiesel" means a monoalkyl ester that:
 - (A) is derived from vegetable oils, rendered animal fats, or renewable lipids or a combination of those ingredients; and
 - (B) meets the requirements of ASTM PS 121, the provisional specification for biodiesel.
- (4) "Fuel ethanol" means ethyl alcohol that:
 - (A) has a purity of at least 99 percent, exclusive of added denaturants;
 - (B) has been denatured in conformity with a method approved by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury;
 - (C) meets the requirements of ASTM D4806, the standard specification for ethanol used as a motor fuel; and
 - (D) is produced exclusively from agricultural products or by-products or municipal solid waste.
- (5) "Producer" means a person who operates a fuel ethanol or biodiesel plant in this state.

Sec. 16.002. PLANT REGISTRATION. (a) To be eligible for a grant for fuel ethanol or biodiesel produced in a plant, a producer must apply to the department for the registration of the plant. A producer may apply for the registration of more than one plant.

(b) An application for the registration of a plant must show to the satisfaction of the department that:

(1) the plant is capable of producing fuel ethanol or biodiesel;

(2) the producer has made a substantial investment of resources in this state in connection with the plant; and

(3) the plant constitutes a permanent fixture in this state.

(c) The department shall register each plant that qualifies under this section.

Sec. 16.003. REPORTS. (a) On or before the fifth day of each month, a producer shall report to the department on:

(1) the number of gallons of fuel ethanol or biodiesel produced at each registered plant operated by the producer during the preceding month;

(2) the number of gallons of fuel ethanol or biodiesel imported into this state by the producer during the preceding month;

(3) the number of gallons of fuel ethanol or biodiesel sold or blended with motor fuels by the producer during the preceding month; and

(4) the total value of agricultural products consumed in each registered plant operated by the producer during the preceding month.

(b) A producer who fails to file a report as required by this section is ineligible to receive a grant for the period for which the report is not filed.

Sec. 16.004. FUEL ETHANOL AND BIODIESEL PRODUCTION ACCOUNT. (a) The fuel ethanol and biodiesel production account is an account in the general revenue fund that may be appropriated only to the department for the purposes of this chapter, including the making of grants under this chapter.

(b) The account is composed of:

(1) fees collected under Section 16.005; and

(2) money transferred to the account under Subsection (c).

(c) The comptroller shall transfer from the undedicated portion of the general revenue fund to the account an amount of money equal to 5.25 times the amount of the fees collected under Section 16.005.

Sec. 16.005. FEE ON FUEL ETHANOL AND BIODIESEL PRODUCTION.

(a) The department shall impose a fee on each producer in an amount equal to 3.2 cents for each gallon of fuel ethanol or biodiesel produced in each registered plant operated by the producer.

(b) For each fiscal year, the department may not impose fees on a producer for more than 18 million gallons of fuel ethanol or biodiesel produced at any one registered plant.

(c) The department shall transfer the fees collected under this section to the comptroller for deposit to the credit of the account.

(d) The department may not impose fees on a producer for fuel ethanol or biodiesel produced at a registered plant after the 10th anniversary of the date production from the plant begins.

Sec. 16.006. FUEL ETHANOL AND BIODIESEL GRANTS. (a) The department shall make grants to producers as an incentive for the development of the fuel ethanol and biodiesel industry and agricultural production in this state.

(b) A producer is entitled to receive from the account 20 cents for each gallon of fuel ethanol or biodiesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins.

(c) For each fiscal year a producer may not receive grants for more than 18 million gallons of fuel ethanol or biodiesel produced at any one registered plant.

(d) The department by rule shall provide for the distribution of grant funds under this chapter to producers. The department shall make grants not less often than quarterly.

(e) If the department determines that the amount of money credited to the account is not sufficient to distribute the full amount of grant funds to eligible producers as provided by this chapter for a fiscal year, the department shall proportionately reduce the amount of each grant for each gallon of fuel ethanol or biodiesel produced as necessary to continue the incentive program during the remainder of the fiscal year.

SECTION 8K.07. Notwithstanding Section 16.004(c), Agriculture Code, as added by this Act, the comptroller may not make transfers from general revenue during the fiscal biennium ending August 31, 2005.

PART 9. EDUCATION

ARTICLE 9A. SCHOOL BUS SAFETY STANDARDS

SECTION 9A.01. Section 34.002(a), Education Code, is amended to read as follows:

(a) The Department of Public Safety, with the advice of the [~~General Services Commission and the~~] Texas Education Agency, shall establish safety standards for school buses used to transport students in accordance with Section 34.003 [~~34.002, Education Code~~].

SECTION 9A.02. Sections 547.7015(a) and (b), Transportation Code, are amended to read as follows:

(a) The department [~~General Services Commission, with the advice of the department,~~] shall adopt and enforce rules governing the design, color, lighting and other equipment, construction, and operation of a school bus for the transportation of schoolchildren that is:

- (1) owned and operated by a school district in this state; or
- (2) privately owned and operated under a contract with a school district in this state.

(b) In adopting rules under this section, the department [~~General Services Commission~~] shall emphasize:

- (1) safety features; and
- (2) long-range, maintenance-free factors.

SECTION 9A.03. Rules that were adopted under Section 547.7015, Transportation Code, before the effective date of this Act and that are in effect on the effective date of this Act are continued in effect as rules of the Department of Public Safety until the rules are amended, repealed, or superseded by an action of the department.

PART 10. INSURANCE

ARTICLE 10A. ABANDONMENT OF PROCEEDS ON DEMUTUALIZATION

SECTION 10A.01. Section 72.101, Property Code, is amended by adding Subsection (c) to read as follows:

(c) The three-year period leading to a presumption of abandonment of proceeds from the demutualization of an insurance company begins on the earlier of the date of the last contact with the policyholder entitled to the proceeds or the date of the demutualization.

SECTION 10A.02. Section 74.301, Property Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (c) or (d), each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 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.

(d) If the property subject to delivery under Subsection (a) is proceeds from the demutualization of an insurance company, the holder shall deliver the property and required report to the comptroller on or before the following August 1.

[PART 11. RESERVED]

[PART 12. RESERVED]

PART 13. AD VALOREM TAXATION

ARTICLE 13A. STATE ADMINISTRATION OF
AD VALOREM TAXATION

SECTION 13A.01. Title 1, Tax Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. DETERMINATION OF SCHOOL DISTRICT PROPERTY
VALUES AND APPRAISAL DISTRICT ACCOUNTABILITY

CHAPTER 51. DETERMINATION OF SCHOOL DISTRICT PROPERTY
VALUES AND APPRAISAL DISTRICT ACCOUNTABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.01. PURPOSE. It is the policy of this state to ensure equity among taxpayers in the burden of school district taxes and among school districts in the distribution of state financial aid for public education. The purpose of this chapter is to promote that policy by providing for uniformity in local property appraisal practices and procedures and for determining property values for schools in order to distribute state funding equitably.

Sec. 51.02. DEFINITIONS. In this chapter:

(1) "Annual study" means a study conducted under Section 51.21.

(2) "Eligible school district" means a school district for which the commissioner has determined the following:

(A) in the most recent annual study, the local value is invalid under Section 51.21(c) and does not exceed the state value for the school district determined in the annual study; and

(B) in the annual study for each of the two years preceding the most recent annual study, the school district's local value was valid.

(3) "Local value" means the market value of property in a school district as determined by the appraisal district that appraises property for the school district, less the total amounts and values listed in Section 51.21(d) as determined by that appraisal district.

(4) "Ratio study" means a study conducted under Section 51.41.

(5) "State value" means the value of property in a school district as determined in the annual study as provided by Section 51.21(c).

[Sections 51.03-51.20 reserved for expansion]

SUBCHAPTER B. DETERMINATION OF SCHOOL DISTRICT
PROPERTY VALUES

Sec. 51.21. DETERMINATION OF SCHOOL DISTRICT PROPERTY VALUES. (a) The commissioner shall conduct an annual study to determine the total taxable value of all property in each school district. The annual study shall determine the total taxable value of all property and of each category of property in each school district. The annual study shall also determine the productivity value of all land designated as agricultural, open-space, or timber land under Chapter 23. The commissioner shall make appropriate adjustments in the study to account for actions taken under Chapter 41, Education Code.

(b) In conducting the annual study, the commissioner shall determine the taxable value of property in each school district:

(1) using, if appropriate, samples selected through generally accepted sampling techniques;

(2) according to generally accepted standard valuation, statistical compilation, and analysis techniques;

(3) ensuring that different levels of appraisal on sold and unsold property do not adversely affect the accuracy of the study; and

(4) using current technology and techniques in appraising commercial personal property.

(c) If after conducting the annual study the commissioner determines that the local value for a school district is valid, the local value is presumed to represent taxable value for the school district. In the absence of that presumption, taxable value for a school district is the state value for the school district determined in the annual study under Subsections (a) and (b), unless the local value exceeds the state value, in which case the taxable value for the school district is the district's local value.

(d) For purposes of this section, "taxable value" means the market value of all taxable property less:

(1) the total dollar amount of any residence homestead exemptions lawfully granted under Section 11.13(b) or (c) in the year that is the subject of the study for each school district;

(2) one-half of the total dollar amount of any residence homestead exemptions granted under Section 11.13(n) in the year that is the subject of the study for each school district;

(3) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312;

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the

other taxing units in the manner provided by Section 311.003(e) before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;

(B) generates taxes paid into a tax increment fund created under Chapter 311 under a reinvestment zone financing plan approved under Section 311.011(d) on or before September 1, 1999; and

(C) is eligible for tax increment financing under Chapter 311;

(5) the total dollar amount of any exemptions granted under Section 11.251;

(6) the difference between the commissioner's determination of the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity under Chapter 23;

(7) the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(8) a portion of the market value of property not otherwise fully taxable by the district at market value because of:

(A) action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted; or

(B) action taken by the district under Subchapter B or C, Chapter 313;

(9) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income;

(10) the appraised value of property for which the collection of delinquent taxes is deferred under Section 33.06;

(11) the portion of the appraised value of property for which the collection of delinquent taxes is deferred under Section 33.065; and

(12) the amount by which the market value of a residence homestead to which Section 23.23 applies exceeds the appraised value of that property as calculated under that section.

(e) The total dollar amount deducted in each year as required by Subsection (d)(3) in a reinvestment zone created after January 1, 1999, may not exceed the captured appraised value estimated for that year as required by Section 311.011(c)(8) in the reinvestment zone financing plan approved under Section 311.011(d) before September 1, 1999. The number of years for which the total dollar amount may be deducted under Subsection (d)(3) shall for any zone, including those created on or before January 1, 1999, be limited to the duration of the zone as specified as required by Section 311.011(c)(9) in the reinvestment zone financing plan approved under Section 311.011(d) before September 1, 1999. The total dollar amount deducted under Subsection (d)(3) for any zone, including a zone created on or before January 1, 1999, may not be increased by any reinvestment zone financing plan amendments that occur after August 31, 1999. The total dollar amount deducted under Subsection (d)(3) for

any zone, including a zone created on or before January 1, 1999, may not be increased by a change made after August 31, 1999, in the portion of the tax increment retained by the school district.

(f) The annual study shall determine the school district values as of January 1 of each study year.

(g) If after conducting the annual study for the year 2004 or a subsequent year the commissioner determines that a school district is an eligible school district, for that year and the following year the taxable value for the school district is the district's local value. Not later than the first anniversary of the date of the determination that a school district is an eligible school district, the commissioner shall complete an appraisal standards review as provided by Section 51.42 of each appraisal district that appraises property for the school district.

(h) The commissioner shall publish preliminary findings, listing values by school district, before February 1 of the year following the study year. Preliminary findings shall be delivered to each school district and shall be certified to the commissioner of education.

(i) For purposes of Section 42.2511, Education Code, the commissioner shall certify to the commissioner of education:

(1) a final value for each school district computed on a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of \$5,000; and

(2) a final value for each school district computed on:

(A) a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of \$15,000; and

(B) the effect of the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution.

(j) For purposes of Section 42.2522, Education Code, the commissioner shall certify to the commissioner of education:

(1) a final value for each school district computed without any deduction for residence homestead exemptions granted under Section 11.13(n); and

(2) a final value for each school district computed after deducting one-half the total dollar amount of residence homestead exemptions granted under Section 11.13(n).

Sec. 51.22. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) A school district, or a property owner whose property is included in the annual study and whose tax liability on the property is \$100,000 or more, may protest the commissioner's findings by filing a petition with the commissioner. The petition must be filed not later than the 40th day after the date on which the commissioner's findings are certified to the commissioner of education and must include specific pleadings stating the legal and appraisal issues in dispute and the value claimed to be correct.

(b) On receipt of a petition, the commissioner shall hold a hearing. The commissioner has the burden to prove the accuracy of the findings. Until a final decision is made by the commissioner, the taxable value of property in the district is determined, with respect to the property subject to the protest, according to the value of the property claimed by the school district or property owner, except that the value to be used while a final decision is pending may not be less than the value of the property as listed on the school district's appraisal roll for the year of the study. If after

the hearing the commissioner concludes that the findings should be changed, the commissioner shall order the appropriate changes and shall certify the changes to the commissioner of education. The commissioner shall complete all protest hearings and certify all changes as necessary to comply with Chapter 42, Education Code. A hearing conducted under this subsection is not a contested case for purposes of Section 2001.003, Government Code.

(c) The commissioner shall adopt procedural rules governing the conduct of protest hearings. The rules shall provide for each protesting school district and property owner to:

(1) be informed of the requirements for submitting a petition initiating a protest;

(2) receive adequate notice of a hearing;

(3) have an opportunity to present evidence and oral argument; and

(4) be given notice by the commissioner of the commissioner's decision on the hearing.

(d) A protesting school district may appeal a determination of protest by the commissioner to a district court in Travis County by filing a petition with the court. An appeal must be filed not later than the 30th day after the date the school district receives notice from the commissioner of the determination. Review is conducted by the court sitting without a jury. The court shall remand the determination to the commissioner if on review the court discovers that substantial rights of the school district have been prejudiced and that:

(1) the commissioner has acted arbitrarily and without regard to the facts; or

(2) the determination of the commissioner is not reasonably supported by substantial evidence introduced before the court.

Sec. 51.23. AUDIT. (a) On request of a school district or the commissioner of education, the commissioner may audit the total taxable value of property in a school district and may revise the annual study findings. The request for audit is limited to corrections and changes in a school district's appraisal roll that occurred after preliminary certification of the annual study findings by the commissioner.

(b) Except as provided by Subsection (c), the request for audit must be filed with the commissioner not later than the third anniversary of the date of the final certification of the annual study findings.

(c) The request for audit may be filed not later than the first anniversary of the date the chief appraiser certifies a change to the appraisal roll if:

(1) the chief appraiser corrects the appraisal roll under Section 25.25 or 42.41; and

(2) the change results in a material reduction in the total taxable value of property in the school district.

(d) The commissioner shall certify the findings of the audit to the commissioner of education.

Sec. 51.24. CONFIDENTIALITY. (a) All information the commissioner obtains from a person, other than a governmental entity, under an assurance that the information will be kept confidential, in the course of conducting the annual study is confidential and may not be disclosed, except as provided by Subsection (b).

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
(2) to the person who gave the information to the commissioner; or
(3) for statistical purposes if in a form that does not identify specific property or a specific owner.

[Sections 51.25-51.40 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF APPRAISAL DISTRICT
ACCOUNTABILITY

Sec. 51.41. APPRAISAL DISTRICT RATIO STUDY. (a) The commissioner shall conduct a study in each appraisal district for each tax year to determine the degree of uniformity of and the median level of appraisals by the appraisal district within each major category of property for that tax year. In conducting the study, the commissioner shall apply appropriate standard statistical analysis techniques to data collected as part of the annual study of school district property values required by Section 51.21.

(b) The commissioner shall publish a report of the findings of the study, including the median level of appraisal for each major category of property, the coefficient of dispersion around the median level of appraisal for each major category of property, and any other standard statistical measure that the commissioner considers appropriate. A copy of the published report of the commissioner shall be distributed to each member of the legislature and to each appraisal district.

(c) In conducting a study under this section, the commissioner or the commissioner's authorized representatives may enter the premises of a business, trade, or profession and inspect the property to determine the existence and market value of property used for the production of income. An inspection under this subsection must be made during normal business hours or at a time mutually agreeable to the commissioner or the commissioner's authorized representatives and the person in control of the premises.

Sec. 51.42. APPRAISAL STANDARDS REVIEW. (a) The commissioner shall review the appraisal standards, procedures, and methodology used by each appraisal district that appraises property for an eligible school district to determine compliance with generally accepted appraisal standards and practices. The commissioner by rule may establish procedures and standards for conducting the review.

(b) In conducting the review, the commissioner is entitled to access to all records and reports of the appraisal district and to the assistance of the appraisal district's officers and employees.

(c) If the review results in a finding that an appraisal district is not in compliance with generally accepted appraisal standards and practices, the commissioner shall deliver a report that details the commissioner's findings and recommendations for improvement to:

(1) the appraisal district's chief appraiser and board of directors; and
(2) the superintendent and board of trustees of each school district participating in the appraisal district.

(d) If the appraisal district fails to comply with the recommendations in the report and the commissioner finds that the board of directors of the appraisal district failed to take remedial action before the first anniversary of the date the report was issued, the commissioner shall notify the judge of each district court in the county for

which the appraisal district is established, who shall appoint a board of conservators consisting of five members to implement the recommendations. The board of conservators shall exercise supervision and control over the operations of the appraisal district until the commissioner determines under Section 51.21 that in the same year the taxable value of each school district for which the appraisal district appraises property is the local value for the district. The appraisal district shall bear the costs related to the supervision and control of the district by the board of conservators.

Sec. 51.43. APPRAISAL DISTRICT PERFORMANCE AUDITS. (a) The commissioner shall audit the performance of an appraisal district if one or more of the following conditions exist according to each of two consecutive ratio studies conducted under Section 51.41, regardless of whether the prescribed condition or conditions that exist are the same for each of those studies:

(1) the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is less than 0.75;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is more than 0.30; or

(3) the difference between the median levels of appraisal for any two classes of property in the district for which the commissioner determines a median level of appraisal is more than 0.45.

(b) At the written request of the governing bodies of a majority of the taxing units participating in an appraisal district or of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, the commissioner shall audit the performance of the appraisal district. The governing bodies may request a general audit of the performance of the appraisal district or may request an audit of only one or more specific duties, practices, functions, departments, or other appraisal district matters.

(c) At the written request of the owners of not less than 10 percent of the number of accounts or parcels of property in an appraisal district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property within the district in the preceding year, or at the written request of the owners of property representing not less than 10 percent of the appraised value of all property in the district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property in the district in the preceding year, the commissioner shall audit the performance of the appraisal district. The property owners may request a general audit of the performance of the appraisal district or may request an audit of only one or more specific duties, practices, functions, departments, or other appraisal district matters. A property owner may authorize an agent to sign a request for an audit under this subsection on the property owner's behalf. The commissioner may require a person signing a request for an audit to provide proof that the person is entitled to sign the request as a property owner or as the agent of a property owner.

(d) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c) if according to each of the two most recently published ratio studies conducted by the commissioner under Section 51.41:

(1) the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is more than 0.90 and less than 1.10;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is less than 0.15; and

(3) the difference between the highest and lowest median levels of appraisal in the district for the classes of property for which the commissioner determines a median level of appraisal is less than 0.20.

(e) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c):

(1) during the two years following the publication of the second of two consecutive ratio studies according to which the commissioner is required to conduct an audit of the district under Subsection (a); or

(2) during the year immediately following the date the results of an audit of the district conducted by the commissioner under Subsection (a) are reported to the chief appraiser of the district.

(f) For purposes of this section, "class of property" means a major kind of property for which the commissioner determines a median level of appraisal under Section 51.41.

(g) In addition to the performance audits permitted by Subsections (a), (b), and (c) and the appraisal standards review required by Section 51.42, the commissioner may audit an appraisal district to analyze the effectiveness and efficiency of the policies, management, and operations of the appraisal district. The results of the audit shall be delivered in a report that details the commissioner's findings and recommendations for improvement to the appraisal district's chief appraiser and board of directors and to the governing body of each taxing unit participating in the appraisal district. The commissioner may require reimbursement by the appraisal district for some or all of the costs of the audit, not to exceed the actual costs associated with conducting the audit.

Sec. 51.44. ADMINISTRATION OF PERFORMANCE AUDITS. (a) The commissioner shall complete an audit required by Section 51.43(a) not later than the second anniversary of the date of the publication of the second of the two ratio studies the results of which required the audit to be conducted. The commissioner shall complete an audit requested under Section 51.43(b) or (c) as soon as practicable after the request is made. The commissioner shall complete an audit conducted under Section 51.43(g) not later than the first anniversary of the date that it is initiated by the commissioner.

(b) The commissioner may not audit the financial condition of an appraisal district or a district's tax collections. If the request is for an audit limited to one or more particular matters, the commissioner's audit must be limited to those matters.

(c) The commissioner must approve the specific plan for the performance audit of an appraisal district. Before approving an audit plan, the commissioner must provide any interested person an opportunity to appear before the commissioner and to comment on the proposed plan. Not later than the 20th day before the date the commissioner considers the plan for an appraisal district performance audit, the commissioner must notify the presiding officer of the appraisal district's board of directors that the commissioner intends to consider the plan. The notice must include the time, date, and location of the meeting to consider the plan. Immediately after receiving the notice, the presiding officer shall deliver a copy of the notice to the other members of the appraisal district's board of directors.

(d) In conducting a general audit, the commissioner shall consider and report on:

(1) the extent to which the district complies with applicable law and generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviation from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by Subsection (b), any other matter included in the request for the audit.

(e) In conducting the audit, the commissioner is entitled to have access at all times to the books, appraisal and other records, reports, vouchers, and other information, confidential or not, of the appraisal district. The commissioner may require the assistance of appraisal district officers and employees that does not interfere significantly with the ordinary functions of the appraisal district. The commissioner may rely on any previous analysis the commissioner has made relating to the appraisal district if the previous analysis is useful or relevant to the audit.

(f) The commissioner shall report the results of the audit in writing to the governing body of each taxing unit that participates in the appraisal district, to the chief appraiser, and to the presiding officer of the appraisal district's board of directors. If the audit was requested under Section 51.43(c), the commissioner shall also provide a report to a representative of the property owners who requested the audit.

(g) If the audit is required or requested under Section 51.43(a) or (b), the appraisal district shall reimburse the commissioner for the costs incurred in conducting the audit and making the commissioner's report of the audit. The costs shall be allocated among the taxing units participating in the district in the same manner as an operating expense of the district. If the audit is requested under Section 51.43(c), the property owners who requested the audit shall reimburse the commissioner for the costs incurred in conducting the audit and making the report of the audit and shall allocate the costs among those property owners in proportion to the appraised value of each property owner's property in the district or on any other basis agreed to by the property owners. If the audit confirms that the median level of appraisal for a class of property exceeds 1.10 or that the median level of appraisal for a class of property varies at least 10 percent from the overall median level of appraisal

for all property in the district for which the commissioner determines a median level of appraisal, not later than the 90th day after the date a request is made by the property owners for reimbursement the appraisal district shall reimburse the property owners who requested the audit for the amount paid to the commissioner for the costs incurred in conducting the audit and making the report. Before conducting an audit under Section 51.43(c), the commissioner may require the requesting property owners to provide the commissioner with a bond, deposit, or other financial security sufficient to cover the projected costs of conducting the audit and making the report. For purposes of this subsection, "costs" include expenses related to salaries, professional fees, travel, reproduction or other printing services, and consumable supplies that are directly attributable to conducting the audit.

(h) At any time after the request for an audit is made, the commissioner may discontinue the audit in whole or in part if requested to do so by:

(1) the governing bodies of a majority of the taxing units participating in the district, if the audit was requested by a majority of those units;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, if the audit was requested by a majority of those units; or

(3) if the audit was requested under Section 51.43(c), by the property owners who requested the audit.

(i) The commissioner by rule may adopt procedures, audit standards, and forms for the administration of performance audits.

Sec. 51.45. ADMINISTRATIVE PROVISIONS. (a) The commissioner may inspect the records or other materials of an appraisal district or taxing unit, including relevant records and materials in the possession or control of a consultant, advisor, or expert hired by the appraisal district or taxing unit, for the purpose of conducting an annual study, ratio study, appraisal standards review, or performance audit required or authorized by this chapter.

(b) On request of the commissioner, the appraisal district or administrative officer of the taxing unit shall produce the records or other materials in the form and manner prescribed by the commissioner.

(c) The commissioner shall prescribe a uniform record system to be used by all appraisal districts for the purpose of submitting data to be used in the annual study and ratio study. The record system shall include a compilation of information concerning sales of real property within the boundaries of the appraisal district. The sales information maintained in the uniform record system shall be submitted annually in a form prescribed by the commissioner.

SECTION 13A.02. Section 13.051(c), Education Code, is amended to read as follows:

(c) Territory that does not have residents may be detached from a school district and annexed to another school district if:

(1) the total taxable value of the property in the territory according to the most recent certified appraisal roll for each school district is not greater than:

(A) five percent of the district's taxable value of all property in that district as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code; and

(B) \$5,000 property value per student in average daily attendance as determined under Section 42.005; and

(2) the school district from which the property will be detached does not own any real property located in the territory.

SECTION 13A.03. Section 13.231(b), Education Code, is amended to read as follows:

(b) In this section, "taxable value" has the meaning assigned by Section 51.21, Tax [403.302, Government] Code.

SECTION 13A.04. Section 41.001(2), Education Code, is amended to read as follows:

(2) "Wealth per student" means the taxable value of property, as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, divided by the number of students in weighted average daily attendance.

SECTION 13A.05. Section 41.002(f), Education Code, is amended to read as follows:

(f) For purposes of Subsection (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year less any amounts paid into a tax increment fund under Chapter 311, Tax Code, by the quotient of the district's taxable value of property, as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, divided by 100.

SECTION 13A.06. Section 41.005, Education Code, is amended to read as follows:

Sec. 41.005. [~~COMPTROLLER AND APPRAISAL DISTRICT~~] COOPERATION. The chief appraiser of each appraisal district and the commissioner of the State Board on Property Valuation [comptroller] shall cooperate with the commissioner and school districts in implementing this chapter.

SECTION 13A.07. Section 41.202(a), Education Code, is amended to read as follows:

(a) For purposes of this subchapter, the taxable value of an individual parcel or other item of property and the total taxable value of property in a school district resulting from the detachment of property from or annexation of property to that district is determined by applying the appraisal ratio for the appropriate category of property determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, for the preceding tax year to the taxable value of the detached or annexed property determined under Title 1, Tax Code, for the preceding tax year.

SECTION 13A.08. Sections 42.106 and 42.2511, Education Code, are amended to read as follows:

Sec. 42.106. ADJUSTED PROPERTY VALUE FOR DISTRICTS NOT OFFERING ALL GRADE LEVELS. For purposes of this chapter, the taxable value of property of a school district that contracts for students residing in the district to be educated in another district under Section 25.039(a) is adjusted by applying the formula:

$$\text{ADPV} = \text{DPV} - (\text{TN}/.015)$$

where:

"ADPV" is the district's adjusted taxable value of property;

"DPV" is the taxable value of property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code; and

"TN" is the total amount of tuition required to be paid by the district under Section 25.039 for the school year for which the adjustment is made.

Sec. 42.2511. ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION.

(a) Notwithstanding any other provision of this chapter, a school district is entitled to additional state aid to the extent that state aid under this chapter based on the determination of the school district's taxable value of property as provided under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, does not fully compensate the district for ad valorem tax revenue lost due to the increase in the homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997, and the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997.

(b) The commissioner, using information provided by the commissioner of the State Board on Property Valuation [~~comptroller~~], shall compute the amount of additional state aid to which a district is entitled under this section. A determination by the commissioner under this section is final and may not be appealed.

SECTION 13A.09. Sections 42.252(a) and (c), Education Code, are amended to read as follows:

(a) Each school district's share of the Foundation School Program is determined by the following formula:

$$\text{LFA} = \text{TR} \times \text{DPV}$$

where:

"LFA" is the school district's local share;

"TR" is a tax rate which for each hundred dollars of valuation is an effective tax rate of \$0.86; and

"DPV" is the taxable value of property in the school district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code.

(c) Appeals of district values shall be held pursuant to Section 51.22, Tax [~~403.303, Government~~] Code.

SECTION 13A.10. Sections 42.2522(a) and (d), Education Code, are amended to read as follows:

(a) In any school year, the commissioner may not provide funding under this chapter based on a school district's taxable value of property computed in accordance with Section 51.21(d)(2), Tax [~~403.302(d)(2), Government~~] Code, unless:

(1) funds are specifically appropriated for purposes of this section; or

(2) the commissioner determines that the total amount of state funds appropriated for purposes of the Foundation School Program for the school year exceeds the amount of state funds distributed to school districts in accordance with Section 42.253 based on the taxable values of property in school districts computed in

accordance with Section 51.21(d), Tax [403.302(d), Government] Code, without any deduction for residence homestead exemptions granted under Section 11.13(n), Tax Code.

(d) If the commissioner determines that the amount of funds available under Subsection (a)(1) or (2) does not at least equal the total amount of state funding to which districts would be entitled if state funding under this chapter were based on the taxable values of property in school districts computed in accordance with Section 51.21(d)(2), Tax [403.302(d)(2), Government] Code, the commissioner may, to the extent necessary, provide state funding based on a uniform lesser fraction of the deduction under Section 51.21(d)(2), Tax [403.302(d)(2), Government] Code.

SECTION 13A.11. Section 42.253(h), Education Code, is amended to read as follows:

(h) If the legislature fails during the regular session to enact the transfer and appropriation proposed under Subsection (f) and there are not funds available under Subsection (j), the commissioner shall reduce the total amount of state funds allocated to each district by an amount determined by a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, results in a total levy equal to the total reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection.

SECTION 13A.12. Section 42.254, Education Code, is amended to read as follows:

Sec. 42.254. ESTIMATES REQUIRED. (a) Not later than October 1 of each even-numbered year:

(1) the agency shall submit to the legislature an estimate of the tax rate and student enrollment of each school district for the following biennium; and

(2) the commissioner of the State Board on Property Valuation [comptroller] shall submit to the legislature an estimate of the total taxable value of all property in the state as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, for the following biennium.

(b) The agency and the commissioner of the State Board on Property Valuation [comptroller] shall update the information provided to the legislature under Subsection (a) not later than March 1 of each odd-numbered year.

SECTION 13A.13. Section 42.257(a), Education Code, is amended to read as follows:

(a) If the final determination of an appeal under Chapter 42, Tax Code, results in a reduction in the taxable value of property that exceeds five percent of the total taxable value of property in the school district for the same tax year determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, the commissioner shall request the commissioner of the State Board on Property Valuation [comptroller] to adjust the [its] taxable property value findings for that year consistent with the final determination of the appraisal appeal.

SECTION 13A.14. Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

$$GYA = (GL \times WADA \times DTR \times 100) - LR$$

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is \$27.14 or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION 13A.15. Section 46.003(a), Education Code, is amended to read as follows:

(a) For each year, except as provided by Sections 46.005 and 46.006, a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate, or improve an instructional facility. The amount of state support is determined by the formula:

$$FYA = (FYL \times ADA \times BTR \times 100) - (BTR \times (DPV/100))$$

where:

"FYA" is the guaranteed facilities yield amount of state funds allocated to the district for the year;

"FYL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

"ADA" is the greater of the number of students in average daily attendance, as determined under Section 42.005, in the district or 400;

"BTR" is the district's bond tax rate for the current year, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, or, if applicable, Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, or, if applicable, Section 42.2521.

SECTION 13A.16. Section 46.006(g), Education Code, is amended to read as follows:

(g) In this section, "wealth per student" means a school district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, or, if applicable, Section 42.2521, divided by the district's average daily attendance as determined under Section 42.005.

SECTION 13A.17. Section 46.032(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under Section 46.034, is determined by the formula:

$$EDA = (EDGL \times ADA \times EDTR \times 100) - (EDTR \times (DPV/100))$$

where:

"EDA" is the amount of state funds to be allocated to the district for assistance with existing debt;

"EDGL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

"ADA" is the number of students in average daily attendance, as determined under Section 42.005, in the district;

"EDTR" is the existing debt tax rate of the district, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, or, if applicable, under Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, or, if applicable, under Section 42.2521.

SECTION 13A.18. Sections 825.405(h) and (i), Government Code, are amended to read as follows:

(h) This section does not apply to state contributions for members employed by a school district in a school year if the district's effective tax rate for maintenance and operation revenues for the tax year that ended in the preceding school year equals or exceeds 125 percent of the statewide average effective tax rate for school district maintenance and operation revenues for that tax year. For a tax year, the statewide average effective tax rate for school district maintenance and operation revenues is the tax rate that, if applied to the statewide total appraised value of taxable property for

every school district in the state determined under Section 51.21, Tax Code [~~403.302~~], would produce an amount equal to the statewide total amount of maintenance and operation taxes imposed in the tax year for every school district in the state.

(i) Not later than the seventh day after the final date the commissioner of the State Board on Property Valuation [~~comptroller~~] certifies to the commissioner of education changes to the property value study conducted under Section 51.21, Tax Code [~~Subchapter M, Chapter 403~~], the commissioner of the State Board on Property Valuation [~~comptroller~~] shall certify to the Teacher Retirement System of Texas:

(1) the effective tax rate for school district maintenance and operation revenues for each school district in the state for the immediately preceding tax year; and

(2) the statewide average effective tax rate for school district maintenance and operation revenues for the immediately preceding tax year.

SECTION 13A.19. Section 61.040, Health and Safety Code, is amended to read as follows:

Sec. 61.040. TAX INFORMATION. (a) The commissioner of the State Board on Property Valuation [~~comptroller~~] shall give the department information relating to [:-
[~~(+)~~] the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period.

(b) The comptroller shall give the department information relating to [:-and
[~~(-)~~] the amount of sales and use tax revenue received by each county for the relevant period.

SECTION 13A.20. Section 1152.204(c), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, and is further amended to read as follows:

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

(1) related to property tax consulting services; and

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

(A) the commissioner of the State Board on Property Valuation [~~comptroller~~];

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

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

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

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

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

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

SECTION 13A.21. Section 1.04, Tax Code, is amended by amending Subdivision (19) and adding Subdivision (20) to read as follows:

(19) "Commissioner" [~~"Comptroller"~~] means the commissioner of the State Board on Property Valuation [~~Comptroller of Public Accounts of the State of Texas~~].

(20) "Board" means the State Board on Property Valuation.

SECTION 13A.22. Section 1.111(h), Tax Code, is amended to read as follows:

(h) The commissioner [~~comptroller~~] shall prescribe forms and adopt rules to facilitate compliance with this section. The commissioner [~~comptroller~~] shall include on any form used for designation of an agent for a single-family residential property in which the property owner resides the following statement in boldfaced type:

"In some cases, you may want to contact your appraisal district or other local taxing units for free information and/or forms concerning your case before designating an agent."

SECTION 13A.23. Chapter 5, Tax Code, is amended by adding Sections 5.01 and 5.02 to read as follows:

Sec. 5.01. STATE BOARD ON PROPERTY VALUATION. (a) The State Board on Property Valuation is established. The board consists of five members appointed by the governor.

(b) Members of the board hold office for terms of six years, with the terms of one or two members expiring March 1 of each odd-numbered year.

(c) To be eligible to serve on the board, a person must:

(1) have been a resident of this state for at least 10 years; and

(2) possess knowledge, skill, and experience in property tax administration, property appraisal, or school finance.

(d) A person is not eligible to serve as a member of the board if the person or the person's spouse:

(1) is registered with or certified by the Board of Tax Professional Examiners;

(2) is employed by or participates in the management of a school district, an appraisal district, the office of an assessor or collector, or a business entity or other organization that is substantially and directly affected by the activities of the board or that does substantial business with the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) The governor shall designate one of the members of the board to serve as presiding officer of the board. The presiding officer serves in that capacity for a term of two years expiring on March 1 of an odd-numbered year.

(g) The board shall maintain its principal office in Austin.

(h) The board shall meet at least once in each calendar quarter and shall meet at other times at the call of the presiding officer or as provided by the rules of the board.

(i) The board is subject to the open meetings law, Chapter 551, Government Code, and the administrative procedure law, Chapter 2001, Government Code.

(j) A member of the board may not receive compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(k) It is a ground for removal from the board if a member:

(1) violates a prohibition established by Subsection (d);

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

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

Sec. 5.02. BOARD PERSONNEL AND OPERATIONS. (a) The board shall employ the commissioner, who shall administer board policies and perform all duties as provided by law.

(b) The commissioner shall employ and supervise professional, clerical, and other personnel necessary to perform all duties as required by law, board policy, and direction of the board or commissioner.

(c) The commissioner shall provide to board staff, as often as necessary, information regarding their qualifications for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

(d) The comptroller, by interagency contract, may provide support to the board for payroll, human resources, computer maintenance and technical assistance, printing and distribution of publications, and similar administrative services.

SECTION 13A.24. Section 5.03, Tax Code, is amended to read as follows:

Sec. 5.03. POWERS AND DUTIES GENERALLY. (a) The board [comptroller] shall adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and the kinds of property the district is responsible for appraising.

(b) The board [comptroller] may require from each district engaged in appraising property for taxation an annual report on a form prescribed by the commissioner [comptroller] on the administration and operation of the appraisal office.

(c) The board [comptroller] may contract with consultants to assist in performance of the duties imposed by this chapter.

(d) The board is responsible for ensuring that the commissioner performs the duties required by law of the commissioner.

(e) The board has the powers necessary to carry out its powers and duties under this title.

(f) The board may:

(1) adopt rules necessary to carry out the board's powers and duties under this title;

(2) sue and be sued;

(3) enter into contracts and other necessary instruments;

(4) impose administrative fees and charges for the costs of publications;

(5) purchase liability insurance covering the board and employees and agents of the board; and

(6) establish other policies, procedures, and eligibility criteria necessary to carry out the board's powers and duties under this title.

SECTION 13A.25. Section 5.04(a), Tax Code, is amended to read as follows:

(a) The commissioner [~~comptroller~~] shall consult and cooperate with the Board of Tax Professional Examiners or any successor agency responsible for certifying tax professionals in this state in setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors, and the commissioner [~~comptroller~~] may cooperate with the board or with other public agencies, educational institutions, or private organizations in sponsoring courses of instruction and training programs.

SECTION 13A.26. Sections 5.041(a), (c), (d), and (f), Tax Code, are amended to read as follows:

(a) The board [~~comptroller~~] shall:

(1) approve curricula and provide materials for use in training and educating members of an appraisal review board; and

(2) supervise a course for training and education of appraisal review board members and issue certificates indicating course completion.

(c) The board [~~comptroller~~] may contract with service providers to assist with the duties imposed under Subsection (a), but the course required may not be provided by an appraisal district or a taxing unit. The board [~~comptroller~~] may assess a fee to recover a portion of the costs incurred for the training course, but the fee may not exceed \$50 per person trained.

(d) The course material for the course required under Subsection (a) is the [~~comptroller's~~] Appraisal Review Board Manual prepared by the commissioner in use on the effective date of this section. The manual shall be updated regularly. It may be revised on request, in writing, to the board [~~comptroller~~]. The revision language must be approved on the unanimous agreement of a committee selected by the board [~~comptroller~~] and representing, equally, taxpayers and chief appraisers. The person requesting the revision shall pay the costs of mediation if the board [~~comptroller~~] determines that mediation is required.

(f) The commissioner [~~comptroller~~] may not advise a property owner, a property owner's agent, an appraisal district, or an appraisal review board on a matter that the commissioner [~~comptroller~~] knows is the subject of a protest to the appraisal review board.

SECTION 13A.27. Sections 5.05(a), (b), and (c), Tax Code, are amended to read as follows:

(a) The commissioner [~~comptroller~~] shall prepare and issue:

(1) a general appraisal manual;

(2) special appraisal manuals;

(3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;

(4) news and reference bulletins;

(5) annotated digests of all laws relating to property taxation; and

(6) a handbook of all rules promulgated by the board or commissioner [~~comptroller~~] relating to the property tax and its administration.

(b) The commissioner [~~comptroller~~] shall revise or supplement all materials periodically as necessary to keep them current.

(c) The commissioner [~~comptroller~~] shall provide without charge one copy of all materials to officials of local government who are responsible for administering the property tax system. If a local government official requests more than one copy, the commissioner [~~comptroller~~] may charge a reasonable fee to offset the costs of printing and distributing the materials. The commissioner [~~comptroller~~] shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

SECTION 13A.28. Sections 5.06, 5.07, 5.08, 5.09, 5.101, 5.14, and 5.16, Tax Code, are amended to read as follows:

Sec. 5.06. EXPLANATION OF TAXPAYER REMEDIES. (a) The commissioner [~~comptroller~~] shall prepare and publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. The commissioner [~~comptroller~~] shall include in the pamphlet advice on preparing and presenting a protest.

(b) The commissioner [~~comptroller~~] shall provide without charge a reasonable number of copies of the pamphlet to any person on request. The commissioner [~~comptroller~~] may charge a person who requests multiple copies of the pamphlet a reasonable fee to offset the costs of printing and distributing those copies. The commissioner [~~comptroller~~] at its discretion shall determine the number of copies that a person may receive without charge.

Sec. 5.07. PROPERTY TAX FORMS AND RECORDS SYSTEMS. (a) The commissioner [~~comptroller~~] shall prescribe the contents of all forms necessary for the administration of the property tax system and on request shall furnish sufficient copies of model forms of each type to the appropriate local officials. The commissioner [~~comptroller~~] may require reimbursement for the costs of printing and distributing the forms.

(b) The commissioner [~~comptroller~~] shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The commissioner [~~comptroller~~] shall also prescribe a uniform record system to be used by all offices appraising property for tax purposes.

Sec. 5.08. PROFESSIONAL AND TECHNICAL ASSISTANCE. (a) The commissioner [~~comptroller~~] may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The commissioner [~~comptroller~~] may also provide professional and technical assistance on request to an appraisal review board. The commissioner [~~comptroller~~] may require reimbursement for the costs of providing the assistance.

(b) The commissioner [~~comptroller~~] may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

Sec. 5.09. ANNUAL REPORTS. (a) The commissioner [~~comptroller~~] shall publish an annual report of the operations of the appraisal districts. The report shall include for each appraisal district, each county, and each school district and may include for other taxing units the total appraised values, assessed values, and taxable values of taxable property by class of property, the assessment ratio, and the tax rate.

(b) The commissioner [~~comptroller~~] shall deliver a copy of each annual report published under Subsection (a) of this section to the governor, the lieutenant governor, and each member of the legislature.

Sec. 5.101. TECHNICAL ADVISORY COMMITTEE. (a) The board [~~comptroller~~] shall appoint a technical advisory committee for the purpose of providing professional and practical expertise to the board [~~comptroller~~] and to review and comment on the methodology used by the commissioner [~~comptroller~~] to conduct the annual studies required by Section 51.21 and the ratio studies required by Section 51.41 [~~Section 5.10 of this code and by Section 403.302, Government Code~~]. A member of the committee serves at the will of the board [~~comptroller~~].

(b) The committee shall:

(1) review the methodology used by the commissioner [~~comptroller~~] to conduct the studies described in Subsection (a);

(2) make an annual report to the commissioner [~~comptroller~~] that includes the committee's findings and recommendations relating to the methodology used to conduct the studies; and

(3) meet as often as necessary to perform its duties, but not less often than semiannually.

(c) The board [~~comptroller~~] shall appoint the committee to provide for a balanced representation of the general public and of professionals affiliated with the entities affected by the studies.

(d) Each member of the committee must have expertise sufficient to determine the accuracy of the [~~annual~~] studies and the appropriateness of the methods used to develop the findings of the studies.

(e) The board [~~comptroller~~] shall specify the committee's purpose, powers, and duties and shall require the committee to report to the board [~~comptroller~~] in a manner specified by the board [~~comptroller~~] relating to the committee's activities and the results of its work.

(f) A member of the committee may receive compensatory per diem for serving on the committee and is entitled to reimbursement for transportation expenses and the per diem meals and lodging allowance as provided for the board [~~comptroller~~] and for commission members in the General Appropriations Act.

(g) The commissioner [~~comptroller~~] shall make the committee's annual report available to the public on request.

Sec. 5.14. PUBLIC ACCESS, INFORMATION, AND COMPLAINTS. (a) The board [~~comptroller~~] shall develop and implement policies that provide the public with a reasonable opportunity to submit information on any property tax issue under the jurisdiction of the board [~~comptroller~~].

(b) The board [~~comptroller~~] shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's [~~comptroller's~~] programs.

(c) The board [~~comptroller~~] shall prepare information of public interest describing the property tax functions of the office of the board [~~comptroller~~] and the board's [~~comptroller's~~] procedures by which complaints are filed with and resolved by the board [~~comptroller~~]. The board [~~comptroller~~] shall make the information available to the public and appropriate state agencies.

(d) If a written complaint is filed with the board [~~comptroller~~] that the board [~~comptroller~~] has authority to resolve, the board [~~comptroller~~], at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(e) The board [~~comptroller~~] shall keep an information file about each complaint filed with the board [~~comptroller~~] that the board [~~comptroller~~] has authority to resolve.

Sec. 5.16. ADMINISTRATIVE PROVISIONS. (a) The commissioner [~~comptroller~~] may inspect the records or other materials of an appraisal office or taxing unit, including the relevant records and materials in the possession or control of a consultant, advisor, or expert hired by the appraisal office or taxing unit, for the purpose of[~~:-~~

[~~(1)~~] establishing, reviewing, or evaluating the value of or an appraisal of any property[~~:-or~~

[~~(2) conducting a study, review, or audit required by Section 5.10 or 5.102 or by Section 403.302, Government Code~~].

(b) On request of the commissioner [~~comptroller~~], the chief appraiser or administrative head of the taxing unit shall produce the materials in the form and manner prescribed by the commissioner [~~comptroller~~].

SECTION 13A.29. Section 6.025(a), Tax Code, is amended to read as follows:

(a) The chief appraisers of two or more appraisal districts that have boundaries that include any part of the same territory shall enter into a written understanding that, with respect to the property located in the territory in which each of the districts has appraisal jurisdiction:

(1) permits each appraiser to have access to and use information appropriate to appraisals, including a record of an exemption application, rendition, or other property owner report;

(2) eliminates differences in the information in appraisal records of the districts, including information relating to ownership of property, the description of property, and the physical characteristics of property; and

(3) contains the form of a written advisory prescribed by the commissioner [~~comptroller~~] informing the owners of property that reports and other documents required of the owners must be filed with or sent to each appraisal district and that the owners should consider sending any other document relating to the property to each appraisal district.

SECTION 13A.30. Section 6.235(a), Tax Code, is amended to read as follows:

(a) During each full term of office, a county assessor-collector of a county with a population of 1,000,000 or more shall complete 64 or more classroom hours of instruction that relate to the duties of the office and that are accredited by the Board of Tax Professional Examiners, the commissioner [~~division of the office of comptroller with responsibility for property taxes~~], the division of the Texas Department of Transportation with responsibility for motor vehicles, or the secretary of state as continuing education credits for the office of county assessor-collector.

SECTION 13A.31. Sections 6.28(b), (d), and (e), Tax Code, are amended to read as follows:

(b) The bond for state taxes must be payable to the governor and his successors in office in an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the year ending August 31 preceding the date bond is given, except that the amount of bond may not be less than \$2,500 or more than \$100,000. To be effective, the bond must be approved by the commissioners court of the county and the commissioner [~~state comptroller of public accounts~~].

(d) The commissioner [~~state comptroller of public accounts~~] or the commissioners court of the county may require a new bond for state taxes at any time. The commissioners court may require a new bond for county taxes at any time. However, the total amount of state bonds or county bonds required of an assessor-collector may not exceed \$100,000 at one time. The commissioners court shall suspend the assessor-collector from office and begin removal proceedings if the assessor-collector [~~he~~] fails to give new bond within a reasonable time after demand.

(e) The assessor-collector's official oath and bonds for state and county taxes shall be recorded in the office of the county clerk, and the county judge shall submit the bond for state taxes to the commissioner [~~state comptroller of public accounts~~].

SECTION 13A.32. Section 6.412(c), Tax Code, is amended to read as follows:

(c) A person is ineligible to serve on the appraisal review board if the person is a member of the board of directors, an officer, or employee of the appraisal district, an employee of the commissioner [~~comptroller~~], or a member of the governing body, officer, or employee of a taxing unit.

SECTION 13A.33. Section 11.11(b), Tax Code, is amended to read as follows:

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by Section 25.19 of this code shall be sent to the commissioner [~~comptroller~~], and the commissioner [~~comptroller~~] shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

SECTION 13A.34. Section 11.182(f), Tax Code, as added by Chapter 842, Acts of the 77th Legislature, Regular Session, 2001, is relettered and amended to read as follows:

(i) [(f)] If any property owned by an organization receiving an exemption under this section has been acquired or sold during the preceding year, such organization shall file by March 31 of the following year with the chief appraiser in the county in which the relevant property is located, on a form promulgated by the commissioner [~~comptroller of public accounts~~], a list of such properties acquired or sold during the preceding year.

SECTION 13A.35. Sections 11.252(c), (d), (i), and (j), Tax Code, are amended to read as follows:

(c) The commissioner [~~comptroller~~] by rule shall establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under Subsection (a).

(d) In connection with the requirements and procedures under Subsection (c), the commissioner [~~comptroller~~] by rule shall adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under Subsection (a). The form shall require the lessee to provide the lessee's name, address, and driver's license or personal identification certificate number and to certify under oath that the lessee does not hold the vehicle for the production of income and that the vehicle is used primarily for activities that do not involve the production of income. The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making a false statement on the form.

(i) In addition to the requirements of Subsections (c) and (d), the commissioner [~~comptroller~~] by rule shall prescribe a property report form to be completed by the lessor describing the leased motor vehicles that the lessor owns. The property report form shall require the lessor to list each leased vehicle the lessor owns on January 1, to provide the year, make, model, and vehicle identification number of each leased vehicle, and to provide the name of the lessee, the address at which the vehicle is kept, and an indication of whether the lessee has designated the vehicle as not held for the production and not used for the production of income.

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

SECTION 13A.36. Section 11.26(e), Tax Code, is amended to read as follows:

(e) For each school district in an appraisal district, the chief appraiser shall determine the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in a tax year because of the limitation on tax increases imposed by this section. That portion is calculated by determining the taxable value that, if multiplied by the tax rate adopted by the school district for the tax year, would produce an amount equal to the amount of tax that would have been imposed by the school district on residence homesteads of the elderly if the limitation on tax increases imposed by this section were not in effect, but that was not imposed because of that limitation. The chief appraiser shall determine that taxable value and certify it to the commissioner [~~comptroller~~] as soon as practicable for each tax year.

SECTION 13A.37. Section 11.27(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~], with the assistance of the Texas Energy and Natural Resources Advisory Council, or its successor, shall develop guidelines to assist local officials in the administration of this section.

SECTION 13A.38. Section 11.43(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~], in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The form must require an applicant to provide the applicant's name

and driver's license number, personal identification certificate number, or social security account number. The commissioner [~~comptroller~~] shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~] shall include, on application forms for exemptions that do not have to be claimed annually, a statement explaining that the application need not be made annually and that if the exemption is allowed, the applicant has a duty to notify the chief appraiser when the applicant's entitlement to the exemption ends. In this subsection:

(1) "Driver's license" has the meaning assigned that term by Section 521.001, Transportation Code.

(2) "Personal identification certificate" means a certificate issued by the Department of Public Safety under Subchapter E, Chapter 521, Transportation Code.

SECTION 13A.39. Section 11.44(c), Tax Code, is amended to read as follows:

(c) The commissioner [~~comptroller~~] shall prescribe by rule the content of the explanation required by Subsection (a) [~~of this section~~], and shall require that each exemption application form be printed and prepared:

(1) as a separate form from any other form; or

(2) on the front of the form if the form also provides for other information.

SECTION 13A.40. Section 21.03(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] shall adopt rules:

(1) identifying the kinds of property subject to this section; and

(2) establishing formulas for calculating the proportion of total market value to be allocated to this state.

SECTION 13A.41. Sections 21.031(e) and (f), Tax Code, are amended to read as follows:

(e) To receive an allocation of value under this section, a property owner must apply for the allocation on a form that substantially complies with the form prescribed by the commissioner [~~comptroller~~]. The application must be filed with the chief appraiser for the district in which the property to which the application applies is taxable before the approval of the appraisal records by the appraisal review board as provided by Section 41.12 [~~of this code~~].

(f) The commissioner [~~comptroller~~] shall promulgate forms and may adopt rules consistent with the provisions of this section.

SECTION 13A.42. Section 22.21, Tax Code, is amended to read as follows:

Sec. 22.21. PUBLICIZING REQUIREMENTS. Each year the commissioner [~~comptroller~~] and each chief appraiser shall publicize in a manner reasonably designed to notify all property owners the requirements of the law relating to filing rendition statements and property reports and of the availability of forms.

SECTION 13A.43. Sections 22.24(a), (c), and (e), Tax Code, are amended to read as follows:

(a) A person required to render property or to file a report as provided by this chapter shall use a form that substantially complies with the appropriate form prescribed or approved by the commissioner [~~comptroller~~].

(c) The commissioner [~~comptroller~~] may prescribe or approve different forms for different kinds of property but shall ensure that each form requires a property owner to furnish the information necessary to identify the property and to determine

its ownership, taxability, and situs. A form may not require a property owner to furnish information not relevant to the appraisal of property for tax purposes or to the assessment or collection of property taxes.

(e) To be valid, a rendition or report must be sworn to before an officer authorized by law to administer an oath. The commissioner [~~comptroller~~] may not prescribe or approve a rendition or report form unless the form provides for the person filing the form to swear that the information provided in the rendition or report is true and accurate to the best of the person's knowledge and belief. This subsection does not apply to a rendition or report filed by the property owner, an employee of the property owner, or an employee of a property owner on behalf of an affiliated entity of the property owner.

SECTION 13A.44. Sections 22.27(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the commissioner [~~comptroller~~] about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) [~~of this section~~].

(b) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;
- (3) to the commissioner [~~comptroller~~] and the commissioner's [~~comptroller's~~] employees authorized by the commissioner [~~comptroller~~] in writing to receive the information or to an assessor or a chief appraiser if requested in writing;
- (4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;
- (5) for statistical purposes if in a form that does not identify specific property or a specific property owner;
- (6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain; or
- (7) to a taxing unit or its legal representative that is engaged in the collection of delinquent taxes on the property that is the subject of the information.

(d) No person who directly or indirectly provides information to the commissioner [~~comptroller~~] or appraisal office about real or personal property sales prices, either as set forth in Subsection (a) [~~of this section~~] under a promise of confidentiality, or otherwise, shall be liable to any other person as the result of providing such information.

SECTION 13A.45. Section 23.121(a)(6), Tax Code, is amended to read as follows:

(6) "Declaration" means the dealer's motor vehicle inventory declaration form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 13A.46. Section 23.121(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall promulgate a form entitled Dealer's Motor Vehicle Inventory Declaration. Except as provided by Section 23.122(l) [~~of this code~~], not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. For purposes of this subsection, a dealer is presumed to have commenced business on the date of issuance to the dealer of a dealer's general distinguishing number as provided by Chapter 503, Transportation Code. Notwithstanding the presumption created by this subsection, a chief appraiser may, at the chief appraiser's [~~his or her~~] sole discretion, designate as the date on which a dealer commenced business a date other than the date of issuance to the dealer of a dealer's general distinguishing number. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the dealer owner conducts business;

(2) each of the dealer's general distinguishing numbers issued by the Texas Department of Transportation;

(3) a statement that the dealer owner is the owner of a dealer's motor vehicle inventory; and

(4) the market value of the dealer's motor vehicle inventory for the current tax year as computed under Section 23.121(b) [~~of this code~~].

SECTION 13A.47. Section 23.122(a)(9), Tax Code, is amended to read as follows:

(9) "Statement" means the Dealer's Motor Vehicle Inventory Tax Statement filed on a form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 13A.48. Section 23.122(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate a form entitled a Dealer's Motor Vehicle Inventory Tax Statement. A dealer shall complete the form with respect to each motor vehicle sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] deems appropriate but shall include at least the following:

(1) a description of the motor vehicle sold;

(2) the sales price of the motor vehicle;

(3) the unit property tax of the motor vehicle if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 13A.49. Section 23.123(c), Tax Code, is amended to read as follows:

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the commissioner [~~comptroller~~] or an employee of the commissioner [~~comptroller~~] authorized by the commissioner [~~comptroller~~] to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.121 or Section 23.122 [~~of this code~~];

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(7) if and to the extent that the information is required for inclusion in a public document or record that the appraisal or collection office is required by law to prepare or maintain; or

(8) to the Texas Department of Transportation for use by that department in auditing compliance of its licensees with appropriate provisions of applicable law.

SECTION 13A.50. Section 23.124(a)(6), Tax Code, is amended to read as follows:

(6) "Declaration" means the dealer's vessel and outboard motor inventory declaration form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 13A.51. Section 23.124(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Declaration." Except as provided by Section 23.125(l) [~~of this code~~], not later than February 1 of each year or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the dealer owner conducts business;

(2) each of the dealer's and manufacturer's numbers issued by the Parks and Wildlife Department;

(3) a statement that the dealer owner is the owner of a dealer's vessel and outboard motor inventory; and

(4) the market value of the dealer's vessel and outboard motor inventory for the current tax year as computed under Subsection (b) of this section.

SECTION 13A.52. Section 23.1241(a)(4), Tax Code, is amended to read as follows:

(4) "Declaration" means a dealer's heavy equipment inventory declaration form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 13A.53. Section 23.1241(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] by rule shall adopt a dealer's heavy equipment inventory declaration form. Except as provided by Section 23.1242(k), not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth:

(1) the name and business address of each location at which the declarant conducts business;

(2) a statement that the declarant is the owner of a dealer's heavy equipment inventory; and

(3) the market value of the declarant's heavy equipment inventory for the current tax year as computed under Subsection (b).

SECTION 13A.54. Section 23.1242(a)(3), Tax Code, is amended to read as follows:

(3) "Statement" means the dealer's heavy equipment inventory tax statement filed on a form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 13A.55. Section 23.1242(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] by rule shall adopt a dealer's heavy equipment inventory tax statement form. A dealer shall complete the form with respect to each item of heavy equipment sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] considers appropriate but shall include at least the following:

(1) a description of the item of heavy equipment sold, including any unique identification or serial number affixed to the item by the manufacturer;

(2) the sales price of the item of heavy equipment;

(3) the unit property tax of the item of heavy equipment, if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 13A.56. Section 23.125(a)(9), Tax Code, is amended to read as follows:

(9) "Statement" means the dealer's vessel and outboard motor inventory tax statement filed on a form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 13A.57. Section 23.125(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Tax Statement." A dealer shall complete the form with respect to each vessel and outboard motor sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] deems appropriate but shall include at least the following:

(1) a description of the vessel or outboard motor sold;

(2) the sales price of the vessel or outboard motor;

(3) the unit property tax of the vessel or outboard motor, if any; and

(4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 13A.58. Section 23.126(c), Tax Code, is amended to read as follows:

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
 (2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the commissioner [~~comptroller~~] or an employee of the commissioner [~~comptroller~~] authorized by the commissioner [~~comptroller~~] to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney, or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.124 or Section 23.125 [~~of this code~~];

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(7) if and to the extent that the information is required for inclusion in a document or record that the appraisal or collection office is required by law to prepare or maintain.

SECTION 13A.59. Section 23.127(a)(3), Tax Code, is amended to read as follows:

(3) "Declaration" means a retail manufactured housing inventory declaration form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 13A.60. Section 23.127(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Declaration." Except as provided by Section 23.128(k), not later than February 1 of each year or, in the case of a retailer who was not in business on January 1, not later than the 30th day after the date the retailer commences business, each retailer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the retailer conducts business;

(2) the retailer's license number issued by the department;

(3) a statement that the retailer is the owner of a retail manufactured housing inventory; and

(4) the market value of the retailer's manufactured housing inventory for the current tax year as computed under Subsection (b).

SECTION 13A.61. Section 23.128(a)(4), Tax Code, is amended to read as follows:

(4) "Statement" means the retail manufactured housing inventory tax statement filed on a form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 13A.62. Section 23.128(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Tax Statement." A retailer shall complete the form with respect to each unit of manufactured housing sold. A retailer may not use another form for that purpose. The statement shall include:

- (1) a description of the unit of manufactured housing sold, including any unique identification or serial number affixed to the unit by the manufacturer;
- (2) the sales price of the unit of manufactured housing;
- (3) any unit property tax of the unit of manufactured housing;
- (4) the reason a unit property tax is not assigned if that is the case; and
- (5) any other information the commissioner [~~comptroller~~] considers appropriate.

SECTION 13A.63. Section 23.175(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] by rule shall develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

SECTION 13A.64. Sections 23.41(b) and (e), Tax Code, are amended to read as follows:

(b) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use.

(e) Improvements other than appurtenances to the land, the mineral estate, and all land used for residential purposes and for processing harvested agricultural products are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshaping of or additions to the soil for agricultural purposes are appurtenances to the land, and the effect of each on the value of the land for agricultural use shall be considered in appraising the land. However, the commissioner [~~comptroller~~] shall provide that in calculating average net income from land a deduction from income be allowed for an appurtenance subject to depreciation or depletion.

SECTION 13A.65. Section 23.43(d), Tax Code, is amended to read as follows:

(d) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim. The commissioner [~~comptroller~~] shall require that the form permit a claimant who has previously been allowed an agricultural designation to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 13A.66. Section 23.45(b), Tax Code, is amended to read as follows:

- (b) Information made confidential by this section may be disclosed:
- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
 - (2) to the person who filed the application or to his representative authorized in writing to receive the information;
 - (3) to the commissioner [~~comptroller~~] and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;
 - (4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

SECTION 13A.67. Section 23.52(d), Tax Code, is amended to read as follows:

(d) The commissioner [~~comptroller~~] by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office shall use the appraisal manuals in appraising qualified open-space land. The commissioner [~~comptroller~~] by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51 [~~of this code~~]. The rules, before taking effect, must be approved by a majority vote of a committee comprised of the following officials or their designees: the commissioner, the governor, the comptroller, the attorney general, and the agriculture commissioner[~~—and the Commissioner of the General Land Office~~].

SECTION 13A.68. Section 23.521(a), Tax Code, is amended to read as follows:

(a) The Parks and Wildlife Department, with the assistance of the commissioner [~~comptroller~~], shall develop standards for determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter. The commissioner [~~comptroller~~] by rule shall adopt the standards developed by the Parks and Wildlife Department and distribute those rules to each appraisal district. On request of the Parks and Wildlife Department, the Texas Agricultural Extension Service shall assist the department in developing the standards.

SECTION 13A.69. Sections 23.54(b) and (c), Tax Code, are amended to read as follows:

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~]; and

(2) contain the information necessary to determine the validity of the claim.

(c) The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~], in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 13A.70. Section 23.73(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified timber land, and each appraisal office shall use the appraisal manuals in appraising qualified timber land. The commissioner [~~comptroller~~] by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Section 23.72 [~~of this code~~]. The rules, before taking effect, must be approved by majority vote of a committee comprised of the following officials or their designees: the commissioner, the governor, the comptroller, the attorney general, and the agriculture commissioner[~~—and the Commissioner of the General Land Office~~].

SECTION 13A.71. Sections 23.75(b) and (c), Tax Code, are amended to read as follows:

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~]; and

(2) contain the information necessary to determine the validity of the claim.

(c) The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~], in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 13A.72. Section 23.83(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising land under this subchapter.

SECTION 13A.73. Section 23.84(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the land for which the claimant [~~he~~] claims appraisal under this subchapter will be used exclusively for recreational, park, or scenic uses in the current year.

SECTION 13A.74. Section 23.93(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising property under this subchapter.

SECTION 13A.75. Section 23.94(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the airport property for which the claimant [~~he~~] claims appraisal under this subchapter will be used exclusively as public access airport property in the current year.

SECTION 13A.76. Sections 23.9804(b), (c), and (d), Tax Code, are amended to read as follows:

(b) To be valid, an application for appraisal under Section 23.9802(a) must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~];

(2) provide evidence that the land qualifies for designation as an aesthetic management zone, critical wildlife habitat zone, or streamside management zone;

(3) specify the location of the proposed zone and the quantity of land, in acres, in the proposed zone; and

(4) contain other information necessary to determine the validity of the claim.

(c) To be valid, an application for appraisal under Section 23.9802(b) must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~];

(2) provide evidence that the land on which the timber was harvested was appraised under Subchapter E in the year in which the timber was harvested;

(3) provide evidence that all of the land has been regenerated in compliance with Section 23.9802(b)(2); and

(4) contain other information necessary to determine the validity of the claim.

(d) The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~], in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that the previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 13A.77. Section 24.32(c), Tax Code, is amended to read as follows:

(c) A report required by this section must be on a form prescribed by the commissioner [~~comptroller~~]. In prescribing the form, the commissioner [~~comptroller~~] shall ensure that it requires the information necessary to determine market value of rolling stock used in this state.

SECTION 13A.78. Section 24.34(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] shall adopt rules establishing formulas for interstate allocation of the value of railroad rolling stock.

SECTION 13A.79. Sections 24.36, 24.365, 24.37, and 24.38, Tax Code, are amended to read as follows:

Sec. 24.36. CERTIFICATION TO COMMISSIONER [~~COMPTROLLER~~]. On approval of the appraised value of the rolling stock as provided by Chapter 41 [~~of this code~~], the chief appraiser shall certify to the commissioner [~~comptroller~~] the amount of market value allocated to this state for each owner whose rolling stock is appraised in the county and the name and business address of each owner.

Sec. 24.365. CORRECTION OF CERTIFIED AMOUNT. (a) A chief appraiser who discovers that the chief appraiser's certification to the commissioner [~~comptroller~~] of the amount of the market value of rolling stock allocated to this state under Section 24.36 was incomplete or incorrect shall immediately certify the correct amount of that market value to the commissioner [~~comptroller~~].

(b) As soon as practicable after the commissioner [~~comptroller~~] receives the correct certification from the chief appraiser, the commissioner [~~comptroller~~] shall certify to the county assessor-collector for each affected county the information required by Section 24.38 as corrected.

Sec. 24.37. INTRASTATE APPORTIONMENT. The commissioner [~~comptroller~~] shall apportion the appraised value of each owner's rolling stock to each county in which the railroad using it operates according to the ratio the mileage of road owned by the railroad in the county bears to the total mileage of road the railroad owns in this state.

Sec. 24.38. CERTIFICATION OF APPORTIONED VALUE. Before August 1, the commissioner [~~comptroller~~] shall certify to the county assessor-collector for each county in which a railroad operates:

(1) the county's apportioned amount of the market value of each owner's rolling stock; and

(2) the name and business address of each owner.

SECTION 13A.80. Section 24.40(a), Tax Code, is amended to read as follows:

(a) If a chief appraiser discovers that rolling stock used in this state and subject to appraisal by the chief appraiser [~~him~~] has not been appraised and apportioned to the counties in one of the two preceding years, he shall appraise the property as of January 1 for each year it was omitted, submit the appraisal for review and protest, and certify the approved value to the commissioner [~~comptroller~~].

SECTION 13A.81. Section 25.011(b), Tax Code, is amended to read as follows:

(b) The record for each type of specially appraised property must be maintained in a separate document for each 12-month period beginning June 1. The document must include the name of at least one owner of the property, the acreage of the property, and other information sufficient to identify the property as required by the commissioner [~~comptroller~~]. All entries in each document must be kept in alphabetical order according to the last name of each owner whose name is part of the record.

SECTION 13A.82. Section 25.02(a), Tax Code, is amended to read as follows:

(a) The appraisal records shall be in the form prescribed by the commissioner [~~comptroller~~] and shall include:

(1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;

(2) real property;

(3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;

(4) personal property;

(5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, E, or H, Chapter 23, the market value of the land;

(6) the appraised value of improvements to land;

(7) the appraised value of a separately taxable estate or interest in land;

(8) the appraised value of personal property;

(9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and, in the case of an exemption authorized by Section 11.23, the amount of the exemption;

(10) the tax year to which the appraisal applies; and

(11) an identification of each taxing unit in which the property is taxable.

SECTION 13A.83. Section 25.025(b), Tax Code, is amended to read as follows:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the commissioner [~~comptroller~~], and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the commissioner [~~comptroller~~] under Section 5.07.

SECTION 13A.84. Section 25.026(b), Tax Code, is amended to read as follows:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the commissioner [~~comptroller~~], and taxing units and political subdivisions of this state if the information identifies the address of a family violence shelter center or a sexual assault program.

SECTION 13A.85. Section 25.03(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] may adopt rules establishing minimum standards for descriptions of property.

SECTION 13A.86. Sections 25.19(i) and (j), Tax Code, are amended to read as follows:

(i) Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the commissioner [~~comptroller~~] under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.

(j) The chief appraiser shall include with a notice required by Subsection (a) or (g):

(1) a copy of a notice of protest form as prescribed by the commissioner [~~comptroller~~] under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

SECTION 13A.87. Section 25.23(b), Tax Code, is amended to read as follows:

(b) Supplemental appraisal records shall be in the form prescribed by the commissioner [~~comptroller~~] and shall include the items required by Section 25.02 [~~of this code~~].

SECTION 13A.88. Section 26.01(b), Tax Code, is amended to read as follows:

(b) When a chief appraiser submits an appraisal roll for county taxes to a county assessor-collector, the chief appraiser also shall certify the appraisal district appraisal roll to the commissioner [~~comptroller~~]. However, the commissioner [~~comptroller~~] by rule may provide for submission of only a summary of the appraisal roll. The chief appraiser shall certify the district appraisal roll or the summary of that roll in the form and manner prescribed by the commissioner's [~~comptroller's~~] rule.

SECTION 13A.89. Section 26.04(e), Tax Code, is amended to read as follows:

(e) By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the rates to the governing body. The designated officer or employee [~~He~~] shall deliver by mail to each property owner in the unit or publish in a newspaper in the form prescribed by the commissioner [~~comptroller~~]:

(1) the effective tax rate, the rollback tax rate, and an explanation of how they were calculated;

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation;

(3) a schedule of the unit's debt obligations showing:

(A) the amount of principal and interest that will be paid to service the unit's debts in the next year from property tax revenue, including payments of lawfully incurred contractual obligations providing security for the payment of the principal of and interest on bonds and other evidences of indebtedness issued on behalf of the unit by another political subdivision and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates to incur in the next calendar year;

(B) the amount by which taxes imposed for debt are to be increased because of the unit's anticipated collection rate; and

(C) the total of the amounts listed in Paragraphs (A)-(B), less any amount collected in excess of the previous year's anticipated collections certified as provided in Subsection (b);

(4) the amount of additional sales and use tax revenue anticipated in calculations under Section 26.041;

(5) a statement that the adoption of a tax rate equal to the effective tax rate would result in an increase or decrease, as applicable, in the amount of taxes imposed by the unit as compared to last year's levy, and the amount of the increase or decrease;

(6) in the year that a taxing unit calculates an adjustment under Subsection (i) or (j), a schedule that includes the following elements:

(A) the name of the unit discontinuing the department, function, or activity;

(B) the amount of property tax revenue spent by the unit listed under Paragraph (A) to operate the discontinued department, function, or activity in the 12 months preceding the month in which the calculations required by this chapter are made; and

(C) the name of the unit that operates a distinct department, function, or activity in all or a majority of the territory of a taxing unit that has discontinued operating the distinct department, function, or activity; and

(7) in the year following the year in which a taxing unit raised its rollback rate as required by Subsection (j), a schedule that includes the following elements:

(A) the amount of property tax revenue spent by the unit to operate the department, function, or activity for which the taxing unit raised the rollback rate as required by Subsection (j) for the 12 months preceding the month in which the calculations required by this chapter are made; and

(B) the amount published by the unit in the preceding tax year under Subdivision (6)(B).

SECTION 13A.90. Section 26.06(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] by rule shall prescribe the language and format to be used in the part of the notice required by Subsection (b)(2). A notice under Subsection (b) is not valid if it does not substantially conform to the language and format prescribed by the commissioner [~~comptroller~~] under this subsection.

SECTION 13A.91. Section 31.01(c), Tax Code, is amended to read as follows:

(c) The tax bill or a separate statement accompanying the tax bill shall:

- (1) identify the property subject to the tax;
- (2) state the appraised value, assessed value, and taxable value of the property;
- (3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;
- (4) state the assessment ratio for the unit;
- (5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;
- (6) state the total tax rate for the unit;
- (7) state the amount of tax due, the due date, and the delinquency date;
- (8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;
- (9) state the rates of penalty and interest imposed for delinquent payment of the tax;
- (10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; and
- (11) include any other information required by the commissioner [~~comptroller~~].

SECTION 13A.92. Section 31.032(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall adopt rules to implement this section.

SECTION 13A.93. Section 31.075(a), Tax Code, is amended to read as follows:

(a) At the request of a property owner or a property owner's agent, the collector for a taxing unit shall issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested, the tax rate for each of those tax years, and the amount of tax paid in each of those years. The receipt must describe the property in the manner prescribed by the commissioner [~~comptroller~~].

SECTION 13A.94. Section 31.11(c), Tax Code, is amended to read as follows:

(c) An application for a refund must be made within three years after the date of the payment or the taxpayer waives the right to the refund. A taxpayer may apply for a refund by filing:

- (1) an application on a form prescribed by the commissioner [~~comptroller~~] by rule; or
- (2) a written request that includes information sufficient to enable the auditor for the taxing unit and, if applicable, the governing body of the taxing unit to determine whether the taxpayer is entitled to the refund.

SECTION 13A.95. Section 33.43(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall prepare forms for petitions initiating suits to collect delinquent taxes. An attorney representing a taxing unit may use the forms or develop a his own form.

SECTION 13A.96. Section 41.44(d), Tax Code, is amended to read as follows:

(d) A notice of protest is sufficient if it identifies the protesting property owner, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner of the property, identifies the property that is the subject of the protest, and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the commissioner [~~comptroller~~] shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The commissioner [~~comptroller~~], each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

SECTION 13A.97. Sections 41.45(k) and (l), Tax Code, are amended to read as follows:

(k) The commissioner [~~comptroller~~] shall prescribe a standard form for an affidavit offered under Subsection (b). Each appraisal district shall make copies of the affidavit form available to property owners without charge.

(l) A property owner is not required to use the affidavit form prescribed by the commissioner [~~comptroller~~] when offering an affidavit under Subsection (b).

SECTION 13A.98. Section 41.461(a), Tax Code, is amended to read as follows:

(a) At least 14 days before a hearing on a protest, the chief appraiser shall:

(1) deliver a copy of the pamphlet prepared by the commissioner [~~comptroller~~] under Section 5.06(a) to the property owner initiating the protest if the owner is not represented by another person [~~representing himself~~], or to an agent representing the owner if requested by the agent;

(2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and

(3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

SECTION 13A.99. Sections 41.65 and 41.68, Tax Code, are amended to read as follows:

Sec. 41.65. REQUEST FOR STATE ASSISTANCE. The appraisal review board may request the commissioner [~~comptroller~~] to assist in determining the accuracy of appraisals by the appraisal office or to provide other professional assistance. The appraisal office shall reimburse the costs of providing assistance if the commissioner [~~comptroller~~] requests reimbursement.

Sec. 41.68. RECORD OF PROCEEDING. The appraisal review board shall keep a record of its proceedings in the form and manner prescribed by the commissioner [~~comptroller~~].

SECTION 13A.100. Section 41.70(a), Tax Code, is amended to read as follows:

(a) On or after May 1 but not later than May 15, the chief appraiser shall publish notice of the manner in which a protest under this chapter may be brought by a property owner. The notice must describe how to initiate a protest and must describe the deadlines for filing a protest. The notice must also describe the manner in which

an order of the appraisal review board may be appealed. The commissioner [~~comptroller~~] by rule shall adopt minimum standards for the form and content of the notice required by this section.

SECTION 13A.101. Sections 42.01, 42.03, and 42.05, Tax Code, are amended to read as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41; or

(B) a determination of an appraisal review board on a motion filed under Section 25.25; or

(2) an order of the commissioner [~~comptroller~~] issued as provided by Subchapter B, Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

Sec. 42.03. RIGHT OF APPEAL BY COUNTY. A county may appeal the order of the commissioner [~~comptroller~~] issued as provided by Subchapter B, Chapter 24 of this code apportioning among the counties the appraised value of railroad rolling stock.

Sec. 42.05. COMMISSIONER [~~COMPTROLLER~~] AS PARTY. The commissioner [~~comptroller~~] is an opposing party in an appeal by:

(1) a property owner of an order of the commissioner [~~comptroller~~] determining a protest of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles; or

(2) a county or a property owner of an order of the commissioner [~~comptroller~~] apportioning among the counties the appraised value of railroad rolling stock.

SECTION 13A.102. Sections 42.06(a), (b), and (c), Tax Code, are amended to read as follows:

(a) To exercise the party's right to appeal an order of an appraisal review board, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 that the order appealed has been issued. To exercise the right to appeal an order of the commissioner [~~comptroller~~], a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the commissioner's [~~comptroller's~~] order. A property owner is not required to file a notice of appeal under this section.

(b) A party required to file a notice of appeal under this section other than a chief appraiser who appeals an order of an appraisal review board shall file the notice with the chief appraiser of the appraisal district for which the appraisal review board is established. A chief appraiser who appeals an order of an appraisal review board shall file the notice with the appraisal review board. A party who appeals an order of the commissioner [~~comptroller~~] shall file the notice with the commissioner [~~comptroller~~].

(c) If the chief appraiser, a taxing unit, or a county appeals, the chief appraiser, if the appeal is of an order of the appraisal review board, or the commissioner [~~comptroller~~], if the appeal is of an order of the commissioner [~~comptroller~~], shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

SECTION 13A.103. Section 42.21(b), Tax Code, is amended to read as follows:

(b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under Subdivision (2) or (3) of Section 42.01 or under Section 42.03 must be brought against the commissioner [~~comptroller~~]. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review is not required to be brought against the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate.

SECTION 13A.104. Section 42.22, Tax Code, as amended by Chapters 667 and 1033, Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

Sec. 42.22. VENUE. (a) Except as provided by Subsections (b) and (c), and by Section 42.221, venue is in the county in which the appraisal review board that issued the order appealed is located.

(b) Venue of an action brought under Section 42.01(1) is in the county in which the property is located or in the county in which the appraisal review board that issued the order is located.

(c) Venue is in Travis County if the order appealed was issued by the commissioner [~~comptroller~~].

SECTION 13A.105. Section 42.23(b), Tax Code, is amended to read as follows:

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or commissioner [~~comptroller~~], except to the extent necessary to establish its jurisdiction.

SECTION 13A.106. Section 42.26(c), Tax Code, is amended to read as follows:

(c) For purposes of establishing the median level of appraisal under Subsection (a)(1), the median level of appraisal in the appraisal district as determined by the commissioner [~~comptroller~~] under Section 51.41 [~~5-10~~] is admissible as evidence of the median level of appraisal of a reasonable and representative sample of properties in the appraisal district for the year of the commissioner's [~~comptroller's~~] determination, subject to the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

SECTION 13A.107. Sections 42.28 and 43.01, Tax Code, are amended to read as follows:

Sec. 42.28. APPEAL OF DISTRICT COURT JUDGMENT. A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the commissioner [~~comptroller~~], or the commissioners court of a county.

Sec. 43.01. AUTHORITY TO BRING SUIT. A taxing unit may sue the appraisal district that appraises property for the unit to compel the appraisal district to comply with the provisions of this title, rules of the commissioner [~~comptroller~~], or other applicable law.

SECTION 13A.108. Section 313.022(b), Tax Code, is amended to read as follows:

(b) For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a), and the minimum amount of a limitation on appraised value under Section 313.027(b), school districts to which this subchapter applies are categorized according to the taxable value of property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, as follows:

CATEGORY	TAXABLE VALUE OF PROPERTY
I	\$10 billion or more
II	\$1 billion or more but less than \$10 billion
III	\$500 million or more but less than \$1 billion
IV	\$100 million or more but less than \$500 million
V	less than \$100 million

SECTION 13A.109. Section 313.052, Tax Code, is amended to read as follows:

Sec. 313.052. CATEGORIZATION OF SCHOOL DISTRICTS. For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a) and the minimum amount of a limitation on appraised value under this subchapter, school districts to which this subchapter applies are categorized according to the taxable value of industrial property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, as follows:

CATEGORY	TAXABLE VALUE OF INDUSTRIAL PROPERTY
I	\$200 million or more
II	\$90 million or more but less than \$200 million
III	\$1 million or more but less than \$90 million
IV	\$100,000 or more but less than \$1 million
V	less than \$100,000

SECTION 13A.110. Sections 39.901(a), (b), (c), and (e), Utilities Code, are amended to read as follows:

(a) Not later than August 31 each year, the commissioner of the State Board on Property Valuation [~~comptroller~~] shall certify to the Texas Education Agency the statewide net loss in electric generating facility property value attributable to electric utility restructuring. In calculating the statewide net loss in electric generating facility property value, the commissioner of the State Board on Property Valuation [~~comptroller~~] shall:

(1) subtract current year electric generating facility appraisal roll values, as defined by Section 25.24, Tax Code, from 1999 electric generating facility appraised values in each school district;

(2) sum the resulting property value losses (positive differences);

(3) sum the resulting property value gains (negative differences); and

(4) subtract the absolute value of the property value gains, subject to the limitation in Section 39.9011, from the absolute value of the property value losses to calculate a statewide net loss.

(b) The Texas Education Agency shall determine the amount necessary to compensate the state for the statewide net loss certified under Subsection (a) by multiplying the statewide net loss by the average adopted property tax rate of the school districts that had losses, weighted by the value losses in each school district, and dividing the result by 100 and shall notify the commission of the amount necessary to compensate the state for the reduction. The commissioner of the State Board on Property Valuation [~~comptroller~~] shall provide the Texas Education Agency the electric generating facility value losses in each school district used in Subsection (a)(2) for use in calculating the weighted average property tax rate.

(c) The amounts determined by the commissioner of the State Board on Property Valuation [~~comptroller~~] and the Texas Education Agency under this section, for the purposes of this section, are final and may not be appealed.

(e) The commissioner of education and the commissioner of the State Board on Property Valuation [~~comptroller~~] shall adopt rules necessary to implement this section, including rules providing for public input.

SECTION 13A.111. The following laws are repealed:

(1) Sections 5.10, 5.102, 5.12, and 5.13, Tax Code; and

(2) Subchapter M, Chapter 403, Government Code.

SECTION 13A.112. (a) As soon as practicable on or after the effective date of this article, the governor shall appoint the members of the State Board on Property Valuation. The initial members appointed shall draw lots so that one member's term expires March 1, 2005, two members' terms expire March 1, 2007, and two members' terms expire March 1, 2009. The board shall employ a commissioner as soon as practicable after a majority of the members of the board qualify for office.

(b) The comptroller of public accounts and the commissioner of the State Board on Property Valuation shall coordinate the transfer of all aspects and functions of the comptroller relating to state administration of the property tax system to the board or commissioner, as applicable. The transfer shall be accomplished as soon as practicable but not later than the 45th day after the date the board employs the initial commissioner.

(c) The transfer required by Subsection (b) of this section includes all assets, obligations, and liabilities of any kind relating to state administration of the property tax system, including all contracts, leases, real or personal property, personnel, furniture, computers and other equipment, files, and related materials used by the comptroller for that purpose.

(d) All appropriations made to the comptroller for the operation of the property tax division, as well as the personnel assigned to the division, are transferred to the State Board on Property Valuation, except for the appropriations for support services provided by other divisions of the comptroller's office. Notwithstanding Section 5.02(d), Tax Code, as added by this Act, until the end of the state fiscal biennium that begins September 1, 2003, the comptroller, by interagency contract, shall continue to provide support to the State Board on Property Valuation for payroll, human resources, computer maintenance and technical assistance, printing and distribution of publications created by the board, and similar administrative services currently provided.

(e) All forms, rules, and procedures relating to state administration of the property tax system adopted by the comptroller or administratively transferred to the comptroller and in effect on the effective date of this article remain in effect on or after that date as if adopted by the State Board on Property Valuation or the commissioner of the State Board on Property Valuation, as applicable, until amended, repealed, withdrawn, or otherwise superseded by the board or commissioner.

(f) In any protest, appeal, or other administrative or judicial action in which the comptroller is a party on the effective date of this article in connection with a duty or function transferred from the comptroller to the State Board on Property Valuation or the commissioner of the State Board on Property Valuation, as applicable, by this article, the board or commissioner is substituted for the comptroller on the effective date of this article.

SECTION 13A.113. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

PART 14. CONFLICTS CLAUSE; EFFECTIVE DATE

ARTICLE 14A. CONFLICTS CLAUSE

SECTION 14A.01. 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.

ARTICLE 14B. EFFECTIVE DATE

SECTION 14B.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2003.

Amendment No. 1

Amend **CSSB 1952** by adding a new SECTION 13A.113 and renumbering all subsequent SECTIONS:

SECTION 13A.113. Section 42.221, Tax Code, is amended to read as follows:

Sec. 42.221. CONSOLIDATED APPEALS FOR MULTICOUNTY PROPERTY PIPELINE OR ELECTRIC LINE. (a) The owner of property of telecommunications providers under Section 51.002, Utility Code, or owner of property regulated by the Railroad Commission, Surface Transportation Board, or the Federal Energy Regulatory Commission ~~an oil or gas pipeline or electric transmission or distribution line~~ that runs through or operates in more than one county and is appraised by more than one appraisal district may appeal an order of an appraisal review board relating to the property that runs through or operates in more than one county pipeline or electric line, to property attached to or connected with the pipeline or electric line, or to an easement or other real property on which the pipeline or electric line is located to the district court of any county in which a portion of the property pipeline or electric line is located or operates if the order relating to that portion of the property the pipeline or electric line is appealed.

(b) A petition for review of each appraisal review board order under this section must be filed with the court as provided by Section 42.21. The fee for filing each additional petition for review under this section relating to a pipeline or electric line after the first petition for review relating to the same property pipeline or electric line is filed for a tax year is \$5.

(c) If only one appeal by the owner of property subject to this section ~~an oil or gas pipeline or electric line~~ is pending before the court in an appeal from the decision of an appraisal review board of a district other than the appraisal district for that county, any party to the suit may, not earlier than the 30th day before and not later than the 10th day before the date set for the hearing, make a motion to transfer the suit to a district court of the county in which the appraisal review board from which the appeal is taken is located. In the absence of a showing that further appeals under this section will be filed, the court shall transfer the suit.

(d) When the owner files the first petition for review under this section ~~for a pipeline or electric line~~ for a tax year, the owner shall include with the petition a list of each appraisal district in which the property pipeline or electric line is appraised for taxation in that tax year.

(e) The court shall consolidate all the appeals for a tax year relating to a single property subject to this section pipeline or electric line for which a petition for review is filed with the court and may consolidate other appeals relating to other property subject to this section pipelines or electric lines of the same owner if the property is pipelines or electric lines are located in one or more of the counties on the list required by Subsection (d). Except as provided by this subsection, on the motion of the owner of a property subject to this section ~~pipeline or electric line owner~~ the court shall grant a continuance to provide the owner with an opportunity to include in the proceeding appeals of appraisal review board orders from additional appraisal districts. The court may not grant a continuance to include an appeal of an appraisal review board order that relates to a property ~~the pipeline or electric line~~ in that tax year after the time for filing a petition for review of that order has expired.

(f) This section does not affect the property owner's right to file a petition for review of an individual appraisal district's order relating to a property subject to this section ~~pipeline or electric line~~ in the district court in the county in which the appraisal review board is located.

(g) On a joint motion or the separate motions of at least 60 percent of the appraisal districts that are defendants in a consolidated suit filed before the 45th day after the date on which the property owner's petitions for review of the appraisal review board orders relating to property subject to this section ~~a pipeline or electric line~~ for that tax year must be filed, the court shall transfer the suit to a district court of the county named in the motion or motions if that county is one in which one of the appraisal review boards from which an appeal was taken is located.

(h) An outlet, facility, ~~or~~ location, or property that is subject to Section 321.002(a)(3), and that was first opened before June 1, 2003, is not subject to Section 321.203(l), and shall be governed by the law in effect at the time such outlet, facility, ~~or~~ location, or property was first opened, and that law shall be continued in effect for that purpose.

Floor Amendment No. 2

Amend **CSSB 1952** as follows:

(1) In SECTION 8A.01 of the bill, in added Section 5.851, Water Code (House committee printing, page 174, line 26), between "Health and Safety Code" and the period, insert ", except that this subchapter does not apply to permits issued under Subchapter L, Chapter 26".

(2) In SECTION 8B.01 of the bill, in added Section 5.132(a)(4), Water Code (House committee printing, page 177, line 18), strike "and".

(3) In SECTION 8B.01 of the bill, in added Section 5.132(a)(5), Water Code (House committee printing, page 177, line 20), between "authorization" and the period, insert the following:
; and

(6) the category of entities does not include concentrated animal feeding operations in a major sole source impairment zone that are subject to Subchapter L, Chapter 26

(4) In SECTION 8B.03 of the bill, in added Section 5.5515(b)(1), Water Code (House committee printing, page 180, line 14), between "proposed to be located" and "and any other", insert the following:

, any local government potentially affected by a concentrated animal feeding operation located or proposed to be located in a major sole source impairment zone that is subject to Subchapter L, Chapter 26,

(5) In the recital of SECTION 8B.09 of the bill (House committee printing, page 183, line 10), strike "Subsections (d-1)-(d-9)" and substitute "Subsections (d-1)-(d-10)".

(6) In SECTION 8B.09 of the bill, following added Section 5.556(d-6), Water Code (House committee printing, page 185, between lines 15 and 16), insert the following new subsection and renumber the subsequent subsections accordingly:

(d-7) For water quality applications for a permit for a concentrated animal feeding operation located or proposed to be located in a major sole source impairment zone that is subject to Subchapter L, Chapter 26, any local government whose sole source of drinking water is downstream of a discharge or proposed discharge is an affected person.

Floor Amendment No. 3

Amend **CSSB 1952** in Part 8 of the bill (House committee printing) as follows:

(1) In Section 8A.01 of the bill, in proposed Subsection (b), Section 5.852, Water Code (page 175, line 4), strike "Section 5.854" and substitute "Section 5.853".

(2) In Section 8B.20 of the bill, in proposed Subsection (a-1), Section 382.056, Health and Safety Code (page 194, line 20), strike "Subsection (e)" and substitute "Subsection (o)".

(3) Strike Section 8C.12 (page 205, lines 14-25).

Floor Amendment No. 4

Amend **CSSB 1952** as follows:

On page 61, line 17, strike "obligate" and insert "redirect."

Floor Amendment No. 5

Amend **CSSB 1952** (House committee report) by striking Article 1E (page 3, line 14 through page 4, line 7) in Part 1 of the bill.

Floor Amendment No. 6

Amend **CSSB 1952** as follows:

Amend SECTION 2A.01 as follows:

On page 50, line 11, strike "and"

On page 50, line 13 strike "." and add "; and"

On page 50, line 14 insert the following:

"(4) interest earned on the investment of money in the fund."

Floor Amendment No. 7

Amend **CSSB 1952** as follows:

In SECTION 2A.01, on page 50, line 5, strike the word "an" and insert the words "a dedicated" before the word "account."

Floor Amendment No. 8

Amend **CSSB 1952** (House committee report) as follows:

(1) Strike ARTICLE 1J (page 6, line 16 through page 23, line 21) of the bill.

(2) Strike SECTION 8B.25 (page 197, lines 25-26) of the bill and substitute the following:

SECTION 8B.25. Sections 361.0791, 361.088(d), and 361.122, Health and Safety Code, are repealed.

Floor Amendment No. 9

Amend **CSSB 1952** (House committee report) by adding the following appropriately numbered article to Part 2 of the bill:

ARTICLE ____ . REPAYMENT TO THE ECONOMIC
STABILIZATION FUND

SECTION __.01 Subchapter G, Government Code, is amended by adding Section 403.107 to read as follows:

Section 403.107. REPAYMENT TO THE ECONOMIC STABILIZATION FUND.

(a) Appropriations from the economic stabilization fund shall be repaid to the fund during the succeeding biennium. Except as provided by Subsection (b) of this section, the comptroller during the succeeding biennium shall transfer from the general revenue fund to the economic stabilization fund an amount equal to the amount appropriated from the economic stabilization fund for all or part of the biennium. The comptroller shall transfer one-half of the required amount during the first fiscal year of the succeeding biennium and one-half of the required amount during the second fiscal year of the succeeding biennium, except that the amount transferred during the first fiscal year may be unequal to the amount transferred during the second fiscal year if the comptroller determines that the financial condition of the state makes it necessary to transfer unequal amounts.

(b) The comptroller shall reduce the amount otherwise required to be repaid under this section as necessary to ensure that the amount in the economic stabilization fund does not exceed the limit prescribed by Subsection (g), Section 49-g, Article III, Texas Constitution.

SECTION __.02 The change in law made by this article takes effect January 1, 2004, and appropriations made from the economic stabilization fund by the 78th Legislature shall be repaid to the fund during the state fiscal biennium beginning September 1, 2005, including appropriations made from the fund for the state fiscal year ending August 31, 2003.

Amendment No. 10

Amend **CSSB 1952** as follows:

Delete Article 2E beginning on page 57 and replace with the following:

SECTION 2E.01. The heading to Section 391.009, Local Government Code, is amended to read as follows:

Sec. 391.009. ROLE OF STATE AUDITOR, GOVERNOR, AND STATE AGENCIES.

SECTION 2E.02. Section 391.009, Local Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) To protect the public interest and [or] promote the efficient use of public funds, the governor, with the technical assistance of the state auditor, may draft and [shall] adopt:

(1) rules relating to the operation and oversight of a commission;
(2) rules relating to the receipt or expenditure of funds by a commission, including:

(A) restrictions on the expenditure of any portion of commission funds for certain classes of expenses; and

(B) restrictions on the maximum amount of or percentage of commission funds that may be expended on a class of expenses, including indirect costs or travel expenses;

- (3) annual reporting requirements for a commission;
- (4) annual audit requirements on funds received or expended by a commission from any source;
- (5) rules relating to the establishment and use of standards by which the productivity and performance of each commission can be evaluated; and
- (6) guidelines that commissions and governmental units shall follow in carrying out the provisions of this chapter relating to review and comment procedures.

(a-1) The governor may draft and adopt rules under Subsection (a) using negotiated rulemaking procedures under Chapter 2008, Government Code.

(a-2) Based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval for inclusion in the audit plan under Section 321.013, Government Code, the state auditor's office shall assist the governor as provided by Subsection (a).

SECTION 2E.03. Section 391.0095, Local Government Code, is amended to read as follows:

Sec. 391.0095. AUDIT AND REPORTING REQUIREMENTS. (a) The audit and reporting requirements under Section 391.009(a) shall include a requirement that a commission annually report to the state auditor ~~[governor]~~:

- (1) the amount and source of funds received by the commission;
- (2) the amount and source of funds expended by the commission;
- (3) an explanation of any method used by the commission to compute an expense of the commission, including computation of any indirect cost of the commission;
- (4) a report of the commission's productivity and performance during the annual reporting period;
- (5) a projection of the commission's productivity and performance during the next annual reporting period;
- (6) the results of an audit of the commission's affairs prepared by an independent certified public accountant; and
- (7) a report of any assets disposed of by the commission.

(b) The annual audit of a commission may be commissioned ~~[by the governor's office or]~~ by the commission or at the direction of the governor's office, as determined by the governor's office, and shall be paid for from the commission's funds.

(c) A commission shall submit any other report or an audit to the state auditor and ~~[required by]~~ the governor.

(d) If a commission fails to submit a report or audit required under this section or is determined by the state auditor ~~[governor]~~ to have failed to comply with a rule, requirement, or guideline adopted under Section 391.009, the state auditor shall report the failure to the governor's office. The governor may, until the failure is corrected:

- (1) appoint a receiver to operate or oversee the commission; or
- (2) withhold any appropriated funds of the commission.

(e) A commission shall send to the governor, the state auditor, the comptroller, and the Legislative Budget Board a copy of each report and audit required under this section or under Section 391.009. Subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval for inclusion in the audit plan under Section 321.013, Government Code, the ~~[The]~~ state auditor may ~~[shall]~~ review

each audit and report. If the state auditor reviews an audit or report, the state auditor ~~and~~ must be given access to working papers and other supporting documentation that the state auditor determines is necessary to perform the review. If the state auditor finds significant issues involving the administration or operation of a commission or its programs, the state auditor shall report its findings and related recommendations to the legislative audit committee, the governor, and the commission. The governor and the legislative audit committee may direct the commission to prepare a corrective action plan or other response to the state auditor's findings or recommendations. The legislative audit committee may direct the state auditor to perform any additional audit or investigative work that the committee determines is necessary.

SECTION 2E.04. Subsection (e), Section 391.0117, Local Government Code, is amended to read as follows:

(e) A commission shall submit to the state auditor ~~[governor]~~ the commission's salary schedule, including the salaries of all exempt positions, not later than the 45th day before the date of the beginning of the commission's fiscal year. If the state auditor, subject to the legislative audit committee's approval for inclusion in the audit plan under Section 321.013, Government Code, has recommendations to improve ~~[governor objects to]~~ a commission's salary schedule or a portion of the schedule, the state auditor shall report the recommendations to the governor's office. The governor's office may not allow the portion of the schedule for which ~~[that]~~ the state auditor has recommendations to ~~[governor objects to may not]~~ go into effect until revisions or explanations are given that are satisfactory to the governor based on recommendations from the state auditor ~~[and the governor approves that portion of the schedule].~~

SECTION 2E.05. On the effective date of this Act, a rule, requirement, or guideline adopted by the governor relating to the oversight of regional planning commissions remains in effect until amended or repealed by the governor.

Floor Amendment No. 11

Amend **CSSB 1952**, by adding the following on page 103 at the end of Section 4C.01:

(f) An institution of higher education, as defined by Section 61.003, Education Code, may elect to participate in the system described in this section in the same manner as a state agency. If the institution makes this election and the comptroller approves the election, the institution:

- (1) shall comply with this chapter in the same manner as a state agency; and
- (2) may not withdraw from the system described in this section without the approval of the comptroller.

Floor Amendment No. 12

Amend **CSSB 1952** by striking Article 2G (page 62, line 9, through page 63, line 5, House committee report).

Floor Amendment No. 13

Amend **CSSB 1952** by striking Article 1I (page 5, line 11, through page 6, line 15, House committee report).

Floor Amendment No. 14

Amend **CSSB 1952** as follows:

Delete Sections 10A.01 and 10A.02 on page 230 and substitute new Sections 10A.01 and 10A.02 to read as follows:

SECTION 10A.01. Section 72.101, Property Code, is amended by adding Subsections (c) and (d) to read as follows:

"(c) Property distributable in the course of demutualization, rehabilitation, or related reorganization of an insurance company is deemed abandoned one year after the date the property is first distributable if, at the time of the first distribution, the last known address of the owner on the books and records of the holder is known to be incorrect, or the distribution or statements are returned by the post office as undeliverable; and the owner:

(1). has not communicated in writing with the holder or its agent regarding the interest; or

(2). otherwise communicated with the holder regarding the interest as evidenced by a memorandum or other record on file with the holder or its agents.

(d) Property distributable in the course of demutualization, rehabilitation or related reorganization of a mutual insurance company that is not subject to subsection (c) shall be reportable as otherwise provided by this law."

SECTION 10A.02. TRANSITION. New subsection (c) and (d) to Section 72.101, Property Code added by this Act shall be effective June 30, 2003 and reportable as otherwise provided by this law.

Floor Amendment No. 15

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to PART 1 of the bill and renumbering existing ARTICLES in PART 1 appropriately:

ARTICLE ____ . GUBERNATORIAL APPOINTMENTS TO
ADVISORY BODIES

SECTION ____ . Subchapter F, Chapter 401, Government Code, is amended by adding Section 401.105 to read as follows:

Sec. 401.105. NOTICE OF APPOINTMENT TO ADVISORY BODIES. Before the governor appoints an individual to serve on an advisory board, advisory council, or advisory committee for which senate confirmation of the appointment is or is not required, the governor must inform the member of the house of representatives in whose district the proposed appointee resides of the proposed appointment.

Floor Amendment No. 17

Amend **CSSB 1952** (House committee report) as follows:

- (1) Strike SECTIONS 1J.17 and 1J.18 (page 11, lines 8-26).
- (2) In SECTION 1J.19(11) of the bill (page 12, line 22), after the semicolon, insert "and".
- (3) In SECTION 1J.19(12) of the bill (page 12, line 24), strike the semicolon and substitute a period.
- (4) Strike SECTIONS 1J.19(13) and (14) (page 12, line 25, through page 13, line 2).
- (5) Strike SECTION 1J.28 (page 22, line 3, through page 23, line 15).

(6) In SECTION 1J.29 of the bill, strike ", and Section 1.06, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), as added by this Act" (page 23, lines 19-21).

(7) Renumber the SECTIONS of Article 1J appropriately.

Floor Amendment No. 18

Amend **CSSB 1952** by striking Section 1P.01 of the bill (page 45, line 22, through page 46, line 9) and substituting:

SECTION 1P.01. Section 1702.002, Occupations Code, is amended by adding Subdivisions (1-a) and (5-a) to read as follows:

(1-a) "Board" means the Texas Private Security Board.

(5-a) "Department" means the Department of Public Safety of the State of Texas.

SECTION 1P.02. Subchapter A, Chapter 1702, Occupations Code, is amended by adding Section 1702.005 to read as follows:

Sec. 1702.005. DEPARTMENT OF PUBLIC SAFETY. (a) The board created under Section 1702.021 is a part of the department. The department shall administer this chapter through the board.

(b) A reference in this chapter or another law to the Texas Commission on Private Security means the board.

SECTION 1P.03. Section 1702.021(a), Occupations Code, is amended to read as follows:

(a) The Texas [~~Commission on~~] Private Security Board consists of seven [~~nine~~] members appointed by the governor with the advice and consent of the senate as follows:

(1) four [~~five~~] public members, each of whom is a citizen of the United States;

(2) one member who[~~:~~

~~[(A)] is licensed under this chapter as a private investigator;~~

~~[(B) has been engaged as a private investigator for at least the five years preceding appointment; and~~

~~[(C) is not employed by a person who employs another member of the commission;]~~

(3) one member who is licensed under this chapter as an alarm systems company; and [~~who:~~

~~[(A) has been engaged as an alarm systems company for at least the five years preceding appointment; and~~

~~[(B) is not employed by a person who employs another member of the commission;]~~

(4) one member who[~~:~~

~~[(A)] is licensed under this chapter as the owner or operator of a guard company[~~:~~~~

~~[(B) has been the owner or operator of the guard company for at least the five years preceding appointment; and~~

~~[(C) is not employed by a person who employs another member of the commission; and~~

~~[(5) one member who:~~

~~[(A) holds a license, security officer commission, or registration under this chapter;~~

~~[(B) has been engaged in activity regulated by the commission under this chapter for at least the five years preceding appointment; and~~

~~[(C) is not employed by a person who employs another member of the commission].~~

SECTION 1P.04. Section 1702.025(a), Occupations Code, is amended to read as follows:

(a) The appointed board ~~[commission]~~ members serve staggered six-year terms, with the terms of two or three appointed members expiring on January 31 of each odd-numbered year.

SECTION 1P.05. Not later than November 1, 2003, the governor shall appoint the members of the Texas Private Security Board, as required under Section 1702.021, Occupations Code, as amended by this Act. The governor shall stagger the terms of the initial board members, as required under Section 1702.025, Occupations Code, as amended by this Act.

SECTION 1P.06. (a) On November 1, 2003:

(1) all functions and activities performed by the Texas Commission on Private Security immediately before that date are transferred to the Texas Private Security Board of the Department of Public Safety of the State of Texas;

(2) a rule or form adopted by the Texas Commission on Private Security is a rule or form of the Texas Private Security Board and remains in effect until amended or replaced by that board;

(3) a reference in law or an administrative rule to the Texas Commission on Private Security means the Texas Private Security Board;

(4) a complaint, investigation, or other proceeding before the Texas Commission on Private Security is transferred without change in status to the Texas Private Security Board, and the Texas Private Security Board assumes, as appropriate and without a change in status, the position of the Texas Commission on Private Security in an action or proceeding to which the Texas Commission on Private Security is a party;

(5) all money, contracts, leases, property, and obligations of the Texas Commission on Private Security are transferred to the Texas Private Security Board;

(6) all property in the custody of the Texas Commission on Private Security is transferred to the Texas Private Security Board; and

(7) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Commission on Private Security is transferred to the Texas Private Security Board.

(b) Before November 1, 2003, the Texas Commission on Private Security may agree with the Department of Public Safety of the State of Texas to transfer any property of the Texas Commission on Private Security to the Department of Public Safety of the State of Texas to implement the transfer required by this Act.

(c) In the period beginning on the effective date of this Act and ending on November 1, 2003, the Texas Commission on Private Security shall continue to perform functions and activities under Chapter 1702, Occupations Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

Floor Amendment No. 19

Amend **CSSB 1952**, (House committee printing), in Part 1, (page 3, line 14 through page 4, line 7), by striking Article 1E and renumbering existing articles accordingly.

Floor Amendment No. 21

Amend **CSSB 1952** by striking ARTICLE 3F of the bill (committee printing page 84 line 10, through page 85, line 21) and renumbering the ARTICLES of the bill as appropriate.

Floor Amendment No. 23

Amend **CSSB 1952** (House committee printing) in Part 8 of the bill as follows:

(1) In the introductory language to Section 8B.02 of the bill (page 179, line 14) strike "Subsection (a)" and substitute "Subsections (a) and (b)".

(2) In Section 8B.02 of the bill, in amended Subsection (a), Section 5.551, Water Code (page 179, line 21), strike "or 382" and substitute ", 382, or 401".

(3) In Section 8B.02 of the bill, in amended Subsection (a), Section 5.551, Water Code (page 179, line 26), strike "or 382" and substitute ", 382, or 401".

(4) In Section 8B.02 of the bill, following amended Subsection (a), Section 5.551, Water Code (page 179, between lines 26 and 27), insert:

(b) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy a requirement for United States Environmental Protection Agency authorization of a state permit program or United States Nuclear Regulatory Commission authorization of a state permit program.

(5) In Section 8B.02 of the bill, in proposed Subsection (d), Section 5.551, Water Code (page 180, lines 2 and 3), strike "or 382" and substitute ", 382, or 401".

(6) In the introductory language to Section 8B.09 of the bill (page 183, line 10), strike "Subsections (d-1)-(d-9)" and substitute "Subsections (d-1)-(d-10)".

(7) In Section 8B.09 of the bill, in amended Subsection (c), Section 5.556, Water Code (page 183, line 22), strike "(d-1)-(d-5)" and substitute "(d-1)-(d-8)".

(8) In Section 8B.09 of the bill, between proposed Subsections (d-5) and (d-6), Section 5.556, Water Code (page 185, between lines 12 and 13), insert:

(d-6) For applications under Chapter 401, Health and Safety Code, an affected person is a person who resides on or owns property in this state and within two miles of the facility or proposed facility.

(9) In Section 8B.09 of the bill, at the beginning of proposed Subsection (d-6), Section 5.556, Water Code (page 185, line 13), strike "(d-6)" and substitute "(d-7)".

(10) In Section 8B.09 of the bill, in proposed Subsection (d-6), Section 5.556, Water Code (page 185, line 14), strike "(d-1)-(d-5)" and substitute "(d-1)-(d-6)".

(11) In Section 8B.09 of the bill, at the beginning of proposed Subsection (d-7), Section 5.556, Water Code (page 185, line 16), strike "(d-7)" and substitute "(d-8)".

(12) In Section 8B.09 of the bill, at the beginning of proposed Subsection (d-8), Section 5.556, Water Code (page 185, line 24), strike "(d-8)" and substitute "(d-9)".

(13) In Section 8B.09 of the bill, at the beginning of proposed Subsection (d-9), Section 5.556, Water Code (page 185, line 27), strike "(d-9)" and substitute "(d-10)".

Floor Amendment No. 24

Amend **CSSB 1952** (House committee report) by adding the following appropriately numbered ARTICLE to PART 8 and renumbering subsequent ARTICLES in PART 8 accordingly:

ARTICLE __. MEDICAL WASTE

SECTION __.01. Section 361.560, Health and Safety Code, is amended by adding Subdivisions (2) and (4) to read as follows:

(2) "Health care related facility" includes:

(A) ambulatory surgical centers;

(B) birthing centers;

(C) blood banks and blood drawing centers;

(D) clinics, including medical, dental, and veterinary clinics;

(E) funeral establishments;

(F) hospitals;

(G) pharmacies;

(H) professional offices, including the offices of physicians, dentists, and acupuncturists; and

(I) other facilities included by commission rule.

(4) "Special waste" includes:

(A) animal wastes and bedding materials that have been exposed to pathogens;

(B) bulk blood, bulk blood products, or bulk human body fluids;

(C) microbiological waste, including discarded cultures, vaccines, disposable culture dishes, and other disposable devices used in microbiological laboratories;

(D) pathological wastes, including human materials removed during surgery, autopsy, or other medical procedures; and

(E) sharps, including hypodermic needles, hypodermic syringes with attached needles, and contaminated items including scalpel blades, razor blades, disposable razors, disposable scissors used in medical procedures, intravenous stylets, rigid introducers, and broken glass.

SECTION __.02. Subchapter S, Chapter 361, Health and Safety Code, is amended by adding Section 361.562 to read as follows:

Sec. 361.562. MOBILE VEHICLES USED FOR TREATMENT OF SPECIAL WASTE FROM HEALTH CARE RELATED FACILITIES. A person who, in accordance with commission rules, uses a mobile vehicle to provide on-site treatment of special waste from health care related facilities may treat, on the site of a hospital registered with the commission as a medical waste collection station, special waste:

(1) generated at the hospital; or

(2) generated at another health care related facility and transported to the hospital site by the mobile unit if the hospital agrees.

SECTION __.03. Not later than December 1, 2003, the Texas Commission on Environmental Quality shall adopt all rules necessary to implement Section 361.562, Health and Safety Code, as added by this article.

Floor Amendment No. 25

Amend **CSSB 1952** (House committee report) in Part 8 of the bill by adding the following appropriately numbered article and renumbering the other articles appropriately:

ARTICLE ____. AIR QUALITY STANDARDS

SECTION ____. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.451 to read as follows:

Sec. 2155.451. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(b) The commission and other state agencies procuring goods or services may give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

SECTION ____. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.907 to read as follows:

Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(c) A governmental agency procuring goods or services may give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Floor Amendment No. 26

Amend **CSSB 1952** (House committee printing) in PART 8 of the bill by adding the following appropriately numbered ARTICLE to PART 8 and renumbering subsequent ARTICLES in PART 8 accordingly:

ARTICLE ____ . REGULATORY FLEXIBILITY AND
REGULATORY STRUCTURE

SECTION ____ . Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.135 and 5.136 to read as follows:

Sec. 5.135. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

- (1) as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and
- (2) not inconsistent with federal law.

(b) The commission may not exempt an applicant under this section unless the applicant can demonstrate to the commission that the applicant's proposed project will result in a level of protection of environmental quality that is equal to or greater than the level of protection afforded by existing standards.

(c) The commission by rule shall specify the procedure for obtaining an exemption under this section.

(d) The commission's order must describe the alternative method or standard and must condition the exemption on compliance with the method or standard as the order prescribes.

(e) The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) The violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

(g) The commission may not exempt an applicant from a requirement of a statute or regulation regarding the storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

- (1) endorse alternative methods that will comply with legal requirements and impose the least onerous restrictions on business, including economic benefit; and
- (2) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

Sec. 5.136. STRATEGICALLY DIRECTED REGULATORY STRUCTURE.

(a) The commission may develop a strategically directed regulatory structure that is designed to use innovative programs to provide enhanced environmental benefit and reward compliance performance.

(b) The strategically directed regulatory structure may offer incentives based on a person's compliance performance and any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of a strategically directed regulatory structure must:

- (1) provide incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction; and

(2) be consistent with other law and any requirement necessary to maintain federal program authorization.

Floor Amendment No. 27

Amend **CSSB 1952** as follows:

(1) In SECTION 8A.01 of the bill, in proposed Subchapter S, Chapter 5, Water Code, between Sections 5.851 and 5.852 (House Committee Printing page 174, between lines 26 and 27), insert the following:

Sec. 5.8515. DEFINITION. In this subchapter, "permit" means a permit, approval, registration, or other form of authorization required by law for a person to engage in an action.

(2) In SECTION 8A.01 of the bill, in proposed Subsection (b), Section 5.852, Water Code (House Committee Printing page 175, line 4), strike "5.854" and substitute "5.853".

(3) In SECTION 8A.01 of the bill, in proposed Subsection (c), Section 5.852, Water Code, between "review" and "a" (House Committee Printing page 175, line 5), insert "and for copying".

(4) In SECTION 8A.01 of the bill, in proposed Section 5.853, Water Code, following Subsection (c) (House Committee Printing page 176, between lines 6 and 7), insert the following:

(d) An applicant for a permit under Chapter 382, Health and Safety Code, shall also publish notice of the preliminary decision in an alternative language newspaper as required by commission rule. This requirement is waived if such a publication does not exist or if the publisher refuses to publish notice.

(5) In SECTION 8A.01 of the bill, in proposed Subsection (b), Section 5.855, Water Code (House Committee Printing page 177, line 4), strike "statement" and substitute "fact sheet".

(6) At the end of ARTICLE 8A of the bill (House Committee Printing page 177, between lines 5 and 6), insert the following:

SECTION 8A.02. The changes in law made by this article apply only to an application for a permit that is filed with the Texas Commission on Environmental Quality on or after September 1, 2003. An application for a permit that is filed before that date is governed by the law in effect on the date it was filed, and that law is continued for that purpose.

(7) In SECTION 8B.01 of the bill, in proposed Subsection (d), Section 5.132, Water Code (House Committee Printing page 178, line 10), strike "the comments" and substitute "written comments".

(8) In SECTION 8B.03 of the bill, in proposed Subsection (a), Section 5.5515, Water Code (House Committee Printing page 180, line 10), strike "the notice" and substitute "notice".

(9) In SECTION 8B.03 of the bill, at the end of proposed Section 5.5515, Water Code (House Committee Printing page 181, between lines 4 and 5), insert the following:

(d) An applicant for a permit under Chapter 382, Health and Safety Code, shall also publish notice of the preliminary decision in an alternative language newspaper as required by commission rule. This requirement is waived if such a publication does not exist or if the publisher refuses to publish notice.

(10) In the recital to SECTION 8B.09 of the bill, between "(d-1)-(d-9)" and "to" (House Committee Printing page 183, line 10), insert "and (g)".

(11) In SECTION 8B.09 of the bill, in amended Subsection (c), Section 5.556, Water Code (House Committee Printing page 183, line 22), strike "(d-1)-(d-5)" and substitute "(d-1)-(d-7)".

(12) In SECTION 8B.09 of the bill, in amended Subsection (c), Section 5.556, Water Code (House Committee Printing page 183, lines 23 and 24), strike "commission's office of hearings examiners" and substitute "State Office of Administrative Hearings".

(13) In SECTION 8B.09 of the bill, in amended Section 5.556, Water Code (House Committee Printing page 185, lines 16-23), strike Subsection (d-7) and substitute the following:

(d-7) A group or association may be an affected person if it is composed of one or more members who would otherwise have standing to request a hearing in their own right, the interests the group or association seeks to protect are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of the individual members. A governmental entity with authority under state law over issues relating to the permit application may be an affected person. The commission by rule shall establish criteria for determining whether a group, association, or governmental entity is an affected person.

(14) In SECTION 8B.09 of the bill, in proposed Subsection (d-8), Section 5.556, Water Code (House Committee Printing page 185, line 25), strike "commission's office of hearings examiners" and substitute "State Office of Administrative Hearings".

(15) In SECTION 8B.09 of the bill, at the end of amended Section 5.556, Water Code (House Committee Printing page 186, between lines 8 and 9), insert the following:

(g) Notice of a contested case hearing granted under this subchapter shall be mailed to the applicant, the office of public interest counsel, the executive director, and the persons whose hearing requests have been granted. Public notice of a contested case hearing is not required.

(16) In SECTION 8B.10 of the bill, in amended Subsection (d), Section 26.028, Water Code (House Committee Printing page 187, lines 1-15), strike Subdivisions (3), (4), and (5) and substitute the following:

(3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant written public comment; and

(4) the commission determines that an applicant's compliance history for the preceding five years [under the method for evaluating compliance history developed by the commission under Section 5.754] raises no issues regarding the applicant's ability to comply with a material term of its permit.

(17) Strike SECTION 8B.12 of the bill (House Committee Printing page 188, line 21, through page 189, line 19) and substitute the following:

SECTION 8B.12. Section 361.088, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (h) to read as follows:

(e) After complying with Sections 5.5515-5.555 [~~5.552-5.555~~], Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; ~~and~~

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing; or

(3) treatment, storage, or disposal of solid waste if the renewal application does not include any changes to authorization provided by the existing permit.

(h) The commission may act on an application for a new permit, Class 3 modification, or major amendment for post-closure care or corrective action at a solid waste management facility if notice and opportunity to request a nonadjudicative hearing under Subchapter S, Chapter 5, Water Code, have been given.

(18) In SECTION 8B.17 of the bill, in amended Section 382.05191, Health and Safety Code (House Committee Printing page 191, lines 20-26), strike Subsection (a) and substitute the following:

(a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice, including notice of the opportunity for nonadjudicative hearing [of intent to obtain the permit] in accordance with Subchapter S, Chapter 5, Water Code [Section 382.056]. An applicant for a permit under Section 382.05186(b) shall publish notice, including notice of an opportunity for nonadjudicative hearing under Section 382.05197.

(19) In SECTION 8B.20 of the bill, in proposed Subsection (a-1), Section 382.056, Health and Safety Code (House Committee Printing page 194, line 18), strike "notice but" and substitute "notice, but".

(20) In SECTION 8B.20 of the bill, in proposed Subsection (a-1), Section 382.056, Health and Safety Code (House Committee Printing page 194, line 20), strike "(e)" and substitute "(o)".

(21) In SECTION 8B.20 of the bill, in amended Section 382.056, Health and Safety Code (House Committee Printing page 194, line 21, through page 195, line 6), strike Subsection (a-2) and substitute the following:

(a-2) An application for a permit amendment under this section is not subject to notice or contested case hearing if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria established by commission rule and the emissions will not change in character. An application for a permit amendment for a facility affected by Section 382.020 is not subject to notice or contested case hearing if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. A finding under this subsection that a total emissions increase is not significant must be made in the same manner as a finding made under Section 382.05196.

(22) Strike SECTION 8B.26 of the bill (House Committee Printing page 197, line 27, through page 198, line 5), and substitute the following:

SECTION 8B.26. Sections 361.534(b), 382.0518(h) and (i), 382.05191(b) and (c), 382.05197(b) and (c), 382.056(b)-(n) and (p), and 382.058, Health and Safety Code, are repealed.

SECTION 8B.27. The changes in law made by this article apply only to an application for a permit that is filed with the Texas Commission on Environmental Quality on or after September 1, 2003. An application for a permit that is filed before that date is governed by the law in effect on the date it was filed, and that law is continued for that purpose.

(23) At the end of ARTICLE 8C of the bill (House committee printing page 207, between lines 25 and 26), insert the following:

SECTION 8C.15. (a) The changes in law made by this article apply only to an action taken by the Texas Commission on Environmental Quality on or after the effective date of this article.

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

Floor Amendment No. 28

Amend Floor Amendment No. 27 to **CSSB 1952** as follows:

- 1) On page 2, strike lines 25 through 29.
- 2) On page 3, strike lines 12 through 15.

Floor Amendment No. 30

Amend **CSSB 1952** (House committee report) as follows:

(1) In SECTION 8B.16, in the introductory language (page 191, line 2), strike "Section 382.0518(b)" and substitute "Section 382.0518".

(2) In SECTION 8B.16, in the introductory language (page 191, line 3), between "amended" and "to", insert "by adding Subsection (a-1) and amending Subsection (b)".

(3) In SECTION 8B.16, in amended Section 382.0518, Health and Safety Code (page 191, between lines 3 and 4), insert the following:

(a-1) To promote administrative efficiency in the permitting process, the commission may provide alternate means of complying with the requirements of this section by adopting rules to establish a plant-wide applicability limitations program or a clean unit program implementing regulations adopted by the United States Environmental Protection Agency under Parts C and D, Title I, of the federal Clean Air Act (42 U.S.C. Sections 7470-7515), as amended, that allows for:

(1) the construction of a new facility at a group of facilities for which a preconstruction permit under this section has been issued if the group of facilities, according to the program adopted:

(A) has been designated a clean unit; or

(B) is subject to a plant-wide applicability limit; or

(2) the modification of an existing facility for which a preconstruction permit under this section has been issued, if the facility, according to the program adopted:

- (A) has been designated a clean unit; or
- (B) is subject to a plant-wide applicability limit.

Floor Amendment No 31

Amend **CSSB 1952** by striking Section 382.056(a), Health and Safety Code, as amended by SECTION 8B.20 of the bill (committee printing page 193, line 7 through page 194, line 14), and substituting the following:

(a) ~~An [Except as provided by Section 382.0518(h), an] applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of a preliminary decision on [intent to obtain] the permit, permit amendment, or permit review and provide an opportunity for a contested case hearing as provided by Subchapter M, Chapter 5, Water Code [not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice]. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 382.0365 and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. [Notice required to be published under this section shall only be required to be published in the United States.]~~

Floor Amendment No. 32

Amend **CSSB 1952** in PART 8 of the bill, ARTICLE 8B (House committee report, page 197, lines 11-19), by striking SECTION 8B.23 and substituting the following:

SECTION 8B.23. (a) Section 382.065, Health and Safety Code, as added by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 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 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.

(b) A change in law made by this section 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 section.

Floor Amendment No. 33

Amend **CSSB 1952** as follows:

(1) In SECTION 8C.06 of the bill, in amended Subsection (d), Section 27.051, Water Code, between "injection well" and "is in the public interest" (House committee printing page 199, line 24), insert "for the disposal of hazardous waste".

(2) In SECTION 8C.06 of the bill, in amended Subdivision (2), Subsection (d), Section 27.051, Water Code, between "available" and the semicolon (House Committee Printing page 200, line 5), insert "to manage the pertinent type and class of hazardous waste".

(3) In SECTION 8C.06 of the bill, in amended Subdivision (3), Subsection (d), Section 27.051, Water Code (House Committee Printing page 200, lines 6 and 7), strike "if the injection well will be used for the disposal of hazardous waste," and substitute "[if the injection well will be used for the disposal of hazardous waste,]".

(4) At the end of ARTICLE 8C of the bill (House committee printing page 207, between lines 25 and 26), insert the following:

SECTION 8C.15. Section 27.051(d), Water Code, as amended by this article, applies only to an application for a disposal or injection well permit that is pending on or is filed on or after the effective date of this article.

SECTION 8C.16. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

Floor Amendment No. 34

Amend **CSSB 1952** (House committee report) by adding the following appropriately numbered ARTICLE to PART 8 of the bill and renumbering subsequent ARTICLES in PART 8 accordingly:

ARTICLE ____ . VALIDATION OF CERTAIN WATER QUALITY RULES

SECTION __.01. VALIDATION OF CERTAIN WATER QUALITY RULES.

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

Floor Amendment No. 36

Amend **CSSB 1952** in PART 8 of the bill by inserting the following appropriately numbered ARTICLE and renumbering the subsequent ARTICLES of the bill accordingly:

ARTICLE 8__ . FINANCIAL SECURITY REQUIREMENTS FOR CERTAIN PERSONS PERFORMING OPERATIONS WITHIN THE JURISDICTION OF THE RAILROAD COMMISSION OF TEXAS

SECTION 8__01. Effective September 1, 2004, Section 85.2021, Natural Resources Code, is amended to read as follows:

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

(1) \$200 if the total depth of the well is 2,000 feet or less;

(2) \$225 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(3) \$250 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;

(4) \$300 if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of \$200 when a Rule 37 spacing or a Rule 38 density exception review is requested [~~required~~].

(c) An applicant shall submit an additional nonrefundable fee of \$150 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) With each application for an extension of time to plug a well pursuant to commission rules, an applicant shall submit to the commission a nonrefundable fee of \$300, unless the applicant has filed a bond, letter of credit, or cash deposit under Section 91.104(b)(1), (2), or (3).

(e) All fees collected under this section shall be deposited in the state oil-field cleanup fund.

SECTION 8__02. Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY. (a) The commission shall require a bond or an alternate form of financial security to be filed with the commission as provided by Subsection (b) [~~of this section~~].

(b) A person required to file a bond or alternate form of financial security under Section 91.103 may choose to file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042;

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042;

(4) a nonrefundable annual fee of \$1,000, if:

~~[(A) the commission determines that individual and blanket bonds as specified by Subdivisions (1) and (2) are not obtainable at reasonable prices; and~~

~~[(B) the person states and commission records confirm that the person has can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~(A) [(+)] has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~(B) [(+)] has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~(C) [(+)] has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates; [✕]~~

(5) a nonrefundable annual fee equal to seven ~~[12 1/2]~~ percent of the bond that otherwise would be required; or

(6) if the person operates wells, another form of financial security authorized by rules adopted by the commission under Subsection (b-1).

(b-1) The commission by rule may authorize a person who operates wells to file a form of financial security other than those provided by Subsections (b)(1)-(5), including insurance. The rules must require the security to be in an amount sufficient to ensure the plugging of the person's wells.

(c) A person who chooses to file a form of financial security other than a bond, letter of credit, or cash deposit shall also submit a fee of \$300 for each application to extend the time to plug a well in accordance with Section 85.2021. A person may not be required to file a bond, letter of credit, or cash deposit as a condition of receiving an extension under that section.

(d) This subsection does not apply to the operation of bay or offshore wells or the storage, handling, treatment, reclamation, or disposal of oil and gas waste. A person who engages in more than one activity or operation for which a bond or alternate form of financial security is required under this subchapter is not required to file a separate bond or alternate form of financial security for each activity or operation in which the person is engaged. The person is required to file a bond or alternate form of financial security only in the amount required for the activity or operation in which the person engages for which a bond or alternate form of financial

security in the greatest amount is required. The bond or alternate form of financial security filed covers all of the activities and operations for which a bond or alternate form of financial security is required under this subchapter.

SECTION 8 __.03. Effective September 1, 2004, Section 91.104, Natural Resources Code, is amended to read as follows:

Sec. 91.104. BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY. (a) The commission shall require a bond or an alternate form of financial security to be filed with the commission as provided by Subsection (b) [~~of this section~~].

(b) A person required to file a bond or alternate form of financial security under Section 91.103 may choose to file:

- (1) an individual bond as provided under Section 91.1041;
- (2) a blanket bond as provided under Section 91.1042;
- (3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042;
- (4) a nonrefundable annual fee [~~of \$1,000, if:~~

~~[(A) the commission determines that individual and blanket bonds as specified by Subdivisions (1) and (2) are not obtainable at reasonable prices; and~~

~~[(B) the person can demonstrate to the commission an acceptable record of compliance with all commission rules, orders, licenses, permits, or certificates that relate to safety or the prevention or control of pollution for the previous 48 months and the person and, if a firm, partnership, joint stock association, corporation, or other organization, its officers, directors, general partners, or owners of more than 25 percent ownership interest or any trustee:~~

~~[(i) has no outstanding violations of such commission rules, orders, licenses, permits, or certificates;~~

~~[(ii) has paid all administrative, civil, and criminal penalties, if any, relating to any violation of such commission rules, orders, licenses, permits, or certificates; and~~

~~[(iii) has paid all reimbursements of any costs and expenses incurred by the commission in relation to any violation of such commission rules, orders, licenses, permits, or certificates; or~~

~~[(5) a nonrefundable annual fee] equal to:~~

~~(A) eight [42 1/2] percent of the bond that otherwise would be required if the financial security is required to be filed before September 1, 2005;~~

~~(B) nine percent of the bond that otherwise would be required if the financial security is required to be filed on or after September 1, 2005, and before September 1, 2006; and~~

~~(C) 10 percent of the bond that otherwise would be required if the financial security is required to be filed on or after September 1, 2006; or~~

~~(5) if the person operates wells, another form of financial security authorized by rules adopted by the commission under Subsection (b-1).~~

(b-1) The commission by rule may authorize a person who operates wells to file a form of financial security other than those provided by Subsections (b)(1)-(5), including insurance. The rules must require the security to be in an amount sufficient to ensure the plugging of the person's wells.

(c) A person who chooses to file a form of financial security other than a bond, letter of credit, or cash deposit shall also submit a fee of \$300 for each application to extend the time to plug a well in accordance with Section 85.2021. A person may not be required to file a bond, letter of credit, or cash deposit as a condition of receiving an extension under that section.

(d) This subsection does not apply to the operation of bay or offshore wells or the storage, handling, treatment, reclamation, or disposal of oil and gas waste. A person who engages in more than one activity or operation for which a bond or alternate form of financial security is required under this subchapter is not required to file a separate bond or alternate form of financial security for each activity or operation in which the person is engaged. The person is required to file a bond or alternate form of financial security only in the amount required for the activity or operation in which the person engages for which a bond or alternate form of financial security in the greatest amount is required. The bond or alternate form of financial security filed covers all of the activities and operations for which a bond or alternate form of financial security is required under this subchapter.

SECTION 8__04. Section 91.1042, Natural Resources Code, is amended to read as follows:

Sec. 91.1042. BLANKET BOND. (a) A person required to file a bond or alternate form of financial security under Section 91.103 who operates wells may file a blanket bond to cover all wells and operations for which a bond or alternate form of financial security is required as follows:

(1) a person who operates at least one well but not more than 10 wells [~~+0 or fewer wells or performs other operations~~] shall file a \$15,000 [~~\$25,000~~] blanket bond;

(2) a person who operates more than 10 but fewer than 25 [~~400~~] wells shall file a \$35,000 [~~\$50,000~~] blanket bond; [~~and~~]

(3) a person who operates 25 [~~400~~] or more wells but fewer than 100 wells shall file a \$50,000 [~~\$250,000~~] blanket bond;

(4) a person who operates 100 or more wells but fewer than 150 wells shall file a \$100,000 blanket bond;

(5) a person who operates 150 or more wells but fewer than 200 wells shall file a \$175,000 blanket bond; and

(6) a person who operates 200 or more wells shall file a \$250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), [~~or~~] (3), (4), (5), or (6), as applicable.

SECTION 8__05. Section 91.107, Natural Resources Code, is amended to read as follows:

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT. Notwithstanding Section 91.104, if an active or inactive well is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to provide financial security by means of a [~~file a new~~] bond, letter of credit, or cash deposit in an appropriate amount as provided by Section 91.104(b)(1), (2), or (3), and

the financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until a ~~[the new]~~ bond, letter of credit, or cash deposit is provided or the commission determines that the bond, letter of credit, or cash deposit previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section.

SECTION 8__ .06. Section 91.109(b), Natural Resources Code, as effective September 1, 2004, is amended to read as follows:

(b) In addition to the financial security requirements of Subsection (a) and Section 91.104(b), a person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is involved in activities other than the ownership or operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 according to the following schedule ~~[in an amount equal to]:~~

(1) no bond, letter of credit, or cash deposit if the person is a:

- (A) local distribution company;
- (B) gas marketer;
- (C) crude oil nominator;
- (D) first purchaser;
- (E) well servicing company;
- (F) survey company;
- (G) saltwater hauler;
- (H) gas nominator;
- (I) gas purchaser; or
- (J) well plugger ~~[\$250,000]; or~~

(2) a bond, letter of credit, or cash deposit in an amount not to exceed \$25,000 if the person is involved in an activity that is not associated with the ownership or operation of wells and is not listed in Subdivision (1) ~~[a lesser amount determined by the commission if the person is able to demonstrate that the risk associated with an operation or group of operations warrants a lesser amount].~~

SECTION 8__ .07. Sections 10, 18, 20, 22, 24, and 27, Chapter 1233, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 8__ .08. The changes in law made by this article apply only to a person required to file a bond or alternate form of financial security under Section 91.103 or 91.107, Natural Resources Code, on or after the effective date of this article. A person required to file a bond or alternate form of financial security under Section 91.103 or 91.107, Natural Resources Code, 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.

SECTION 8__ .09. (a) Except as provided by Subsection (b) of this section, this article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2003.

(b) Section 91.109(b), Natural Resources Code, as amended by this article, takes effect September 1, 2004.

Floor Amendment No. 37

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

Section 49.067, Water Code is amended to read as follows:

(a) A district shall contract, and be contracted with, in the name of the district.

(b) Notwithstanding any other law, a contract for technical, scientific, legal, fiscal, or other professional services must be approved by the board unless specifically delegated by board action, and terms and conditions of such contract, including the terms for payment, are subject to the decision of the board unless specifically delegated by board actions. The Board through this action cannot abrogate its fiscal responsibility.

Floor Amendment No. 38

Amend **CSSB 1952** (House committee printing) by adding the following appropriately numbered ARTICLE to PART 8 of the bill and renumbering subsequent ARTICLES in PART 8 accordingly:

ARTICLE _____. CONSTRUCTION NEAR PIPELINE

SECTION _____. Chapter 756, Health and Safety Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CONSTRUCTION AFFECTING PIPELINE

EASEMENTS AND RIGHTS-OF-WAY

Sec. 756.101. DEFINITIONS. In this subchapter:

(1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.

(2) "Constructor" means a person that builds, operates, repairs, replaces, or maintains a construction or causes a construction to be built, operated, repaired, maintained, or replaced.

(3) "Pipeline facility" means a pipeline used to transmit or distribute natural gas or to gather or transmit oil, gas, or the products of oil or gas.

Sec. 756.102. APPLICABILITY. This subchapter applies to a construction or the repair, replacement, or maintenance of a construction unless there is a written agreement, including a Texas Department of Transportation right-of-way agreement, to the contrary between the owner or operator of the affected pipeline facility and the person that places or causes a construction to be placed on the easement or right-of-way of a pipeline facility.

Sec. 756.103. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. A person may not build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given the operator of the pipeline facility and:

(1) the operator of the pipeline facility determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline facility;

(2) if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the public or pipeline facility from that risk before proceeding with the construction; or

(3) the building, repair, replacement, or maintenance is conducted under an existing written agreement.

Sec. 756.104. NO NOTICE REQUIRED IN EVENT OF NATURAL DISASTER. A person may build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility without notice if the building, repair, replacement, or maintenance is required to be done promptly by a regulated utility company because of the effects of a natural disaster.

SECTION _____. The change in law made by Subchapter G, Chapter 756, Health and Safety Code, as added by this article, applies only to an activity described by Section 756.103, Health and Safety Code, as added by this article, that is initiated on or after the effective date of this Act.

Floor Amendment No. 40

Amend **CSSB 1952** by inserting a new appropriately numbered SECTION of the bill to read as follows and by renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter C, Chapter 105, Utilities Code, is amended by adding Section 105.052 to read as follows:

Sec. 105.052. REIMBURSEMENT OF REASONABLE COSTS. (a) To the extent the regulatory authority determines the costs are reasonable, a gas utility shall reimburse the costs of an affected person or a state agency or municipality that is a party to a proceeding that results from a complaint filed against the utility under Section 105.051 if the affected person or party is wholly or partially successful in prosecuting the complaint before a regulatory authority or a court.

(b) Costs for which an affected person or a state agency or municipality may receive reimbursement under this section include any reasonable expenses related to the investigation, preparation, and prosecution of the complaint, including the reasonable costs of consultants, accountants, auditors, attorneys, and engineers.

(c) For purposes of this section, an affected person or a state agency or municipality may recover reasonable costs not yet paid because payment has been deferred pending a determination of reasonableness by the regulatory authority.

(d) Notwithstanding any other provision of this subtitle, a gas utility may not recover any amounts paid as reimbursement under this section as or through a charge to the utility's customers.

Floor Amendment No. 41

Amend **CSSB 1952** (House committee printing) in PART 8 of the bill by adding the following appropriately numbered ARTICLE to PART 8 of the bill and renumbering subsequent ARTICLES in PART 8 accordingly:

ARTICLE ____ . APPLICATION OF AIR QUALITY
PERMIT REQUIREMENTS

SECTION ____ . (a) The siting, location, and operation of a facility, as defined by Section 382.003, Health and Safety Code, for which an application for a permit to construct the facility is pending with the Texas Commission on Environmental Quality on the effective date of this article are governed by Chapter 382, Health and Safety Code, as that chapter existed on the date the application was filed.

(b) This section prevails over any conflicting Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment.

Floor Amendment No. 42

Amend **CSSB 1952** (House committee report) by adding an appropriately numbered part to the bill as follows and renumbering the parts of the bill appropriately:

PART ____ . NURSING

ARTICLE ____ . SINGLE NURSING BOARD

SECTION ____ . The heading to Chapter 301, Occupations Code, is amended to read as follows:

CHAPTER 301. ~~[REGISTERED]~~ NURSES

SECTION ____ . Section 301.002, Occupations Code, is amended by adding Subdivisions (3), (4), and (5) to read as follows:

(3) "Nurse" means a person required to be licensed under this chapter to engage in professional or vocational nursing.

(4) "Nursing" means professional or vocational nursing.

(5) "Vocational nursing" means nursing, other than professional nursing, that generally requires experience and education in biological, physical, and social sciences sufficient to qualify as a licensed vocational nurse.

SECTION ____ . Section 301.003, Occupations Code, is amended to read as follows:

Sec. 301.003. APPLICATION OF SUNSET ACT. The Board of Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, ~~2007~~ ~~[2005]~~.

SECTION ____ . Section 301.004(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided by a friend;

(2) ~~[nursing care by a licensed vocational nurse licensed under Chapter 302;~~

~~(3)]~~ nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out as a ~~[registered or professional]~~ nurse unless the person is licensed in another state;

(3) ~~(4)~~ nursing care in which treatment is solely by prayer or spiritual means;

(4) ~~(5)~~ an act performed by a person under the delegated authority ~~[control or supervision or at the instruction]~~ of a person licensed by the Texas State Board of Medical Examiners;

(5) ~~(6)~~ an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed;

(6) ~~(7)~~ the practice of nursing that is incidental to a program of study by a student enrolled in a board-approved ~~board-accredited~~ nursing education program leading to an initial license as a ~~professional~~ nurse; or

(7) ~~(8)~~ the practice of nursing by a person ~~registered nurse~~ licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:

(A) provide care to a patient being transported into, out of, or through this state;

(B) provide ~~professional~~ nursing consulting services; or

(C) attend or present a continuing nursing education program.

SECTION _____. Subchapter A, Chapter 301, Occupations Code, is amended by adding Section 301.005 to read as follows:

Sec. 301.005. OCCUPATION TAX AND FEE EXEMPTION. A vocational nurse organization that operates a nonprofit registry to enroll members to provide nursing to the public is not liable for the payment of an occupation tax or license fee unless the law imposing the tax or fee specifically imposes the tax or fee on vocational nurse organizations that operate nonprofit registries.

SECTION _____. Section 301.051(a), Occupations Code, is amended to read as follows:

(a) The Board of Nurse Examiners consists of 13 ~~nine~~ members appointed by the governor with the advice and consent of the senate as follows:

(1) six ~~registered~~ nurse members, including:

(A) one advanced practice nurse;

(B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and

(C) three vocational nurses who are not members of a nurse faculty;

(2) three members who are nurse faculty members of schools of nursing:

(A) one of whom is a nurse faculty member of a school of nursing offering a ~~the~~ baccalaureate degree program in preparing registered nurses;

(B) one of whom is a nurse faculty member of a school of nursing offering an ~~the~~ associate degree program in preparing registered nurses; and

(C) one of whom is a nurse faculty member of a ~~graduate~~ school of nursing at an institution of higher education preparing vocational ~~advanced practice~~ nurses; and

(3) four ~~(2) three~~ members who represent the public.

SECTION _____. Section 301.052(a), Occupations Code, is amended to read as follows:

(a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced ~~engaged in the~~ nursing in the role for which the member was appointed ~~profession~~ for at least three of the five years preceding the date of appointment.

SECTION _____. Section 301.054, Occupations Code, is amended to read as follows:

Sec. 301.054. TERMS. Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible ~~[one member who is a practicing registered nurse, one member who is a registered nurse engaged in nurse education, and one member who is a representative of the public]~~ expiring on January 31 of each odd-numbered year.

SECTION _____. Section 301.151, Occupations Code, is amended to read as follows:

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the board;
- (2) regulate the practice of professional nursing and vocational nursing;
- (3) establish standards of professional conduct for license holders under this chapter; and
- (4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

SECTION _____. Section 301.154(a), Occupations Code, is amended to read as follows:

(a) The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses and vocational nurses licensed by the board. In making a recommendation, the board may distinguish between nurses on the basis of special training and education.

SECTION _____. The heading to Section 301.157, Occupations Code, is amended to read as follows:

Sec. 301.157. PROGRAMS OF STUDY AND APPROVAL ~~[ACCREDITATION]~~.

SECTION _____. Sections 301.157(b), (c), and (d), Occupations Code, are amended to read as follows:

- (b) The board shall:
- (1) prescribe two programs of study to prepare vocational nurses as follows:
 - (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and
 - (B) a program conducted by a hospital;
 - (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational ~~[professional]~~ nurses;
 - (3) ~~[(2)]~~ prescribe other rules as necessary to conduct approved ~~[accredited]~~ schools of nursing and educational programs for the preparation of registered nurses or vocational ~~[professional]~~ nurses;
 - (4) approve ~~[(3) -accredit]~~ schools of nursing and educational programs that meet the board's requirements; and
 - (5) ~~[(4)]~~ deny or withdraw approval ~~[accreditation]~~ from a school of nursing or educational program that fails to meet the prescribed course of study or other standard.

(c) A program approved to prepare registered nurses ~~[The board]~~ may not be ~~[require a program that is composed of]~~ less than two academic years or more than four calendar years.

(d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of an approved ~~[accredited]~~ school of nursing or educational program.

SECTION _____. Section 301.158, Occupations Code, is amended to read as follows:

Sec. 301.158. DISSEMINATION OF INFORMATION. The board shall disseminate, at least twice a year and at other times the board determines necessary, information that is of significant interest to ~~[professional]~~ nurses and employers of ~~[professional]~~ nurses in this state, including summaries of final disciplinary action taken against ~~[registered]~~ nurses by the board since its last dissemination of information.

SECTION _____. Section 301.251, Occupations Code, is amended to read as follows:

Sec. 301.251. LICENSE REQUIRED. (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse";

(2) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or

(3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

(c) This section does not apply to a person entitled to practice professional nursing or vocational nursing in this state under Chapter 304, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001.

SECTION _____. Section 301.252, Occupations Code, is amended to read as follows:

Sec. 301.252. LICENSE APPLICATION. (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant ~~[has]~~:

(1) has good professional character; and

(2) has successfully completed an approved ~~[accredited]~~ program of professional or vocational nursing education.

(b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

(1) a professional nursing school approved by the board; or

(2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

SECTION _____. Section 301.253(c), Occupations Code, is amended to read as follows:

(c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

SECTION _____. Section 301.256, Occupations Code, is amended to read as follows:

Sec. 301.256. ISSUANCE OF LICENSE. If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the board under that section, the board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the board's presiding officer and the executive director and attested by the board's seal.

SECTION _____. Sections 301.257(a) and (g), Occupations Code, are amended to read as follows:

(a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; and

(2) has reason to believe that the person is ineligible for the license.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

SECTION _____. Sections 301.258(a), (d), and (f), Occupations Code, are amended to read as follows:

(a) Pending the results of a licensing examination, the board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.

(d) The board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the board necessary for:

(1) renewal of an expired license;

(2) reactivation of an inactive license; or

(3) reissuance of a suspended, revoked, or surrendered license.

(f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the board as a condition of issuing the permit.

SECTION _____. Section 301.259, Occupations Code, is amended to read as follows:

Sec. 301.259. RECIPROCAL LICENSE BY ENDORSEMENT FOR CERTAIN FOREIGN APPLICANTS. On payment of a fee established by the board, the board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

SECTION _____. Section 301.260(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the board:

(1) an endorsement fee as determined by the board and a completed sworn application in the form prescribed by the board;

(2) evidence that the person possessed, at the time of initial licensing as a ~~registered~~ nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and

(3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

SECTION _____. Sections 301.261(a), (c), and (e), Occupations Code, are amended to read as follows:

(a) The board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.

(c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

(e) The board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use, as applicable, the title "Registered Nurse Retired," ~~or~~ "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired."

SECTION _____. Section 301.301(f), Occupations Code, is amended to read as follows:

(f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

SECTION _____. Section 301.302(a), Occupations Code, is amended to read as follows:

(a) The board may renew without examination the expired license of a person who was licensed to practice professional nursing or vocational nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

SECTION _____. Section 301.304(a), Occupations Code, is amended to read as follows:

(a) As part of any continuing education requirements under Section 301.303, a registered nurse ~~[license holder]~~ shall participate in not less than two hours of continuing education relating to hepatitis C. This subsection applies only to a registered nurse ~~[license holder]~~ who renews a license on or after June 1, 2002.

SECTION _____. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.305 to read as follows:

Sec. 301.305. BIOTERRORISM RESPONSE COMPONENT IN CONTINUING EDUCATION. (a) As part of continuing education requirements under Section 301.303, a license holder shall participate during each two-year licensing period in at least two hours of continuing education relating to preparing for, reporting medical events resulting from, and responding to the consequences of an incident of bioterrorism.

(b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).

(c) A license holder who does not comply with the continuing education required under Subsection (a) is subject only to one or both of the following sanctions:

(1) completion of the instruction in a period set by the board of 30 days or less; or

(2) an administrative penalty imposed under Subchapter K.

(d) A license holder who fails to comply with a sanction imposed under Subsection (c) is subject to any sanction imposed under Section 301.453 or Subchapter K.

(e) The board, in consultation with the Texas Department of Health, shall adopt rules establishing the content of the continuing education required under Subsection (a). The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

(f) The board may divide the content of the continuing education required under Subsection (a) into one-hour segments and may require that those segments be taken in a certain sequence.

(g) This section expires September 1, 2007.

SECTION _____. Section 301.351, Occupations Code, is amended to read as follows:

Sec. 301.351. DESIGNATIONS. (a) A person who holds a license as a registered nurse under this chapter:

(1) is referred to as a registered nurse; and

(2) may use the abbreviation "R.N."

(b) A person who holds a license as a vocational nurse under this chapter:

(1) is referred to as a licensed vocational nurse or vocational nurse; and

(2) may use the abbreviation "L.V.N." or "V.N."

(c) While on duty providing direct care to a patient, each licensed registered nurse shall wear an insignia identifying the nurse as a registered nurse and each licensed vocational nurse shall wear an insignia identifying the nurse as a vocational nurse.

SECTION _____. Sections 301.352(a) and (c), Occupations Code, are amended to read as follows:

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a [registered] nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

- (1) constitutes grounds for reporting the nurse to the board; or
- (2) is a violation of this chapter or a rule of the board.

(c) A [registered] nurse's rights under this section may not be nullified by a contract.

SECTION _____. Section 301.401, Occupations Code, is amended to read as follows:

Sec. 301.401. GROUNDS FOR REPORTING [REGISTERED] NURSE. The following are grounds for reporting a [registered] nurse under Section 301.402, 301.403, 301.405, or 301.407:

- (1) unnecessary or likely exposure by the [registered] nurse of a patient or other person to a risk of harm;
- (2) unprofessional conduct by the [registered] nurse;
- (3) failure by the [registered] nurse to adequately care for a patient;
- (4) failure by the [registered] nurse to conform to the minimum standards of acceptable professional nursing practice; or
- (5) impairment or likely impairment of the [registered] nurse's practice by chemical dependency.

SECTION _____. Section 301.402, Occupations Code, is amended to read as follows:

Sec. 301.402. DUTY OF [REGISTERED] NURSE TO REPORT. (a) In this section:

(1) "Nursing [~~Professional nursing~~] educational program" means a board-approved [board-accredited] educational program leading to initial licensure as a registered nurse or vocational nurse.

(2) "Nursing [~~Professional nursing~~] student" means an individual who is enrolled in a professional nursing or vocational nursing educational program.

(b) A [registered] nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

(1) another [registered] nurse is subject to a ground for reporting under Section 301.401; or

(2) the ability of a [professional] nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(c) In a written, signed report to the appropriate licensing board, a ~~[registered]~~ nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing nursing ~~[professional]~~ practice.

(d) A report by a ~~[registered]~~ nurse under Subsection (b) must:

- (1) be written and signed; and
- (2) include the identity of the ~~[registered]~~ nurse or student and any additional information required by the board.

(e) A ~~[registered]~~ nurse may make a report required under Subsection (b)(2) to the ~~[professional]~~ nursing educational program in which the student is enrolled instead of reporting to the board.

SECTION _____. Section 301.403, Occupations Code, is amended to read as follows:

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. A ~~[professional]~~ nursing peer review committee operating under Chapter 303 that has a ground for reporting a ~~[registered]~~ nurse under Section 301.401 shall file with the board a written, signed report that includes:

- (1) the identity of the nurse;
- (2) a description of any corrective action taken against the nurse;
- (3) a statement whether the ~~[professional]~~ nursing peer review committee recommends that the board take formal disciplinary action against the nurse; and
- (4) any additional information the board requires.

SECTION _____. Section 301.404, Occupations Code, is amended to read as follows:

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. (a) In this section, "~~[professional]~~ nursing educational program" and "~~[professional]~~ nursing student" have the meanings assigned by Section 301.402(a).

(b) A ~~[professional]~~ nursing educational program that has reasonable cause to suspect that the ability of a ~~[professional]~~ nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

SECTION _____. Section 301.405, Occupations Code, is amended to read as follows:

Sec. 301.405. DUTY OF PERSON EMPLOYING ~~[REGISTERED]~~ NURSE TO REPORT. (a) This section applies only to a person who employs, hires, or contracts for the services of a ~~[registered]~~ nurse, including:

- (1) a health care facility, including a hospital, health science center, nursing home, or home health agency;
- (2) a state agency;
- (3) a political subdivision;
- (4) a school of ~~[professional]~~ nursing; and
- (5) a temporary nursing service.

(b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a ~~[registered]~~ nurse because a ground under Section 301.401 exists to report the nurse shall report in writing to the board the identity of the nurse and any additional information the board requires.

(c) Except as provided by Subsection (g), each ~~[Each]~~ person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more ~~[registered]~~ nurses shall develop a written plan for identifying and reporting a ~~[registered]~~ nurse in its service against whom a ground under Section 301.401 exists. The plan must include an appropriate process for the review by a ~~[professional]~~ nursing peer review committee established and operated under Chapter 303 of any incident reportable under this section and for the affected nurse to submit rebuttal information to that committee. Review by the committee is only advisory.

(d) The review by the peer review committee must include a determination as to whether a ground under Section 301.401 exists to report the ~~[registered]~~ nurse undergoing review. The peer review committee's determination must be included in the report made to the board under Subsection (b).

(e) The requirement that a report to the board be reviewed by a ~~[professional]~~ nursing peer review committee:

(1) applies only to a required report; and

(2) does not subject a person's administrative decision to discipline a ~~[registered]~~ nurse to the peer review process or prevent a person from taking disciplinary action before review by the peer review committee is conducted.

(f) The board shall enter into memoranda of understanding with each state agency that licenses, registers, or certifies a health care facility or agency or surveys that facility or agency with respect to ~~[professional]~~ nursing care as to how that state agency can promote compliance with Subsection (c).

(g) A person is not required to develop a written plan under Subsection (c) for peer review of:

(1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or

(2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

SECTION _____. Section 301.406, Occupations Code, is amended to read as follows:

Sec. 301.406. DUTY OF CERTAIN PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS TO REPORT. A professional association of ~~[registered]~~ nurses or an organization that conducts a certification or accreditation program for ~~[registered]~~ nurses and that expels, decertifies, or takes any other substantive disciplinary action, as defined by the board, against a ~~[registered]~~ nurse as a result of the nurse's failure to conform to the minimum standards of acceptable ~~[professional]~~ nursing practice shall report in writing to the board the identity of the nurse and any additional information the board requires.

SECTION _____. Section 301.407, Occupations Code, is amended to read as follows:

Sec. 301.407. DUTY OF STATE AGENCY TO REPORT. (a) This section applies only to a state agency that:

(1) licenses, registers, or certifies:

- (A) a hospital;
- (B) a nursing home;
- (C) a health science center;
- (D) a home health agency; or
- (E) another health care facility or agency; or

(2) surveys a facility or agency listed in Subdivision (1) regarding the quality of ~~[professional]~~ nursing care provided by the facility or agency.

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe a ground for reporting a ~~[registered]~~ nurse exists under Section 301.401 shall report in writing to the board the identity of that ~~[registered]~~ nurse.

SECTION _____. Section 301.408, Occupations Code, is amended to read as follows:

Sec. 301.408. DUTY OF ~~[PROFESSIONAL]~~ LIABILITY INSURER TO REPORT. (a) Each insurer that provides to a ~~[registered]~~ nurse ~~[professional]~~ liability insurance that covers claims arising from providing or failing to provide ~~[professional]~~ nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data must be provided for:

(1) a complaint filed in court against a ~~[registered]~~ nurse that seeks damages related to the nurse's conduct in providing or failing to provide ~~[professional]~~ nursing care; and

(2) a settlement of a claim or lawsuit made on behalf of a nurse.

(c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the board:

(1) the name of the ~~[registered]~~ nurse against whom the claim is filed;

(2) the policy number;

(3) the policy limits;

(4) a copy of the petition;

(5) a copy of the answer; and

(6) other relevant information known by the insurer, as required by the board.

(d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured ~~[registered]~~ nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:

(1) whether an appeal has been taken from the judgment and by which party;

(2) the amount of the settlement or judgment against the nurse; and

(3) other relevant information known by the insurer, as required by the board.

(e) A ~~registered~~ nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide ~~professional~~ nursing care and the nurse:

- (1) does not carry or is not covered by ~~professional~~ liability insurance; or
- (2) is insured by a nonadmitted carrier.

SECTION _____. Section 301.409(a), Occupations Code, is amended to read as follows:

(a) The attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

(1) a person known to be a ~~registered~~ nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:

- (A) a felony;
- (B) a misdemeanor involving moral turpitude;
- (C) a violation of a state or federal narcotics or controlled substance

law; or

(D) an offense involving fraud or abuse under the Medicare or Medicaid program; or

(2) a court finds that a ~~registered~~ nurse is mentally ill or mentally incompetent.

SECTION _____. Section 301.410, Occupations Code, is amended to read as follows:

Sec. 301.410. REPORT REGARDING IMPAIRMENT BY CHEMICAL DEPENDENCY OR MENTAL ILLNESS. A person who is required to report a ~~registered~~ nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, instead of reporting to the board or requesting review by a ~~professional~~ nursing peer review committee.

SECTION _____. Section 301.414, Occupations Code, is amended to read as follows:

Sec. 301.414. NOTICE AND REVIEW OF REPORT. (a) The board shall notify each ~~registered~~ nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.

(b) The ~~registered~~ nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The board may not reveal the identity of the person making or signing the report.

SECTION _____. Section 301.415(a), Occupations Code, is amended to read as follows:

(a) A ~~registered~~ nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the board.

SECTION _____. Section 301.416(b), Occupations Code, is amended to read as follows:

(b) If the board determines that the reported conduct does not indicate that the continued practice of [professional] nursing by the nurse poses a risk of harm to a client or other person, the board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The board shall:

- (1) maintain a record of the report; and
- (2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

SECTION _____. Sections 301.418(b) and (c), Occupations Code, are amended to read as follows:

(b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide [professional] nursing services may not be made available in a liability action for:

- (1) discovery;
- (2) court subpoena; or
- (3) introduction into evidence.

(c) A person is not prevented from taking disciplinary action against a [registered] nurse by:

- (1) the filing of a report under this subchapter with the board;
- (2) an investigation by the board; or
- (3) the disposition of a matter by the board.

SECTION _____. Sections 301.419(a), (c), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "minor incident" means conduct that does not indicate that the continuing practice of [professional] nursing by an affected nurse poses a risk of harm to a client or other person.

(c) If the board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the [registered] nurse's file.

(d) The board shall inform, in the manner the board determines appropriate, [registered] nurses, facilities, agencies, and other persons of their duty to report under this subchapter.

SECTION _____. Section 301.451, Occupations Code, is amended to read as follows:

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

- (1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;
- (2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;
- (3) practice [professional] nursing under a diploma, license, or record that was:

- (A) obtained unlawfully or fraudulently; or
- (B) signed or issued unlawfully or under false representation; or

(4) practice [professional] nursing in a period in which the person's license is suspended or revoked.

SECTION _____. Sections 301.452(a) and (b), Occupations Code, are amended to read as follows:

(a) In this section, "intemperate use" includes practicing [~~professional~~] nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of [~~professional~~] nursing;

(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction;

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable [~~professional~~] nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

SECTION _____. Sections 301.453(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

(1) denial of the person's application for a license, license renewal, or temporary permit;

(2) issuance of a written warning;

(3) administration of a public reprimand;

(4) limitation or restriction of the person's license, including:

(A) limiting to or excluding from the person's practice one or more specified activities of [~~professional~~] nursing; or

(B) stipulating periodic board review;

(5) suspension of the person's license for a period not to exceed five years;

- (6) revocation of the person's license; or
- (7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

- (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;
- (2) participate in a program of education or counseling prescribed by the board;
- (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board; or
- (4) perform public service the board considers appropriate.

(c) The board may probate any penalty imposed on a ~~registered~~ nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

SECTION _____. Section 301.455(a), Occupations Code, is amended to read as follows:

(a) The license of a ~~registered~~ nurse shall be temporarily suspended on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the ~~registered~~ nurse would constitute a continuing and imminent threat to the public welfare.

SECTION _____. Section 301.457, Occupations Code, is amended to read as follows:

Sec. 301.457. COMPLAINT AND INVESTIGATION. (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a ~~registered~~ nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a ~~registered~~ nurse that requires a determination of ~~professional~~ nursing competency shall be reviewed by a board member, consultant, or employee with a ~~professional~~ nursing background the board considers sufficient.

(c) On the filing of a complaint, the board:

- (1) may conduct a preliminary investigation into the identity of the ~~registered~~ nurse named or described in the complaint;
- (2) shall make a timely and appropriate preliminary investigation of the complaint; and
- (3) may issue a warning or reprimand to the ~~registered~~ nurse.

(d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the ~~registered~~ nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the ~~registered~~ nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) The board shall conduct an investigation of the complaint to determine:

(1) whether the [registered] nurse's continued practice of [professional] nursing poses a risk of harm to clients or other persons; and

(2) whether probable cause exists that a [registered] nurse committed an act listed in Section 301.452(b) or that violates other law.

SECTION _____. Sections 301.458(a) and (c), Occupations Code, are amended to read as follows:

(a) Unless there is an agreed disposition of the complaint under Section 301.463, and if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall initiate proceedings by filing formal charges against the [registered] nurse.

(c) A copy of the formal charge shall be served on the [registered] nurse or the nurse's counsel of record.

SECTION _____. Section 301.459(b), Occupations Code, is amended to read as follows:

(b) In any hearing under this section, a [registered] nurse is entitled to appear in person or by counsel.

SECTION _____. Section 301.462, Occupations Code, is amended to read as follows:

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a [registered] nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

SECTION _____. Section 301.463(b), Occupations Code, is amended to read as follows:

(b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of [professional] nursing.

SECTION _____. Section 301.466, Occupations Code, is amended to read as follows:

Sec. 301.466. CONFIDENTIALITY. (a) A complaint and investigation concerning a [registered] nurse under this subchapter and all information and material compiled by the board in connection with the complaint and investigation are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the nurse;

(2) a [professional] nursing licensing or disciplinary board in another jurisdiction;

(3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a [~~registered~~] nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SECTION _____. Section 301.467(a), Occupations Code, is amended to read as follows:

(a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

SECTION _____. Section 301.468(a), Occupations Code, is amended to read as follows:

(a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing; or

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board.

SECTION _____. Section 301.469, Occupations Code, is amended to read as follows:

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a [~~registered~~] nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

ARTICLE _____. CONFORMING AMENDMENTS FOR SINGLE NURSING BOARD

SECTION _____. Section 84.003(5), Civil Practice and Remedies Code, is amended to read as follows:

(5) "Volunteer health care provider" means an individual who voluntarily provides health care services without compensation or expectation of compensation and who is:

(A) an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(B) a retired physician who is eligible to provide health care services, including a retired physician who is licensed but exempt from paying the required annual registration fee under Section 156.002, Occupations Code;

(C) a physician assistant licensed under Chapter 204, Occupations Code, or a retired physician assistant who is eligible to provide health care services under the law of this state;

(D) a registered nurse, including an advanced nurse practitioner, or vocational nurse, licensed under Chapter 301, Occupations Code, or a retired vocational nurse or registered nurse, including a retired advanced nurse practitioner, who is eligible to provide health care services under the law of this state;

(E) [~~a licensed vocational nurse licensed under Chapter 302, Occupations Code, or a retired licensed vocational nurse who is eligible to provide health care services under the law of this state;~~

[~~(F)~~] a pharmacist licensed under Subtitle J, Title 3, Occupations Code, or a retired pharmacist who is eligible to provide health care services under the law of this state;

(F) [~~(G)~~] a podiatrist licensed under Chapter 202, Occupations Code, or a retired podiatrist who is eligible to provide health care services under the law of this state;

(G) [~~(H)~~] a dentist licensed under Subtitle D, Title 3, Occupations Code, or a retired dentist who is eligible to provide health care services under the law of this state;

(H) [~~(I)~~] a dental hygienist licensed under Subtitle D, Title 3, Occupations Code, or a retired dental hygienist who is eligible to provide health care services under the law of this state; or

(I) [~~(J)~~] an optometrist or therapeutic optometrist licensed under Chapter 351, Occupations Code, or a retired optometrist or therapeutic optometrist who is eligible to provide health care services under the law of this state.

SECTION _____. Section 61.657(b), Education Code, is amended to read as follows:

(b) The board shall appoint an eight-member advisory committee to advise the board concerning assistance provided under this subchapter to vocational nursing students. The advisory committee consists of:

- (1) a chair named by the board;
- (2) one representative named by the Licensed Vocational Nurses Association of Texas;
- (3) one representative named by the Texas Organization of Nurse Executives;
- (4) one representative named by the Board of [~~Vocational~~] Nurse Examiners;
- (5) two representatives of vocational nursing educational programs named by the Texas Association of Vocational Nurse Educators;
- (6) one representative named by the Texas Health Care Association; and
- (7) one representative named by the Texas Association of Homes for the Aging.

SECTION _____. Section 232.002, Family Code, is amended to read as follows:
Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. The following are licensing authorities subject to this chapter:

- (1) Department of Agriculture;
- (2) Texas Commission on Alcohol and Drug Abuse;
- (3) Texas Alcoholic Beverage Commission;
- (4) Texas Appraiser Licensing and Certification Board;

- (5) Texas Board of Architectural Examiners;
- (6) State Board of Barber Examiners;
- (7) Texas Board of Chiropractic Examiners;
- (8) Comptroller of Public Accounts;
- (9) Texas Cosmetology Commission;
- (10) Court Reporters Certification Board;
- (11) State Board of Dental Examiners;
- (12) Texas State Board of Examiners of Dietitians;
- (13) Texas Funeral Service Commission;
- (14) Texas Department of Health;
- (15) Texas Department of Human Services;
- (16) Texas Board of Professional Land Surveying;
- (17) Texas Department of Licensing and Regulation;
- (18) Texas State Board of Examiners of Marriage and Family Therapists;
- (19) Texas State Board of Medical Examiners;
- (20) Midwifery Board;
- (21) Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];
- (22) Board of Nurse Examiners;
- (23) Texas Board of Occupational Therapy Examiners;
- (24) Texas Optometry Board;
- (25) Parks and Wildlife Department;
- (26) Texas State Board of Examiners of Perfusionists;
- (27) Texas State Board of Pharmacy;
- (28) Texas Board of Physical Therapy Examiners;
- (29) Texas State Board of Plumbing Examiners;
- (30) Texas State Board of Podiatric Medical Examiners;
- (31) Polygraph Examiners Board;
- (32) Texas Commission on Private Security;
- (33) Texas State Board of Examiners of Professional Counselors;
- (34) Texas Board of Professional Engineers;
- (35) Department of Protective and Regulatory Services;
- (36) Texas State Board of Examiners of Psychologists;
- (37) Texas State Board of Public Accountancy;
- (38) Department of Public Safety of the State of Texas;
- (39) Public Utility Commission of Texas;
- (40) Railroad Commission of Texas;
- (41) Texas Real Estate Commission;
- (42) State Bar of Texas;
- (43) Texas State Board of Social Worker Examiners;
- (44) State Board of Examiners for Speech-Language Pathology and Audiology;
- (45) Texas Structural Pest Control Board;
- (46) Board of Tax Professional Examiners;
- (47) Secretary of State;
- (48) Supreme Court of Texas;

- (49) Texas Transportation Commission;
- (50) State Board of Veterinary Medical Examiners;
- (51) ~~Board of Vocational Nurse Examiners;~~
- ~~(52)~~ Texas Ethics Commission;
- ~~(52)~~ ~~(53)~~ Advisory Board of Athletic Trainers;
- ~~(53)~~ ~~(54)~~ State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments;
- ~~(54)~~ ~~(55)~~ Texas Board of Licensure for Professional Medical Physicists;
- ~~(55)~~ ~~(56)~~ Texas Department of Insurance;
- ~~(56)~~ ~~(57)~~ Texas Board of Orthotics and Prosthetics;
- ~~(57)~~ ~~(58)~~ savings and loan commissioner;
- ~~(58)~~ ~~(59)~~ Texas Juvenile Probation Commission; and
- ~~(59)~~ ~~(60)~~ Texas Lottery Commission under Chapter 466, Government

Code.

SECTION _____. Section 487.101(3), Government Code, is amended to read as follows:

(3) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code;

(B) a nonprofit, independent institution approved under Section 61.222, Education Code; or

(C) a nonprofit, health-related school or program accredited by the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Board of Nurse Examiners, ~~the Board of Vocational Nurse Examiners,~~ or, in the case of allied health, an accrediting body recognized by the United States Department of Education.

SECTION _____. Section 487.151(2), Government Code, is amended to read as follows:

(2) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003, Education Code;

(B) a nonprofit, independent institution approved under Section 61.222, Education Code; or

(C) a nonprofit, health-related school or program accredited by the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Board of Nurse Examiners, ~~the Board of Vocational Nurse Examiners,~~ or, in the case of allied health, an accrediting body recognized by the United States Department of Education.

SECTION _____. Section 531.051(f), Government Code, is amended to read as follows:

(f) Section 301.251(a), Occupations Code, does not apply to delivery of a service for which payment is provided under the voucher payment program developed under this section if:

(1) the person who delivers the service:

(A) has not been denied a license under Chapter 301 ~~or 302~~, Occupations Code;

(B) has not been issued a license under Chapter 301, Occupations Code, that is revoked or suspended; and

(C) provides a service listed under Subsection (h); and

(2) the consumer who receives the service:

(A) has a functional disability and the service would have been performed by the consumer, or the parent or guardian for the consumer, except for that disability; and

(B) if:

(i) the consumer is capable of training the person in the proper performance of the service, the consumer directs the person to deliver the service; or

(ii) the consumer is not capable of training the person in the proper performance of the service, the consumer's parent or guardian is capable of training the person in the proper performance of the service and directs the person to deliver the service.

SECTION _____. Section 2054.252(a), Government Code, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The following licensing authorities shall participate in the system established under Section 2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001:

- (1) State Board of Barber Examiners;
- (2) Texas Board of Chiropractic Examiners;
- (3) Texas Cosmetology Commission;
- (4) Court Reporters Certification Board;
- (5) State Board of Dental Examiners;
- (6) Texas Funeral Service Commission;
- (7) Texas Board of Professional Land Surveying;
- (8) Texas State Board of Medical Examiners;
- (9) Board of Nurse Examiners;
- (10) ~~Board of Vocational Nurse Examiners;~~
- ~~[(11)]~~ Texas Optometry Board;
- ~~[(12)]~~ ~~[(12)]~~ Texas Structural Pest Control Board;
- ~~[(13)]~~ ~~[(13)]~~ Texas State Board of Pharmacy;
- ~~[(14)]~~ ~~[(14)]~~ Executive Council of Physical Therapy and Occupational Therapy Examiners;
- ~~[(15)]~~ ~~[(15)]~~ Texas State Board of Plumbing Examiners;
- ~~[(16)]~~ ~~[(16)]~~ Texas State Board of Podiatric Medical Examiners;
- ~~[(17)]~~ ~~[(17)]~~ Board of Tax Professional Examiners;
- ~~[(18)]~~ ~~[(18)]~~ Polygraph Examiners Board;
- ~~[(19)]~~ ~~[(19)]~~ Texas State Board of Examiners of Psychologists;
- ~~[(20)]~~ ~~[(20)]~~ State Board of Veterinary Medical Examiners;
- ~~[(21)]~~ ~~[(21)]~~ Texas Real Estate Commission;
- ~~[(22)]~~ ~~[(22)]~~ Texas Appraiser Licensing and Certification Board; and
- ~~[(23)]~~ ~~[(23)]~~ Texas Department of Licensing and Regulation.

SECTION _____. Section 81.010(c), Health and Safety Code, is amended to read as follows:

(c) The council consists of one representative from each of the following agencies appointed by the executive director or commissioner of each agency:

- (1) the department;
- (2) the Texas Department of Mental Health and Mental Retardation;
- (3) the Texas Department of Human Services;
- (4) the Texas Commission on Alcohol and Drug Abuse;
- (5) the Texas Rehabilitation Commission;
- (6) the Texas Youth Commission;
- (7) the Texas Department of Criminal Justice;
- (8) the Texas Juvenile Probation Commission;
- (9) the Texas Commission for the Blind;
- (10) the Texas Commission for the Deaf and Hard of Hearing;
- (11) the Department of Protective and Regulatory Services;
- (12) the Texas Education Agency;
- (13) the Texas State Board of Medical Examiners;
- (14) the Board of Nurse Examiners;
- (15) ~~the Board of Vocational Nurse Examiners;~~
- ~~(16)~~ the State Board of Dental Examiners;
- (16) ~~(47)~~ the Health and Human Services Commission;
- (17) ~~(48)~~ the Texas Department on Aging; and
- (18) ~~(49)~~ the Texas Workforce Commission.

SECTION _____. Section 142.022, Health and Safety Code, is amended to read as follows:

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

- (1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;
- (2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;
- (3) a graduate vocational nurse holding a temporary permit issued by the Board of ~~Vocational~~ Nurse Examiners;
- (4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or
- (5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners ~~or the department and the Board of Vocational Nurse Examiners, as appropriate~~.

SECTION _____. Section 164.003(6), Health and Safety Code, is amended to read as follows:

- (6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) "~~licensed~~ vocational nurse" licensed under Chapter 301 [~~as defined by Section 302.004~~], Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

SECTION _____. Section 242.607, Health and Safety Code, is amended to read as follows:

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Board of [~~Vocational~~] Nurse Examiners;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners [~~or the department and the Board of Vocational Nurse Examiners, as appropriate~~].

SECTION _____. Section 36.132(a)(2), Human Resources Code, is amended to read as follows:

(2) "Licensing authority" means:

(A) the Texas State Board of Medical Examiners;

(B) the State Board of Dental Examiners;

(C) the Texas State Board of Examiners of Psychologists;

(D) the Texas State Board of Social Worker Examiners;

(E) the Board of Nurse Examiners;

(F) [~~the Board of Vocational Nurse Examiners;~~

~~(G)~~ the Texas Board of Physical Therapy Examiners;

(G) [~~(H)~~] the Texas Board of Occupational Therapy Examiners; or

(H) [~~(H)~~] another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

SECTION _____. Section 101.002, Occupations Code, is amended to read as follows:

Sec. 101.002. COMPOSITION OF COUNCIL. The council consists of 14 [~~15~~] members, with one member appointed by each of the following:

- (1) the Texas Board of Chiropractic Examiners;
- (2) the State Board of Dental Examiners;
- (3) the Texas Optometry Board;
- (4) the Texas State Board of Pharmacy;
- (5) the Texas State Board of Podiatric Medical Examiners;
- (6) the State Board of Veterinary Medical Examiners;
- (7) the Texas State Board of Medical Examiners;
- (8) the Board of Nurse Examiners;
- (9) the Texas State Board of Examiners of Psychologists;
- (10) [~~the Board of Vocational Nurse Examiners;~~
- [~~(11)~~] the Texas Funeral Service Commission;
- (11) [~~(12)~~] the entity that regulates the practice of physical therapy;
- (12) [~~(13)~~] the entity that regulates the practice of occupational therapy;
- (13) [~~(14)~~] the health licensing division of the Texas Department of Health;

and

- (14) [~~(15)~~] the governor's office.

SECTION _____. Section 201.003(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to a registered nurse licensed under Chapter 301, a vocational nurse licensed under Chapter 301 [~~302~~], a person who provides spinal screening services as authorized by Chapter 37, Health and Safety Code, a physical therapist licensed under Chapter 453, or a massage therapist or a massage therapy instructor qualified and registered under Chapter 455 if:

- (1) the person does not represent to the public that the person is a chiropractor or use the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name or practice; and
- (2) the person practices strictly within the scope of the license or registration held in compliance with all laws relating to the license and registration.

SECTION _____. Section 203.402, Occupations Code, is amended to read as follows:

Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may not:

- (1) except as provided by Section 203.403, use in connection with the midwife's name a title, abbreviation, or designation tending to imply that the midwife is a "registered" or "certified" midwife as opposed to one who is documented under this chapter;
- (2) advertise or represent that the midwife is a physician or a graduate of a medical school unless the midwife is licensed to practice medicine by the Texas State Board of Medical Examiners;

(3) use advertising or an identification statement that is false, misleading, or deceptive; or

(4) except as authorized by rules adopted by the Board of Nurse Examiners [~~and the Board of Vocational Nurse Examiners~~], use in combination with the term "midwife" the term "nurse" or another title, initial, or designation that implies that the midwife is licensed as a registered nurse or [~~licensed~~] vocational nurse.

SECTION _____. Section 206.253(a), Occupations Code, is amended to read as follows:

(a) This chapter does not authorize a person who holds a license issued under this chapter to engage in the practice of:

(1) medicine, as defined by Subtitle B[, Title 3, Occupations Code]; or

(2) [~~professional~~] nursing, as defined by Chapter 301[~~, Occupations Code;~~

~~or~~

[~~(3) nursing, as defined by Chapter 302, Occupations Code~~].

SECTION _____. Section 22.011(c)(3), Penal Code, is amended to read as follows:

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) [~~a licensed vocational nurse licensed under Chapter 302, Occupations Code;~~

[~~(D)~~] a physical therapist licensed under Chapter 453, Occupations Code;

[~~(D)~~] a physician assistant licensed under Chapter 204, Occupations Code; or

[~~(E)~~] a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

SECTION _____. Sections 303.001(2) and (3), Occupations Code, are amended to read as follows:

(2) "Nurse" means a registered nurse [~~licensed under Chapter 301~~] or a [~~licensed~~] vocational nurse licensed under Chapter 301 [~~302~~].

(3) "Nursing" has the meaning assigned by Section 301.002 [~~means professional nursing as defined by Chapter 301 or vocational nursing as defined by Chapter 302~~].

SECTION _____. Section 303.002(b), Occupations Code, is amended to read as follows:

(b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing [~~registered nurse~~] peer review committee. The memorandum of understanding must:

(1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing [~~registered nurse~~] peer review committee; and

(2) be adopted as a rule of the board and the agency.

SECTION _____. Sections 303.003(b) and (c), Occupations Code, are amended to read as follows:

(b) A nursing peer review committee that conducts a peer review that involves only the practice of vocational nursing must have registered nurses and ~~[licensed]~~ vocational nurses as three-fourths of its members, to the extent feasible must include ~~[licensed]~~ vocational nurses as members, and may have only registered nurses and ~~[licensed]~~ vocational nurses as voting members.

(c) A nursing peer review committee that conducts a peer review that involves the practice of both professional nursing and ~~[licensed]~~ vocational nursing:

(1) must have registered nurses and ~~[licensed]~~ vocational nurses as four-fifths of its members, with registered nurses as three-fifths of its members;

(2) to the extent feasible must include ~~[licensed]~~ vocational nurses as members; and

(3) may have only:

(A) registered nurses and ~~[licensed]~~ vocational nurses as voting members when a ~~[licensed]~~ vocational nurse is being reviewed; and

(B) registered nurses as voting members when a registered nurse is being reviewed.

SECTION _____. Section 303.005, Occupations Code, is amended by amending Subsections (a), (b), (c), (d), and (f) and adding Subsection (h) to read as follows:

(a) In this section, "duty to a patient" means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a ~~[registered]~~ nurse's ability to comply with that duty.

(b) If a person who regularly employs, hires, or otherwise contracts for the services of at least 10 ~~[registered]~~ nurses requests one of those nurses to engage in conduct that the nurse believes violates a ~~[registered]~~ nurse's duty to a patient, the nurse may request, on a form produced by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a ~~[registered]~~ nurse's duty to a patient.

(c) A ~~[registered]~~ nurse who in good faith requests a peer review determination under Subsection (b):

(1) may not be disciplined or discriminated against for making the request;

(2) may engage in the requested conduct pending the peer review;

(3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and

(4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.

(d) The determinations of the peer review committee shall be considered in a decision to discipline the nurse, but the determinations are not binding if a ~~[registered]~~ nurse administrator believes in good faith that the peer review committee has incorrectly determined a ~~[registered]~~ nurse's duty.

(f) A ~~[registered]~~ nurse's rights under this section may not be nullified by a contract.

(h) A person is not required to provide a peer review determination under this section for a request made by:

(1) a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses; or

(2) a vocational nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five vocational nurses.

SECTION _____. Section 304.002, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.002. ADMINISTRATION OF COMPACT. The executive director [~~directors~~] of the Board of Nurse Examiners is [~~and the Board of Vocational Nurse Examiners are~~] the Nurse Licensure Compact administrator [~~administrators~~] for this state. [~~The executive director of the Board of Nurse Examiners is responsible for administering matters relating to registered nurses. The executive director of the Board of Vocational Nurse Examiners is responsible for administering matters relating to licensed vocational nurses.~~]

SECTION _____. Section 304.003, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.003. RULES. The Board of Nurse Examiners [~~and the Board of Vocational Nurse Examiners~~] may adopt rules necessary to implement this chapter.

SECTION _____. Sections 304.004(b) and (c), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Board of Nurse Examiners [~~or the Board of Vocational Nurse Examiners~~].

(c) The Board of Nurse Examiners has [~~and the Board of Vocational Nurse Examiners have~~] the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

SECTION _____. Section 304.005, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.005. ENFORCEMENT. The Board of Nurse Examiners is [~~and the Board of Vocational Nurse Examiners are~~] the state agency [~~agencies~~] responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

SECTION _____. Section 304.006(a), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) On request and payment of a reasonable fee, the Board of Nurse Examiners [~~and the Board of Vocational Nurse Examiners~~] shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article 7 of the Nurse Licensure Compact.

SECTION _____. Section 304.007, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.007. ACCESS TO PRACTICE-RELATED INFORMATION. Practice-related information provided by the Board of Nurse Examiners [~~or the Board of Vocational Nurse Examiners~~] to registered or vocational nurses licensed by this state shall be made available by the board [~~boards~~] on request and at a reasonable cost to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.

SECTION _____. Section 304.008(a), Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) In reporting information to the coordinated licensure information system under Article 7 of the Nurse Licensure Compact, the Board of Nurse Examiners [~~and the Board of Vocational Nurse Examiners~~] may disclose personally identifiable information about the nurse, including social security number.

SECTION _____. Section 304.009, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 304.009. WITHDRAWAL FROM COMPACT. (a) The governor may withdraw this state from the Nurse Licensure Compact if the Board of Nurse Examiners [~~or the Board of Vocational Nurse Examiners~~] notifies the governor that a state that is party to the compact changed, after January 1, 1999, the state's requirements for licensing a nurse and that the state's requirements, as changed, are substantially lower than the requirements for licensing a nurse in this state.

(b) The governor may completely withdraw this state from the Nurse Licensure Compact or may limit withdrawal to the application of the compact to registered nurses or [~~licensed~~] vocational nurses.

SECTION _____. Section 304.001(3), Occupations Code, as added by Chapter 1489, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(3) "Nurse" means a registered nurse or a [~~licensed~~] vocational nurse.

ARTICLE _____. TEMPORARY LICENSE SUSPENSIONS

SECTION _____. Sections 301.455(c) and (d), Occupations Code, are amended to read as follows:

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 30th [~~14th~~] day after the date of the temporary suspension to determine, de novo, whether probable cause exists that a continuing and imminent threat to the public welfare exists.

(d) A final hearing on the matter shall be held not later than the 91st [~~61st~~] day after the date of the temporary suspension.

SECTION _____. This article applies only to a hearing held on or after the effective date of this part.

ARTICLE _____. CRIMINAL HISTORY RECORDS

SECTION _____. Subchapter D, Chapter 301, Occupations Code, is amended by adding Section 301.1615 to read as follows:

Sec. 301.1615. OBTAINING CRIMINAL HISTORY RECORD INFORMATION; HEARING. (a) In addition to the information to which the board is entitled under Section 411.125, Government Code, the board may request and receive criminal history record information from the Federal Bureau of Investigation as provided by Section 411.087, Government Code.

(b) Criminal history record information received by the board may be used only by the board and is privileged. The information may not be disclosed to any person other than:

(1) as required under a court order; or

(2) to a nursing board that is a member of the nurse licensure compact under Chapter 304.

(c) If, on the basis of criminal history record information obtained by the board, the board proposes to deny an application for a license, refuse to renew a license, or suspend or revoke a license or temporary permit, the applicant or license holder is entitled to a hearing under Section 301.454.

SECTION _____. Subchapter F, Chapter 301, Occupations Code, is amended by adding Section 301.2511 to read as follows:

Sec. 301.2511. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE APPLICANTS. (a) An applicant for a registered nurse license must submit to the board, in addition to satisfying the other requirements of this subchapter, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the board is conditioned on the board obtaining the applicant's criminal history record information under this section.

(c) The board by rule may develop a system for initiating the process of obtaining criminal history record information for applicants for a license under this chapter by requiring persons who enroll or plan to enroll in an educational program that prepares a person for a license as a registered nurse to submit to the board a set of fingerprints that meets the requirements of Subsection (a). The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

SECTION _____. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.3011 to read as follows:

Sec. 301.3011. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) The board may require that an applicant for renewal of an unexpired license submit to the board, in addition to satisfying any other requirements for license renewal, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may refuse to renew the license of a person who does not comply with the requirement of Subsection (a). Renewal of a license by the board is conditioned on the board obtaining the person's criminal history record information under this section.

SECTION _____. Section 411.125(a), Government Code, is amended to read as follows:

(a) The Board of Nurse Examiners is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who:

- (1) is an applicant for or the holder of a license issued by ~~from~~ the board;
- (2) has requested a determination of eligibility for a license from the board;

or

(3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

SECTION _____. The change in law made by this article applies only to an application for the issuance or renewal of a license that is filed with the Board of Nurse Examiners on or after the effective date of this part. An application for the issuance or renewal of a license that is filed before the effective date of this part is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

ARTICLE _____. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION _____. On February 1, 2004, the following laws are repealed:

- (1) Chapter 302, Occupations Code; and
- (2) Section 303.002(a), Occupations Code.

SECTION _____. (a) This section provides for the appointment of members to the Board of Nurse Examiners for terms beginning February 1, 2004, to establish the staggering of members' terms in accordance with Sections 301.051 and 301.054, Occupations Code, as amended by this part.

(b) The term of one of two registered nurse members of the Board of Nurse Examiners scheduled to expire in 2007 expires January 31, 2004. Those members shall agree or draw lots to determine whose term expires on that date. Effective February 1, 2004, the governor shall appoint one person who is a nurse faculty member of a school of nursing offering vocational nurse training to fill that vacancy and to serve a term expiring January 31, 2007.

(c) Effective February 1, 2004, the governor shall appoint one person who shall serve as a public member of the Board of Nurse Examiners with a term expiring January 31, 2009, as provided under Section 301.051, Occupations Code, as amended by this part.

(d) Effective February 1, 2004, the governor shall appoint three additional members to the Board of Nurse Examiners to serve in the position of vocational nurse, as provided under Section 301.051, Occupations Code, as amended by this part. In appointing those members, the governor shall appoint one person to a term expiring January 31, 2005, one to a term expiring January 31, 2007, and one to a term expiring January 31, 2009.

SECTION _____. (a) On February 1, 2004:

(1) all functions and activities performed by the Board of Vocational Nurse Examiners immediately before that date are transferred to the Board of Nurse Examiners;

(2) a rule or form adopted by the Board of Vocational Nurse Examiners is a rule or form of the Board of Nurse Examiners and remains in effect until amended or replaced by that board;

(3) a reference in law or an administrative rule to the Board of Vocational Nurse Examiners means the Board of Nurse Examiners;

(4) a complaint, investigation, or other proceeding before the Board of Vocational Nurse Examiners is transferred without change in status to the Board of Nurse Examiners, and the Board of Nurse Examiners assumes, as appropriate and without a change in status, the position of the Board of Vocational Nurse Examiners in an action or proceeding to which the Board of Vocational Nurse Examiners is a party;

(5) all money, contracts, leases, property, and obligations of the Board of Vocational Nurse Examiners are transferred to the Board of Nurse Examiners;

(6) a license issued by the Board of Vocational Nurse Examiners is a license of the Board of Nurse Examiners;

(7) an employee of the Board of Vocational Nurse Examiners, except for the Board of Vocational Nurse Examiners' executive director, becomes an employee of the Board of Nurse Examiners; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Board of Vocational Nurse Examiners is transferred to the Board of Nurse Examiners.

(b) Before February 1, 2004, the Board of Vocational Nurse Examiners may agree with the Board of Nurse Examiners to transfer any property of the Board of Vocational Nurse Examiners to the Board of Nurse Examiners to implement the transfer required by this section.

(c) In the period beginning on the effective date of this Act and ending on January 31, 2004, the Board of Vocational Nurse Examiners shall continue to perform functions and activities under Chapter 302, Occupations Code, or other law as if that chapter had not been repealed or other law had not been amended by this part, and the former law is continued in effect for that purpose.

SECTION _____. (a) Not later than June 1, 2004, the Board of Nurse Examiners shall adopt the rules required by Section 301.305, Occupations Code, as added by this part.

(b) A license holder may not be required to complete the continuing education requirements imposed by Section 301.305, Occupations Code, as added by this part, before June 1, 2006.

(c) As part of the next review conducted under Section 301.003, Occupations Code, as amended by this part, the Sunset Advisory Commission shall evaluate the necessity and effectiveness of mandating continuing education courses for nurses on specific topics.

SECTION _____. 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.

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

(b) Article ____ of this part (Conforming Amendments For Single Nursing Board) takes effect February 1, 2004.

Floor Amendment No. 43

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

SECTION _____. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.063 to read as follows:

Sec. 531.063. JOINT PURCHASING OF PRESCRIPTION DRUGS AND OTHER MEDICATIONS. (a) Notwithstanding any other law, the commission and each health and human services agency authorized by the commission may enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program or another government-funded health program in this state.

(b) The commission shall adopt procedures applicable to an agreement and joint purchase authorized by this section. The procedures must ensure that this state receives:

(1) all prescription drugs and other medications purchased with money provided by this state; and

(2) an equitable share of any price benefits resulting from the joint bulk purchase.

(b) If before implementing any provision of this section a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

Floor Amendment No. 44

Amend **CSSB 1952** by adding a new section with the following:

SECTION 1. Section 62.053, Health and Safety Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Notwithstanding Section 62.055 and subject to Subsection (e), the Texas Department of Human Services shall assume responsibility for eligibility screening and enrollment under the child health plan and may not contract for those services with a third party administrator or other entity, if the commission, after conducting a cost-benefit analysis of requiring the department to assume responsibility for these services, determines that the department is able to:

(1) satisfy the same performance standards applicable to a third party administrator or other entity; and

(2) perform these services less expensively than a third party administrator.

(e) The Texas Department of Human Services may not assume responsibility for eligibility screening and enrollment under the child health plan before the Texas Integrated Eligibility Redesign System is developed and the child health plan is integrated into that system.

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

Floor Amendment No. 45

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to PART 1 of the bill:

ARTICLE _____. STATE AIRCRAFT POOLING BOARD

SECTION _____. The heading to Chapter 2205, Government Code, is amended to read as follows:

CHAPTER 2205. STATE-OPERATED AIRCRAFT [~~POOLING~~]

SECTION _____. Subchapter B, Chapter 2205, Government Code, is amended by adding Section 2205.0315 to read as follows:

Sec. 2205.0315. DEFINITION. In this chapter, "department" means the Department of Public Safety of the State of Texas.

SECTION _____. Section 2205.032, Government Code, is amended to read as follows:

Sec. 2205.032. TRANSPORTATION [~~CUSTODY, CONTROL, OPERATION,~~] AND MAINTENANCE. (a) The department shall maintain [~~board shall operate a pool for the custody, control, operation, and maintenance of~~] all aircraft owned or leased by the state.

(b) The department [~~board~~] may provide aircraft transportation under Section 2205.036 [~~purchase aircraft with funds appropriated for that purpose~~].

~~[(c) As part of the strategic plan that the board develops and submits under Chapter 2056, the board shall develop a long range plan for its pool of aircraft. The board shall include appropriate portions of the long range plan in its legislative appropriations request. The long range plan must include estimates of future aircraft replacement needs and other fleet management needs, including any projected need to increase or decrease the number of aircraft in the pool. In developing the long range plan, the board shall consider at a minimum for each aircraft in the pool:~~

~~[(1) how much the aircraft is used and the purposes for which it is used;~~

~~[(2) the cost of operating the aircraft and the revenue generated by the aircraft; and~~

~~[(3) the demand for the aircraft or for that type of aircraft.]~~

SECTION _____. Section 2205.034, Government Code, is amended to read as follows:

Sec. 2205.034. FACILITIES. (a) The department [~~board~~] may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the department [~~board~~] to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities.

(b) A state agency that operates an aircraft may not use a facility in Austin other than a facility operated by the department [~~board~~] for the storage, parking, fueling, or maintenance of the aircraft, whether or not the aircraft is based in Austin. In a situation the department [~~board~~] determines to be an emergency, the department [~~board~~] may authorize a state agency to use a facility in Austin other than a department [~~board~~] facility for the storage, parking, fueling, or maintenance of an aircraft.

SECTION _____. Section 2205.036, Government Code, is amended to read as follows:

Sec. 2205.036. PASSENGER TRANSPORTATION. (a) The department may ~~[board shall]~~ provide aircraft transportation, to the extent that its aircraft are available, to:

(1) state officers and employees who are traveling on official business according to the coordinated passenger scheduling system and the priority scheduling system developed as part of the aircraft operations manual under Section 2205.038;

(2) persons in the care or custody of state officers or employees described by Subdivision (1); and

(3) persons whose transportation furthers official state business.

(b) The department ~~[board]~~ may not provide aircraft transportation to a passenger if the passenger is to be transported to or from a place where the passenger:

(1) will make or has made a speech not related to official state business;

(2) will attend or has attended an event sponsored by a political party;

(3) will perform a service or has performed a service for which the passenger is to receive an honorarium, unless the passenger reimburses the board for the cost of transportation;

(4) will attend or has attended an event at which money is raised for private or political purposes; or

(5) will attend or has attended an event at which an audience was charged an admission fee to see or hear the passenger.

(c) The department ~~[board]~~ may not provide aircraft transportation to a destination unless:

(1) the destination is not served by a commercial carrier;

(2) the time required to use a commercial carrier interferes with passenger obligations; or

(3) the number of passengers traveling makes the use of state aircraft cost-effective.

(d) The department shall monitor and ensure compliance with the requirements of this section.

SECTION _____. Subchapter B, Chapter 2205, Government Code, is amended by adding Section 2205.0365 to read as follows:

Sec. 2205.0365. CONTRACTS. (a) The department may negotiate contracts with private charter aircraft providers to obtain the most cost-effective rates possible for transportation of state officers and employees traveling on official business.

(b) The department may contract with a flight safety consultant in developing safety guidelines for charter aircraft providers.

(c) A contract described by Subsection (a) may provide that:

(1) a state agency using charter services shall pay the charter aircraft provider directly for charter services; or

(2) the department shall pay the charter aircraft provider for services and be reimbursed by state agencies using the charter services.

SECTION _____. Section 2205.038, Government Code, is amended to read as follows:

Sec. 2205.038. AIRCRAFT OPERATIONS MANUAL. (a) The department ~~[board]~~ shall:

(1) prepare a manual that establishes minimum standards for the operation of aircraft by state agencies; and

(2) adopt procedures for the distribution of the manual to state agencies.

(b) The manual must include provisions for:

(1) pilot certification standards, including medical requirements for pilots;

(2) recurring training programs for pilots;

(3) general operating and flight rules;

(4) coordinated passenger scheduling; and

(5) other issues the department [~~board~~] determines are necessary to ensure the efficient and safe operation of aircraft by a state agency.

(c) The department [~~board~~] shall confer with and solicit the written advice of state agencies that operate state-owned aircraft and state agencies the department [~~board~~] determines are principal users of aircraft operated by the department [~~board~~] and, to the extent practicable, incorporate that advice in the development of the manual and subsequent changes to the manual.

(d) The department [~~board~~] shall give an officer normally elected by statewide election priority in the scheduling of aircraft. The department [~~board~~] by rule may require appropriate advance [~~a 12-hour~~] notice by the officer to obtain the priority in scheduling.

SECTION _____. Section 2205.039, Government Code, is amended to read as follows:

Sec. 2205.039. TRAVEL LOG. (a) The Legislative Budget Board, in cooperation with the department [~~board~~], shall prescribe:

(1) a travel log form for gathering information about the use of state-operated aircraft;

(2) procedures to ensure that individuals who travel as passengers on or operate state-operated aircraft provide in a legible manner the information requested of them by the form; and

(3) procedures for each state agency that operates an aircraft for sending the form to the department [~~board~~] and the Legislative Budget Board.

(b) The travel log form must request the following information about a state-operated aircraft each time the aircraft is flown:

(1) a mission statement, which may appear as a selection to be identified from general categories appearing on the form;

(2) the name, state agency represented, destination, and signature of each person who is a passenger or crew member of the aircraft;

(3) the date of each flight;

(4) a detailed and specific description of the official business purpose of each flight; and

(5) other information determined by the Legislative Budget Board and the department [~~board~~] to be necessary to monitor the proper use of the aircraft.

(c) A state agency other than the department [~~board~~] shall send travel logs to the department [~~board~~] each month in which the agency operates an aircraft.

(d) The department shall monitor and ensure compliance by state agencies with the requirements of this section.

(e) The department shall annually report to the Legislative Budget Board on air travel information received under this section.

SECTION _____. Section 2205.040, Government Code, is amended to read as follows:

Sec. 2205.040. RATES AND BILLING PROCEDURES. (a) The department [~~board~~] shall adopt rates for interagency aircraft services that are sufficient to recover, in the aggregate and to the extent possible, all direct and indirect costs for the services provided, including a state agency's pro rata share of major maintenance, overhauls of equipment and facilities, and pilots' salaries.

(b) The Legislative Budget Board, in cooperation with the department [~~board~~] and the state auditor, shall prescribe a billing procedure for passenger travel on state-operated aircraft.

SECTION _____. Section 2205.041(a), Government Code, is amended to read as follows:

(a) The Legislative Budget Board, in cooperation with the department [~~board~~], shall prescribe:

(1) an annual aircraft use form for gathering information about the use of state-operated aircraft, including the extent to which and the methods by which the goal provided by Section 2205.031(b) is being met; and

(2) procedures for each state agency that operates an aircraft for sending the form to the department [~~board~~] and the Legislative Budget Board.

SECTION _____. Section 2205.043(b), Government Code, is amended to read as follows:

(b) The department [~~board~~] shall adopt rules, consistent with federal regulations and Subtitle A, Title 11 [~~Article 6129f, Revised Statutes~~], governing the color, size, and location of marks of identification required by this section.

SECTION _____. Section 2205.044, Government Code, is amended to read as follows:

Sec. 2205.044. FUEL AND MAINTENANCE CONTRACTS. The department [~~board~~] may contract with a state or federal governmental agency or a political subdivision to provide aircraft fuel or to provide aircraft maintenance services.

SECTION _____. Section 2205.045(a), Government Code, is amended to read as follows:

(a) The department shall negotiate [~~board may purchase~~] insurance contracts to protect the state [~~board~~] from loss caused by damage, loss, theft, or destruction of aircraft owned or leased by the state and shall negotiate [~~purchase~~] liability insurance contracts to protect the officers and employees of each state agency from loss arising from the operation of state-owned aircraft.

SECTION _____. Section 2205.047, Government Code, is amended to read as follows:

Sec. 2205.047. INFORMATION POSTED ON THE INTERNET. The department [~~board~~] shall post information related to travel and other services provided by the department under this chapter [~~board~~] on an Internet site maintained by or for the department [~~board~~]. The site must be generally accessible to state agencies, persons who use the department's [~~board's~~] services, and, to the extent appropriate, the general public.

SECTION _____. The following laws are repealed:

- (1) Subchapter A, Chapter 2205, Government Code;
- (2) Section 2205.035, Government Code;
- (3) Section 2205.042, Government Code; and
- (4) Section 2205.046, Government Code.

SECTION _____. (a) The Department of Public Safety of the State of Texas, the State Aircraft Pooling Board, and the Texas Public Finance Authority, in consultation with the Texas Building and Procurement Commission and the General Land Office, shall establish a transition team to oversee the orderly transition of property, services, and certain employees from the State Aircraft Pooling Board to the Department of Public Safety of the State of Texas. The team shall:

(1) determine when:

- (A) the Department of Public Safety of the State of Texas will begin to perform a function or activity of the State Aircraft Pooling Board;
- (B) the State Aircraft Pooling Board will cease to perform a function that is discontinued under Chapter 2205, Government Code, as amended by this Act;
- (C) an employee of the board whose primary duties involve maintenance of aircraft becomes an employee of the department; and
- (D) a King Air 200 aircraft with an aircraft identification number of N808WD becomes property of the Department of Public Safety of the State of Texas;

(2) inventory all equipment and other property required to be transferred or sold;

(3) determine any continued support and cooperation the board must provide the department before the board is abolished to ensure an efficient continuation of service and of planning for future needs; and

(4) ensure that:

- (A) the transition is complete by January 1, 2004; and
- (B) all board employee positions, except the positions of employees serving on the transition team or employees whose primary duties involve maintenance of aircraft, are eliminated by September 1, 2003.

(b) The transition team and the State Aircraft Pooling Board are abolished on January 1, 2004.

SECTION _____. (a) By September 1, 2004, the Texas Building and Procurement Commission, in consultation with the Department of Public Safety of the State of Texas, shall sell for fair market value all state aircraft and aircraft-related equipment, other than equipment used in the maintenance of aircraft formerly under the custody of the State Aircraft Pooling Board and a King Air 200 aircraft with an aircraft identification number of N808WD. If bonds were issued in connection with acquiring or maintaining the aircraft or equipment or in connection with other board purposes, the proceeds from the sale of the aircraft and equipment shall be used to pay off the bonds to the extent the proceeds of the bonds were expended for those purposes.

(b) By September 1, 2005, the General Land Office, in consultation with the Texas Public Finance Authority, shall sell all State Aircraft Pooling Board facilities, other than facilities used for maintenance or housing of aircraft owned or operated by state agencies other than the board, located at the Austin-Bergstrom International

Airport for not less than the amount contained in the current market value assessment of the property that shall be made by the General Land Office. If bonds were issued, the proceeds of which were expended for the purchase, maintenance, or construction of the Austin-Bergstrom facilities, the proceeds from the sale of the facilities shall be used to pay off the state bond obligations as the Texas Public Finance Authority determines to be appropriate. The General Land Office, at the discretion of the commissioner of the General Land Office, may offer the facilities for sale by competitive bid in accordance with Section 31.158, Natural Resources Code. Alternatively, the General Land Office may negotiate a direct sale of the facilities to:

- (1) a current lessee of the facilities;
- (2) a neighboring property owner of the facilities; or
- (3) a political subdivision of the state, including Travis County or the City

of Austin.

(c) By September 1, 2005, the General Land Office shall sell all State Aircraft Pooling Board facilities located at the site of the former Robert Mueller Municipal Airport for not less than the amount contained in the current market value assessment of the property that shall be made by the General Land Office. If bonds were issued in connection with acquiring or maintaining the facilities located at the site of the former Robert Mueller Municipal Airport, the proceeds from the sale of the facilities shall be used to pay off the bonds to the extent the proceeds of the bonds were expended for acquiring or maintaining the facilities. The General Land Office, at the discretion of the commissioner of the General Land Office, may offer the facilities for sale by competitive bid in accordance with Section 31.158, Natural Resources Code. Alternatively, the General Land Office may negotiate a direct sale of the facilities to:

- (1) a current lessee of the facilities;
- (2) a neighboring property owner of the facilities; or
- (3) a political subdivision of the state, including Travis County or the City

of Austin.

Floor Amendment No. 46

Amend Floor Amendment No. 45 to **CSSB 1952** as follows:

- (1) On page 9, line 29, insert the following after "sell": "or lease";
- (2) On page 10, strike line 3;
- (3) On page 10, line 4, strike "that shall be made" and substitute "determined";

and

- (4) On page 10, line 7, between "sale" and "of", insert "or lease".

Floor Amendment No. 47

Amend **CSSB 1952** (House committee printing), by striking Article 5B (page 110, line 16, through page 138, line 24) and adding a new Article 5B to read as follows:

ARTICLE 5B. PRISON PRIVATIZATION STUDY

SECTION 5B.01. CREATION. The select committee on prison privatization is created.

SECTION 5B.02. COMPOSITION. (a) The select committee is composed of:

- (1) three members appointed by the governor;
- (2) three members appointed by the lieutenant governor;

- (3) three members appointed by the speaker of the house of representatives;
- (4) one member employed by the Legislative Budget Board and appointed by the executive director of that board;
- (5) one member employed by and appointed by the comptroller;
- (6) one member employed by and appointed by the state auditor; and
- (7) one member employed by the Criminal Justice Policy Council and appointed by the executive director of that council.

(b) Each individual required to make an appointment under Subsection (a) shall make the appointment as soon as possible after the effective date of this Act, but not later than October 1, 2003.

SECTION 5B.03. DUTIES. (a) The select committee on prison privatization shall prepare a report that, for the purposes of comparing cost effectiveness and program effectiveness of prison facilities operated by the Texas Department of Criminal Justice and prison facilities operated by or potentially operated by private contractors, analyzes the following issues:

- (1) the best possible methods and processes for administering and monitoring contracts for prison privatization;
- (2) whether an existing agency of the state or a newly created agency should administer future prison privatization contracts;
- (3) the probable cost savings to the state if prison privatization is increased;
- (4) the standards that should be used to compare program effectiveness and the best methods for comparing costs for provision of programs by the department and costs for provision of programs by contractors;
- (5) the history of prison privatization efforts in this state and in other populous states, with special emphasis on subissues related to program effectiveness, performance records, cost savings, ethical concerns, and impact on relevant communities;
- (6) as to potential contractors, the backgrounds and past achievements of those contractors;
- (7) which facilities or services currently provided primarily by the Texas Department of Criminal Justice could best be performed by a contractor; and
- (8) whether ethical standards could be adopted to protect the state from corruption or ethical conflicts.

(b) In addition to the issues described by Subsection (a) of this section, the report must analyze the impact that privatization of a Texas Department of Criminal Justice facility or function would have on the community in which the function is performed or the facility is located, including economic impact, workforce impact, impact caused by higher employee turnover rates, and impact on community facilities and services.

(c) The select committee shall present copies of the report not later than November 1, 2004, to the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 5B.04. HEARINGS. The select committee on prison privatization, for the purpose of gathering information necessary for the preparation of the report required by Section 5B.03 of this article, shall hold at least four public hearings. At least one of the hearings must be held in a municipality with a population greater than

one million and at least two of the hearings must be held in a municipality or county in which more than one division of the Texas Department of Criminal Justice operates a facility or performs a function.

SECTION 5B.05. EXPIRATION. The select committee on prison privatization is abolished and this article expires November 30, 2004.

Floor Amendment No. 48

Amend Floor Amendment No. 47 to **CSSB 1952** as follows:

(1) On page 3, between lines 11 and 12, insert the following:

SECTION 5B.05. FUNDS TRANSFER. The Texas Department of Criminal Justice shall enter into a memorandum of understanding with the select committee on prison privatization to provide the committee with not less than \$250,000 from the department's budget for the biennium ending August 31, 2005. The select committee shall use funds received from the department under this section to hire technical assistance that is professional and unbiased and that will assist the committee in performing its duties under this Article. The department and the committee shall enter into the memorandum of understanding not later than October 1, 2003. The memorandum must specify that the funds will be transferred to the select committee according to a schedule established by the committee.

(2) On page 3, line 12, strike "5B.05" and substitute "5B.06".

Floor Amendment No. 49

Amend Floor Amendment No. 47 by Swinford to **CSSB 1952** in SECTION 5B.03 by inserting the following after Subsection (b) and relettering the subsequent subsections accordingly:

(b) In addition to the information required by Subsection (a), the report must contain a qualitative and quantitative comparison of the performance of vendors operating facilities under this subtitle and the performance of facilities operated by the department that provide the same level of programs and services. The comparison must provide information on the operations of each vendor and comparable department programs and facilities, including information about treatment programs implemented, numbers of escapes, major disciplinary events, and other matters determined to be important by the commission.

Floor Amendment No. 51

Amend SECTION 9 of **CSSB 1952** by inserting the following language (page 229, line 27):

SECTION 9B.01. Subchapter A, Chapter 52, Education Code, is amended by adding Section 52.015 to read as follows:

Sec. 52.015. Performance Review of Student Loan Program. The Comptroller of Public Accounts shall conduct a performance review of the student loan program authorized under this chapter. The performance review shall address whether or not the program should continue to be administered by the state or if the program should be discontinued and sold to one or more qualified buyers. The review shall include a valuation of the student loan portfolio, the potential proceeds from the sale of the board's student loan portfolio, the amount of money needed to redeem the outstanding debt on bonds issued by the board under this chapter, and the likely impact of a sale

on student borrowers. In conducting the performance review, the Comptroller shall consult with the board, the Bond Review Board, and the Governor's Office of Budget, Planning, and Policy. The Comptroller shall report the results of the performance review to the Governor, the appropriate Senate and House Committees, and the Legislative Budget Board by November 1, 2004.

Floor Amendment No. 52

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

(1) In SECTION 2E.03 of the bill, in amended Section 391.0095(a)(6), Local Government Code (page 59, line 1), strike "and" and substitute "~~and~~".

(2) In SECTION 2E.03 of the bill, in amended Section 391.0095(a)(7), Local Government Code (page 59, line 3), between "commission" and the period, insert the following:

; and

(8) a statement of whether the restrictions on the use of revenue prescribed by Section 361.014(b), Health and Safety Code, have been followed, if the commission has used funds provided under that section

(3) In SECTION 2E.03 of the bill, in amended Section 391.0095(d), Local Government Code (page 59, lines 12 and 13), strike "state auditor [~~governor~~]" and substitute "governor".

(4) In SECTION 2E.03 of the bill, in amended Section 391.0095(d), Local Government Code (page 59, line 13), between "comply with" and "a rule", insert "state law or".

(5) In SECTION 2E.03 of the bill, in amended Section 391.0095(d), Local Government Code (page 59, lines 14 and 15), strike "state auditor shall report the failure to the governor. The".

Floor Amendment No. 53

Amend Floor Amendment No. 52 by Chisum to **CSSB 1952** by striking Item (3) of the amendment.

Floor Amendment No. 54

Amend **CSSB 1952** (House committee report), in PART 9 of the bill by adding the following appropriately numbered ARTICLE to read as follows:

ARTICLE 9 . GENERAL EDUCATION PROVISIONS

SECTION 9 .01. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.027 to read as follows:

Sec. 7.027. GRANTS. (a) The agency may accept grants for the benefit of public education.

(b) Unless otherwise required by federal law or by the terms of a private grant, the agency may award grants in accordance with a formula or other criteria adopted by agency rule instead of using a competitive process.

SECTION 9 .02. Section 7.102(c)(15), Education Code, is amended to read as follows:

(15) The board shall adopt criteria for identifying gifted and talented students [~~and shall develop and update a state plan for the education of gifted and talented students~~] as required under Subchapter D, Chapter 29.

SECTION 9__03. Section 8.103, Education Code, is amended to read as follows:

Sec. 8.103. ANNUAL EVALUATION. The commissioner shall conduct an annual evaluation of each executive director and regional education service center. Each evaluation must include:

- (1) an audit of the center's finances;
- (2) a review of the center's performance on the indicators adopted under Section 8.101; and
- (3) ~~a review of client satisfaction with services provided under Subchapter B; and~~
- ~~(4)~~ a review of any other factor the commissioner determines to be appropriate.

SECTION 9__04. Section 21.004(a), Education Code, is amended to read as follows:

(a) To the extent that funds are available, the agency, the State Board for Educator Certification, and the Texas Higher Education Coordinating Board shall develop and implement coordinated programs to identify talented students and recruit those students and persons, including high school and undergraduate students, mid-career and retired professionals, honorably discharged and retired military personnel, and members of underrepresented gender and ethnic groups, into the teaching profession.

SECTION 9__05. Section 21.355, Education Code, is amended to read as follows:

Sec. 21.355. CONFIDENTIALITY. (a) A document evaluating the performance of a teacher or administrator is confidential.

(b) This section does not restrict the use of aggregate results of student performance on academic skills assessment instruments for the purposes of evaluating teacher preparation and training programs as provided by Section 39.030(b).

SECTION 9__06. Section 29.903, as added by Chapter 795, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (h) to read as follows:

(h) This section must be implemented only to the extent that funds are specifically appropriated for the purpose.

SECTION 9__07. Sections 31.1011(a), (d), and (e), Education Code, are amended to read as follows:

(a) The commissioner shall implement a program to study the use of credits for textbooks. The program shall be designed to allow a participating school district or open-enrollment charter school to receive credit for textbooks purchased at a cost below the cost limit established under Section 31.025(a). The commissioner shall allow any school district or open-enrollment charter school to participate in the program.

(d) The commissioner shall prepare a report relating to the use of the textbook credit system and deliver the report to the 80th ~~79th~~ Legislature.

(e) This section expires September 1, 2007 ~~2005~~.

SECTION 9__08. Section 32.033(a), Education Code, is amended to read as follows:

(a) The agency, in coordination with institutions of higher education and other public or private entities, may [~~shall~~] maintain and expand, as needed, the telecommunications capabilities of school districts and regional education service centers. The agency shall design and implement a telecommunications system for distance learning throughout the state.

SECTION 9__09. Section 39.030(b), Education Code, is amended to read as follows:

(b) The results of individual student performance on academic skills assessment instruments administered under this subchapter are confidential and may be released only in accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students [~~or teachers~~]. Except as otherwise required by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), this subsection does not restrict the use of aggregate results of student performance on academic skills assessment instruments for the purpose of evaluating teacher preparation and training programs, including:

- (1) traditional educator preparation programs;
- (2) alternative certification programs; and
- (3) continuing education courses and programs.

SECTION 9__10. Section 39.075(a), Education Code, is amended to read as follows:

(a) The commissioner may [~~shall~~] authorize special accreditation investigations to be conducted:

- (1) when excessive numbers of absences of students eligible to be tested on state assessment instruments are determined;
- (2) when excessive numbers of allowable exemptions from the required state assessment are determined;
- (3) in response to complaints submitted to the agency with respect to alleged violations of civil rights or other requirements imposed on the state by federal law or court order;
- (4) in response to established compliance reviews of the district's financial accounting practices and state and federal program requirements;
- (5) when extraordinary numbers of student placements in alternative education programs, other than placements under Sections 37.006 and 37.007, are determined;
- (6) in response to an allegation involving a conflict between members of the board of trustees or between the board and the district administration if it appears that the conflict involves a violation of a role or duty of the board members or the administration clearly defined by this code; or
- (7) as the commissioner otherwise determines necessary.

SECTION 9__11. Section 39.131, Education Code, is amended by adding subsection (k) to read as follows:

(k) The commissioner may take action under Subsection (a) or (b) against an entity to which a charter is granted under Subchapter B, Chapter 12, based on the failure of one or more campuses operated by that charter holder to satisfy accreditation criteria.

SECTION 9_.12. The heading to Section 39.182, Education Code, is amended to read as follows:

Sec. 39.182. COMPREHENSIVE [~~ANNUAL~~] REPORT.

SECTION 9_.13. Section 39.182(a), Education Code, is amended to read as follows:

(a) Not later than December 1 of each even-numbered year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a comprehensive report covering the preceding two school years [year] and containing;

(1) an evaluation of the achievements of the state educational program in relation to the statutory goals for the public education system under Section 4.002;

(2) an evaluation of the status of education in the state as reflected by the academic excellence indicators adopted under Section 39.051;

(3) a summary compilation of overall student performance on academic skills assessment instruments required by Section 39.023 with the number and percentage of students exempted from the administration of those instruments and the basis of the exemptions, aggregated by grade level, subject area, campus, and district, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(4) a summary compilation of overall performance of students placed in an alternative education program established under Section 37.008 on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(5) a summary compilation of overall performance of students at risk of dropping out of school, as defined by Section 29.081(d), on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(6) an evaluation of the correlation between student grades and student performance on academic skills assessment instruments required by Section 39.023;

(7) a statement of the dropout rate of students in grade levels 7 through 12, expressed in the aggregate and by grade level, and a statement of the completion rates of students for grade levels 9 through 12;

(8) a statement of:

(A) the completion rate of students who enter grade level 9 and graduate not more than four years later;

(B) the completion rate of students who enter grade level 9 and graduate, including students who require more than four years to graduate;

(C) the completion rate of students who enter grade level 9 and not more than four years later receive a high school equivalency certificate;

(D) the completion rate of students who enter grade level 9 and receive a high school equivalency certificate, including students who require more than four years to receive a certificate; and

(E) the number and percentage of all students who have not been accounted for under Paragraph (A), (B), (C), or (D);

(9) a statement of the projected cross-sectional and longitudinal dropout rates for grade levels 9 through 12 for the next five years, assuming no state action is taken to reduce the dropout rate;

(10) a description of a systematic, measurable plan for reducing the projected cross-sectional and longitudinal dropout rates to five percent or less for the 1997-1998 school year;

(11) a summary of the information required by Section 29.083 regarding grade level retention of students and information concerning:

(A) the number and percentage of students retained; and

(B) the performance of retained students on assessment instruments required under Section 39.023(a);

(12) information, aggregated by district type and disaggregated by race, ethnicity, gender, and socioeconomic status, on:

(A) the number of students placed in an alternative education program established under Section 37.008;

(B) the average length of a student's placement in an alternative education program established under Section 37.008;

(C) the academic performance of students on assessment instruments required under Section 39.023(a) during the year preceding and during the year following placement in an alternative education program; and

(D) the dropout rates of students who have been placed in an alternative education program established under Section 37.008;

(13) a list of each school district or campus that does not satisfy performance standards, with an explanation of the actions taken by the commissioner to improve student performance in the district or campus and an evaluation of the results of those actions;

(14) an evaluation of the status of the curriculum taught in public schools, with recommendations for legislative changes necessary to improve or modify the curriculum required by Section 28.002;

(15) a description of all funds received by and each activity and expenditure of the agency;

(16) a summary and analysis of the compliance of school districts with administrative cost ratios set by the commissioner under Section 42.201, including any improvements and cost savings achieved by school districts;

(17) a summary of the effect of deregulation, including exemptions and waivers granted under Section 7.056 or 39.112;

(18) a statement of the total number and length of reports that school districts and school district employees must submit to the agency, identifying which reports are required by federal statute or rule, state statute, or agency rule, and a summary of the agency's efforts to reduce overall reporting requirements;

(19) a list of each school district that is not in compliance with state special education requirements, including:

(A) the period for which the district has not been in compliance;

(B) the manner in which the agency considered the district's failure to comply in determining the district's accreditation status; and

(C) an explanation of the actions taken by the commissioner to ensure compliance and an evaluation of the results of those actions;

(20) a comparison of the performance of open-enrollment charter schools and school districts on the academic excellence indicators specified in Section 39.051(b) and accountability measures adopted under Section 39.051(g), with a separately aggregated comparison of the performance of open-enrollment charter schools predominantly serving students at risk of dropping out of school, as defined by Section 29.081(d), with the performance of school districts; and

(21) any additional information considered important by the commissioner or the State Board of Education.

SECTION 9__14. Sections 825.507(b) and (c), Government Code, are amended to read as follows:

(b) The retirement system may release records of a participant, including a participant to which Chapter 803 applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary;

(3) a spouse or former spouse of the participant if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal or state criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; [✗]

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena;

- (10) the commissioner of education or the commissioner's designee; or
(11) the State Board for Educator Certification or the board's designee.

(c) The records of a participant remain confidential after release to a person as authorized by this section. This section does not prevent the disclosure or confirmation, on an individual basis, of the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system. The release of records to a designee of the commissioner of education or State Board for Educator Certification under Subsection (b)(10) or (b)(11) is an intergovernmental transfer of information that does not violate the confidentiality of the information and does not waive any exception to public disclosure.

SECTION 9__15. Sections 7.102(c)(1) and (c)(25), 8.051(b), 11.254(b), 12.107(b), 12.118, 12.119(c), 21.453, 29.123, 32.035, 45.208(e), Education Code, are repealed.

SECTION 9__16. This article applies beginning with the 2003-2004 school year.

Floor Amendment No. 55

Amend **CSSB 1952** in PART 9 of the bill, immediately preceding PART 10 (House committee report, page 229, between lines 26 and 27), by inserting the following appropriately numbered new ARTICLE:

ARTICLE _____. COMPLIANCE OF PUBLIC SCHOOL BILINGUAL EDUCATION AND SPECIAL LANGUAGE PROGRAMS

SECTION _____. (a) Section 29.062, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1) to read as follows:

(a) The legislature recognizes that compliance with this subchapter is an imperative public necessity. Therefore, in accordance with the policy of the state, the agency shall monitor compliance with all applicable state laws and rules by inspecting each school district and open-enrollment charter school on-site at least every five [~~three~~] years. The agency may combine the inspection of a district under this section with the inspection of the district's special education program under Section 29.010.

(a-1) An on-site monitoring inspection under this section must include:

- (1) review of each bilingual education and special language program performance indicator adopted by the agency;
- (2) consideration of campus-based quality points or similar measures of program achievement; and
- (3) a parent roundtable discussion or similar process to involve the parents of students enrolled in a program.

(b) The areas to be monitored in an on-site inspection must [~~shall~~] include:

- (1) program content and design;
- (2) program coverage
- (3) identification procedures;
- (4) classification procedures;
- (5) staffing;
- (6) learning materials;
- (7) testing materials;

(8) reclassification of students for either entry into regular classes conducted exclusively in English or reentry into a bilingual education or special education program; ~~and~~

(9) activities of the language proficiency assessment committees; and

(10) program evaluation methods.

(b-1) The commissioner shall electronically conduct a risk-based analysis of school district and open-enrollment charter school compliance with all applicable state laws and rules relating to bilingual education and special language programs. The commissioner shall also develop a system and standards for review of the analysis or use systems already available at the agency. The analysis must be designed to identify districts and schools that are at high risk of noncompliance and, as a result, require on-site monitoring of bilingual education or special language programs. If the risk-based analysis indicates that a district or school is at high risk of noncompliance, the district or school is entitled to an opportunity to respond to the commissioner's determination before on-site monitoring may be conducted. The district or school must respond not later than the 30th day after the date the commissioner notifies the district or school of the commissioner's determination. If the district's or school's response does not change the commissioner's determination that the district or school is at high risk of noncompliance or if the district or school does not respond in a timely manner, the commissioner shall order agency staff to conduct on-site monitoring of the district or school. The commissioner is not required to include in the analysis under this subsection an analysis of each area described by Subsection (b). In determining whether a district or school is at high risk of noncompliance, the commissioner shall consider:

(1) excessive parental complaints of noncompliance; and

(2) frequent district or school requests for waivers of program requirements.

(b) Subsection (a) of this section applies beginning with the 2004-2005 school year.

Floor Amendment No. 56

Amend **CSSB 1952** by inserting the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0012 to read as follows:

Sec. 130.0012. PILOT PROJECT: BACCALAUREATE DEGREE PROGRAMS. (a) The Texas Higher Education Coordinating Board shall establish a pilot project to examine the feasibility and effectiveness of authorizing public junior colleges to offer baccalaureate degree programs in the fields of applied science and applied technology. Participation in the pilot project does not otherwise alter the role and mission of a public junior college.

(b) The coordinating board shall operate the pilot project at the following public junior colleges:

(1) Brazosport College;

(2) El Centro College of the Dallas County Community College District;

(3) Midland College;

(4) North Harris Montgomery Community College District; and

(5) South Texas Community College.

(c) A public junior college participating in the pilot project must meet all applicable accreditation requirements of the Commission on Colleges of the Southern Association of Colleges and Schools.

(d) A public junior college participating in the pilot project may not offer more than five baccalaureate degree programs under the project at any time. The degree programs are subject to the continuing approval of the coordinating board. In determining what baccalaureate degree programs are to be offered, the junior college and the coordinating board shall consider:

(1) the need for the degree programs in the region served by the junior college;

(2) how those degree programs would complement the other programs and course offerings of the junior college;

(3) whether those degree programs would unnecessarily duplicate the degree programs offered by other institutions of higher education; and

(4) the ability of the junior college to support the program and the adequacy of the junior college's facilities, faculty, administration, libraries, and other resources.

(e) Each public junior college that offers a baccalaureate degree program under the pilot project must enter into an articulation agreement with one or more general academic teaching institutions to ensure that students enrolled in the degree program have an opportunity to complete the degree if the public junior college ceases to offer the degree program. The coordinating board may require a general academic teaching institution that offers a comparable degree program to enter into an articulation agreement with the public junior college as provided by this subsection.

(f) In its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college receive substantially the same state support for junior-level and senior-level courses offered under the pilot project as that provided to a general academic teaching institution for substantially similar courses. In determining the contact hours attributable to students enrolled in a junior-level or senior-level course offered under the pilot project used to determine a public junior college's proportionate share of state appropriations under Section 130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations. This subsection does not prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses offered under the pilot project.

(g) Each public junior college participating in the pilot project shall prepare a biennial report on the operation and effectiveness of the junior college's baccalaureate degree programs offered under the project and shall deliver a copy of the report to the coordinating board in the form and at the time determined by the coordinating board.

(h) Not later than January 1, 2009, the coordinating board shall prepare a progress report on the pilot project. Not later than January 1, 2011, the coordinating board shall prepare a report on the effectiveness of the pilot project, including any recommendations for legislative action regarding the offering of baccalaureate degree programs by public junior colleges. The coordinating board shall deliver a copy of

each report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over higher education.

(i) Unless the authority to continue offering the baccalaureate degree programs is continued by the legislature, a public junior college may not:

(1) enroll a new student in a baccalaureate degree program under the pilot project after the 2011 fall semester;

(2) offer junior-level or senior-level courses for those degree programs after the 2015 fall semester, unless the coordinating board authorizes the college to offer those courses; or

(3) award a baccalaureate degree under the pilot project after the 2015 fall semester, unless the coordinating board approves the awarding of the degree.

(j) The coordinating board shall prescribe procedures to ensure that each public junior college that offers a degree program under the pilot project informs each student who enrolls in the degree program of:

(1) the nature of the pilot project, including the limited duration of the project; and

(2) the articulation agreement entered into under Subsection (e) for the student's degree program.

(k) This section expires January 1, 2020.

Floor Amendment No. 57

Amend **CSSB 1952** (House committee report), in PART 10 of the bill, by inserting the following new ARTICLE in that PART, appropriately numbered (page 230, between lines 21 and 22):

ARTICLE ____ . TEXAS SCHOOL EMPLOYEES UNIFORM GROUP
HEALTH COVERAGE ACT AND BENEFITS FOR SCHOOL EMPLOYEES

SECTION 10 __.01. The heading to Article 3.50-8, Insurance Code, is amended to read as follows:

Art. 3.50-8. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT [~~COVERAGE OR COMPENSATION SUPPLEMENTATION~~]

SECTION 10 __.02. The heading to Section 1, Article 3.50-8, Insurance Code, is amended to read as follows:

Sec. 1. GENERAL DEFINITIONS.

SECTION 10 __.03. Section 1, Article 3.50-8, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (1-a), (1-b), (1-c), (2-a), (2-b), (2-c), (2-d), (3-a), and (3-b) to read as follows:

(1) "Account" means a health reimbursement arrangement account established under this article for a participating employee [~~"Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments~~].

(1-a) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this article and the trustee's rules adopted under this article.

(1-b) "Approved health benefit plan provider" means an entity approved by the trustee to offer health benefit plan coverage under this article.

(1-c) "Dependent" means:

(A) the spouse of a person;

(B) an unmarried child of the person if that child is under 25 years of age, including:

(i) an adopted child;

(ii) a stepchild, foster child, or other child who has a regular parent-child relationship with the person; or

(iii) a recognized natural child; or

(C) the person's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship with the participating employee and who lives with or has his or her care provided by the person on a regular basis regardless of the child's age if the child is mentally retarded or physically incapacitated to an extent that the child is dependent on the person for care or support, as determined by the trustee.

(2) "Employee" means a participating member of the Teacher Retirement System of Texas who:

(A) is employed by a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center; ~~and~~

(B) is not a retiree covered under the Texas Public School Retired Employees Group Insurance Program established under Article 3.50-4 of this code;

(C) is not covered by a group insurance program under Chapter 1551 or 1601 of this code; and

(D) is not an individual performing personal services for a participating entity as an independent contractor.

(2-a) "Health benefit plan" means a plan designed to provide, pay for, or reimburse expenses for health care services. The term includes:

(A) an insurance policy, contract, or certificate;

(B) a medical or hospital service agreement; and

(C) a similar arrangement, including coverage through a health maintenance organization operating under Chapter 843.

(2-b) "Health benefit plan issuer" means an entity that provides health benefit plan coverage in this state. The term includes:

(A) an insurance company authorized to do business in this state;

(B) a group hospital service corporation operating under Chapter 842 of this code;

(C) a health maintenance organization operating under Chapter 843 of this code;

(D) a stipulated premium insurance company operating under Chapter 884 of this code;

(E) a multiple employer welfare arrangement subject to Chapter 846 of this code;

(F) an approved nonprofit health corporation that holds a certificate of authority issued under Chapter 844 of this code; and

(G) any other entity providing a plan of health insurance or health benefits coverage subject to state regulation by the department.

(2-c) "Health reimbursement arrangement" is a health benefit plan that:

(A) is paid for solely by the employer;

(B) is not provided under a salary reduction election;

(C) reimburses a participant for a qualified health care expense incurred by the participant or the participant's dependent;

(D) provides reimbursements up to a maximum dollar amount at the end of a coverage period; and

(E) provides that any unused portion of the maximum dollar amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods.

(2-d) "Participant" means a person enrolled in the program.

(3-a) "Program" means the health reimbursement arrangement program established under this article.

(3-b) "Qualified health care expense" means an expense paid by an employee for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, and its subsequent amendments, for the employee or the employee's dependents, as defined by Section 152, Internal Revenue Code of 1986, and its subsequent amendments.

SECTION 10 __.04. Article 3.50-8, Insurance Code, is amended by adding Section 1A to read as follows:

Sec. 1A. DEFINITION OF EMPLOYER. (a) For purposes of qualification under federal law of a health reimbursement arrangement established under this article, "employer" means this state and a school district, another educational district whose employees are members of the Teacher Retirement System of Texas, a participating charter school, or a regional education service center.

(b) This article does not make an employee an employee of this state for any purpose other than the limited purpose described by Subsection (a) of this section.

SECTION 10 __.05. Section 2, Article 3.50-8, Insurance Code, is amended to read as follows:

Sec. 2. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT PROGRAM; STATE CONTRIBUTION [~~COVERAGE OR COMPENSATION SUPPLEMENTATION~~]. (a) For each employee, the state shall annually contribute \$1,000 or the amount specified in the General Appropriations Act to the health reimbursement arrangement account established for that employee for the payment of qualified health care expenses.

(b) Each year, the trustee shall contribute to the health reimbursement arrangement account of each employee of [~~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 the amount to which the employee is entitled under Subsection (a) of this section [~~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~~]. The contributions shall be made in equal monthly installments.

(c) Each employee shall direct the expenditure of the amount of the state contribution made under this section and that is allocated to the employee in accordance with the General Appropriations Act and this article.

(d) Money described by Subsection (c) of this section may be used by an employee only in accordance with this article for the employee and the employee's dependents for health benefit plan coverage offered by approved health benefit plan providers and for other qualified health care expenses.

(e) Any funds in a cafeteria plan authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments, and described by Section 3(a) of this article, for an employee who received the funds under this article, as this article existed immediately before September 1, 2003, that were designated by the employee for health care expenses and are unspent as of September 1, 2003, must be spent by the employee for qualified health care expenses before the employee may spend any funds from the health reimbursement arrangement account established for that employee under this section. ~~[(b) All funds received by a school district, other educational district, participating charter school, or regional education service center under this article are held in trust for the benefit of the active employees on whose behalf the district, school, or service center received the funds.~~

~~[(c) The trustee shall distribute funds under this article in equal monthly installments. The trustee is entitled to recover from a school district, other educational district, participating charter school, or regional education service center any amount distributed under this article to which the district, school, or service center was not entitled.~~

~~[(d) A determination by the trustee under this section is final and may not be appealed.]~~

SECTION 10__06. Article 3.50-8, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. PROGRAM FUNDING STRUCTURE; RULES. (a) The trustee, in consultation with the comptroller, shall by rule develop a funding structure that:

(1) implements Section 2 of this article in accordance with this article;
(2) permits an employee to carry over money allocated to the employee throughout the period the employee is eligible to participate in the program; and
(3) ensures, to the extent feasible and consistent with this chapter, favorable federal tax treatment to the employee.

(b) The funding structure shall use a health reimbursement arrangement established in a manner compatible with federal tax law.

(c) To implement this section, the comptroller shall, as requested by the trustee:
(1) establish separate accounts attributable to individual participating employees within the Texas school employees uniform group coverage trust fund; or
(2) transfer funds from the Texas school employees uniform group coverage trust fund to trust accounts outside the fund in the custody of the comptroller established for the benefit of employees.

(d) On an employee's separation from service with an entity described by Section 2(b) of this article, the employee may continue to use for qualified health care expenses any money carried over by the employee under Subsection (a)(2) of this section that was allocated to the employee under this article and was not spent before the effective date of the separation.

SECTION 10__07. Section 4, Article 3.50-8, Insurance Code, is amended to read as follows:

Sec. 4. GENERAL RULES AND ADMINISTRATION; CONTRACT AUTHORITY. (a) The trustee shall ~~may~~ adopt rules to implement this article.

(b) The trustee may contract with an independent and experienced group insurance consultant or actuary for advice and counsel in implementing and administering the program.

(c) The trustee may enter into interagency contracts with any agency of this state, including the Employees Retirement System of Texas and the department, for the purpose of assistance in implementing this article.

(d) The trustee may not directly administer health benefit plan coverages made available under the program and may not provide those coverages on a self-funded basis.

(e) The trustee may not establish, approve, or limit premium rates for health benefit plan coverages made available under the program.

(f) Notwithstanding Section 2 of this article, the trustee may pay all administrative costs incurred by the trustee in operating the program from the contributions made by the state under Section 2(a) of this article.

SECTION 10__08. Article 3.50-8, Insurance Code, is amended by adding Sections 4A-4F to read as follows:

Sec. 4A. COMPETITIVE BIDDING REQUIREMENTS. (a) The trustee may, on a competitive bid basis, contract with an entity to act for the trustee as an independent administrator or manager of the coverages, services, and benefits authorized under this article.

(b) The entity must be a qualified, experienced firm of group insurance specialists or an administering firm and shall assist the trustee in ensuring the proper administration of this article and the coverages, services, and benefits authorized under this chapter.

Sec. 4B. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract under this article, the trustee is not required to select the lowest bid and may consider also any relevant criteria, including the bidder's;

(1) ability to service contracts;

(2) past experience, including experience with the operation of health reimbursement arrangements; and

(3) financial stability.

(b) If the trustee awards a contract to a bidder whose bid deviates from that advertised, the trustee shall record the deviation and fully justify the reason for the deviation in the minutes of the next trustee meeting.

Sec. 4C. CERTIFICATE OF COVERAGE. An approved health benefit plan provider shall issue, to each employee purchasing health benefit plan coverage from the health benefit plan provider under the program, a certificate of coverage that states:

- (1) the benefits to which the participant is entitled;
- (2) to whom the benefits are payable;
- (3) to whom a claim must be submitted; and
- (4) the provisions of the plan document, in summary form, that principally affect the participant.

Sec. 4D. ISSUER RECORDS. Any health benefit plan issuer providing coverages to participants in the program shall:

- (1) furnish any reasonable report the trustee determines is necessary to enable the trustee to perform its functions under this article; and
- (2) permit the trustee and a representative of the state auditor to examine records of the health benefit plan issuer as necessary to accomplish the purposes of this article.

Sec. 4E. CONFIDENTIALITY OF PARTICIPANT RECORDS. (a) The records of a participant in the program in the custody of the trustee, or of an administrator or health benefit plan issuer acting under the program, are confidential and not subject to disclosure and are exempt from the public access provisions of Chapter 552, Government Code, except as provided by this section.

- (b) The trustee may release the records to:
- (1) an administrator, health benefit plan issuer, agent, or attorney acting under the program;
 - (2) another governmental entity;
 - (3) a medical provider of the participant to accomplish the purposes of this article; or
 - (4) a party in response to a subpoena issued under applicable law.

Sec. 4F. EQUITABILITY IN NEGOTIATED RATES. (a) A health benefit plan used to provide coverage under the program must be designed to ensure that an employee who purchases coverage under the health benefit plan through the employee's health reimbursement arrangement account is entitled to pay a physician or other health care provider for services provided to the employee that are not reimbursed from the account at the same rate negotiated with the physician or other health care provider by the approved health benefit plan provider for provision of those services under the plan.

(b) Subsection (a) of this section applies to medical services, dental services, and vision care services.

SECTION 10__09. Section 822.201(c), Government Code, is amended to read as follows:

- (c) Excluded from salary and wages are:
- (1) expense payments;
 - (2) allowances;
 - (3) payments for unused vacation or sick leave;
 - (4) maintenance or other nonmonetary compensation;
 - (5) fringe benefits;

- (6) deferred compensation other than as provided by Subsection (b)(3);
- (7) compensation that is not made pursuant to a valid employment agreement;
- (8) payments received by an employee in a school year that exceed \$5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;
- (9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;
- (10) contributions to a health reimbursement arrangement account [~~supplemental compensation~~] received by an employee under Article 3.50-8, Insurance Code; and
- (11) any compensation not described by ~~the~~ Subsection (b).

SECTION 10__ .10. Sections 3 and 5, Article 3.50-8, Insurance Code, are repealed.

SECTION 10__ .11. (a) The Teacher Retirement System of Texas, in consultation with the comptroller, shall develop the funding structure required by Section 2A, Article 3.50-8, Insurance Code, as added by this ARTICLE of this PART, and shall take necessary action to implement the health reimbursement arrangement program in accordance with Article 3.50-8, Insurance Code, as amended by this ARTICLE of this PART, not later than September 1, 2004.

(b) Notwithstanding any other law, until September 1, 2004, the Teacher Retirement System of Texas may pay for administrative expenses incurred by the system in developing the health care reimbursement arrangement program from funds received by the system in fiscal year 2004 under Article 3.50-8, Insurance Code, for operation of the employee health coverage and compensation supplementation program.

SECTION 10__ .12. (a) The Teacher Retirement System of Texas shall continue to operate the medical savings account program established under Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, until September 1, 2004.

(b) Any unspent funds in a medical savings account established for an employee under Article 3.50-8, Insurance Code, as that section existed before amendment by this ARTICLE, are transferred to the health reimbursement arrangement account established for that employee under Article 3.50-8, Insurance Code, as amended by this ARTICLE, effective September 1, 2004.

SECTION 10__ .13. Not later than July 31, 2004, the Teacher Retirement System of Texas shall provide written information to school districts eligible to participate in the health reimbursement arrangement program under Article 3.50-8, Insurance Code, as amended by this ARTICLE of this PART, that provides a general description of the requirements for such a program as adopted under Article 3.50-8, Insurance Code, as amended by this ARTICLE of this PART.

SECTION 10__ .14. During the initial implementation of Article 3.50-8, Insurance Code, as amended by this ARTICLE of this PART, and notwithstanding any bidding requirements or other requirements set forth in Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, the Teacher Retirement System of Texas may amend any agreement in effect on

September 1, 2003, that it has entered into under Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, as necessary to comply with Article 3.50-8, Insurance Code, as amended by this ARTICLE of this PART.

SECTION 10__.15. Notwithstanding Article 3.50-8, Insurance Code, the state shall pay the state contribution for active employee health coverage or supplemental compensation authorized under Section 2, Article 3.50-8, Insurance Code, for the last month of state fiscal year 2005 not earlier than the first day of the first month of state fiscal year 2006.

SECTION 10__.16. Effective September 1, 2003, the comptroller of public accounts shall transfer \$42 million from the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, Insurance Code, to the retired school employees group insurance fund described by Subchapter G, Chapter 1575, Insurance Code, to compensate the retired school employees group insurance fund for money transferred from that fund under Section 4.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10__.17. (a) Except as provided by Subsection (b) of this section, this ARTICLE takes effect September 1, 2003.

(b) Sections 10__.09 and 10__.10 of this ARTICLE take effect September 1, 2004, and apply beginning with the 2004-2005 school year.

Floor Amendment No. 58

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to PART 9 of the bill and renumbering subsequent ARTICLES of PART 9 of the bill accordingly:

ARTICLE ____ . HIGHER EDUCATION PARTNERSHIPS

SECTION 9.01. The heading to Subchapter N, Chapter 51, Education Code, is amended to read as follows:

SUBCHAPTER N. PARTNERSHIPS BETWEEN COMMUNITY/JUNIOR COLLEGES AND OTHER INSTITUTIONS OF HIGHER EDUCATION ~~[UPPER LEVEL UNIVERSITIES OR CENTERS]~~

SECTION 9.02. Section 51.661, Education Code, is amended to read as follows:

Sec. 51.661. PURPOSE. The purpose of this subchapter is to encourage partnerships between public community/junior colleges and other institutions of higher education that ~~[upper level universities or centers which]~~ are located in the same state uniform service region as adopted by the Texas Higher Education Coordinating Board in order to improve the continuity, quality, and efficiency of educational programs and services.

SECTION 9.03. Subchapter N, Chapter 51, Education Code, is amended by adding Section 51.6615 to read as follows:

Sec. 51.6615. DEFINITION. In this section, "institution of higher education" has the meaning assigned by Section 61.003.

SECTION 9.04. Section 51.662, Education Code, is amended to read as follows:

Sec. 51.662. PARTNERSHIP AGREEMENTS. With the approval of the Texas Higher Education Coordinating Board, the governing boards of a public community/junior college and another institution of higher education that ~~an~~ ~~upper level university or center which~~ are located in the same state uniform service region as adopted by the coordinating board may enter into a partnership agreement designed to coordinate the management and operations of the institutions. The agreements shall in no way abrogate the powers and duties of the boards with regard to the governance of their respective institutions.

SECTION 9.05. Section 51.666, Education Code, is amended to read as follows:

Sec. 51.666. FACILITIES. A participating institution of higher education ~~[upper level university or center]~~ may lease facilities from or to the community/junior college for administrative and instructional purposes. Community/junior college facilities may not be transferred to the other participating institution of higher education ~~[university or center]~~ and may not be included in the space inventory of the other participating institution of higher education ~~[university or center]~~ for formula funding purposes.

SECTION 9.06. Section 51.667, Education Code, is amended to read as follows:

Sec. 51.667. STATE FUNDING. The community/junior college shall receive state appropriations on the same formula basis as other community/junior colleges, and the other participating institution of higher education ~~[university or center]~~ shall receive state appropriations on the same formula basis as other similar institutions of higher education ~~[upper level senior colleges and universities]~~.

SECTION 9.07. Section 51.668, Education Code, is amended to read as follows:

Sec. 51.668. CONTINUING RESPONSIBILITIES. A participating community/junior college must continue to provide programs and services enumerated in Section 130.003(e) ~~[Subsection (e) of Section 130.003 of this code]~~. The role ~~[role]~~ and scope of the other participating institution of higher education ~~[university or center]~~ are subject to approval by the coordinating board.

Floor Amendment No. 62

Amend **CSSB 1952** in SECTION 13A.01 of the bill, in proposed Subsection (c), Section 51.21, Tax Code (House committee printing page 233, line 13), at the end of the subsection, by adding the following:

In determining whether the local value for a school district is valid, the commissioner shall use a margin of error that does not exceed five percent unless the commissioner determines that the size of the sample of properties necessary to make the determination makes the use of such a margin of error not feasible, in which case the commissioner may use a larger margin of error.

Floor Amendment No. 63

Amend **CSSB 1952** as follows:

(1) In SECTION 13A.01 of the bill, in proposed Subsection (g), Section 51.21, Tax Code (House committee printing page 236, line 18), strike "2004" and substitute "2003".

(2) In SECTION 13A.01 of the bill, in proposed Section 51.21, Tax Code, between Subsections (g) and (h) (House Committee Printing page 236, between lines 26 and 27), insert the following:

(g-1) If the comptroller determines in the annual study conducted for the year 2002 that the taxable value of a school district is the local value because the local value is invalid and exceeds the state value, the commissioner of education shall compute the amount by which the funding under Chapter 42, Education Code, of the school district is reduced for the 2003-2004 school year because of the use of local value rather than state value as taxable value. The commissioner of education shall allocate the amount of the reduction for that school year to the school districts that receive funding under Chapter 42, Education Code, whose taxable value for 2002 is the state value, and whose maintenance and operations tax rate for 2002 exceeds \$1.42 on the \$100 valuation of taxable property. The allocation shall be made in proportion to the amount of funding under Chapter 42, Education Code, that each of those school districts would otherwise have received in that year. This subsection expires September 30, 2005.

Floor Amendment No. 64

Amend **CSSB 1952** by adding the following new PART to the bill and renumbering the subsequent PARTS accordingly:

PART ____ . INTERSTATE COMPACT FOR JUVENILES

ARTICLE ____ . INTERSTATE COMPACT FOR JUVENILES

SECTION ____ . Chapter 60, Family Code, is amended by adding Section 60.010 to enact the Interstate Compact for Juveniles and to read as follows:

Sec. 60.010. INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the juveniles who are moved under this compact to another state for probation or parole supervision and services are governed in the receiving state by the same standards that apply to juveniles receiving such supervision and services in the receiving state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected and balanced with the juvenile's and the juvenile's family's best interests and welfare when an interstate movement is under consideration; (C) return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting

their return through a fair and prompt judicial review process that ensures that the requisition is in order and that the transport is properly supervised; (D) make provisions for contracts between member states for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking of juveniles who move interstate under the compact's provisions; (F) equitably allocate the costs, benefits, and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders, ensuring that a receiving state accepts supervision of a juvenile when the juvenile's parent or other person having legal custody resides or is undertaking residence there; (H) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish a system of uniform data collection on information pertaining to juveniles who move interstate under this compact that prevents public disclosure of identity and individual treatment information but allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (J) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (K) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (L) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling the Interstate Commission's actions or conduct.

B. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact and to the rules adopted by the Interstate Commission under this compact.

C. "Compacting state" means any state which has enacted the enabling legislation for this compact.

D. "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact and to the rules adopted by the Interstate Commission under this compact.

G. "Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

H. "Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender - a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Nonoffender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

J. "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. "Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III

INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the Interstate Commission for Juveniles. The Interstate Commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate the Interstate Commission's information functions with the appropriate repository of records.

ARTICLE IV

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire, or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III of this compact, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, whether real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, and judiciary of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting, and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Sec. A. Bylaws

1. The Interstate Commission shall, by a majority of the members present and voting, within 12 months of the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;

g. Providing start-up rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Sec. B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Sec. C. Qualified Immunity, Defense, and Indemnification

1. The Interstate Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that

occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities, provided that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason or reasons for that proposed rule;

2. Allow and invite persons to submit written data, facts, opinions, and arguments, which information shall be added to the record and be made publicly available;

3. Provide an opportunity for an informal hearing, if petitioned by 10 or more persons; and

4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission's principal office is located for judicial review of the rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created under this compact.

G. Upon determination by the Interstate Commission that an emergency exists, the Interstate Commission may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

ARTICLE VII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Sec. A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers,

responsibilities, or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Sec. B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article X of this compact.

ARTICLE VIII

FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The Interstate Commission shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, as defined in Article II of this compact, is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter, the compact shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of noncompacting states or their designees shall be invited to participate in Interstate Commission activities on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE X

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

Sec. A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Sec. B. Technical Assistance, Fines, Suspension, Termination, and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative dispute resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer

of the state, and the majority and minority leaders of the defaulting state's legislature. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules, and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the Interstate Commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within 60 days of the effective date of termination of a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief judicial officer of the state, and the majority and minority leaders of the defaulting state's legislature of such termination.

3. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Sec. C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Sec. D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XI
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XII
BINDING EFFECT OF COMPACT AND OTHER LAWS

Sec. A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Sec. B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

ARTICLE ____ . CONFORMING AMENDMENTS

SECTION ____ . Sections 60.001 and 60.009, Family Code, are amended to read as follows:

Sec. 60.001. DEFINITIONS [~~SHORT TITLE~~]. In this [~~This~~] chapter:

(1) "Commission" means the Interstate Commission for Juveniles.

(2) "Compact" means the Interstate Compact for Juveniles.

(3) "Compact administrator" has the meaning assigned by Article II of the compact [~~may be cited as the Uniform Interstate Compact on Juveniles~~].

Sec. 60.009. ADDITIONAL PROCEDURES NOT PRECLUDED. In addition to any [~~the~~] procedures developed under [~~provided in Articles IV and VI of~~] the compact for the return of a runaway juvenile, the particular states, the juvenile, or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile.

SECTION _____. Chapter 60, Family Code, is amended by adding Sections 60.011 and 60.012 to read as follows:

Sec. 60.011. EFFECT OF TEXAS LAWS. If the laws of this state conflict with the compact, the compact controls, except that in the event of a conflict between the compact and the Texas Constitution, as determined by the courts of this state, the Texas Constitution controls.

Sec. 60.012. LIABILITIES FOR CERTAIN COMMISSION AGENTS. The compact administrator and each member, officer, executive director, employee, or agent of the commission acting within the scope of the person's employment or duties is, for the purpose of acts or omissions occurring within this state, entitled to the same protections under Chapter 104, Civil Practice and Remedies Code, as an employee, a member of the governing board, or any other officer of a state agency, institution, or department.

SECTION _____. Section 54.10(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a hearing under [~~Article IV, Article V, and Article VI of~~] the [~~Uniform~~] Interstate Compact for ~~for~~ Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g) or a master appointed under Chapter 54, Government Code, provided:

(1) the parties have been informed by the referee or master that they are entitled to have the hearing before the juvenile court judge; and

(2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or master.

ARTICLE _____. TRANSITION, REPEALER, AND EFFECTIVE DATE

SECTION _____. The governor shall publish notice of the implementation of the Interstate Compact for Juveniles in the Texas Register not later than the 30th day after the date the compact becomes effective under Article IX of the compact.

SECTION _____. Sections 60.002, 60.003, and 60.004, Family Code, are repealed.

SECTION _____. (a) Except as provided by Subsection (b) of this section, all provisions of law in this Act relating to the Interstate Compact for Juveniles take effect on the day on which the Interstate Compact for Juveniles takes effect, which according to the terms of the compact is the later of July 1, 2004, or the day on which the compact is enacted into law by the 35th state, as defined by the compact.

(b) Article 1 of this Part takes effect September 1, 2003.

Floor Amendment No. 66

Amend **CSSB 1952** (House committee report) by adding the following appropriately numbered article to Part 9 of the bill:

ARTICLE _____. WAIVERS FOR SCHOOL DISTRICTS

SECTION __.01. Section 7.056, Education Code, is amended by adding Subsection (h) to read as follows:

(h) The commissioner may not grant a waiver with regard to a school start date under this section if granting the request would increase non-instructional costs for the requesting school district or campus.

Floor Amendment No. 67

Amend **CSSB 1952** by inserting the following new SECTIONS, appropriately numbered, and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.017 to read as follows:

Sec. 531.017. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of \$50 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and:

(A) the commission;

(B) a health and human services agency; or

(C) any other state agency under the jurisdiction of the commission.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the agency, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the agency for changes to the contract. The office of the attorney general shall report any recommendations made under this subsection to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) An agency described by Subsection (a)(2) must notify the office of the attorney general at the time the agency is initiating the applicable competitive bidding or other applicable contracting process. A representative of the office of the attorney general may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the office of the attorney general makes recommendations for changes to a proposed contract under Subsection (b), the office shall report those recommendations to the Commission for State Health Expenditures.

SECTION _____. Subchapter A, Chapter 811, Government Code, is amended by adding Section 811.007 to read as follows:

Sec. 811.007. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of \$50 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and the retirement system.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract. The office of the attorney general shall report any recommendations made under this subsection to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) The retirement system must notify the office of the attorney general at the time the system is initiating the applicable competitive bidding or other applicable contracting process. A representative of the office of the attorney general may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the office of the attorney general makes recommendations for changes to a proposed contract under Subsection (b), the office shall report those recommendations to the Commission for State Health Expenditures.

SECTION _____. Subchapter A, Chapter 821, Government Code, is amended by adding Section 821.009 to read as follows:

Sec. 821.009. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES: REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of \$50 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and the retirement system.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract. The office of the attorney general shall report any recommendations made under this subsection to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) The retirement system must notify the office of the attorney general at the time the system is initiating the applicable competitive bidding or other applicable contracting process. A representative of the office of the attorney general may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the office of the attorney general makes recommendations for changes to a proposed contract under Subsection (b), the office shall report those recommendations to the Commission for State Health Expenditures.

SECTION _____. Sections 531.017(d), 811.007(d), and 821.009(d), Government Code, as added by this Act, take effect only if H.B. No. 3181, Acts of the 78th Legislature, Regular Session, 2003, or another Act of the 78th Legislature, Regular Session, 2003, establishing the Commission for State Health Expenditures becomes law. If H.B. No. 3181, Acts of the 78th Legislature, Regular Session, 2003, or another Act of the 78th Legislature, Regular Session, 2003, establishing the Commission for State Health Expenditures does not become law, Sections 531.017(d), 811.007(d), and 821.009(d), Government Code, as added by this Act, have no effect.

SECTION _____. Sections 531.017, 811.007, and 821.009, Government Code, as added by this Act, apply only to a contract described by those sections that is entered into on or after September 1, 2003.

Floor Amendment No. 68

Amend Floor Amendment No. 67 by Delisi to **CSSB 1952** as follows:

(1) On Page 2 line 6 by striking "Commission for State Health Expenditures" and replacing it with "the agency engaged in the contract negotiations, the governor, the lieutenant governor, the speaker of the house of representatives and the Commission for State Health Expenditures".

(2) On page 2 line 23 by striking "governor, the lieutenant governor, and the speaker of the house of representatives" and replacing it with "the agency engaged in the contract negotiations, the governor, the lieutenant governor, the speaker of the house of representatives and the Commission for State Health Expenditures".

(3) On page 3 line 22 by striking "governor, the lieutenant governor, and the speaker of the house of representatives" and replacing it with "the agency engaged in the contract negotiations, the governor, the lieutenant governor, the speaker of the house of representatives and the Commission for State Health Expenditures".

Floor Amendment No. 69

Amend **CSSB 1952** by inserting the following in Part 6:

(1) Amend Section 251.001(16) of the Election Code to read as follows:

(16) "Political Advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

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

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

(2) Amend Section 255.001 of the Election Code to read as follows:

Sec. 255.001. REQUIRED DISCLOSURE ON POLITICAL ADVERTISING.

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

(1) that it is political advertising; and

(2) the full name of ~~[either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or]~~ (i) the person who paid for the political advertising, (ii) the political committee authorizing the political advertising or (iii) the full name of the candidate or specific-purpose committee supporting the candidate, if such political advertising is authorized by the candidate. ~~[that individual represents; and~~

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

(b) Political advertising that is authorized by a candidate, or the candidate's agents, or political committee filing reports with the commission shall be deemed to contain express advocacy.

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

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

(e) A person who violates this section is liable to the state for a civil penalty that may be levied by the Ethics Commission in its discretion in an amount not to exceed \$4000 [commits an offense. An offense under this section is a Class A misdemeanor].

Floor Amendment No. 70

Amend **CSSB 1952**, in PART 1 of the bill, by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES in PART 1 appropriately:

ARTICLE ____ . DEFERRED COMPENSATION PLANS

SECTION __.01. Section 609.006(d), Government Code, is amended to read as follows:

(d) The comptroller [~~board of trustees of the Employees Retirement System of Texas~~] may adopt rules necessary to make a deferred compensation plan established under Subchapter C a qualified plan under federal law, including federal rules and regulations.

SECTION __.02. Section 609.007(b), Government Code, is amended to read as follows:

(b) The comptroller [~~board of trustees of the Employees Retirement System of Texas~~] may contract with an employee of a state agency participating in a deferred compensation plan for the deferment of any part of the employee's compensation.

SECTION __.03. Section 609.010(a), Government Code, is amended to read as follows:

(a) The comptroller [~~board of trustees~~], a state agency, a political subdivision, a plan administrator, or an employee of any of those persons is not liable to a participating employee for the diminution in value or loss of all or part of the participating employee's deferred amounts or investment income because of market conditions or the failure, insolvency, or bankruptcy of a qualified vendor.

SECTION __.04. Sections 609.502(a)-(d), Government Code, are amended to read as follows:

(a) The comptroller [~~board of trustees of the Employees Retirement System of Texas~~] is the trustee and the plan administrator of a 401(k) plan known as TexaSaver established under this subchapter.

(b) The comptroller [~~board of trustees~~] is the trustee and the plan administrator of a 457 plan established under this subchapter.

(c) The comptroller [~~board of trustees~~] shall administer all aspects of each plan.

(d) The comptroller [~~board of trustees~~] may designate a person to assist in the execution of the comptroller's [~~board's~~] authority and responsibilities as plan administrator.

SECTION __.05. Section 609.503, Government Code, is amended to read as follows:

Sec. 609.503. CHANGING AMOUNT DEFERRED. An employee may change the amount to be deferred by notifying the comptroller [~~board of trustees~~] in accordance with the requirements of the comptroller [~~board of trustees~~].

SECTION __.06. Section 609.504, Government Code, is amended to read as follows:

Sec. 609.504. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. After execution of a contract under Section 609.007, the comptroller [~~board of trustees~~] shall:

(1) invest the deferred amounts and investment income of the employee in the qualified investment products designated by the employee; and

(2) promptly transfer the deferred amounts and investment income of the employee from one qualified investment product to another in accordance with the requirements of the comptroller [~~board of trustees~~].

SECTION __.07. Section 609.505, Government Code, is amended to read as follows:

Sec. 609.505. QUALIFIED VENDOR. (a) The comptroller [~~board of trustees~~], in accordance with rules adopted under this subchapter, may contract with a vendor qualified to participate in a deferred compensation plan.

(b) In a contract under Subsection (a), the comptroller [~~board of trustees~~] may require the vendor to be audited annually by an independent auditor paid by the vendor.

(c) A vendor or investment product having an ownership or other financial interest in the contractor selected by the comptroller [~~board of trustees~~] to administer a deferred compensation plan is not qualified to participate in that plan.

(d) The comptroller [~~board of trustees~~] shall select vendors or investment products based on the quality of investment performance, proven ability to manage institutional assets, minimum net worth requirements, fee structure, compliance with applicable federal and state laws, and other criteria established by the comptroller [~~board~~]. The comptroller [~~board of trustees~~] shall determine the minimum and maximum number of vendors and investment products that may be offered by a plan at any particular time.

SECTION __.08. Section 609.506, Government Code, is amended to read as follows:

Sec. 609.506. INSURANCE COMPANY AS QUALIFIED VENDOR. On written request, the Texas Department of Insurance shall certify in writing to the comptroller [~~board of trustees~~] whether an insurance company is eligible to be a qualified vendor under rules adopted by the comptroller [~~board~~]. The comptroller [~~board~~] is entitled to rely on the certification.

SECTION __.09. Section 609.508, Government Code, is amended to read as follows:

Sec. 609.508. RULES. The comptroller [~~board of trustees~~] may adopt rules, including plans and procedures, and orders necessary to carry out the purposes of this subchapter, including rules or orders relating to:

- (1) the selection and regulation of vendors for a deferred compensation plan;
- (2) the regulation of the practices of agents employed by vendors;
- (3) the disclosure of information concerning investment products;
- (4) the regulation of advertising materials to be used by vendors;
- (5) the submission of financial information by a vendor; and
- (6) the development of a system to facilitate electronic authorization, distribution, transfer, and investment of deferrals.

SECTION __.10. Section 609.509, Government Code, is amended to read as follows:

Sec. 609.509. CONTRACTS FOR GOODS AND SERVICES. (a) The comptroller [~~board of trustees~~] may contract for necessary goods and consolidated billing, accounting, and other services to be provided in connection with a deferred compensation plan.

(b) In a contract under Subsection (a), the comptroller [~~board of trustees~~] may provide for the comptroller [~~board~~] to audit periodically the person with whom the contract is made. The audit may cover:

- (1) the proper handling and accounting of state or trust funds; and
- (2) other matters related to the proper performance of the contract.

(c) The comptroller [~~board of trustees~~] may contract with a private entity to conduct the audit under Subsection (b).

SECTION __.11. Section 609.511, Government Code, is amended to read as follows:

Sec. 609.511. FEE. (a) The comptroller [~~board of trustees~~] may assess a fee against participating employees or qualified vendors, or both the employees and the qualified vendors, in the manner and to the extent it determines necessary to cover the costs of administering the plan.

(b) The comptroller [~~board of trustees~~] shall determine the method for computing and assessing a fee under this section.

SECTION __.12. Sections 609.512(c), (g), (h), and (i), Government Code, are amended to read as follows:

(c) The comptroller [~~board of trustees~~] shall administer each trust fund.

(g) The comptroller [~~board of trustees~~] may establish accounts in a trust fund that the comptroller [~~†~~] considers necessary, including an account for the administration of the deferred compensation plan for which the trust fund was established.

(h) The comptroller [~~board of trustees~~] may transfer assets from one account of a trust fund to another account of the fund for financial management purposes if adequate arrangements are made to:

- (1) reimburse the account from which the transfer is made; and
- (2) pay administrative expenses.

(i) The comptroller [~~board of trustees~~] may invest and reinvest money in a trust fund subject only to the duty of care provided by Section 815.307 that would apply if the investments were being made for the Employees Retirement System of Texas.

SECTION __.13. Section 609.513, Government Code, is amended to read as follows:

Sec. 609.513. DISCRETIONARY TRANSFER. (a) The comptroller [~~board of trustees~~] may transfer an employee's deferred amounts and investment income from a qualified investment product to the trust fund of the deferred compensation plan in which the employee participates if the comptroller [~~board of trustees~~] determines that the transfer is in the best interest of the plan and the employee.

(b) The comptroller [~~board of trustees~~] is not required to give notice of a transfer under Subsection (a) to the employee before the transfer occurs.

(c) Promptly after a transfer under Subsection (a) occurs, the comptroller [~~board of trustees~~] shall give to the employee a notice that:

- (1) states the reason for the transfer; and
- (2) requests that the employee promptly designate another qualified investment product to receive the transferred amount.

SECTION __.14. Section 609.514, Government Code, is amended to read as follows:

Sec. 609.514. ALTERNATIVE TO FUND DEPOSIT. Instead of depositing deferred amounts and investment income in the trust fund of the deferred compensation plan, the comptroller [~~board of trustees~~] may invest them in a qualified investment product specifically designated by the comptroller [~~board~~] for that purpose.

SECTION __.15. Section 609.515, Government Code, is amended to read as follows:

Sec. 609.515. FIDUCIARY INSURANCE. In the administration of a deferred compensation plan, the comptroller [~~board of trustees~~] may purchase liability insurance for the coverage of the comptroller and the [~~trustees,~~] employees[;] and agents of the comptroller [~~board~~] in the amounts that the comptroller [~~board~~], in the comptroller's [~~its~~] sole discretion, considers reasonable and necessary.

SECTION __.16. Section 609.001(1), Government Code, is repealed.

SECTION __.17. The changes in law made by this article do not affect rules adopted, contracts entered into, contractors, vendors, or products selected, fee amounts prescribed, or investments or transfers in effect immediately before the effective date of this Act, and those rules, contracts, selections, fees, investments, and transfers remain in effect until amended or changed by an action of the comptroller of public accounts.

Floor Amendment No. 71

Amend **CSSB 1952** by adding the following appropriately numbered ARTICLE to PART 1 of the bill and renumbering subsequent ARTICLES in PART 1 accordingly:

ARTICLE ____ . RETIREMENT SYSTEM OVERSIGHT BOARD

SECTION __.01. Subtitle A, Title 8, Government Code, is amended by adding Chapter 806 to read as follows:

CHAPTER 806. RETIREMENT SYSTEM OVERSIGHT BOARD

Sec. 806.001. DEFINITIONS. In this chapter:

(1) "Oversight board" means the retirement system oversight board.

(2) "State retirement system" means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, and the Teacher Retirement System of Texas. The term does not include the optional retirement program governed by Chapter 830.

Sec. 806.002. COMPOSITION OF BOARD; OFFICERS; MEETINGS. (a) The oversight board is composed of five members as described by this section.

(b) The governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and the attorney general, or the designees of those officials, serve as ex officio voting members of the oversight board. Service on the oversight board is an additional duty of the positions of those officials.

(c) The oversight board shall elect from its members a presiding officer and other officers the oversight board considers necessary to perform the oversight board's duties.

(d) The oversight board shall meet at the call of the presiding officer.

Sec. 806.003. OVERSIGHT BOARD DUTIES. (a) The oversight board shall monitor the management of state retirement system assets to ensure that each state retirement system is managing its assets in accordance with applicable constitutional and statutory provisions and applicable actuarial and investment principles.

(b) An employee, officer, or member of the board of trustees of a state retirement system shall provide to a member of the oversight board any information, other than information that is confidential under other law, that the oversight board member requests to carry out the oversight board's duties under this section.

(c) An oversight board member may attend any regular, special, or called meeting of the board of trustees of a state retirement system to carry out the oversight board's duties under this section.

Sec. 806.004. REIMBURSEMENT FOR EXPENSES. An oversight board member may not receive compensation for service on the oversight board but is entitled to reimbursement of travel expenses that the member incurs while conducting the business of the oversight board, as provided by the General Appropriations Act.

Floor Amendment No. 72

Amend **CSSB 1952** in PART 7 of the bill by adding the following appropriately numbered ARTICLE and SECTION to the bill and renumbering subsequent ARTICLES and SECTIONS in PART 7 accordingly:

ARTICLE ____ . MAILINGS BY EMPLOYEES RETIREMENT SYSTEM OF
TEXAS ON BEHALF OF CERTAIN NONPROFIT ASSOCIATIONS

SECTION ____ . Section 815.503, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The retirement system may make not more than two mailings a year on behalf of a nonprofit association to persons identified in information contained in records that are in the custody of the retirement system. A nonprofit association requesting a mailing must have at least 2,000 members who are annuitants of the retirement system and must be an eligible state employee organization, as that term is defined by Section 403.0165. A mailing may only include information on membership in the nonprofit association and policy issues affecting annuitants. The nonprofit association must pay the expense of the mailing.

Floor Amendment No. 74

Amend **CSSB 1952** as follows:

In SECTION 7E.03, on page 172, line 27 (House committee report) strike "August 31, 2004" and insert "March 1, 2004".

Floor Amendment No. 75

Amend **CSSB 1952** by adding the following appropriately numbered article to Part 3 of the bill:

ARTICLE ____ . ACCESS DRIVEWAY PERMITS

SECTION __.01. Subchapter C, Chapter 203, Transportation Code, is amended by adding Section 203.035 to read as follows:

Sec. 203.035. ACCESS DRIVEWAY PERMITS. (a) Not later than the 42nd day after the date the department receives a complete application for a permit to construct an access driveway to a highway under the department's jurisdiction the department shall approve or deny the application. If the department does not approve or deny the application on or before the 42nd day after the date the department receives the application, the application is approved.

(b) If the department denies a complete application under Subsection (a), the department shall send to the applicant written notice of the denial specifying the reasons for the denial. If the applicant resubmits the application, the department shall approve or deny the application not later than the 30th day after the date the department receives the resubmitted application. If the department does not approve or deny the resubmitted application on or before the 30th day after the date the department receives the application, the application is approved. If the department denies the resubmitted application, the application may not be subsequently resubmitted.

SECTION __.02. This article applies only to an application for an access driveway permit received by the Texas Department of Transportation on or after the effective date of this Act. An application for an access driveway permit received before the effective date of this Act is governed by the law in effect on the date the application was received, and the former law is continued in effect for that purpose.

Floor Amendment No. 76

Amend **CSSB 1952** in Part 9 of the bill, immediately following Article 9A (House committee printing, page 229, between lines 26 and 27), by inserting the following new article:

ARTICLE 9B. CARE OF PUBLIC SCHOOL
STUDENTS WITH DIABETES

SECTION 9B.01. Chapter 38, Education Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CARE OF STUDENTS WITH DIABETES

Sec. 38.101. DEFINITIONS. In this subchapter:

(1) "Individual health care plan" means the document required by Section 38.102.

(2) "School" means an elementary or secondary school of an independent school district.

(3) "School employee" means a person employed by:

(A) a school;

(B) a local health department that assists a school under this subchapter;

or

(C) another entity with which a school has contracted to perform its duties under this subchapter.

(4) "Trained diabetes care assistant" means a school employee who has completed the training required by Section 38.103.

Sec. 38.102. INDIVIDUAL HEALTH CARE PLAN. (a) An individual health care plan must be developed for each student with diabetes who will seek care for the student's diabetes while at school. The plan shall be developed by:

(1) the student's parent or guardian; and

(2) the student's personal health care team, which should include the student's physician.

(b) An individual health care plan must:

(1) be developed based on specific recommendations by the student's physician or other health care practitioner regarding the student's medical, dietary, and exercise needs and any other needs related to the student's medical condition;

(2) identify the health care services the student may receive at school; and

(3) be signed by the student's parent or guardian and the student's personal health care team.

(c) The parent or guardian of a student with diabetes who seeks care for the student's diabetes while the student is at school shall submit to the school a copy of the student's individual health care plan. The plan must be submitted to and reviewed by the school:

(1) before the beginning of the school year;

(2) on enrollment of the student, if the student enrolls in the school after the beginning of the school year; or

(3) as soon as practicable following a diagnosis of diabetes for the student.

Sec. 38.103. TRAINED DIABETES CARE ASSISTANT. (a) The Texas Diabetes Council shall develop, with the assistance of the following entities, guidelines for the training of school employees in the care of students with diabetes:

- (1) the School Health Program of the Texas Department of Health;
- (2) the American Diabetes Association;
- (3) the Juvenile Diabetes Research Foundation International;
- (4) the American Association of Diabetes Educators;
- (5) the agency; and
- (6) the Texas School Nurses Organization.

(b) A school employee is not required to be a health care professional to be designated as a trained diabetes care assistant. The board of trustees of a school district may not require a school employee to serve as a trained diabetes care assistant.

(c) If a school nurse is assigned to a campus:

(1) the school nurse may be recognized as the trained diabetes care assistant at that campus; or

(2) the school nurse may supervise one or more other school employees acting as trained diabetes care assistants.

(d) If a school nurse is not assigned to a campus:

(1) each trained diabetes care assistant must have access, for emergency or informational assistance, to an individual who has expertise in the care of persons with diabetes, such as a physician, registered nurse, certified dietitian educator, or licensed dietitian; or

(2) the school must have access to a licensed health care professional who is a member of the student's personal health care team.

(e) A trained diabetes care assistant who is not a licensed health care professional may not perform an activity that may otherwise be performed only by a licensed health care professional unless:

(1) a licensed health care professional enters an appropriate written order delegating the activity to the trained diabetes care assistant; and

(2) the order is maintained with the student's personal health care plan or other student records.

(f) Training under this section must be provided annually by a health care professional with expertise in the care of persons with diabetes. The training must be provided before the beginning of the school year or as soon as practicable following:

(1) the enrollment of a student with diabetes at a campus that previously had no students with diabetes; or

(2) a diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

(g) The training must include instruction in:

(1) recognizing signs of hypoglycemia and hyperglycemia;

(2) steps to take if the blood glucose levels of a student with diabetes are outside the target ranges indicated by the student's individual health care plan;

(3) how to follow a physician's instructions concerning diabetes medication dosages, administration, and frequency of administration;

(4) performing finger-sticks to check blood glucose levels, checking ketone levels, and recording the results of those checks;

(5) administering glucagon and insulin and recording the results of the administration; and

(6) the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the steps to take if a student's schedule is disrupted.

(h) The training must be provided without charge to the school employee receiving the training.

(i) The board of trustees of a school district shall ensure that there is at least one trained diabetes care assistant at each campus attended by one or more students with diabetes.

Sec. 38.104. INFORMATION FOR CERTAIN EMPLOYEES. A school district shall provide to each school employee who is responsible for transporting a student with diabetes or for supervising a student with diabetes during an off-campus activity a one-page information sheet that:

(1) identifies the student with diabetes;

(2) identifies potential emergencies involving the student's diabetes and appropriate responses to such emergencies; and

(3) provides telephone numbers of persons the employee may contact in an emergency involving the student's diabetes.

Sec. 38.105. REQUIRED CARE OF STUDENTS WITH DIABETES. (a) At the written request of a parent or guardian of a student with diabetes and in compliance with the student's individual health care plan, a trained diabetes care assistant shall:

(1) respond to the student's blood glucose level if it is outside the target range specified in the student's individual health care plan; and

(2) assist the student in following instructions regarding meals, snacks, and physical activity.

(b) A school shall ensure to the greatest extent practicable that the trained diabetes care assistant is present and available to provide the required care to a student with diabetes during the regular school day.

(c) A school district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required trained diabetes care assistants.

(d) A trained diabetes care assistant who performs an activity described by Subsection (a) in compliance with the individual health care plan of a student with diabetes:

(1) is not considered to be engaging in the practice of:

(A) professional nursing under Chapter 301, Occupations Code, or other state law; or

(B) vocational nursing under Chapter 302, Occupations Code, or other state law; and

(2) if delegated to perform the activity as required by Section 35.103(e), is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health care professional.

Sec. 38.106. INDEPENDENT MONITORING AND TREATMENT. On the written request signed by a parent or guardian of a student with diabetes, and if permitted by the student's individual health care plan, a school shall permit the student to:

- (1) perform blood glucose level checks;
- (2) administer insulin through the insulin delivery system the student uses;
- (3) treat hypoglycemia and hyperglycemia;
- (4) possess on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and
- (5) otherwise attend to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

SECTION 9B.02. Subchapter C, Chapter 38, Education Code, as added by this Act, applies beginning with the 2004-2005 school year.

Floor Amendment No. 77

Amend **CSSB 1952** (House committee printing), in Part ____, by adding an appropriately numbered ARTICLE to read as follows and renumbering existing ARTICLES accordingly:

ARTICLE _____. UNIFIED DRUG ENFORCEMENT STRATEGY

SECTION __.01. Section 772.006, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The criminal justice division may not award a grant under this section to a multijurisdictional drug task force.

(e) The criminal justice division may award a grant under this section to fund a unified drug enforcement strategy by multiple law enforcement agencies through an interlocal contract made under Chapter 791 and approved by the director of the Department of Public Safety. The contract must require that:

(1) the enforcement strategy be under the command and control of the director; and

(2) a peace officer participating in an activity that is part of the enforcement strategy and who is outside of the jurisdiction of the law enforcement agency served by the officer may make an arrest only if:

(A) the officer would otherwise be authorized to make the arrest under Article 14.03, Code of Criminal Procedure; or

(B) the officer is in the presence of another peace officer who serves a law enforcement agency with jurisdiction at the place at which the arrest is to be made.

Floor Amendment No. 78

Amend **CSSB 1952** by adding the following appropriately numbered PART to the bill:

PART _____. CRIMINAL PROCEDURE

ARTICLE _____. USE OF TELECONFERENCING TO ENTER
CERTAIN PLEAS OR WAIVERS

SECTION __.01. Article 27.18, Code of Criminal Procedure, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) A defendant who is confined in a county other than the county in which charges against the defendant are pending may use the teleconferencing method provided by this article to enter a plea or waive a right in the court with jurisdiction over the case.

(e) A defendant who enters a plea or waiver under Subsection (d):

(1) consents to venue in the county in which the court receiving the plea or waiver is located; and

(2) waives any claim of error related to venue.

(f) If a defendant enters a plea of guilty or nolo contendere under Subsection (d), the attorney representing the state may request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. On request for a fingerprint under this subsection, the county in which the defendant is confined shall obtain a fingerprint of the defendant and use first class mail or other means acceptable to the attorney representing the state and the county to forward the fingerprint to the court accepting the plea.

Floor Amendment No. 80

Amend **CSSB 1952** (House committee report) by adding the following appropriately numbered ARTICLE to PART 9 of the bill and renumbering the other ARTICLES accordingly:

ARTICLE ____ . UNIVERSITY OF NORTH TEXAS AT DALLAS

SECTION __.01. Section 105.451(d), Education Code, is amended to read as follows:

(d) Notwithstanding any other provision of this subchapter, the University of North Texas at Dallas may operate as a general academic teaching institution with its own chief executive officer, administration, and faculty only after the Texas Higher Education Coordinating Board certifies that enrollment at the University of North Texas System Center at Dallas has reached an enrollment equivalent to 935 [~~2,500~~] full-time students for one semester. Until that enrollment level is reached, the board may operate a system center of the University of North Texas in the city of Dallas.

Floor Amendment No. 84

Amend **CSSB 1952** by adding a new section to the bill, numbered appropriately, to read as follows and renumbering the existing sections of the bill accordingly:

Section ____ . (a) Section 155.051, Occupations Code is amended to read as follows:

(b) An applicant who is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree must pass each part of an examination described by Section 155.0511(2), (3), (4), (6), or (7) not later than the second anniversary of the date the applicant completed the graduate medical training described by Section 155.003(a)(5) [~~was awarded a doctor of medicine degree or doctor of osteopathy degree~~].

(b) The changes in law made by this section apply to a person who files an application with the Texas State Board of Medical Examiners for a license to practice medicine in this state on or after the effective date of this section or whose license application is pending on the effective date of this section.

(c) This section 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 section does not receive the vote necessary for immediate effect, this section takes effect September 1, 2003.

Floor Amendment No. 85

Amend **CSSB 1952** by adding the following appropriately numbered article to Part 7 of the bill and renumbering the subsequent articles of that part of the bill accordingly:

ARTICLE ____ . REPORTS ON EFFICIENCY OF DEPARTMENT OF
PUBLIC SAFETY OFFICERS

SECTION __.01. Section 411.007(d), Government Code, is amended to read as follows:

(d) At least annually the heads of the divisions and bureaus, after due investigation, shall make a report to the director of the efficiency of each employee within the division or bureau. These reports shall be kept in the department's permanent files and shall be given proper consideration in all matters of promotion and discharge. If the employee is an officer commissioned by the department, the officer's immediate supervisor shall prepare an initial report of the officer's efficiency and present that report to the officer for review and comment. After the officer has been given a reasonable opportunity to review the report and attach additional written information or comments, the department shall require the officer to forward the report, together with any written information or comments added by the officer, to the officer's next immediate supervisor. A supervisor at each intermediate level of supervision of the officer shall review the report and either concur in the evaluations and decisions made by the officer's immediate supervisor or supplement the report by providing additional information or comments. Any additional information or comments provided by the officer or a supervisor of the officer must be kept with the report in the department's permanent files and be given appropriate consideration as part of the report in all matters related to promotion and discharge of the officer.

Floor Amendment No. 89

Amend **CSSB 1952** by adding the following appropriately numbered article to Part 1 of the bill and renumbering the subsequent articles of Part 1 of the bill accordingly:

ARTICLE ____ . STARS OVER TEXAS MUSIC TOUR

SECTION __.01. Chapter 442, Government Code, is amended by adding Section 442.019 to read as follows:

Sec. 442.019. STARS OVER TEXAS MUSIC TOUR. (a) The commission, with the advice of the Music, Film, Television, and Multimedia Office in the governor's office, shall develop and implement a program in accordance with this section to promote the preservation of Texas music history and related tourism and to honor the state's musical heritage.

(b) The program shall be referred to as the "Stars Over Texas Music Tour."

(c) The program shall create an official symbol of designation to recognize and honor persons, events, and locations in this state that are related to Texas music history.

(d) The program shall develop strict standards of eligibility for the presentation of the official symbol of designation under this section.

(e) The program shall, as appropriate, present the official symbol of designation in the form of:

(1) a plaque or other public display, to mark an event or specific location that the office considers to be of significant value to the state's musical heritage; and

(2) an award, to recognize the significant contribution of a person or organization to the state's musical heritage.

(f) The commission shall adopt procedures as necessary to implement the program under this section and shall, as necessary, enter into:

(1) a memorandum of understanding with the Texas Commission on the Arts in accordance with Section 444.030;

(2) an agreement with the Music, Film, Television, and Multimedia Office in the governor's office;

(3) a memorandum of understanding with the Texas Department of Economic Development in accordance with Section 481.028; and

(4) an agreement with the Texas Department of Transportation.

Floor Amendment No. 90

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

ARTICLE ____ . CERTAIN FEDERAL GRANTS

SECTION __.01. Subchapter I, Chapter 391, Transportation Code, is amended by adding Section 391.256 to read as follows:

Sec. 391.256. CERTAIN FEDERAL GRANTS. (a) The department shall plan, design, and establish a program for designating highways in accordance with 23 U.S.C. Section 162.

(b) The department shall:

(1) develop grant projects for highways in accordance with 23 U.S.C. Section 162; and

(2) apply for funding under 23 U.S.C. Section 162 for the grant projects.

(c) The department may not use money from the state highway fund or the Texas Mobility Fund for the purposes of this section.

(d) The department shall adopt rules to implement this section.

Floor Amendment No. 92

Amend **CSSB 1952** by adding the following SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Subtitle E, Title 3, Finance Code, is amended by adding Chapter 157 to read as follows:

CHAPTER 157. CREDIT REPORTING BUREAUS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 157.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the banking commissioner of Texas.

(2) "Credit reporting bureau" means a person who engages in the practice of assembling or reporting credit information about individuals for the purpose of furnishing the information to a third party.

(3) "Department" means the Texas Department of Banking.

(4) "Principal," in connection with management of a license holder or applicant, means a person who performs executive functions or otherwise controls the executive affairs of a license holder, including an owner, officer, director, partner, trustee, or manager of the license holder.

SUBCHAPTER B. POWERS AND DUTIES OF
DEPARTMENT AND COMMISSION

Sec. 157.101. ADMINISTRATION. The department shall administer this chapter.

Sec. 157.102. RULES. (a) The Finance Commission of Texas may:

(1) adopt rules necessary to enforce and administer this chapter, including rules relating to an application for a license; and

(2) adopt rules to accomplish the purposes of Chapter 20, Business & Commerce Code, and any other law applicable to a credit reporting bureau, including rules reasonable or necessary to:

(A) implement and clarify Chapter 20, Business & Commerce Code;
and

(B) defray the cost of enforcing Chapter 20, Business & Commerce Code, and any other law applicable to a credit reporting bureau.

(b) In adopting rules under this section, the Finance Commission of Texas shall consider the necessity to:

(1) promote a stable consumer reporting environment; and

(2) provide adequate protection to consumers and their personal identifying information.

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Sec. 157.201. A credit reporting bureau may not engage in the practice of assembling or reporting credit information about individuals in this state for the purpose of furnishing the information to a third party, as a service or for consideration, unless the credit reporting bureau holds a license issued under this chapter.

Sec. 157.202. APPLICATION. (a) An application for a license must be in writing, sworn to, and filed with the commissioner in the form the commissioner prescribes.

(b) The application must:

(1) state the full legal name, federal taxpayer identification number or social security number, and business address of the applicant, and, the full legal name, federal taxpayer identification number or social security number, and the business address of:

(A) each individual who is a principal of the applicant; and

(B) each individual who is a principal of any person that is a principal of the applicant; and

(2) disclose any other information that may be required by rule or reasonably requested by the commissioner.

Sec. 157.203. ACCOMPANYING FEE, STATEMENTS, AND BOND. (a) An application for a license must be accompanied by:

(1) a nonrefundable application fee in an amount established by rule that is sufficient to administer this chapter;

(2) audited financial statements of the applicant that are reasonably satisfactory to the commissioner;

(3) the location of the home office of the applicant and of the main office of the applicant in this state; and

(4) a surety bond in the amount of \$100,000 that is:

(A) in a form satisfactory to the commissioner; and

(B) issued by a bonding company or insurance company authorized to do business in this state.

Sec. 157.204. ISSUANCE OF LICENSE. On the filing of an application that meets the requirements of Sections 157.202 and 157.203, the commissioner shall issue a license to the applicant if the commissioner:

(1) approves the documents; and

(2) finds that the bond is in the prescribed amount.

Sec. 157.205. DENIAL OF LICENSE; HEARING. (a) A hearing must be held before a license may be denied.

(b) The commissioner shall give the applicant notice of the hearing.

SUBCHAPTER D. REQUIREMENTS TO MAINTAIN LICENSE

Sec. 157.301. INSUFFICIENT BOND. (a) If the commissioner at any time reasonably determines that the bond required by this chapter is insecure or deficient in amount, the commissioner by written order may require the license holder to file a new or supplemental bond to secure compliance with this chapter.

(b) The license holder shall comply with the order not later than the 30th day after the date on which the order is served.

Sec. 157.302. ANNUAL LICENSE FEE. (a) Not later than June 30 of each year, a license holder shall pay to the commissioner a license renewal fee in an amount established by rule.

(b) The fee required by Section 157.203(1) satisfies the license fee requirement for the first license year or part of that year.

Sec. 157.303. REVOCATION OF LICENSE. (a) The commissioner may revoke a license:

(1) on a ground on which the commissioner may refuse to grant a license; or

(2) for a violation of this chapter.

(b) The commissioner may investigate the business and records of a license holder if the commissioner has reasonable cause to believe that grounds for revocation exist.

Sec. 157.304. HEARING ON LICENSE REVOCATION. (a) The commissioner shall give a license holder an opportunity for a hearing before a license may be revoked.

(b) The commissioner shall give the license holder notice of the hearing.

SUBCHAPTER E. CRIMINAL PENALTIES AND CIVIL REMEDIES

Sec. 157.401. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) makes an untrue statement of a material fact in an application or report required to be filed with the commissioner under this chapter; or

(2) violates Section 157.201.

(b) An offense under this section is a third degree felony.

Sec. 157.402. ADMINISTRATIVE PENALTY. (a) The commissioner may impose an administrative penalty on a person in an amount specified by the commissioner if, after notice and hearing, the commissioner finds the person has violated:

- (1) this chapter;
- (2) a rule adopted under this chapter; or
- (3) an order of the commissioner issued under this chapter.
- (b) The amount of the penalty may not exceed:
 - (1) \$1,000 for each violation; or
 - (2) \$1,000 for each day the violation continues.

Sec. 157.403. SUIT BY ATTORNEY GENERAL. The attorney general may sue on behalf of claimants on the bond required by Section 152.203(4) in a district court in Travis County, either in one action or successive actions.

Floor Amendment No. 93

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

SECTION _____. Section 498.004(a), Government Code, as amended by Chapters 249 and 321, Acts of the 74th Legislature, Regular Session, 1995, is reenacted and amended to read as follows:

(a) If, during the actual term of imprisonment of an inmate in the institutional division or in a transfer facility, the inmate commits an offense or violates a rule of the division, the department may forfeit all or any part of the inmate's accrued good conduct time. The department may ~~not~~ restore good conduct time forfeited under this subsection.

Floor Amendment No. 95

Amend **CSSB 1952** (House committee printing) by adding the following new SECTIONS _____ on page 7, line 18 and renumbering accordingly:

SECTION _____. Amend Section 1051.001, Occupations Code to read as follows:

- (3) "Interior design" means the:
 - (A) performance of professional services, for a fee or other compensation, directly or indirectly, to another person, or to a partnership, corporation, or other legal entity, that include:
 - (1) preparing and filing interior design construction documents with code enforcement officials for nonstructural or non-seismic interior construction;
 - (2) obtaining building permits for nonstructural or non-seismic interior construction;
 - (3) preparing documents to illustrate materials, finishes, space planning, reflected ceiling plans, furnishings, fixtures, and equipment;
 - (4) analyzing a client's needs, goals, and life safety requirements while protecting the public health, safety, and welfare;
 - (5) integrating findings with knowledge of interior design;
 - (6) formulating preliminary design concepts that are appropriate, functional, and aesthetic;

(7) developing and presenting final design recommendations through appropriate presentation media;

(8) collaborating with closely allied design professionals who are licensed practitioners offering professional services as required for regulatory approval;

(9) preparing and administering bids and contract documents as the client's agent; and

(10) reviewing and evaluating the implementation of projects while in progress and on completion as a representative of, and on behalf of, the client.

(B) The term "interior design" does not include an act, service or work within the scope of the practice of architecture as defined by Chapter 1051 of the Occupations Code or an act, service or work within the scope of the practice of engineering as defined by Chapter 1001 of the Occupations Code. The term also does not include the performance of services relating to:

(1) structural, mechanical, plumbing, heating, air conditioning, ventilation, electrical, or vertical transportation systems;

(2) construction of stairwells; and

(3) construction that affects life-safety systems including, but not

limited to:

(a) performance of mechanical systems;

(b) fire safety protection;

(c) fire-rated vertical shafts and multi-story structures;

(d) smoke evacuation and compartmentalization;

(e) emergency sprinkler and alarm systems; and

(f) emergency ingress and egress systems.

SECTION _____. Section 1053.002, Occupations Code, is amended to read as follows:

Sec. 1053.002. APPLICATION. (a) This chapter does not apply to a person who:

(1) does not use the title "interior designer" and does not use the term "interior design" to describe a service the person offers or performs; or

(2) is registered to practice architecture in this state, or works under the control, instruction or supervision of a registered architect, if the architect does not use the term "Registered Interior Designer" unless also registered under this chapter.

(b) This chapter does not:

(1) prohibit an employee of a retail establishment from providing consultations regarding interior decoration or furnishings:

(A) on the premises of the retail establishment; or

(B) in furtherance of a retail sale or prospective retail sale [an interior designer or architect from performing an interior design service under the control, instruction, or supervision of the interior designer or architect]; [or]

(2) restrict the practice or activities of or the provision of a service by a person engaged in a profession or occupation for which the person is licensed or registered in this state under any other law; or

(3) restrict the activities of a person who provides decorative services or assistance in the selection of surface materials, window coverings, wall coverings, paint, floor coverings, surface-mounted fixtures, and loose furnishings not subject to regulation.

SECTION _____. The heading to Subchapter D, Chapter 1053, Occupations Code, is amended to read as follows:

SUBCHAPTER D. REGISTRATION [~~REQUIREMENTS~~]

SECTION _____. Section 1053.151, Occupations Code, is amended to read as follows:

Sec. 1053.151. REGISTRATION REQUIRED. A person other than an interior designer may not:

(1) engage in the practice of interior design or offer or attempt to engage in the practice of interior design unless the person is registered under this chapter; or

(2) hold the person out as engaged in the practice of interior design or, unless all interior design services provided by the person are rendered by or under the responsible supervisory control of a person registered under this chapter, represent:

(A) that the person is an "interior designer" by using that title or the term "Registered Interior Designer"; or

(B) [~~(2) represent, by using the term "interior design" a service the person offers or performs~~] that the person may offer or perform an "interior design" service.

SECTION _____. Section 1053.152(b), Occupations Code, is amended to read as follows:

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

(1) meet the qualifications established by the board under Subsection (a);

(2) pass the [~~registration~~] examination of the National Council for Interior Design Qualification or a similar national organization recognized by the board; [~~and~~]

(3) pay the required fees;

(4) hold a professional degree in interior design or architecture conferred by a design program accredited by the Foundation for Interior Design Education Research or a substantially equivalent program, as determined by the board; and

(5) have two years of diversified experience as determined by the board.

SECTION _____. Section 1053.154(b), Occupations Code, is amended to read as follows:

(b) The examination must cover subjects established by and must be graded according to board rules. The board by rule shall [~~may~~] adopt the examination of the National Council for Interior Design Qualification or a similar national organization recognized by the board [~~comparable examination~~].

SECTION _____. Section 1053.160, Occupations Code by adding a new Subsection (e) as follows:

(e) Construction documents that bear the seal of a registered interior designer who holds a certificate from the National Council for Interior Design Qualification shall be accepted for filing by the appropriate jurisdiction or local building department.

SECTION _____. Section 1053.201, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a certificate of registration issued under this chapter is valid for one year from the date of issuance. [The board shall provide for the annual renewal of a certificate of registration.]

(c) Effective December 1, 2005, to be eligible to renew a certificate of registration, an interior designer who has not passed the examination of the National Council for Interior Design Qualification or an examination of a similar national organization recognized by the board, must have:

(1) passed the building and barrier-free code section of the examination of the National Council for Interior Design Qualification or a similar national organization recognized by the board; ~~or~~ and

(2) completed, in addition to the continuing education requirements required for renewal of the certificate of registration under Section 1053.205, 15 hours of board-approved continuing education classes relating to ~~building and barrier free codes and regulations~~, the Texas Accessibility Standards and building codes approved for adoption in Texas.

SECTION _____. Section 1053.351, Occupations Code, is amended to read as follows:

Sec. 1053.351. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates [~~Section 1053.151 or a standard of conduct adopted under~~] this chapter or a rule adopted under this chapter.

(b) An offense under this section is a [~~Class C~~] misdemeanor punishable by a fine of not less than \$250 or more than \$5,000. Each day of violation constitutes a separate offense.

SECTION _____. Chapter 1053, Occupations Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PRACTICE BY INTERIOR DESIGNER

Sec. 1053.401. SUPERVISION BY INTERIOR DESIGNER. Each interior design office must have an interior designer or architect who is responsible for interior design work performed at that location. The interior designer or architect shall provide responsible supervisory control over each nonregistered person working at that location in the practice of interior design. Responsible Supervisory Control is the direct responsibility for supervision by an interior designer or architect of the work and decision-making process, including the ability to review, enforce, and control compliance with all design criteria and life safety requirements. For purposes of this subdivision, supervision is not required to be continuous and uninterrupted.

Sec. 1053.402. DUTIES TO CLIENT. (a) Before entering into a contract with a client, an interior designer must clearly determine and disclose the scope and nature of the project and the method of compensation.

(b) An interior designer shall notify each client of the name and address of the board.

Sec. 1053.404. COMPLIANCE WITH CERTAIN REQUIREMENTS. Each interior designer shall practice in compliance with all applicable building codes, fire codes, local regulations, and other safety requirements adopted by the board or another regulatory entity implemented to prohibit practice by persons who:

(1) fail to practice within the bounds of minimum competency requirements;

or

(2) otherwise present a danger to the public.

SECTION _____. Section 1053.158, Occupations Code, is repealed.

SECTION _____. The Texas Board of Architectural Examiners shall issue a certificate of registration as an interior designer to a person who applies for registration as an interior designer with the board and pays the required fees before the second anniversary of the effective date of this Act if the person presents evidence satisfactory to the board that the person has passed the examination of the National Council for Interior Design Qualification or a similar national organization recognized by the board.

SECTION _____. (a) The change in law made by this Act to Section 1053.351, Occupations Code, applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

SECTION _____. The Texas Board of Architectural Examiners shall adopt rules as required by Chapter 1053, Occupations Code, as amended by this Act, not later than December 1, 2003.

SECTION _____. The change in law made by this Act to Section 1053.201, Occupations Code, takes effect September 1, 2003, and applies only to an application for an initial or renewal interior designer certificate of registration that is filed with the Texas Board of Architectural Examiners on or after January 1, 2004. An application filed before January 1, 2004, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

Floor Amendment No. 98

Amend **CSSB 1952** by striking Article 1H in Part 1 of the bill.

Floor Amendment No. 99

Substitute the following for Floor Amendment No. 98 to **CSSB 1952** as follows:

(1) In Section 1H.01 of the bill, in added Section 401.105(a), Government Code (House committee report, page 4, lines 23-25), strike the first sentence and substitute the following: "In this section, "state agency" does not include an institution of higher education as defined by Section 61.003, Education Code."

Floor Amendment No. 3 on Third Reading

Amend **CSSB 1952** on third reading by striking ARTICLE 1N of the bill (page 42, line 14, through page 43, line 24) and renumbering ARTICLES in PART 1 of the bill accordingly.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 1952** on third reading by striking Article 2D, relating to sales tax on motor vehicles, in Part 2 of the bill.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1952** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Harris, Armbrister, Nelson, and Whitmire.

SENATE RESOLUTION 1010

Senator Madla offered the following resolution:

WHEREAS, The San Antonio Spurs finished the 2002-2003 regular season with the best record in the NBA; and

WHEREAS, The San Antonio Spurs finished the 2002-2003 regular season as the Mid-West Conference Champions; and

WHEREAS, Tim Duncan repeated as the National Basketball Association's Most Valuable Player; and

WHEREAS, The San Antonio Spurs entered into the Western Conference playoffs as the number one seeded team; and

WHEREAS, The San Antonio Spurs defeated the Dallas Mavericks four games to two in a best of seven game series for the Western Conference Championship; and

WHEREAS, The San Antonio Spurs will once again be playing for the National Basketball Association's Championship; now, therefore, be it

RESOLVED, That the Bexar County Delegation of the Texas Senate, 78th Legislature, hereby would like to thank the Dallas Mavericks for participating in this year's Western Conference Finals, pick up your commemorative "We Got Fourth Place" tee-shirt on the way out the door; and, be it further

RESOLVED, That the Bexar County Delegation of the Texas Senate, 78th Legislature, hereby would like to say "GO SPURS GO!!!"

MADLA
VAN DE PUTTE
WENTWORTH
ZAFFIRINI

The resolution was read.

SENATE RESOLUTION 1013

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the coach and players of the San Antonio Spurs for winning the Western Conference Championship title in the National Basketball Association play-offs; and

WHEREAS, The San Antonio Spurs defeated the Dallas Mavericks 90-78 in the hotly contested play-off game; with the Spurs down 13 points and less than four minutes left, Steve Kerr entered the game and converted all four of his three-point shots to clinch the victory; and

WHEREAS, The Spurs, who are led by Coach Gregg Popovich and Most Valuable Player of the Year, Tim Duncan, have had an impressive performance in the Interstate 35 series; and

WHEREAS, Since the Dallas Chaparrals had the good sense to move to San Antonio to become the San Antonio Spurs, one city became the better for it; now two former American Basketball Association teams will meet in the NBA finals; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby congratulate the San Antonio Spurs basketball team, Coach Gregg Popovich, and all who are a part of the team for their outstanding performance in the Western Conference play-off and extend to them best wishes for success in the championship finals; and, be it further

RESOLVED, That the Senate also recognize the Dallas Mavericks for their impressive regular season and play-off run; and, be it further

RESOLVED, That the San Antonio Senate Delegation is looking forward to being treated by the Dallas Senate Delegation to Texas barbecue, with soy barbecue for Senator Zaffirini.

ZAFFIRINI
MADLA
VAN DE PUTTE
WENTWORTH

The resolution was read.

SR 1010 and **SR 1013** were adopted without objection.

SENATE BILL 1182 WITH HOUSE AMENDMENTS

Senator Deuell called **SB 1182** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

(1) Amend **SB 1182** by inserting the following new subsections (e) and (f) to read as follows:

(e) The performance agreement shall specify required standard outcomes for the programs administered by a local authority. Performance related to these outcomes must be verifiable by the Department, but should include community center and advocacy group input.

(f) Measures relating to outputs and units of service delivered, shall be included in the performance agreement, and recorded in the local authority automated data systems. Copies of these output/service reports shall be forwarded to the Department at least annually, as determined by the Department.

(2) Renumber the remaining subsections accordingly.

Floor Amendment No. 2

Amend Committee Amendment No. 1 to **SB 1182** by striking the text of the amendment and substituting the following:

Amend **SB 1182** as follows:

(1) In proposed Section 533.0354(d), Health and Safety Code, as added by SECTION 1 of the bill (page 2, lines 18-21), strike Paragraphs (d)(2)(D) and (d)(2)(E) and substitute the following:

(D) goals to divert consumers of services from the criminal justice system;

(E) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(F) opportunities for innovation in services and service delivery.

(e) The department and the local mental health or mental retardation authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health or mental retardation authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

(2) In Subsection (b) of SECTION 2 of the bill (page 2, line 27), strike "Subsection (c), Section 533.0354," and substitute "Sections 533.0354(c) and (e)."

(3) In Subsection (b) of SECTION 2 of the bill (page 3, line 1), strike "applies" and substitute "apply".

Floor Amendment No. 3

Amend **SB 1182** (House committee printing) in Section 1 of the bill as follows:

(1) In proposed Paragraph (B), Subdivision (1), Subsection (d), Section 533.0354, Health and Safety Code (page 2, line 7), between the semi-colon and "and", insert:

(C) consumers of services of state schools for persons with mental retardation, members of families of those consumers, and members of state school volunteer services councils, if a state school is located in the local service area of the local authority;

(2) At the beginning of proposed Paragraph (C), Subdivision (1), Subsection (d), Section 533.0354, Health and Safety Code (page 2, line 8), strike "(C)" and substitute "(D)".

(3) In proposed Paragraph (D), Subdivision (2), Subsection (d), Section 533.0354, Health and Safety Code (page 2, line 19), between the semi-colon and "and", insert:

(E) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state schools for persons with mental retardation in the local service area of the local authority;

(4) At the beginning of proposed Paragraph (E), Subdivision (2), Subsection (d), Section 533.0354, Health and Safety Code (page 2, line 20), strike "(E)" and substitute "(F)".

Floor Amendment No. 4

Amend **SB 1182** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION _____. Chapter 574, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING AT PROCEEDINGS

Sec. 574.201. APPLICATION OF SUBCHAPTER. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

Sec. 574.202. CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or the attorney representing the state or at the court's discretion, the court may terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

Floor Amendment No. 5

Amend **SB 1182** by inserting the following new SECTION, appropriately numbered, and numbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0224 to read as follows:

Sec. 531.0224. MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.

(a) To ensure appropriate delivery of mental health and substance abuse services, the commission shall regularly evaluate program contractors and subcontractors that provide or arrange for the services for persons enrolled in:

(1) the Medicaid managed care program; and

(2) the state child health plan program.

(b) The commission shall monitor:

(1) penetration rates, as they relate to mental health and substance abuse services provided by or through contractors and subcontractors;

(2) utilization rates, as they relate to mental health and substance abuse services provided by or through contractors and subcontractors; and

(3) provider networks used by contractors and subcontractors to provide mental health or substance abuse services.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1182** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Deuell, Chair; West, Lindsay, Carona, and Shapleigh.

SENATE BILL 1000 WITH HOUSE AMENDMENT

Senator West called **SB 1000** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1000** as follows:

(1) In SECTION 1 of the bill, in the first sentence of Subsection (a), Section 2113.108, Government Code, as added by the bill (House committee printing, page 1, line 9), between "(a) A state agency" and "may not use appropriated", insert "other than the offices of the attorney general and comptroller".

(2) Strike existing SECTION 2 of the bill (House committee printing, page 2, lines 4-22) and substitute the following:

SECTION 2. Chapter 323, Government Code, is amended by adding Section 323.020 to read as follows:

Sec. 323.020. CONTRACTS TO PERFORM STATISTICAL OR DEMOGRAPHIC ANALYSIS; CONFIDENTIALITY. (a) Except for Subsection (b), this section does not apply in relation to a statistical or demographic analysis of information related to the redistricting process.

(b) The council may determine whether and the extent to which council resources are available to perform or assist a state agency in performing a statistical or demographic analysis of information as described by Section 2113.108.

(c) Except as provided by this section, information that the council acquires or produces in relation to a statistical or demographic analysis described by Section 2113.108 is confidential and not public information subject to Chapter 552, including:

(1) any information that identifies or tends to identify an individual or other entity that submitted information or that was asked to submit information for the analysis;

(2) working drafts and working papers developed in performing the analysis;

(3) contracts and subcontracts entered into for purposes of performing the analysis;

(4) internal and interagency correspondence sent or received in the course of performing the analysis;

(5) memoranda of understanding entered into in relation to performing the analysis; and

(6) data, data files, databases, computer coding, computer specification programs, data use agreements, and data dictionaries acquired or used in performing the analysis.

(d) Without regard to whether the council collects information for purposes of performing a statistical or demographic analysis of information as described by Section 2113.108 indirectly through the state agency or directly from another governmental or nongovernmental entity, an individual or other entity that voluntarily provides information to the state agency or to the council for purposes of the analysis does not waive any exception from required disclosure or any privilege not to disclose the information, and the character of the information as privileged or excepted from required disclosure is not affected by that action of the individual or other entity.

(e) A final report containing a statistical or demographic analysis of information as described by Section 2113.108, a cover letter or cover memorandum for the final report, and an announcement that the final report is available are not confidential and are subject to required public disclosure under Chapter 552 except to the extent that the final report, cover letter or cover memorandum, or announcement contains information that identifies or tends to identify an individual or entity other than information that names a staff member who performed work in relation to performing the analysis or that names government officials on a letterhead.

(f) Notwithstanding Subsection (c)(3), a contract between the council and a state agency under Section 2113.108 and the names of the staff members who perform work in relation to performing the analysis under the contract are not confidential. A contract between the council and a state agency under Section 2113.108 is public information subject to Chapter 552.

(g) Information that an individual or other entity submits for the purpose of a statistical or demographic analysis of information performed by the council under Section 2113.108 may not be used against the individual or other entity in a state agency enforcement proceeding. This subsection does not affect the ability of a state agency to obtain the information by other means and to use the information, if obtained by other means, in a state agency enforcement proceeding.

(3) Add the following new SECTION 3 of the bill and renumber existing SECTION 3 of the bill as SECTION 4 of the bill:

SECTION 3. Section 552.112, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Information is excepted from the requirements of Section 552.021 if it is information submitted by an individual or other entity to the Texas Legislative Council, or to any state agency or department overseen by the Finance Commission of Texas and the information has been or will be sent to the Texas Legislative Council, for the purpose of performing a statistical or demographic analysis of information subject to Section 323.020. However, this subsection does not except from the requirements of Section 552.021 information that does not identify or tend to identify an individual or other entity and that is subject to required public disclosure under Section 323.020(e).

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1000** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Armbrister, Harris, Whitmire, and Duncan.

SENATE BILL 264 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 264** 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 264** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Department of Housing and Community Affairs.

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

SECTION 1. Section 2306.001, Government Code, is amended to read as follows:

Sec. 2306.001. PURPOSES. The purposes of the department are to:

- (1) assist local governments in:
 - (A) providing essential public services for their residents; and
 - (B) overcoming financial, social, and environmental problems;
 - (2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
 - (3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;
 - (4) assist the governor and the legislature in coordinating federal and state programs affecting local government;
 - (5) inform state officials and the public of the needs of local government;
- ~~and~~
- (6) serve as the lead agency for:
 - (A) addressing at the state level the problem of homelessness in this state;
 - (B) coordinating interagency efforts to address homelessness; and
 - (C) addressing at the state level and coordinating interagency efforts to address any problem associated with homelessness, including hunger; and [-]
- (7) [6] serve as a source of information to the public regarding all affordable housing resources and community support services in the state.

SECTION 2. Section 2306.004(14), Government Code, is amended to read as follows:

- (14) "Housing sponsor" means:
 - (A) an individual, including an individual or family of low and very low income or family of moderate income, joint venture, partnership, limited partnership, trust, firm, corporation, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other terms and conditions in this chapter; ~~or~~
 - (B) in an economically depressed or blighted area, or in a federally assisted new community located within a home-rule municipality, the term may include an individual or family whose income exceeds the moderate income level if at least 90 percent of the total mortgage amount available under a mortgage revenue bond issue is designated for individuals and families of low income or families of moderate income; or
 - (C) a public housing authority.

SECTION 3. Section 2306.021(b), Government Code, is amended to read as follows:

- (b) The department is composed of:
 - (1) the community affairs division;
 - (2) the housing finance division;
 - (3) the manufactured housing division; and

(4) ~~[the community development division; and~~
~~[(5)]~~ any other division created by the director as permitted by [under]
 Section 2306.0521.

SECTION 4. Section 2306.022, Government Code, is amended to read as follows:

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2007 ~~[2003]~~.

SECTION 5. Section 2306.0661, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board shall adopt rules governing the topics that may be considered at a public hearing. The rules must require the department to consider the following topics in relation to a proposed housing development:

- (1) the developer market study;
- (2) the location;
- (3) the compliance history of the developer;
- (4) the financial feasibility;
- (5) the appropriateness of the development's size and configuration in relation to the housing needs of the community in which the development is located;
- (6) the development's proximity to other low income housing developments;
- (7) the availability of adequate public facilities and services;
- (8) the anticipated impact on local school districts;
- (9) zoning and other land use considerations; and
- (10) any other topics that the board by rule determines to be appropriate.

SECTION 6. Section 2306.0721(c), Government Code, is amended to read as follows:

- (c) The plan must include:
- (1) an estimate and analysis of the housing needs of the following populations in each uniform state service region:
 - (A) individuals and families of moderate, low, very low, and extremely low income;
 - (B) individuals with special needs; and
 - (C) homeless individuals;
 - (2) a proposal to use all available housing resources to address the housing needs of the populations described by Subdivision (1) by establishing funding levels for all housing-related programs;
 - (3) an estimate of the number of federally assisted housing units available for individuals and families of low and very low income and individuals with special needs in each uniform state service region;
 - (4) a description of state programs that govern the use of all available housing resources;
 - (5) a resource allocation plan that targets all available housing resources to individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(6) a description of the department's efforts to monitor and analyze the unused or underused federal resources of other state agencies for housing-related services and services for homeless individuals and the department's recommendations to ensure the full use by the state of all available federal resources for those services in each uniform state service region;

(7) strategies to provide housing for individuals and families with special needs in each uniform state service region;

(8) a description of the department's efforts to encourage in each uniform state service region the construction of housing units that incorporate energy efficient construction and appliances;

(9) an estimate and analysis of the housing supply in each uniform state service region;

(10) an inventory of all publicly and, where possible, privately funded housing resources, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies;

(11) strategies for meeting rural housing needs;

(12) a biennial action plan for colonias that:

(A) addresses current policy goals for colonia programs, strategies to meet the policy goals, and the projected outcomes with respect to the policy goals; and

(B) includes information on the demand for contract-for-deed conversions, services from self-help centers, consumer education, and other colonia resident services in counties some part of which is within 150 miles of the international border of this state;

(13) a summary of public comments received at a hearing under this chapter or from another source that concern the demand for colonia resident services described by Subdivision (12); and

(14) any other housing-related information that the state is required to include in the one-year action plan of the consolidated plan submitted annually to the United States Department of Housing and Urban Development.

SECTION 7. Section 2306.0722(a), Government Code, is amended to read as follows:

(a) Before preparing the annual low income housing report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the department shall meet with regional planning commissions created under Chapter 391, Local Government Code, representatives of groups with an interest in low income housing, nonprofit housing organizations, managers, owners, and developers of affordable housing, local government officials, ~~and~~ residents of low income housing, and members of the Colonia Resident Advisory Committee. The department shall obtain the comments and suggestions of the representatives, officials, ~~and~~ residents, and members about the prioritization and allocation of the department's resources in regard to housing.

SECTION 8. Subchapter D, Chapter 2306, Government Code, is amended by adding Section 2306.082 to read as follows:

Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The department shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 9. Section 2306.111, Government Code, is amended by adding Subsections (c-1), (c-2), (d-1), and (i) to read as follows:

(c-1) The following entities are eligible to apply for set-aside funds under Subsection (c):

(1) nonprofit providers of affordable housing, including community housing development organizations; and

(2) for-profit providers of affordable housing.

(c-2) In allocating set-aside funds under Subsection (c), the department may not give preference to nonprofit providers of affordable housing, except as required by federal law.

(d-1) Funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if:

(1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law; and

(2) each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program.

(i) The director shall designate an employee of the department to act as the information officer and as a liaison with the public regarding each application seeking an allocation of housing funds described by this section.

SECTION 10. Sections 2306.111(d)-(g), Government Code, are amended to read as follows:

(d) The department shall allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by the department under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by the department under Subchapter DD to all urban, exurban, and rural areas of each uniform state service region based on a formula developed by the department that is based on the need for housing assistance and the

availability of housing resources in those urban, exurban, and rural areas, provided that the allocations are consistent with applicable federal and state requirements and limitations. The department shall use the information contained in its annual state low income housing plan and shall use other appropriate data to develop the formula. If the department determines under the formula that an insufficient number of eligible applications for assistance out of funds or credits allocable under this subsection are submitted to the department from a particular uniform state service region, the department shall use the unused funds or credits allocated to that region for all urban, exurban, and rural areas in other uniform state service regions based on identified need and financial feasibility.

(e) The department shall include in its annual low income housing plan under Section 2306.0721:

(1) the formula developed by the department under Subsection (d); and

(2) the allocation targets established under the formula for the urban, exurban, and rural areas of each uniform state service region.

(f) The department shall include in its annual low income housing report under Section 2306.072 the amounts of funds and credits allocated to the urban, exurban, and rural areas of each uniform state service region in the preceding year for each federal and state program affected by the requirements of Subsection (d).

(g) For all urban, exurban, and rural areas of each uniform state service region, the department shall establish funding priorities to ensure that:

(1) funds are awarded to project applicants who are best able to meet recognized needs for affordable housing, as determined by ~~the~~ department rule;

(2) when practicable and when authorized under Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least restrictive funding sources are used to serve the lowest income residents; and

(3) funds are awarded based on a project applicant's ability, when consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), practicable, and economically feasible, to:

(A) provide the greatest number of quality residential units;

(B) serve persons with the lowest percent area median family income;

(C) extend the duration of the project to serve a continuing public need;

(D) use other local funding sources to minimize the amount of state subsidy needed to complete the project; and

(E) provide integrated, affordable housing for individuals and families with different levels of income.

SECTION 11. Section 2306.1113, Government Code, is amended to read as follows:

Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) During the period beginning on the date a project application is filed and ending on the date the board makes a final decision with respect to any approval of that application, a member of the board ~~[or a member of the advisory committee established under Section 2306.1112]~~ may not communicate with the following persons:

(1) the applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of the proposed project, including:

- (i) a general partner or contractor; and
- (ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a lobbyist by the applicant or a related party.

(a-1) Subject to Subsection (a-2), during the period beginning on the date a project application is filed and ending on the date the board makes a final decision with respect to any approval of that application, an employee of the department may communicate about the application with the following persons:

(1) the applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of the proposed project, including:

- (i) a general partner or contractor; and
- (ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a lobbyist by the applicant or a related party.

(a-2) A communication under Subsection (a-1) may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(1) the communication must be restricted to technical or administrative matters directly affecting the application;

(2) the communication must occur or be received on the premises of the department during established business hours; and

(3) a record of the communication must be maintained and included with the application for purposes of board review and must contain the following information:

(A) the date, time, and means of communication;

(B) the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the applicant;

(C) the subject matter of the communication; and

(D) a summary of any action taken as a result of the communication.

(b) Notwithstanding Subsection (a) or (a-1), a board member or department employee [~~advisory committee member~~] may communicate without restriction with a person listed in Subsection (a) or (a-1) [~~described by that subsection~~] at any board meeting or public hearing held with respect to the application.

SECTION 12. Subchapter F, Chapter 2306, Government Code, is amended by adding Section 2306.1114 to read as follows:

Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION. (a) Not later than the 14th day after the date an application or a proposed application for housing funds described by Section 2306.111 has been filed, the department shall provide written notice of the filing of the application or proposed application to the following persons:

(1) the United States representative who represents the community containing the development described in the application;

(2) members of the legislature who represent the community containing the development described in the application;

(3) the presiding officer of the governing body of the political subdivision containing the development described in the application;

(4) any member of the governing body of a political subdivision who represents the area containing the development described in the application;

(5) the superintendent and the presiding officer of the board of trustees of the school district containing the development described in the application; and

(6) any neighborhood organizations on record with the state or county in which the development described in the application is to be located and whose boundaries contain the proposed development site.

(b) The notice provided under Subsection (a) must include the following information:

(1) the relevant dates affecting the application, including:

(A) the date on which the application was filed;

(B) the date or dates on which any hearings on the application will be held; and

(C) the date by which a decision on the application will be made;

(2) a summary of relevant facts associated with the development;

(3) a summary of any public benefits provided as a result of the development, including rent subsidies and tenant services; and

(4) the name and contact information of the employee of the department designated by the director to act as the information officer and liaison with the public regarding the application.

SECTION 13. Section 2306.185, Government Code, is amended by amending Subsections (a) and (e) and adding Subsection (h) to read as follows:

(a) The department shall adopt policies and procedures to ensure that, for a multifamily rental housing development funded through loans, grants, or tax credits under this chapter, the owner of the development:

(1) keeps the rents affordable for low income tenants for the longest period that is economically feasible; and

(2) provides regular maintenance to keep the development sanitary, decent, and safe and otherwise complies with the requirements of Section 2306.186.

(e) Subsections (c) and (d) and Section 2306.269 apply only to multifamily rental housing developments to which the department is providing one or more of the following forms of assistance:

(1) a loan or grant in an amount greater than 33 percent of the market value of the development on the date the recipient completed the construction [~~took legal possession~~] of the development;

(2) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the development on the date the recipient took legal title to the development; or

(3) a low income housing tax credit.

(h) The department shall monitor a development owner's compliance with this section.

SECTION 14. Subchapter H, Chapter 2306, Government Code, is amended by adding Section 2306.186 to read as follows:

Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY REPAIRS. (a) In this section:

(1) "Bank trustee" means a bank authorized to do business in this state, with the power to act as trustee.

(2) "Department assistance" means any state or federal assistance administered by or through the department, including low income housing tax credits.

(3) "First lien lender" means a lender whose lien has first priority.

(4) "Reserve account" means an individual account:

(A) created to fund any necessary repairs for a multifamily rental housing development; and

(B) maintained by a first lien lender or bank trustee.

(b) If the department is the first lien lender with respect to the development, each owner who receives department assistance for a multifamily rental housing development that contains 25 or more rental units shall deposit annually into a reserve account:

(1) for the year 2004:

(A) not less than \$150 per unit per year for units one to five years old;

and

(B) not less than \$200 per unit per year for units six or more years old;

and

(2) for each year following the year 2004, the amounts per unit per year as described by Subdivision (1).

(c) A land use restriction agreement or restrictive covenant between the owner and the department must require the owner to begin making annual deposits to the reserve account on the date that occupancy of the multifamily rental housing development stabilizes or the date that permanent financing for the development is completely in place, whichever occurs later, and shall continue making deposits until the earliest of the following dates:

(1) the date of any involuntary change in ownership of the development;

(2) the date on which the owner suffers a total casualty loss with respect to the development or the date on which the development becomes functionally obsolete, if the development cannot be or is not restored;

(3) the date on which the development is demolished;

(4) the date on which the development ceases to be used as multifamily rental property; or

(5) the end of the affordability period specified by the land use restriction agreement or restrictive covenant.

(d) With respect to multifamily rental developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, the development owner shall set aside the repair reserve amount as a reserve for capital improvements. The reserve must be established for each unit in the development, regardless of the amount of rent charged for the unit.

(e) Beginning with the 11th year after the awarding of any financial assistance for the development by the department, the owner of a multifamily rental housing development shall contract for a third-party physical needs assessment at appropriate intervals that are consistent with lender requirements with respect to the development. If the first lien lender does not require a third-party physical needs assessment or if the department is the first lien lender, the owner shall contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the development by the department. The owner of the development shall submit to the department copies of the most recent third-party physical needs assessment conducted on the development, any response by the owner to the assessment, any repairs made in response to the assessment, and information on any necessary changes to the required reserve based on the assessment.

(f) The department may complete necessary repairs if the owner fails to complete the repairs as required by Subsection (e). Payment for those repairs must be made directly by the owner of the development or through a reserve account established for the development under this section.

(g) If notified of the development owner's failure to comply with a local health, safety, or building code, the department may enter on the property and complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and may pay for those repairs through a reserve account established for the development under this section.

(h) The duties of the owner of a multifamily rental housing development under this section cease on the date of a voluntary change in ownership of the development, but the subsequent owner of the development is subject to the deposit, inspection, and notification requirements of Subsections (b), (c), (d), and (e).

(i) The first lien lender shall maintain the reserve account. In the event there is no longer a first lien lender, then Subsections (b) and (d) no longer apply.

(j) The department shall adopt rules that:

(1) establish requirements and standards regarding:

(A) for first lien lenders and bank trustees:

(i) maintenance of reserve accounts and reasonable costs of that maintenance;

(ii) asset management;

(iii) transfer of money in reserve accounts to the department to fund necessary repairs; and

(iv) oversight of reserve accounts and the provision of financial data and other information to the department; and

(B) for owners, inspections of the multifamily rental housing developments and identification of necessary repairs, including requirements and standards regarding construction, rehabilitation, and occupancy that may enable quicker identification of those repairs;

(2) identify circumstances in which money in the reserve accounts may:

(A) be used for expenses other than necessary repairs, including property taxes or insurance; and

(B) fall below mandatory deposit levels without resulting in department action;

(3) define the scope of department oversight of reserve accounts and the repair process;

(4) provide the consequences of any failure to make a required deposit, including a definition of good cause, if any, for a failure to make a required deposit;

(5) specify or create processes and standards to be used by the department to obtain repairs for developments;

(6) define for purposes of Subsection (c) the date on which occupancy of a development is considered to have stabilized and the date on which permanent financing is considered to be completely in place; and

(7) provide for appointment of a bank trustee as necessary under this section.

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Section 2306.6023. The penalty is computed by multiplying \$200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(l) This section does not apply to a development for which an owner is required to maintain a reserve account under any other provision of federal or state law.

SECTION 15. Section 2306.252(b), Government Code, is amended to read as follows:

(b) The department, through the center, shall:

(1) provide educational material prepared in plain language to housing advocates, housing sponsors, borrowers, and tenants;

(2) provide technical assistance to nonprofit housing sponsors;

(3) assist in the development of housing policy, including the annual state low income housing plan and report and the consolidated plan; and

~~(4) [maintain communication with local governments and act as an advocate for local governments at the state and federal levels;~~

~~[(5) assist local governments with advisory and technical services;~~

~~[(6) provide financial aid to local governments and combinations of local governments for programs that are authorized to receive assistance;~~

~~[(7) provide information about and referrals for state and federal programs and services that affect local governments;~~

~~[(8) administer, conduct, or jointly sponsor educational and training programs for local government officials;~~

~~[(9) conduct research on problems of general concern to local governments;~~

~~[(10) collect, publish, and distribute information useful to local governments, including information on:~~

~~[(A) local government finances and employment;~~

~~[(B) housing;~~

~~[(C) population characteristics; and~~

- ~~[(D) land-use patterns;~~
- ~~[(11) encourage cooperation among local governments as appropriate;~~
- ~~[(12) advise and inform the governor and the legislature about the affairs of local governments and recommend necessary action;~~
- ~~[(13) assist the governor in coordinating federal and state activities affecting local governments;~~
- ~~[(14) provide appropriate information regarding-~~
- ~~[(A) state responsibilities for programs created under the federal Economic Opportunity Act of 1964 (42 U.S.C. Section 2701 et seq.);~~
- ~~[(B) programs assigned to the department under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35); and~~
- ~~[(C) other federal acts creating economic opportunity programs assigned to the department;~~
- ~~[(15) develop a consumer education program to educate consumers on executory contract transactions for the conveyance of real property used or to be used as the consumer's residence;~~
- ~~[(16) adopt rules that are necessary and proper to carry out programs and responsibilities assigned by the legislature or the governor;~~
- ~~[(17) provide, in cooperation with the state energy conservation office, the Texas ~~Natural Resource Conservation~~ Commission on Environmental Quality, and other governmental entities, information on the use of sustainable and energy efficient housing construction products and assist local governments and nonprofits in identifying information on sustainable and energy efficient housing construction and energy efficient resources and techniques]; ~~and~~~~
- ~~[(18) perform other duties relating to local governments that are assigned by the legislature or the governor].~~

SECTION 16. Subchapter P, Chapter 2306, Government Code, is amended by adding Section 2306.359 to read as follows:

Sec. 2306.359. ISSUANCE OF PRIVATE ACTIVITY BONDS. (a) In evaluating an application for an issuance of private activity bonds, the department shall score and rank the application using a point system based on criteria that are adopted by the department, including criteria:

- (1) regarding:
- (A) the income levels of tenants of the development, consistent with the funding priorities provided by Section 1372.0321;
- (B) the rent levels of the units;
- (C) the level of community support for the application;
- (D) the period of guaranteed affordability for low income tenants;
- (E) the cost per unit of the development;
- (F) the size, quality, and amenities of the units;
- (G) the services to be provided to tenants of the development;
- (H) the commitment of development funding by local political subdivisions that enables additional units for individuals and families of very low income; and
- (I) other criteria as developed by the board; and

(2) imposing penalties on applicants who have requested extensions of department deadlines relating to developments supported by an issuance of private activity bonds made in the application round preceding the current round.

(b) The department shall make available on its website details of the scoring system used by the department to score applications.

(c) The department shall underwrite the applications by determining:

(1) that the general contractor's profit, overhead, and general requirements are within the maximum limit published by the department;

(2) that the developer fee for the proposed project does not exceed the maximum amount allowed by the department; and

(3) if applicable, the amount of tax credits available to the proposed development.

(d) In adopting criteria for underwriting applications under this section, the department shall attach additional weight to criteria that will determine the maximum amount that can be awarded that will:

(1) result in an issuance of private activity bonds for developments serving the lowest income tenants; and

(2) produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods.

SECTION 17. Section 2306.589(c), Government Code, is amended to read as follows:

(c) The department may use money in the colonia set-aside fund for specific activities that assist colonias, including:

(1) the operation and activities of the self-help centers established under this subchapter;

(2) reimbursement of colonia resident advisory committee members [~~and colonia initiatives advisory committee members~~] for their reasonable expenses in the manner provided by Chapter 2110 or the General Appropriations Act; and

(3) funding for the provision of water and sewer service connections in accordance with Subsection (b).

SECTION 18. Sections 2306.6702(a)(5), (10), and (16), Government Code, are amended to read as follows:

(5) "At-risk development" means a development that:

(A) has received [~~receives~~] the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, [~~or~~] rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development; ~~[or]~~

(vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(viii) Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42); and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(ii) the federally insured mortgage on the development is eligible for prepayment or is nearing the end of its term.

(10) "Qualified allocation plan" means a plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with Section 2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce ~~[are affordable to qualified tenants]~~ for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the qualified allocation plan and this subchapter.

(16) "Unit" means any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains ~~[separate and]~~ complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

SECTION 19. Section 2306.6703, Government Code, is amended to read as follows:

Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager employed by the department; ~~[or]~~

(2) the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless:

(A) the applicant proposes to maintain for a period of 30 years or more 100 percent of the development units supported by ~~[low income]~~ housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; and

(B) at least one-third of all the units in the development are public housing units or Section 8 project-based units;

(3) the applicant proposes to construct a new development that is located one linear mile or less from a development that:

(A) serves the same type of household as the new development, regardless of whether the developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins; and

(C) has not been withdrawn or terminated from the low income housing tax credit program; or

(4) the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant:

(A) has obtained prior approval of the development from the governing body of the appropriate municipality or county containing the development; and

(B) has included in the application a written statement of support from that governing body referencing this section and authorizing an allocation of housing tax credits for the development.

(b) Subsection (a)(3) does not apply to a development:

(1) that is using:

(A) federal HOPE VI funds received through the United States Department of Housing and Urban Development; or

(B) locally approved funds received from a public improvement district or a tax increment financing district; or

(2) that is located in a county with a population of less than one million.

SECTION 20. Section 2306.6704, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application:

(1) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(2) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(3) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(4) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(5) the state senator and state representative of the district containing the development.

SECTION 21. Section 2306.6705, Government Code, is amended to read as follows:

Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An application must contain at a minimum the following written, detailed information in a form prescribed by the board:

(1) a description of:

(A) the financing plan for the development, including any nontraditional financing arrangements;

(B) the use of funds with respect to the development;

(C) the funding sources for the development, including:

(i) construction, permanent, and bridge loans; and

(ii) rents, operating subsidies, and replacement reserves; and

(D) the commitment status of the funding sources for the development;

(2) if syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters;

(3) from a syndicator or a financial consultant of the applicant, an estimate of the amount of equity dollars expected to be raised for the development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including:

(A) pay-in schedules; and

(B) syndicator consulting fees and other syndication costs;

(4) if rental assistance, an operating subsidy, or an annuity is proposed for the development, any related contract or other agreement securing those funds and an identification of:

(A) the source and annual amount of the funds;

(B) the number of units receiving the funds; and

(C) the term and expiration date of the contract or other agreement;

(5) if the development is located within the boundaries of a political subdivision with a zoning ordinance, evidence in the form of a letter from the chief executive officer of the political subdivision or from another local official with jurisdiction over zoning matters that states that:

(A) the development is permitted under the provisions of the ordinance that apply to the location of the development; or

(B) the applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied;

(6) if an occupied development is proposed for rehabilitation:

(A) an explanation of the process used to notify and consult with the tenants in preparing the application;

(B) a relocation plan outlining:

- (i) relocation requirements; and
- (ii) a budget with an identified funding source; and
- (C) if applicable, evidence that the relocation plan has been submitted to the appropriate local agency;
- (7) a certification of the applicant's compliance with appropriate state and federal laws, as required by other state law or by the board; ~~and~~
- (8) any other information required by the board in the qualified allocation plan; and
- (9) evidence that the applicant has notified the following entities with respect to the filing of the application:
 - (A) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;
 - (B) the superintendent and the presiding officer of the board of trustees of the school district containing the development;
 - (C) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;
 - (D) the presiding officer of the governing body of the county containing the development and all elected members of that body; and
 - (E) the state senator and state representative of the district containing the development.

SECTION 22. Subchapter DD, Chapter 2306, Government Code, is amended by adding Section 2306.67055 to read as follows:

Sec. 2306.67055. MARKET ANALYSIS. (a) A market analysis submitted in conjunction with an application for housing tax credits must:

- (1) be prepared by a market analyst approved by the department; and
- (2) include an assessment of other developments that are supported by housing tax credits within the market area.
- (b) The department, through the qualified allocation plan, shall develop:
 - (1) a process for approving market analysts; and
 - (2) a methodology for determining the market area to be examined in a market analysis.

SECTION 23. Section 2306.6710, Government Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (f) and (g) to read as follows:

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria ~~[based on criteria that are adapted to regional market conditions and adopted by the department, including criteria:~~

~~(+) regarding:~~

(A) financial feasibility of ~~[the income levels of tenants of]~~ the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;

(B) quantifiable community participation with respect to the development, evaluated on the basis of written statements from:

(i) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site; and

(ii) the superintendent or the presiding officer of the board of trustees of the school district containing the development [the rent levels of the units];

(C) the income levels of tenants of the development [period of guaranteed affordability for low income tenants];

(D) the size and quality of the units [cost by square foot of the development];

(E) the commitment of development funding by local political subdivisions [size, quality, and amenities of the units];

(F) the level of community support for the application, evaluated on the basis of written statements from state elected officials [the services to be provided to tenants of the development];

(G) the rent levels of the units [commitment of development funding by local political subdivisions that enables additional units for individuals and families of very low income]; [and]

(H) the cost of the development by square foot [level of community support for the application, evaluated on the basis of written statements of support from local and state elected officials representing constituents in areas that include the location of the development]; and

(I) the services to be provided to tenants of the development; and

(2) uses criteria imposing penalties on applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement.

(d) The department shall underwrite the applications ranked under Subsection (b) beginning with the applications with the highest scores in each region described by Section 2306.111(d) and in each set-aside category described in the qualified allocation plan. Based on application rankings, the department shall continue to underwrite applications until the department has processed enough applications satisfying the department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and set-aside categories. To enable the board to establish an applications waiting list under Section 2306.6711, the department shall underwrite as many additional applications as the board considers necessary to ensure that all available housing tax credits are allocated within the period required by law. The department shall underwrite an application solely to determine an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the department shall determine that the cost of the development does not exceed acceptable cost parameters as established by historical final cost certifications of all previous housing tax credit allocations.

(e) In ~~[adopting criteria for]~~ scoring ~~[and underwriting]~~ applications for purposes of housing tax credit allocations, the department shall award ~~[attach]~~, consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), preference points to a development that [the most weight to criteria that] will:

(1) when practicable and feasible based on documented, committed, and available third-party funding sources, serve [result in an allocation of housing tax credits for developments serving] the lowest income tenants per housing tax credit, if the development is to be located outside a qualified census tract; and

(2) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any [qualified] tenants who are income-eligible under the low income housing tax credit program [for extended periods].

(f) In evaluating the level of community support for an application under Subsection (b)(1)(F), the department shall award:

(1) positive points for positive written statements received;

(2) negative points for negative written statements received; and

(3) zero points for neutral statements received.

(g) In awarding points under Subsection (f), the department shall give equal weight to each written statement received.

SECTION 24. Section 2306.6711, Government Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Not later than the deadline specified in the qualified allocation plan, the board shall issue commitments for available housing tax credits based on the application evaluation process provided by Section 2306.6710. The board may not allocate to an applicant housing tax credits in any unnecessary amount, as determined by the department's underwriting policy and by federal law, and in any event may not allocate to the applicant housing tax credits in an amount greater than \$2 ~~[\$1.6]~~ million in a single application round.

(f) The board may allocate housing tax credits to more than one development in a single community, as defined by department rule, in the same calendar year only if the developments are or will be located more than one linear mile apart.

SECTION 25. Section 2306.6716(b), Government Code, is amended to read as follows:

(b) The department shall publish ~~[not later than July 1 of]~~ each year an updated ~~[a]~~ schedule of application fees that specifies the amount to be charged at each stage of the application process.

SECTION 26. Section 2306.6717(b), Government Code, is amended to read as follows:

(b) The department shall make available on the department's website [provide] information regarding the low income housing tax credit program, including notice regarding public hearings, ~~[board]~~ meetings, ~~[and]~~ the opening and closing dates for applications, submitted applications, and applications approved for underwriting and recommended to the board, and shall provide that information to:

(1) locally affected community groups;

(2) local and state elected officials;

(3) local housing departments;

(4) any appropriate [~~(2)~~] newspapers of general or limited circulation that serve the community in which the development is to be located;

(5) [~~(3)~~] nonprofit and for-profit organizations;

(6) [~~(4)~~] on-site property managers of occupied developments that are the subject of applications for posting in prominent locations in those developments; and

(7) [~~(5)~~] any other interested persons and [~~including~~] community groups that [~~who~~] request the information.

SECTION 27. Section 2306.6725(b), Government Code, is amended to read as follows:

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the property that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or to provide to a qualified nonprofit organization or tenant organization a right of first refusal to purchase the property at the minimum price provided in, and in accordance with the requirements of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)); and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

SECTION 28. Section 1372.0231, Government Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), the board shall grant reservations at the direction of the Texas Department of Housing and Community Affairs as provided by Section 2306.359 and [:

(1) in the order determined by the board by lot; and

(2) in a manner that ensures that:

(1) [~~(A)~~] the set-aside amount is used for proposed projects that are located throughout the state; and

(2) [~~(B)~~] not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986.

(h) Allocations by the board at the direction of the Texas Department of Housing and Community Affairs under Subsection (b) are subject to review and approval by the board as provided by Section 1231.041.

SECTION 29. Section 1372.0321, Government Code, as added by Chapters 1367 and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES. (a) In granting reservations to issuers of qualified residential rental project issues, the board shall[:

(1) [~~(A)~~] give first priority to:

(1) [~~(A)~~] projects in which:

(A) 50 [~~100~~] percent of the residential units in the project [~~projects~~]
are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 50 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 50 percent of the area median income; and

(B) the remaining 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(2) projects in which:

(A) 15 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 30 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 30 percent of the area median income; and

(B) the remaining 85 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(3) projects:

(A) in which 100 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income; and

(B) which are located in a census tract in which the median income, based on the most recent information published by the Bureau of the Census, is higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract is located as established by the United States Department of Housing and Urban Development; or

(4) [~~(B)~~] on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development.

(a-1) In granting reservations to issuers of qualified residential rental project issues, the board shall [±

~~[(2)]~~ give second priority to projects in which 100 percent of the residential units in the project [projects] are:

(1) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(2) reserved for families and individuals earning not more than 60 percent of the area median income.

(a-2) In granting reservations to issuers of qualified residential rental project issues, the board shall [± and

~~[(3)]~~ give third priority to any other qualified residential rental project.

(b) The board may not reserve a portion of the state ceiling for a first or second priority project described by this section [Subsection (a)] unless the board receives evidence that an application has been filed with the Texas Department of Housing and Community Affairs for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

SECTION 30. (a) Except as otherwise provided by this section, the changes in law made by this Act relating to the awarding of financial assistance administered by the Texas Department of Housing and Community Affairs apply only to an application for that assistance submitted on or after the effective date of this Act.

(b) The Texas Department of Housing and Community Affairs shall adopt the rules required by Section 2306.186, Government Code, as added by this Act, not later than December 1, 2003.

(c) The change in law made by Section 2306.186, Government Code, as added by this Act, applies only to multifamily rental housing developments that receive assistance from the Texas Department of Housing and Community Affairs on or after January 1, 2004.

(d) The change in law made by this Act in amending Chapter 1372, Government Code, applies only to an application for an amount of the state ceiling set aside for issuers of qualified residential rental project bonds in a year beginning on or after January 1, 2004. An application for an amount of the state ceiling set aside for issuers of qualified residential rental project bonds in 2003 is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 31. The following provisions of the Government Code are repealed:

(1) Sections 2306.072(d) and 2306.185(g);

(2) Section 2306.590, as added by Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001; and

(3) Sections 2306.591 and 2306.6732.

SECTION 32. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 264** as follows:

1) On page 3, lines 4-5, strike "; or (C) a public housing authority".

2) On page 29, line 15, after the semicolon, strike "or" and insert the following:

"(C) funds provided to the state under Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.);

(D) funds provided to the state and participating jurisdictions the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.);
or"

3) On page 36, lines 11-13, strike "The department shall underwrite an application solely to determine an appropriate level of housing tax credits" and substitute "The department shall underwrite an application to determine the financial feasibility of the development and an appropriate level of housing tax credits".

4) On page 38, line 5, insert the following sentence after the period: "This subsection applies only to communities contained within counties with populations in excess of 1 million."

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 264** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Madla, Nelson, Brimer, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 425

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 425** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 425** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators West, Chair; Harris, Ratliff, Armbrister, and Whitmire.

SENATE BILL 392 WITH HOUSE AMENDMENTS

Senator Williams called **SB 392** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 392** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to a repeal of exemptions from certain truth-in-taxation provisions for certain conservation and reclamation districts.

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

SECTION 1. Sections 49.107(g) and 49.108(f), Water Code, are repealed.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) For the 2003 tax year, the change in law made by this Act applies only to a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and governed by Chapter 49, Water Code, that adopts its tax rate on or after the effective date of this Act. For the 2003 tax year, a district that adopts its tax rate before the effective date is governed by the law as it existed when the tax rate was adopted, and that law is continued in effect for that purpose.

Floor Amendment No. 1

Amend **CSSB 392** (House committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.236 to read as follows:

Sec. 49.236. NOTICE OF TAX HEARING. (a) Before the board adopts an ad valorem tax rate for the district for debt service, operation and maintenance purposes, or contract purposes, the board shall give notice of each meeting of the board at which the adoption of a tax rate will be considered. The notice must:

(1) contain a statement in substantially the following form:

"NOTICE OF PUBLIC HEARING ON TAX RATE

"The (name of the district) will hold a public hearing on a proposed tax rate for the tax year (year of tax levy) on (date and time) at (meeting place). Your individual taxes may increase or decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted.

"(Names of all board members and, if a vote was taken, an indication of how each voted on the proposed tax rate and an indication of any absences.)";

(2) contain the following information:

(A) the district's total adopted tax rate for the preceding year and the proposed tax rate, expressed as an amount per \$100;

(B) the difference, expressed as an amount per \$100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding year;

(C) the average appraised value of a residence homestead in the district in the preceding year and in the current year; the district's total homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average

taxable value of a residence homestead in the district in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(D) the amount of tax that would have been imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(E) the amount of tax that would be imposed by the district in the current year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax rate is adopted; and

(F) the difference between the amounts of tax calculated under Paragraphs (D) and (E), expressed in dollars and cents and described as the annual percentage increase or decrease, as applicable, in the tax to be imposed by the district on the average residence homestead in the district in the current year if the proposed tax rate is adopted; and

(3) contain a statement in substantially the following form:

"NOTICE OF TAXPAYERS' RIGHT TO ROLLBACK ELECTION

"If taxes on the average residence homestead increase by more than eight percent, the qualified voters of the district by petition may require that an election be held to determine whether to reduce the operation and maintenance tax rate to the rollback tax rate under Section 49.236(d), Water Code."

(b) Notice of the hearing shall be:

(1) published at least once in a newspaper having general circulation in the district at least seven days before the date of the hearing; or

(2) mailed to each owner of taxable property in the district, at the address for notice shown on the most recently certified tax roll of the district, at least 10 days before the date of the hearing.

(c) The notice provided under this section may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper of general circulation, and the headline on the notice must be in 18-point or larger type.

(d) If the governing body of a district adopts a combined debt service, operation and maintenance, and contract tax rate that would impose more than 1.08 times the amount of tax imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, the qualified voters of the district by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to the rollback tax rate in accordance with the procedures provided by Sections 26.07(b) through (g) and 26.081, Tax Code. For purposes of Sections 26.07(b) through (g) and this subsection, the rollback tax rate is the current year's debt service and contract tax rates plus the operation and maintenance tax rate that would impose 1.08 times the amount of the operation and maintenance tax imposed by the district in the preceding year on a residence homestead appraised at

the average appraised value of a residence homestead in the district in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) For the 2003 tax year, the change in law made by this Act applies only to a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and governed by Chapter 49, Water Code, that adopts its tax rate on or after the effective date of this Act. For the 2003 tax year, a district that adopts its tax rate before the effective date of this Act is governed by the law as it existed when the tax rate was adopted, and that law is continued in effect for that purpose.

The amendments were read.

Senator Williams moved to concur in the House amendments to **SB 392**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 7

Senator Bivins called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 7** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 7** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Nelson, West, Staples, and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 3459

Senator Bivins called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3459** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3459** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Bivins, Chair; Ogden, Zaffirini, Shapiro, and Duncan.

CONFERENCE COMMITTEE ON HOUSE BILL 320

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 320** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 320** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Duncan, Lucio, Bivins, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 329

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 329** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 329** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Jackson, Shapleigh, Brimer, and Van de Putte.

SENATE BILL 1053 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1053** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1053** as follows:

- (1) On page 15, line 9 and 10, strike "as provided by legislative appropriation".
- (2) On page 16, line 16, strike "as provided by legislative appropriation".
- (3) On page 16, line 19, strike "the terms of the legislative appropriation language." and insert "(1) the commitment of the state agency to water conservation; and (2) the benefits that will be gained by making the grant.
(c)".
- (4) On page 16, line 20 and 21, strike "shall make the determination required by the legislative language" and insert "must find that:
(1) the grant funds will supplement rather than replace money of the state agency;
(2) the public interest is served by providing the grant; and
(3) the grant will further water conservation in the state.
(d) If a state agency is applying for funds that have been provided by legislative appropriation for such state agency, the board shall review the application according to the terms of the legislative appropriation. To approve such grant, the board shall make the determination required by the legislative language.".

(5) On page 16, line 22, strike "(c)" and insert "(e)"

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1053**.

The motion prevailed by a viva voce vote.

SENATE BILL 585 WITH HOUSE AMENDMENT

Senator Duncan called **SB 585** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 585** by adding the following appropriately numbered section to read as follows and by renumbering the other sections of the bill appropriately:

SECTION _____. Chapter 756, Health and Safety Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

(1) identify the problem requiring the need for providing municipal landscaping services;

(2) identify the public health, safety, or welfare concern;

(3) describe any reasonable actions previously taken to alleviate the problem; and

(4) specify a period of definite duration necessary to address the problem.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 585** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Averitt, Staples, Armbrister, and Madla.

SENATE BILL 286 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 286** 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 286** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Higher Education Coordinating Board.

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

SECTION 1. Section 61.0211, Education Code, is amended to read as follows:

Sec. 61.0211. SUNSET PROVISION. The Texas Higher Education Coordinating Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [~~2003~~].

SECTION 2. Section 61.022, Education Code, is amended to read as follows:

Sec. 61.022. MEMBERS OF BOARD; APPOINTMENT; TERMS OF OFFICE. (a) The board shall consist of nine [~~18~~] members appointed by the governor so as to provide representation from all areas of the state with the advice and consent of the senate, and as the constitution provides. Members of the board serve staggered six-year terms. The terms of one-third of the members expire August 31 of each odd-numbered year [~~Of the initial appointments to the board six shall be for terms which shall expire August 31, 1967, six for terms which shall expire August 31, 1969, and six for terms which shall expire on August 31, 1971, or at such time as their successors are appointed and have qualified. Thereafter, the governor shall appoint members for terms of six years. Members of the Texas Commission on Higher Education are eligible for appointment to the board~~].

(b) A board [~~No~~] member may not be employed professionally for remuneration in the field of education during the member's [~~his~~] term of office.

SECTION 3. Subsections (b) through (e), Section 61.0222, Education Code, are amended to read as follows:

(b) A person may not be a member 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 higher education; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of higher education [~~An officer, employee, or paid consultant of a Texas trade association in the field of higher education may not be a member or employee of the board if the person is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule~~].

(c) ~~[A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of higher education may not be a board member and may not be a board employee who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.]~~

~~[(d)]~~ A person may not be [serve as] a member of the board or act as the general counsel to the board 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 board.

(d) ~~In [(e) For the purposes of]~~ this section, "Texas trade association" means a [Texas trade association is a nonprofit,] 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.

SECTION 4. Subsections (a) and (c), Section 61.0223, Education Code, are amended to read as follows:

(a) It is a ground for removal from the board that [is] a member:

(1) does not have at the time of taking office [appointment] the qualifications required by Section 61.0222(a) [of this code];

(2) does not maintain during service on the board the qualifications required by Section 61.0222(a) [of this code];

(3) is ineligible for membership under [violates a prohibition established by] Section 61.022 or 61.0222 [Section 61.0222(b), (e), or (d) of this code];

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

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

(c) If the commissioner of higher education has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer [chairman] of the board of the potential ground. The presiding officer [chairman] 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 commissioner 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 5. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0224 to read as follows:

Sec. 61.0224. TRAINING OF BOARD MEMBERS. (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) the legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

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

(5) the current budget for the board;

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

(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 board 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 6. Subsections (f) and (g), Section 61.028, Education Code, are amended to read as follows:

(f) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements ~~[to assure implementation of]~~ a program of equal employment opportunity to ensure that ~~[under which]~~ all personnel decisions ~~[transactions]~~ are made without regard to race, color, disability ~~[handicap]~~, sex, religion, age, or national origin. The policy statement must include:

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

(2) an ~~[a comprehensive]~~ analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law ~~[work force that meets federal and state guidelines];~~

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

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

(g) The ~~[A]~~ policy statement ~~[prepared under Subsection (f) of this section]~~ must:

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

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

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

SECTION 7. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0281 to read as follows:

Sec. 61.0281. STATE EMPLOYEE INCENTIVE PROGRAM. The commissioner of higher education or the commissioner's designee shall provide to board employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 8. Section 61.029, Education Code, is amended to read as follows:

Sec. 61.029. INTERNAL AUDITOR. (a) The board [commissioner of higher education] shall appoint an internal auditor for the board. ~~[The appointment of an internal auditor must be approved by the board.]~~

(b) The internal auditor shall report directly to the board on all matters, other than administrative matters, that require the decision of the commissioner of higher education. ~~[The board by rule may require the internal auditor to submit certain reports directly to the board.]~~

(c) The commissioner shall advise the board regarding:

(1) the termination or discipline of the internal auditor; and

(2) the transfer or reclassification of, or other changes in, the powers or duties of the internal auditor. ~~[A committee of the board whose primary function is to oversee the administration of the board shall meet with the internal auditor at least as frequently as quarterly.]~~

(d) The internal auditor shall develop an annual audit plan, conduct audits as specified in the audit plan, and fulfill the other duties required by Chapter 2102, Government Code [auditor's duties include:

(1) the review and appraisal of the accounting, financial, and operating activities of the board, including its internal information management; and

(2) appraisal of the board's effectiveness in meeting its statutory duties].

(e) The internal auditor shall review all audit reports with the board and the commissioner.

SECTION 9. Section 61.031, Education Code, is amended to read as follows:

Sec. 61.031. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) The board shall maintain a file on 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 board;

(3) the subject matter of the complaint;

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

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

and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint [prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies].

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution [keep an information file about each complaint filed with the board that the board has authority to resolve].

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

SECTION 10. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.033 to read as follows:

Sec. 61.033. NEGOTIATED RULEMAKING; 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 board 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 board's jurisdiction.

(b) The board'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 board.

SECTION 11. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.034 to read as follows:

Sec. 61.034. EFFECTIVE USE OF TECHNOLOGY. The board shall develop and implement a policy that requires the commissioner of higher education and the staff of the board to research and propose appropriate technological solutions to improve the ability of the agency to perform its mission. The technological solutions must include measures to ensure that the public is able to easily find information about the board through the Internet and that persons who have a reason to use the board's services are able to use the Internet to interact with the board and to access any services that can be provided effectively through the Internet. The policy shall also ensure that proposed technological solutions are cost-effective and developed through the board's planning processes.

SECTION 12. Section 61.051, Education Code, is amended by amending Subsections (a), (j), and (m) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) The board shall represent the highest authority in the state in matters of public higher education and is charged with the duty to take an active part in promoting quality education in the various regions of the state. The board shall be responsible for assuring that there is no discrimination in the distribution of programs and resources throughout the state on the basis of race, national origin, or sex.

(a-1) The board shall develop a five-year master plan for higher education in this state ~~and update the plan annually~~. The five-year plan shall take into account the resources of private institutions of higher education in this state.

(a-2) The board shall periodically review and revise the five-year master plan developed under Subsection (a-1). As a specific element of its review, the board shall identify and analyze the degree to which the plan reflects the continuing higher education needs of this state, as well as any policy changes necessary to improve overall implementation of the plan and the fiscal impact of those changes. The board shall establish procedures for monitoring the board's implementation of the plan, including an analysis of the degree to which its current activities support implementation of the plan and any change in board rules or practices necessary to improve implementation of the plan. The board shall identify additional strategies necessary to achieve the goals of the plan, emphasizing implementation by institutions of higher education and specific recommendations for the different regions of the state. The board shall notify each institution of higher education of all strategies for implementing the plan.

(a-3) The board shall[+]

[(+) inform the legislature on matters pertaining to higher education, including the state's activities in the Board of Control for Southern Regional Education, [;] and shall

[(2) report to the legislature not later than [##] January 1 of each odd-numbered year on the state of higher education in Texas. In the biennial report, the board shall assess the state's progress in meeting the goals stated in the plan developed under Subsection (a-1) and shall recommend legislative action to assist the state in meeting those goals. The report must include the analyses performed in connection with the board's periodic review under Subsection (a-2).

(j) No off-campus courses for credit may be offered by any public technical institute, public community college, or public college or university without specific prior approval of the board. However, any of those institutions may offer a distance learning course approved by the board with no in-state geographic restrictions if the course is within the approved curriculum of the institution. To facilitate the delivery of courses by distance learning and to improve access to those courses, the board shall encourage collaborative efforts to make the benefits of computer access to educational opportunities widely available. The board shall maintain a central informational resource accessible to the general public that provides~~[, to be called the Texas Colleges On Line, on which institutions can place]~~ information relating to ~~[all computer accessible]~~ distance learning courses and programs offered for credit by institutions of higher education and information including computer links, addresses, or other directions to assist an interested person to obtain additional information directly from the appropriate institution. The board may not prohibit a public junior college district from offering a course for credit outside the boundaries of the junior college district when such course has met the requirements for approval as adopted by the board. The board shall establish regulations for the coordination of credit activities of adult and continuing education by public technical institutes, public community colleges, or public colleges and universities.

(m) The board shall publish and distribute materials on admission policies, transferable courses among institutions, financial assistance programs, and other matters of interest to persons choosing an institution in which to enroll. It is the intent of the legislature that materials distributed under this subsection be designed to promote and encourage students to complete high school coursework and aspire to their highest potential by obtaining a degree or certificate from an institution of higher education.

SECTION 13. Section 61.059, Education Code, is amended by amending Subsections (a) and (i) and adding Subsection (i-1) to read as follows:

(a) To finance a system of higher education and to secure an equitable distribution of state funds deemed to be available for higher education, the board shall perform the functions described in this section. Funding policies shall:

(1) allocate resources efficiently and provide incentives for programs of superior quality and for institutional diversity;

(2) provide incentives for supporting the five-year master plan developed and revised under Section 61.051; and

(3) discourage [~~while discouraging~~] unnecessary duplication of course offerings between institutions and [~~as well as discouraging~~] unnecessary construction on any campus.

(i) The board shall make continuing studies on its own initiative, on [~~or upon~~] the request of the governor or the Legislative Budget Board, and as otherwise provided by Subsection (i-1) of the financial needs of public higher education and all services and activities of the institutions of higher education and issue reports to the governor and the Legislative Budget Board that result from its studies.

(i-1) Not later than January 1 of each odd-numbered year, the board shall make and submit to the legislature findings and recommendations regarding the degree to which the current higher education funding system, including formula funding and any other transfers of legislative appropriations to institutions of higher education, supports the implementation of the five-year master plan developed and revised under Section 61.051. The board may include its findings and recommendations in the biennial report submitted to the legislature under Section 61.051. In its findings, the board must:

(1) identify funding incentives that would encourage implementation of the five-year master plan by institutions of higher education; and

(2) assess the accountability of institutions of higher education with respect to legislative appropriations to evaluate institutional allocation of financial resources in accordance with the five-year master plan.

SECTION 14. Subsection (a), Section 61.065, Education Code, is amended to read as follows:

(a) The comptroller of public accounts and the board jointly shall prescribe and periodically update a uniform system of financial accounting and reporting for institutions of higher education, including definitions of the elements of cost on the basis of which appropriations shall be made and financial records shall be maintained. The board may require institutions to report additional financial information as the board considers necessary. In order that the uniform system of financial accounting and reporting shall provide for maximum consistency with the national reporting

system for higher education, the uniform system shall incorporate insofar as possible the provisions of the financial accounting and reporting manual published by the National Association of College and University Business Officers. The accounts of the institutions shall be maintained and audited in accordance with the approved reporting system.

SECTION 15. Section 61.066, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall conduct a study and make findings and recommendations regarding methods for reducing administrative burdens and increasing participation in student financial aid programs to maximize the value of those programs to the state. In conducting the study, the board shall seek input from financial aid officers and student groups at institutions of higher education. Not later than November 1, 2004, the board shall report to the standing committee of each house of the legislature with primary jurisdiction over higher education the board's findings and recommendations for legislative action necessary to consolidate, expand, or otherwise modify existing student financial aid programs. This subsection expires January 1, 2005.

SECTION 16. Section 61.076, Education Code, is amended to read as follows:

Sec. 61.076. COOPERATION BETWEEN STATE AGENCIES OF EDUCATION. (a) It is the policy of the State of Texas that the entire system of education supported with public funds be coordinated to provide the citizens with efficient, effective, and high quality educational services and activities. The board and the State Board of Education, in conjunction with such other agencies as may be appropriate, shall ensure that long-range plans and educational programs established by the boards complement the functioning of the entire system of public education, extending from early childhood education through postgraduate study. In assuring that plans and programs are coordinated, the boards shall use the P-16 Council [~~Joint Advisory Committee~~] established under Section 61.077 [~~of this code~~].

(b) The P-16 Council [~~Joint Advisory Committee~~] shall coordinate plans and programs of the two boards, including curricula, instructional programs, research, and other functions as appropriate. This coordination shall include the following areas:

- (1) equal educational opportunity for all Texans;
- (2) college recruitment, with special emphasis on the recruitment of minority students;
- (3) preparation of high school students for further study at colleges and universities;
- (4) reduction of the dropout rate and dropout prevention;
- (5) teacher education, recruitment, and retention; [~~and~~]
- (6) testing and assessment; and
- (7) adult education programs.

SECTION 17. Section 61.077, Education Code, is amended to read as follows:

Sec. 61.077. P-16 COUNCIL [~~JOINT ADVISORY COMMITTEE~~]. (a) The P-16 Council [~~A joint advisory committee~~] shall advise the Texas Higher Education Coordinating Board and the State Board of Education in coordinating postsecondary career and technology activities, career and technology teacher education programs offered or proposed to be offered in the colleges and universities of this state, and other relevant matters, including those listed in Section 61.076 [~~of this code~~].

(b) The council is [committee shall be] composed of the commissioner of education, the commissioner of higher education, the executive director of the Texas Workforce Commission, and the executive director of the State Board for Educator Certification [three members from the State Board of Education, appointed by the chairman of the board and three members from the Texas Higher Education Coordinating Board, appointed by the chairman of the board, one member designated by the presiding officer of the Council on Workforce and Economic Competitiveness, and one member representing business designated by the chair of the Texas Partnership for Economic Development]. Existing members of the council may appoint additional members as the members consider necessary. The position of presiding officer rotates among the members of the council in the order the members are listed in this subsection, with each member serving as the presiding officer for one two-year term [A member of the board shall be designated as chairman of the joint advisory committee by the chairman of the board].

(c) The council shall meet at least once each calendar quarter and may hold other meetings as necessary at the call of the presiding officer [committee shall hold regular annual meetings as called by the chairman]. Each member of the council or the member's designee shall make a report of the council's activities at least twice annually to the governing body of the member's agency or, in the case of the commissioner of education, to the State Board of Education.

(d) [(b)] The purposes of this council [committee] shall include the following:

(1) to advise the two boards on the coordination of postsecondary career and technology education and the articulation between postsecondary career and technology education and secondary career and technology education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary career and technology education from the State Board of Education to the board in accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524;

(3) to advise the State Board of Education, when it acts as the State Board for Career and Technology Education, on the following:

(A) the transfer of federal funds to the board for allotment to eligible public postsecondary institutions of higher education;

(B) the career and technology education funding for projects and institutions as determined by the board when the State Board for Career and Technology Education is required by federal law to endorse such determinations;

(C) the development and updating of the state plan for career and technology education and the evaluation of programs, services, and activities of postsecondary career and technology education and such amendments to the state plan for career and technology education as may relate to postsecondary education;

(D) other matters related to postsecondary career and technology education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including areas listed in Section 61.076 [of this code], school-to-work and school-to-college transition programs, and professional development activities; [and]

(4) to advise the Council on Workforce and Economic Competitiveness on educational policy issues related to workforce preparation; and

(5) to examine and make recommendations regarding the alignment of secondary and postsecondary education:

(A) curricula; and

(B) testing and assessment.

(e) Subsection (d)(5) does not require the council to establish curriculum or testing or assessment standards.

SECTION 18. Subsection (a), Section 61.0771, Education Code, is amended to read as follows:

(a) The board, in cooperation with institutions of higher education, shall develop a master plan for the development of distance learning and other applications of instructional electronic technology by institutions of higher education and as necessary may revise the plan. The plan shall include recommendations for:

(1) the coordination and integration of distance learning and related telecommunications activities among institutions of higher education and other public or private entities to achieve optimum efficiency and effectiveness in providing necessary services, including identification of the costs and any cost savings to be achieved by the use of distance learning and related activities such as teleconferencing or sharing resources by telecommunications;

(2) the development and acquisition of distance learning infrastructure and equipment, including its functions and capabilities, within and among institutions of higher education consistent with the missions of those institutions and the recipients of their services;

(3) the establishment of uniform or compatible standards and technologies for distance learning;

(4) the training of faculty and staff in the use and operation of distance learning facilities;

(5) appropriate applications of distance learning, including the identification of the needs of the student populations to be served;

(6) policies relating to the funding for implementation and administering of distance learning, including interinstitutional funds transfers among institutions providing and receiving distance learning services and formula funding allocations, and recommendations for the appropriate fees for services offered through distance learning;

(7) revising regulatory policy relating to public utilities to facilitate distance learning; and

(8) any statutory or regulatory changes desirable to promote distance learning or to implement the master plan.

SECTION 19. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0902 to read as follows:

Sec. 61.0902. PUBLICATION OF PERFORMANCE DATA OF GENERAL ACADEMIC TEACHING INSTITUTIONS. (a) The board shall administer a program to publish performance data provided to the board by general academic teaching institutions under this section.

(b) Not later than the next November 1 following the completion of an academic year, each general academic teaching institution shall provide to the board one or more reports containing data related to:

(1) the qualifications of the entering freshman class for the academic year covered by the report, including:

(A) the average Texas Academic Skills Program Test scores of the class;

(B) the average scores of the class on each generally recognized test or assessment used in college and university undergraduate admissions, including the Scholastic Assessment Test and the American College Test;

(C) the range of scores of the class from the 25th to the 75th percentile on each generally recognized test or assessment used in college and university undergraduate admissions, including the Scholastic Assessment Test and the American College Test;

(D) the overall grade point average of the class for the academic year covered by the report;

(E) the number of students in the class who graduated in the top 10 percent of the student's high school graduating class; and

(F) enrollment percentages by ethnicity; and

(2) student performance and institution efficiency, including:

(A) the retention rate of full-time students after the completion of one academic year at the institution;

(B) the percentage of full-time degree-seeking undergraduate students who earn a baccalaureate degree before the sixth anniversary of the date of the student's first enrollment at the institution;

(C) the percentage of lower-division semester credit hours taught by tenured or tenure-track faculty;

(D) the percentage of undergraduate classes with fewer than 20 students;

(E) the percentage of undergraduate classes with more than 50 students;

(F) the student-to-faculty ratio for undergraduate students;

(G) the percentage of students receiving financial aid;

(H) the average cost of tuition and fees for an undergraduate student enrolled for 12 semester credit hours;

(I) the average cost of on-campus room and board for an academic year, excluding summer sessions;

(J) the number of disciplines in which master's degrees are offered;

(K) the number of disciplines in which doctoral degrees are offered;

(L) a description of any departments, schools, or certificate or degree programs of the institution that have a statewide or national reputation for excellence; and

(M) statistics regarding job placement rates for students awarded certificates or degrees by the institution.

(c) Each year the board shall publish and post in a grid format on the board's Internet site the names of the general academic teaching institutions, the performance data required by Subsection (b) for the most recent academic year for which the data

is available, and any other information considered appropriate by the board. The board shall use the classification system developed by the Carnegie Foundation in publishing and posting the data and other information.

(d) Each general academic teaching institution shall provide a link on the institution's Internet home page to the board's Internet site described by Subsection (c).

(e) A general academic teaching institution is not required to report to the board the data required by Subsection (b) if the data is available to the board from another source.

SECTION 20. Subsection (c), Section 61.093, Education Code, is amended to read as follows:

(c) Money appropriated for payment of contracts under the authority of Section [Sections] 61.092 [and 61.094 of this code] shall be paid to [the] Baylor College of Medicine [and the Baylor College of Dentistry] as follows:

(1) 40 [24] percent of the yearly entitlement [of each college] shall be paid in two equal installments to be made on or before the 25th day of September and October; and

(2) 60 [76] percent of the yearly entitlement [of each college] shall be paid in six [eight] equal installments to be made on or before the 25th day of November, December, January, February, March, and April~~[, May, June, July, and August]~~.

SECTION 21. Subsection (a), Section 61.532, Education Code, is amended to read as follows:

(a) To be eligible to receive repayment assistance, a physician must apply to the coordinating board and have completed at least one year of medical practice:

(1) in private practice in an economically depressed or rural medically underserved area of the state;

(2) for one of the following state agencies:

(A) Texas Department of Health;

(B) Texas Department of Mental Health and Mental Retardation;

(C) Texas Department of Corrections; or

(D) Texas Youth Commission; or

(3) for an approved family practice residency training program established under Subchapter I ~~[of this chapter]~~ as a[-

~~(A)]~~ clinical faculty member and have completed training in an approved family practice residency training program on or after July 1, 1994~~[-or~~

~~(B)]~~ resident].

SECTION 22. Subchapter J, Chapter 61, Education Code, is amended by adding Section 61.540 to read as follows:

Sec. 61.540. SERVICE AGREEMENTS ENTERED INTO UNDER FORMER LAW; SAVING PROVISION. (a) This section applies only to a person who entered into a written agreement to perform service as a physician in exchange for loan repayment assistance under this subchapter before September 1, 2003.

(b) The agreement continues in effect and this subchapter, as it existed when the person entered into the agreement, is continued in effect for purposes of that agreement until the person satisfies all the conditions of the agreement or repays all amounts due under the agreement if the person does not satisfy the conditions of the agreement.

SECTION 23. Subsection (b), Section 61.822, Education Code, is amended to read as follows:

(b) Each institution of higher education shall adopt a core curriculum of no less than 42 semester credit hours, including specific courses comprising the curriculum. The core curriculum shall be consistent with the common course numbering [~~course numbering~~] system approved by the board and with the statement, recommendations, and rules issued by the board. An institution may have a core curriculum of other than 42 semester credit hours only if approved by the board.

SECTION 24. Section 61.830, Education Code, is amended to read as follows:

Sec. 61.830. PUBLICATION OF GUIDELINES ADDRESSING TRANSFER PRACTICES. In its course catalogs and on its website, each institution of higher education shall publish guidelines addressing the practices of the institution regarding the transfer of course credit. In the guidelines, the institution must identify a course by using the [~~any~~] common course numbering system approved [~~adopted~~] by the board.

SECTION 25. Subchapter S, Chapter 61, Education Code, is amended by adding Section 61.832 to read as follows:

Sec. 61.832. COMMON COURSE NUMBERING SYSTEM. (a) The board shall approve a common course numbering system for lower-division courses to facilitate the transfer of those courses among institutions of higher education by promoting consistency in course designation and identification.

(b) The board may approve only a common course numbering system already in common use in this state by institutions of higher education.

(c) The board shall cooperate with institutions of higher education in any additional development or alteration of the common course numbering system, including the taxonomy to be used, and in the development of rules for the administration and applicability of the system.

(d) An institution of higher education shall include in its course listings the applicable course numbers from the common course numbering system approved by the board under this section. For good cause, the board may grant to an institution of higher education an exemption from the requirements of this subsection.

SECTION 26. Sections 61.873 and 61.876, Education Code, as added by Chapter 833, Acts of the 76th Legislature, Regular Session, 1999, are amended to read as follows:

Sec. 61.873. ELIGIBILITY FOR ASSISTANCE. To be eligible to receive loan repayment assistance under this subchapter, a person must:

(1) hold an associate, baccalaureate, or graduate degree in early childhood development or the equivalent from a public or private institution of higher education accredited by a recognized accrediting agency; and

(2) have served for at least one year [~~enter into an agreement to serve~~] as, and be currently serving as, an early childhood child-care worker [~~as provided by Section 61.875~~].

Sec. 61.876. AMOUNT OF REPAYMENT ASSISTANCE; LIMITATIONS.

(a) For each year that a qualified person serves as an early childhood child-care worker in this state [~~under an agreement under Section 61.875~~], the person may receive loan repayment assistance in an amount not to exceed 15 percent of the total amount of the person's outstanding student loans, including scheduled interest payments that would become due if the loan is not prepaid, as of the date [when] the person begins to receive repayment assistance under this subchapter [enters into the agreement].

(b) The amount of repayment assistance paid for a year may not exceed the lesser of:

(1) the actual amount of the loan payments the person receiving the assistance is required to make for that year; or

(2) an amount set by the board equal to the maximum amount of resident tuition and required fees paid by a person enrolled as a full-time student at a general academic teaching institution for the most recent academic year, excluding summer sessions.

~~(c) [The board may enter into an agreement to provide loan repayment assistance under Section 61.875 only to the extent money in the trust fund established by Section 61.878 or money appropriated to the trust fund for future deposit to the trust fund will be sufficient to provide the repayment assistance as it becomes payable.]~~ If [that] money will not be sufficient to provide repayment assistance to each eligible applicant, the board shall select persons to receive repayment assistance from the eligible applicants according to financial need or on another basis the board considers reasonable to further the purposes of this subchapter.

~~(d) [The board may determine the manner in which the loan repayment assistance is to be paid [and shall include provisions governing the manner of repayment in the agreement].~~ The board may provide for the payment of a portion of the repayment assistance in one or more installments before the person completes a full year of service as an early childhood child-care worker and for the payment of the remainder of the repayment assistance for that year after the completion of the full year of service.

SECTION 27. Subchapter T, Chapter 61, Education Code, as added by Chapter 833, Acts of the 76th Legislature, Regular Session, 1999, is amended by adding Section 61.879 to read as follows:

Sec. 61.879. SERVICE AGREEMENTS ENTERED INTO UNDER FORMER LAW; SAVING PROVISION. (a) This section applies only to a person who was awarded loan repayment assistance under this subchapter and entered into a written agreement to perform service as an early childhood child-care worker in exchange for that assistance under this subchapter before September 1, 2003.

(b) The agreement continues in effect and this subchapter, as it existed when the person entered into the agreement, is continued in effect for purposes of that agreement until the person satisfies all the conditions of the agreement or repays all amounts due under the agreement if the person does not satisfy the conditions of the agreement.

SECTION 28. Sections 61.952 and 61.954, Education Code, as added by Chapter 1403, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

Sec. 61.952. ELIGIBILITY. To be eligible to receive repayment assistance, an attorney must:

(1) apply to the board; and

(2) have been [be] employed for at least one year by, and be currently employed by, [~~or have been offered employment with~~] the office of the attorney general at the time the attorney applies for the assistance[~~]; and~~

~~[(3) enter into an agreement to serve as an attorney with the office of the attorney general as provided by Section 61.953].~~

Sec. 61.954. MAXIMUM AMOUNT OF REPAYMENT ASSISTANCE [~~LIMITATIONS~~]. (a) For each year that an attorney serves as an attorney with the office of the attorney general [~~under an agreement under Section 61.953~~], the attorney may receive repayment assistance under this subchapter in an amount not to exceed \$6,000.

(b) An attorney may not receive repayment assistance under this subchapter for more than three years.

SECTION 29. Subchapter X, Chapter 61, Education Code, as added by Chapter 148, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Section 61.955 to read as follows:

Sec. 61.955. SALE OF PROMOTIONAL ITEMS AND MEDIA AND TRAINING MATERIALS. (a) The board may sell or contract for the sale of promotional items, including clothing, posters, and banners, designed to promote the public awareness campaign. The board may use its Internet website to advertise and sell the items.

(b) The board may sell, contract for the sale of, or otherwise transfer the board's rights in media and training materials developed for the public awareness campaign.

(c) Money received under this section shall be deposited to the credit of the general revenue fund and used only by the board to further the purposes of the campaign.

SECTION 30. Sections 142.005 and 142.006, Education Code, are amended to read as follows:

Sec. 142.005. PROGRESS REPORTS. An institution receiving funds under this chapter shall report on the progress of the funded research to the coordinating board not later than the date specified by the coordinating board [~~September 1 of~~] each year.

Sec. 142.006. MERIT REVIEW. The coordinating board shall appoint a committee that consists of experts in the specified research areas to evaluate the program's effectiveness and report its findings to the coordinating board not later than January 31 [~~September 1~~] of each odd-numbered [~~the second~~] year [~~of each biennium~~].

SECTION 31. Chapter 142, Education Code, is amended by adding Section 142.007 to read as follows:

Sec. 142.007. CONFIDENTIALITY. Information submitted as part of a pre-proposal or proposal or related to the evaluation and selection of research projects to be funded by the program is confidential unless made public by coordinating board rule.

SECTION 32. Sections 143.006 and 143.007, Education Code, are amended to read as follows:

Sec. 143.006. PROGRESS REPORTS. An institution receiving funds under this chapter shall report on the progress of the funded research to the coordinating board not later than the date specified by the coordinating board ~~[September 1 of]~~ each year.

Sec. 143.007. MERIT REVIEW. The coordinating board shall appoint a committee consisting of representatives of higher education and private enterprise advanced technology research organizations to evaluate the technology program's effectiveness and report its findings to the coordinating board not later than January 31 ~~[September 1]~~ of each odd-numbered ~~[the second]~~ year ~~[of each biennium]~~.

SECTION 33. Chapter 143, Education Code, is amended by adding Section 143.008 to read as follows:

Sec. 143.008. CONFIDENTIALITY. Information submitted as part of a pre-proposal or proposal or related to the evaluation and selection of research projects to be funded by the technology program is confidential unless made public by coordinating board rule.

SECTION 34. Section 7.005, Education Code, is amended to read as follows:

Sec. 7.005. COOPERATION BETWEEN STATE AGENCIES OF EDUCATION. The State Board of Education and the Texas Higher Education Coordinating Board, in conjunction with other appropriate agencies, shall ensure that long-range plans and educational programs established by each board provide a comprehensive education for the students of this state under the jurisdiction of that board, extending from early childhood education through postgraduate study. In assuring that programs are coordinated, the boards shall use the P-16 Council ~~[joint advisory committee]~~ established under Section 61.077.

SECTION 35. Section 52.34, Education Code, is amended to read as follows:

Sec. 52.34. PAYMENTS TO STUDENT. (a) No payment may be made to any student until the student ~~[he]~~ has executed a note payable to the Texas Opportunity Plan Fund for the full amount of the authorized loan plus interest.

(b) For the purposes of this chapter, a student has the capacity to contract and is bound by any contract executed by the student ~~[him]~~, and the defense that the student ~~[he]~~ was a minor at the time the student ~~[he]~~ executed the note is not available to the student ~~[him]~~ in any action arising on the note.

(c) Payments to students executing notes may be made annually, semiannually, quarterly, monthly, or for each semester as the board may determine, depending on the demonstrated capacity of the student to manage the student's ~~[his]~~ financial affairs.

(d) Disbursements may be made by the board or by the participating institution pursuant to a contract between the board and the institution executed in conformity with this chapter.

(e) Money ~~[No funds]~~ may be distributed to a participating institution only ~~[except]~~ to make payments to a student under a loan authorized by this chapter.

(f) The board shall distribute money to a participating institution through the electronic funds transfer system maintained by the Texas Guaranteed Student Loan Corporation for disbursing loan funds from commercial lenders participating in the guaranteed student loan program under Chapter 57, except that at the request of a participating institution the board may distribute the money through other means. The board shall enter into a contract with the corporation for the use of the system, and the corporation shall make the system available to the board as necessary to carry out this subsection.

SECTION 36. Subchapter C, Chapter 52, Education Code, is amended by adding Section 52.41 to read as follows:

Sec. 52.41. RESTRICTION ON ISSUANCE OF CERTAIN FEDERALLY INSURED STUDENT LOANS. (a) Except as provided by Subsection (c), the board may issue a student loan under the Federal Family Education Loan Program (20 U.S.C. Section 1071 et seq.), as amended, only to a borrower who has been or will be issued a student loan under another student loan program administered by the board.

(b) The board may service any outstanding student loans issued by the board under the Federal Family Education Loan Program.

(c) The board may issue student loans under the Federal Family Education Loan Program to borrowers other than borrowers described by Subsection (a) if the commissioner of higher education determines that market conditions warrant the issuance of those loans.

SECTION 37. The heading to Subchapter O, Chapter 56, Education Code, as added by Chapter 1261, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

SUBCHAPTER O. TEACH FOR TEXAS

LOAN REPAYMENT [FINANCIAL] ASSISTANCE PROGRAM

SECTION 38. Subchapter O, Chapter 56, Education Code, as added by Chapter 1261, Acts of the 77th Legislature, Regular Session, 2001, is amended by amending Sections 56.351 through 56.355 and adding Sections 56.3575 and 56.359 to read as follows:

Sec. 56.351. DEFINITION [DEFINITIONS]. In this subchapter, "coordinating[~~ing~~] board" means the Texas Higher Education Coordinating Board.

[~~(2) "Eligible institution of higher education" means:~~
[~~(A) an institution of higher education; or~~
[~~(B) a private or independent institution of higher education as defined by Section 61.003.]~~

Sec. 56.352. PURPOSE OF PROGRAM; LOAN REPAYMENT AUTHORIZED. (a) The purpose of this subchapter is to attract to the teaching profession persons who have expressed interest in teaching and to support the employment [certification] of those persons as classroom teachers by providing student loan repayment assistance for service [a grant on the condition that the recipient serve] as a classroom teacher in the public schools of this state [for a specified period].

(b) The coordinating board shall provide, in accordance with this subchapter and board rules, assistance in the repayment of eligible student loans for persons who apply and qualify for the assistance.

Sec. 56.353. ELIGIBILITY [~~FOR GRANT; TEACHING AGREEMENT~~].

(a) ~~(A)~~ Teach for Texas repayment assistance [~~grant~~] is available only to a person who applies for the assistance [~~a grant~~] and who:

(1) is certified [~~seeking educator certification~~];

(2) is enrolled in an eligible institution of higher education in this state:

~~[(A) as a junior or senior in a baccalaureate degree program; or~~

~~[(B) in the person's first academic year in an educator certification program after receiving a baccalaureate degree;~~

~~[(3) makes satisfactory progress toward completion of the person's educator certification program; and~~

~~[(4) satisfies one of the following:~~

~~[(A) the person is seeking educator certification]~~ in a teaching field identified [~~certified~~] by the commissioner of education as experiencing a critical shortage of teachers in this state in the year in which the person receives the assistance [~~grant~~] and has for at least one year taught full-time at, and is currently teaching [~~agrees to teach~~] full-time [~~for five years~~] at, the preschool, primary, or secondary level in a public school in this state in that teaching field; or

(2) is a certified educator who has for at least one year taught full-time at, and is currently teaching [~~(B) the person agrees to teach~~] full-time [~~for five years~~] at, the preschool, primary, or secondary level in a public school in this state in a community identified [~~, which is not required to be specifically designated at the time the person receives the grant, certified~~] by the commissioner of education as experiencing a critical shortage of teachers in the [~~any~~] year in which the person receives the assistance [~~a grant under this subchapter or in any subsequent year in which the person fulfills the teaching obligation~~].

(b) The coordinating board in awarding repayment assistance [~~Teach for Texas grants~~] shall give priority to applicants who demonstrate financial need.

~~(c) If the money available for grants in a period for which grants are awarded exceeds the amount needed to provide grants to all eligible applicants described by Subsection (b), the coordinating board shall award grants from the remaining money to additional eligible applicants. The coordinating board shall prescribe by rule the eligibility requirements for these applicants based on the factors that the coordinating board considers appropriate to further the purposes of this subchapter.~~

~~[(d)]~~ If the money available for loan repayment assistance [~~grants~~] in a period for which assistance is [~~grants are~~] awarded is insufficient to provide assistance [~~grants~~] to all eligible applicants described by Subsection (b), the coordinating board shall establish priorities for awarding repayment assistance to address the most critical teacher shortages described by Subsection (a) [~~give the highest priority to applicants who demonstrate the greatest financial need~~].

(d) [~~(e)~~] A person may not receive loan repayment assistance [~~a Teach for Texas tuition grant~~] for more than five [~~three academic~~] years [~~or the equivalent~~].

~~[(f) A person is not eligible to receive a Teach for Texas grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of another jurisdiction involving a controlled substance, as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:~~

~~[(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or~~

~~[(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise has been released from the resulting ineligibility to receive a grant under this subchapter.~~

~~[(g) For the purpose of this section, a person makes satisfactory academic progress toward completion of an educator certification program if the person:~~

~~[(1) completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and~~

~~[(2) earns an overall grade point average of at least 2.5 on a four point scale or the equivalent on coursework previously attempted at institutions of higher education.]~~

Sec. 56.354. ELIGIBLE LOANS. (a) A person may receive Teach for Texas loan repayment assistance under this subchapter for the repayment of any student loan for education at any public or private institution of higher education through any lender. If the loan is not a state or federal guaranteed student loan, the note or other writing governing the terms of the loan must require the loan proceeds to be used for expenses incurred by a person to attend a public or private institution of higher education.

(b) The coordinating board may not provide loan repayment assistance for a student loan that is in default at the time of the person's application ~~[AMOUNT OF GRANT; PAYMENT OF GRANT. (a) The amount of a Teach for Texas grant is equal to four times the current amount of a TEXAS grant under Subchapter M for a student enrolled in a general academic teaching institution.~~

~~[(b) The coordinating board shall pay the amount of a Teach for Texas grant in installments, with a substantially equal amount paid in each semester or term based on the number of semesters in which a typical full time student would complete the recipient's educator certification program. The coordinating board may adjust the amount of a grant for a semester or term, or award a supplemental grant, to ensure that a grant recipient who completes the educator certification program receives the total amount of the recipient's grant].~~

Sec. 56.355. PAYMENT OF ASSISTANCE. (a) The coordinating board may determine the manner in which Teach for Texas loan repayment assistance is to be paid. The coordinating board may provide for the payment of a portion of the repayment assistance in one or more installments before the person completes a full year of service as a teacher and for the payment of the remainder of the repayment assistance for that year after the completion of the full year of service.

(b) Loan repayment assistance received under this subchapter may be applied to the principal amount of the loan and to interest that accrues [ELIGIBILITY FOR TEXAS GRANT NOT AFFECTED. A person may receive both a TEXAS grant under Subchapter M and a Teach for Texas grant under this subchapter for the same semester or term].

Sec. 56.3575. ADMINISTRATION; RULES. (a) The coordinating board shall adopt rules necessary for the administration of this subchapter.

(b) The coordinating board shall distribute a copy of the rules adopted under this section and pertinent information relating to this subchapter to each public or private institution of higher education in this state that offers an educator certification program, including an alternative educator certification program or another equivalent program.

Sec. 56.359. GRANTS AND SERVICE AGREEMENTS ENTERED INTO UNDER FORMER LAW; SAVING PROVISION. (a) This section applies only to a person who was awarded a Teach for Texas grant and entered into a written agreement to perform service as a public school teacher in this state in order to receive the grant under this subchapter before September 1, 2003.

(b) A person to whom this section applies may receive any unpaid installments of the grant as provided by the agreement and in accordance with this subchapter as it existed when the grant was awarded. The agreement continues in effect and this subchapter, as it existed when the person entered into the agreement, is continued in effect for purposes of that agreement until the person satisfies all the conditions of the agreement or repays all amounts due under the agreement if the person does not satisfy the conditions of the agreement.

SECTION 39. Sections 61.0592, 61.0593, 61.070, and 61.071, Education Code, are repealed.

SECTION 40. Subsection (e), Section 61.0771, Education Code, is repealed.

SECTION 41. Sections 61.094 and 61.096, Education Code, are repealed.

SECTION 42. Subchapter E, Chapter 61, Education Code, is repealed.

SECTION 43. Subchapter Q, Chapter 61, Education Code, is repealed.

SECTION 44. (a) Section 56.356, Education Code, as added by Chapter 1261, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

(b) Section 61.875, Education Code, as added by Chapter 833, Acts of the 76th Legislature, Regular Session, 1999, is repealed.

(c) Section 61.953, Education Code, as added by Chapter 1403, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 45. (a) Of the six positions on the Texas Higher Education Coordinating Board that have terms scheduled to expire on August 31, 2003, three of the positions are abolished on September 1, 2003. On or before September 1, 2003, the governor shall designate which three of the six positions shall be abolished. The governor shall appoint persons to fill the other three positions for terms expiring August 31, 2009.

(b) Of the six positions on the Texas Higher Education Coordinating Board that have terms scheduled to expire on August 31, 2005, three of the positions are abolished on September 1, 2003. On or before September 1, 2003, the members whose terms are scheduled to expire on August 31, 2005, shall determine by

unanimous agreement or by lot which three of the six positions shall be abolished and shall inform the presiding officer of the Texas Higher Education Coordinating Board of that determination.

(c) Of the six positions on the Texas Higher Education Coordinating Board that have terms scheduled to expire on August 31, 2007, three of the positions are abolished on September 1, 2003. On or before September 1, 2003, the members whose terms are scheduled to expire on August 31, 2007, shall determine by unanimous agreement or by lot which three of the six positions shall be abolished and shall inform the presiding officer of the Texas Higher Education Coordinating Board of that determination.

SECTION 46. The changes in law made by this Act in the prohibitions or qualifications applying to members of the Texas Higher Education Coordinating Board do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to serve and function as a member of the board for the remainder of the member's term. Those changes in law apply only to a member appointed on or after the effective date of this Act.

SECTION 47. On the effective date of this Act:

(1) the P-16 Council replaces the joint advisory committee as the advisory board for the Texas Higher Education Coordinating Board and the State Board of Education;

(2) all functions and activities performed by the joint advisory committee are transferred to the P-16 Council to the extent consistent with the functions and duties of the P-16 Council provided by law; and

(3) a reference in law to the joint advisory committee that relates to providing advisory functions to the Texas Higher Education Coordinating Board and the State Board of Education means the P-16 Council.

SECTION 48. (a) Each general academic teaching institution shall provide the performance data as required by Section 61.0902, Education Code, as added by this Act, beginning with the data for the 2003-2004 academic year.

(b) Not later than March 1, 2005, the Texas Higher Education Coordinating Board shall publish and post on the board's Internet site the performance data provided by the general academic teaching institutions in this state as required by Section 61.0902, Education Code, as added by this Act.

SECTION 49. Not later than June 1, 2004, the Texas Higher Education Coordinating Board shall:

(1) approve the common course numbering system required by Section 61.832, Education Code, as added by this Act; and

(2) establish a timetable for each public institution of higher education to phase in the inclusion of the applicable course numbers from the common course numbering system in its individual course catalog system.

SECTION 50. (a) The Texas Higher Education Coordinating Board shall enter into a contract with the Texas Guaranteed Student Loan Corporation to use the corporation's electronic funds transfer system, as required by Section 52.34, Education Code, as amended by this Act, not later than January 1, 2004.

(b) Subsection (a), Section 52.41, Education Code, as added by this Act, applies only to a student loan issued under the Federal Family Education Loan Program (20 U.S.C. Section 1071 et seq.), as amended, on or after the effective date of this Act.

SECTION 51. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 286** as follows:

1. On page 42, lines 3 through 25 of the bill, strike Section 45, of the bill and substitute the following:

SECTION 45. To achieve an orderly transition from 18 to 9 positions on the Texas Higher Education Coordinating Board, the Governor on August 31, 2003, or September 1, 2003, shall appoint only three persons to the coordinating board for terms expiring on August 31, 2009. On, or as soon as possible after, August 31, 2005, the Governor shall appoint only four members to the coordinating board for terms expiring on August 31, 2011. On, or as soon as possible after, August 31, 2007, the Governor shall appoint only two members to the coordinating board for terms expiring on August 31, 2013. As terms on the coordinating board expire on and after August 31, 2009, the Governor shall appoint three members to the coordinating board in accordance with Section 61.022, Education Code, as amended by this Act.

Floor Amendment No. 2

Amend **CSSB 286** by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Section 61.313, Education Code, is amended by amending Subsection (e) and adding Subsections (f) and (g) to read as follows:

(e) This section does not apply to a person who on September 1, 1997, used the term "college" or "university" in the official name or title of a private postsecondary educational institution that was established before September 1, 1975. A person covered by this subsection is not required to remove the term "college" or "university" from the name or title of the institution established before September 1, 1975.

(f) A person covered by Subsection (e) [~~this subsection~~] may use the term "college" in the official name or title of another private postsecondary educational institution in this state if:

(1) the person's business name on September 1, 1995, included the term "college"; and

(2) the other institution offers the same or similar educational programs and is located in the same county as the institution established before September 1, 1975.

(g) A person covered by Subsection (e) may use the term "college" in the official name or title of another private postsecondary educational institution in this state if:

(1) the person operated at least four private postsecondary educational institutions in this state on September 1, 1985, for which the person was permitted to use the term "college" in the official name or title; and

(2) the other institution offers the same or similar educational programs as the institutions described by Subdivision (1) and has enrolled students in educational programs continuously since before September 1, 1995.

Floor Amendment No. 3

Amend **CSSB 286** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The heading to Subchapter N, Chapter 51, Education Code, is amended to read as follows:

SUBCHAPTER N. PARTNERSHIPS BETWEEN COMMUNITY/JUNIOR COLLEGES AND OTHER INSTITUTIONS OF HIGHER EDUCATION
[UPPER LEVEL UNIVERSITIES OR CENTERS]

SECTION _____. Section 51.661, Education Code, is amended to read as follows:

Sec. 51.661. PURPOSE. The purpose of this subchapter is to encourage partnerships between public community/junior colleges and other institutions of higher education that ~~[upper level universities or centers which]~~ are located in the same state uniform service region as adopted by the Texas Higher Education Coordinating Board in order to improve the continuity, quality, and efficiency of educational programs and services.

SECTION _____. Subchapter N, Chapter 51, Education Code, is amended by adding Section 51.6615 to read as follows:

Sec. 51.6615. DEFINITION. In this section, "institution of higher education" has the meaning assigned by Section 61.003.

SECTION _____. Section 51.662, Education Code, is amended to read as follows:

Sec. 51.662. PARTNERSHIP AGREEMENTS. With the approval of the Texas Higher Education Coordinating Board, the governing boards of a public community/junior college and another institution of higher education that ~~[an upper level university or center which]~~ are located in the same state uniform service region as adopted by the coordinating board may enter into a partnership agreement designed to coordinate the management and operations of the institutions. The agreements shall in no way abrogate the powers and duties of the boards with regard to the governance of their respective institutions.

SECTION _____. Section 51.666, Education Code, is amended to read as follows:

Sec. 51.666. FACILITIES. A participating institution of higher education ~~[upper level university or center]~~ may lease facilities from or to the community/junior college for administrative and instructional purposes. Community/junior college facilities may not be transferred to the other participating institution of higher education ~~[university or center]~~ and may not be included in the space inventory of the other participating institution of higher education ~~[university or center]~~ for formula funding purposes.

SECTION _____. Section 51.667, Education Code, is amended to read as follows:

Sec. 51.667. STATE FUNDING. The community/junior college shall receive state appropriations on the same formula basis as other community/junior colleges, and the other participating institution of higher education ~~[university or center]~~ shall receive state appropriations on the same formula basis as other similar institutions of higher education ~~[upper level senior colleges and universities]~~.

SECTION _____. Section 51.668, Education Code, is amended to read as follows:

Sec. 51.668. CONTINUING RESPONSIBILITIES. A participating community/junior college must continue to provide programs and services enumerated in Section 130.003(e) [~~Subsection (e) of Section 130.003 of this code~~]. The role [~~role~~] and scope of the other participating institution of higher education [~~university or center~~] are subject to approval by the coordinating board.

Floor Amendment No. 4

Amend **CSSB 286** (House committee report) by adding the following appropriately numbered SECTION to the bill and by renumbering existing SECTIONS of the bill as follows:

SECTION _____. (a) The purpose of this section is to provide for assessment of the readiness of entering college students to:

(1) enroll in freshman-level academic coursework; and

(2) by providing advising and educational support necessary for success in college, assist students who are not yet ready to enroll in that coursework.

(b) Subchapter F, Chapter 51, Education Code, is amended by adding Section 51.3062 to read as follows:

Sec. 51.3062. SUCCESS INITIATIVE. (a) The definitions provided by Section 61.003 apply to this section.

(b) An institution of higher education shall assess the academic skills of each entering undergraduate student to determine the student's readiness to enroll in freshman-level academic coursework. An institution may not use the assessment or the results of the assessment as a condition of admission to the institution.

(c) The board shall designate an instrument for use by institutions of higher education in assessing students under this section.

(d) If practical and feasible, not later than September 1, 2005, the board shall designate the exit-level assessment instrument required under Section 39.023 as the primary assessment instrument under this section. This subsection expires September 1, 2006.

(e) As the board considers necessary, the board may designate additional assessment instruments for use by institutions of higher education under this section.

(f) An assessment instrument designated by the board for use under this section must be diagnostic in nature and designed to assess a student's readiness to perform freshman-level academic coursework. The board shall prescribe standards for the assessment instrument or instruments that reflect that student readiness. An institution of higher education may adopt more stringent assessment standards with respect to student readiness.

(g) Each institution of higher education shall establish a program to advise students regarding coursework and other means by which students can develop the academic skills required to successfully complete college-level work.

(h) If a student fails to meet the assessment standards described by Subsection (f), the institution of higher education shall work with the student to develop a plan to assist the student in becoming ready to perform freshman-level academic coursework. The plan must be designed on an individual basis to provide the best opportunity for each student to attain that readiness.

(i) The institution of higher education may refer a student to developmental coursework as considered necessary by the institution to address a student's deficiencies in the student's readiness to perform freshman-level academic coursework, except that the institution may not require enrollment in developmental coursework with respect to a student previously determined by any institution of higher education to have met college-readiness standards.

(j) A student may retake an assessment instrument at any time to determine readiness to perform freshman-level academic coursework.

(k) An institution of higher education shall determine when a student is ready to perform freshman-level academic coursework. The determination may include requiring a student to retake an assessment instrument or other means of evaluating student readiness. The institution must make its determination on an individual basis according to the needs of the student.

(l) The legislature shall appropriate money for approved non-degree-credit developmental courses, except that legislative appropriations may not be used for developmental coursework taken by a student in excess of:

(1) 18 semester credit hours, for a general academic teaching institution; and

(2) 27 semester credit hours, for a public junior college, public technical institute, or public state college.

(m) The board may develop formulas to supplement the funding of developmental academic programs by institutions of higher education, including formulas for supplementing the funding of non-course-based programs. The board may develop a performance funding formula by which institutions may receive additional funding for each student who completes the Success Initiative established under this section and then successfully completes college coursework. The legislature may appropriate the money required to provide the additional funding under those formulas.

(n) Each institution of higher education shall report annually to the board on the success of its students and the effectiveness of its Success Initiative.

(o) The board shall evaluate the effectiveness of the Success Initiative on a statewide basis and with respect to each institution of higher education.

(p) A student who has achieved a score set by the board on the Scholastic Assessment Test (SAT) or the American College Test (ACT) is exempt from the requirements of this section. An exemption under this subsection is effective for the five-year period following the date a student takes the test and achieves the standard set by the board.

(q) A student who has achieved a score set by the board on an exit-level assessment instrument required under Section 39.023 is exempt from the requirements of this section. The exemption is effective for the three-year period following the date a student takes the assessment instrument and achieves the standard set by the board. This subsection does not apply during any period for which the board designates the exit-level assessment instrument required under Section 39.023 as the primary assessment instrument under this section, except that the three-year period described by this subsection remains in effect for students who qualify for an exemption under this section before that period.

(r) This section does not apply to:

(1) a student who has graduated with an associate or baccalaureate degree from an institution of higher education;

(2) a student who transfers to an institution of higher education from a private or independent institution of higher education or an accredited out-of-state institution of higher education and who has satisfactorily completed college-level coursework;

(3) a student who is enrolled in a certificate program of one year or less at a public junior college, a public technical institute, or a public state college; or

(4) a student who is serving on active duty as a member of the Armed Forces of the United States.

(s) An institution of higher education may exempt a non-degree-seeking or non-certificate-seeking student from the requirements of this section.

(c) Sections 51.306 and 51.3061, Education Code, are repealed.

(d) The Texas Higher Education Coordinating Board shall adopt rules for the administration of Section 51.3062, Education Code, as added by this Act, as soon as practicable after this Act takes effect. For that purpose, the board may adopt the initial rules in the manner provided by law for emergency rules.

Floor Amendment No. 5

Amend Floor Amendment No. 4 by Delisi to **CSSB 286** as follows:

(1) In SECTION 1 of the amendment add the following new Subsection and renumber the subsequent Subsections appropriately:

____ The Board, by rule, shall provide for each institution to inform students about the Success Initiative, including the institution's responsibilities and the students' options and responsibilities.

Floor Amendment No. 6

Amend **CSSB 286** (House committee report) by adding the following appropriately numbered SECTION to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0816 to read as follows:

Sec. 61.0816. INFORMATION REGARDING HIGHER EDUCATION AUTHORITIES. (a) The board shall collect and make available to the public on request information regarding higher education authorities operating under Chapter 53 and nonprofit corporations carrying out the functions of higher education authorities under Chapter 53. For each authority or corporation, the information must include:

(1) total amount and type of outstanding bonds issued by the authority or corporation;

(2) a description of the programs and activities administered by the authority or corporation; and

(3) with respect to any real property owned by the authority or corporation:

(A) the location and description of the property;

(B) the current or proposed use of the property, including whether the property is under construction or renovation;

(C) the method by which the authority or corporation financed the acquisition, construction, or renovation of the property;

(D) the school, public or private institution of higher education, or other educational institution for which the property is being used or proposed to be used;

(E) whether the property is exempt from ad valorem taxes; and

(F) the appraised value of the property.

(b) A higher education authority or nonprofit corporation described by this section shall provide the board the relevant information the board requests at the time and in the manner the board prescribes.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 286** on third reading by inserting the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0012 to read as follows:

Sec. 130.0012. PILOT PROJECT: BACCALAUREATE DEGREE PROGRAMS. (a) The Texas Higher Education Coordinating Board shall establish a pilot project to examine the feasibility and effectiveness of authorizing public junior colleges to offer baccalaureate degree programs in the fields of applied science and applied technology. Participation in the pilot project does not otherwise alter the role and mission of a public junior college.

(b) The coordinating board shall operate the pilot project at the following public junior colleges:

(1) Brazosport College;

(2) El Centro College of the Dallas County Community College District;

(3) Midland College;

(4) North Harris Montgomery Community College District; and

(5) South Texas Community College.

(c) A public junior college participating in the pilot project must meet all applicable accreditation requirements of the Commission on Colleges of the Southern Association of Colleges and Schools.

(d) A public junior college participating in the pilot project may not offer more than five baccalaureate degree programs under the project at any time. The degree programs are subject to the continuing approval of the coordinating board. In determining what baccalaureate degree programs are to be offered, the junior college and the coordinating board shall consider:

(1) the need for the degree programs in the region served by the junior college;

(2) how those degree programs would complement the other programs and course offerings of the junior college;

(3) whether those degree programs would unnecessarily duplicate the degree programs offered by other institutions of higher education; and

(4) the ability of the junior college to support the program and the adequacy of the junior college's facilities, faculty, administration, libraries, and other resources.

(e) Each public junior college that offers a baccalaureate degree program under the pilot project must enter into an articulation agreement with one or more general academic teaching institutions to ensure that students enrolled in the degree program have an opportunity to complete the degree if the public junior college ceases to offer

the degree program. The coordinating board may require a general academic teaching institution that offers a comparable degree program to enter into an articulation agreement with the public junior college as provided by this subsection.

(f) In its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college receive substantially the same state support for junior-level and senior-level courses offered under the pilot project as that provided to a general academic teaching institution for substantially similar courses. In determining the contact hours attributable to students enrolled in a junior-level or senior-level course offered under the pilot project used to determine a public junior college's proportionate share of state appropriations under Section 130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations. This subsection does not prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses offered under the pilot project.

(g) Each public junior college participating in the pilot project shall prepare a biennial report on the operation and effectiveness of the junior college's baccalaureate degree programs offered under the project and shall deliver a copy of the report to the coordinating board in the form and at the time determined by the coordinating board.

(h) Not later than January 1, 2009, the coordinating board shall prepare a progress report on the pilot project. Not later than January 1, 2011, the coordinating board shall prepare a report on the effectiveness of the pilot project, including any recommendations for legislative action regarding the offering of baccalaureate degree programs by public junior colleges. The coordinating board shall deliver a copy of each report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over higher education.

(i) Unless the authority to continue offering the baccalaureate degree programs is continued by the legislature, a public junior college may not:

(1) enroll a new student in a baccalaureate degree program under the pilot project after the 2011 fall semester;

(2) offer junior-level or senior-level courses for those degree programs after the 2015 fall semester, unless the coordinating board authorizes the college to offer those courses; or

(3) award a baccalaureate degree under the pilot project after the 2015 fall semester, unless the coordinating board approves the awarding of the degree.

(j) The coordinating board shall prescribe procedures to ensure that each public junior college that offers a degree program under the pilot project informs each student who enrolls in the degree program of:

(1) the nature of the pilot project, including the limited duration of the project; and

(2) the articulation agreement entered into under Subsection (e) for the student's degree program.

(k) This section expires January 1, 2020.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 286** on third reading by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION 1. Chapter 56, Education Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. DOCTORAL INCENTIVE LOAN
REPAYMENT PROGRAM

Sec. 56.091. ESTABLISHMENT; ADMINISTRATION. (a) The Texas Higher Education Coordinating Board shall establish and administer the doctoral incentive loan repayment program as provided by this subchapter and shall adopt rules as necessary to administer the program.

(b) The purpose of the doctoral incentive loan repayment program is to provide education loan repayment assistance to individuals from groups that are underrepresented among the faculty and administration of public and independent institutions of higher education in this state to increase the number of individuals from those underrepresented groups among the faculty and administration of public and independent institutions of higher education in this state.

(c) For purposes of this subchapter, an individual is from a group that is underrepresented among the faculty and administration of public and independent institutions of higher education in this state if:

(1) the individual was from a low socioeconomic background while pursuing the individual's undergraduate education; or

(2) when the individual graduated from high school the individual resided in an area from which a disproportionately low number of high school graduates enrolled in postsecondary educational institutions.

Sec. 56.092. ELIGIBILITY. To be eligible for loan repayment assistance under the doctoral incentive loan repayment program, an individual must:

(1) be employed as a full-time faculty or administration member in a public or independent institution of higher education in this state for at least one year;

(2) be a Texas resident;

(3) be from a group that is underrepresented among the faculty and administration of public and independent institutions of higher education in this state;

(4) have qualified for student financial aid based on financial need while enrolled in a graduate-level degree program; and

(5) comply with any other requirements adopted by the coordinating board for the effective administration of the program.

Sec. 56.093. ELIGIBLE LOANS. The coordinating board may provide repayment assistance under the doctoral incentive loan repayment program for the repayment of any education loan received by an eligible individual through any lender.

Sec. 56.094. LOAN REPAYMENT ASSISTANCE. (a) The coordinating board may provide assistance in the repayment of an eligible loan to an eligible individual in the amounts and under the terms the coordinating board considers appropriate to further the purposes of the doctoral incentive loan repayment program and the best interests of this state.

(b) An individual may receive loan repayment assistance under the doctoral incentive loan repayment program in a total amount not to exceed \$100,000.

Sec. 56.095. FUNDING; LIMITATION ON FUNDING. (a) The doctoral incentive loan repayment program may be funded only from a source provided by this section. The total amount of loan repayment assistance paid under the program may not exceed the amount of money available for the program under this section.

(b) Each institution of higher education shall set aside a portion of the tuition collected from each student enrolled in a doctoral degree program, other than a law or health professional degree program, equal to \$2 for each semester credit hour for which the student is enrolled. The amount set aside shall be transferred to the comptroller to be maintained in the state treasury for the sole purpose of repayment of student loans of individuals employed as faculty and administrators at institutions of higher education in this state as provided by this subchapter. The money may be used only to provide loan repayment under this subchapter and to cover the costs of administering this subchapter.

(c) The coordinating board may solicit and accept gifts and grants from any public or private source for the purposes of the doctoral incentive loan repayment program.

Sec. 56.096. INITIAL IMPLEMENTATION. (a) The board shall provide loan repayments under this subchapter beginning with the 2004-2005 academic year.

(b) The board shall adopt the initial rules for awarding loan repayment under this subchapter as soon as practicable after this subchapter becomes law. The board may adopt those initial rules in the manner provided by law for emergency rules.

(c) This section expires January 1, 2006.

Floor Amendment No. 3 on Third Reading

Substitute Floor Amendment No. 2 on Third Reading to **CSSB 286** on third reading by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Chapter 56, Education Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

Sec. 56.091. ESTABLISHMENT; ADMINISTRATION. (a) The Texas Higher Education Coordinating Board shall establish and administer the doctoral incentive loan repayment program as provided by this subchapter and shall adopt rules as necessary to administer the program.

(b) The purpose of the doctoral incentive loan repayment program is to provide education loan repayment assistance to individuals from groups that are underrepresented among the faculty and administration of public and independent institutions of higher education in this state to increase the number of individuals from those underrepresented groups among the faculty and administration of public and independent institutions of higher education in this state.

(c) For purposes of this subchapter, an individual is from a group that is underrepresented among the faculty and administration of public and independent institutions of higher education in this state if:

(1) the individual was from a low socioeconomic background while pursuing the individual's undergraduate education; or

(2) when the individual graduated from high school the individual resided in an area from which a disproportionately low number of high school graduates enrolled in postsecondary educational institutions.

Sec. 56.092. ELIGIBILITY. To be eligible for loan repayment assistance under the doctoral incentive loan repayment program, an individual must:

(1) be employed as a full-time faculty or administration member in a public or independent institution of higher education in this state for at least one year;

(2) be a Texas resident;

(3) be from a group that is underrepresented among the faculty and administration of public and independent institutions of higher education in this state;

(4) have qualified for student financial aid based on financial need while enrolled in a graduate-level degree program; and

(5) comply with any other requirements adopted by the coordinating board for the effective administration of the program.

Sec. 56.093. ELIGIBLE LOANS. The coordinating board may provide repayment assistance under the doctoral incentive loan repayment program for the repayment of any education loan received by an eligible individual through any lender.

Sec. 56.094. LOAN REPAYMENT ASSISTANCE. (a) The coordinating board may provide assistance in the repayment of an eligible loan to an eligible individual in the amounts and under the terms the coordinating board considers appropriate to further the purposes of the doctoral incentive loan repayment program and the best interests of this state.

(b) An individual may receive loan repayment assistance under the doctoral incentive loan repayment program in a total amount not to exceed \$100,000.

Sec. 56.095. FUNDING; LIMITATION ON FUNDING. (a) The doctoral incentive loan repayment program may be funded only from a source provided by this section. The total amount of loan repayment assistance paid under the program may not exceed the amount of money available for the program under this section.

(b) Each institution of higher education shall set aside a portion of the tuition collected from each student enrolled in a doctoral degree program, other than a law or health professional degree program, equal to \$2 for each semester credit hour for which the student is enrolled. The amount set aside shall be transferred to the comptroller to be maintained in the state treasury for the sole purpose of repayment of student loans of individuals employed as faculty and administrators at institutions of higher education in this state as provided by this subchapter. The money may be used only to provide loan repayment under this subchapter and to cover the costs of administering this subchapter.

(c) The coordinating board may solicit and accept gifts and grants from any public or private source for the purposes of the doctoral incentive loan repayment program.

Sec. 56.096. INITIAL IMPLEMENTATION. (a) The board shall provide loan repayments under this subchapter beginning with the 2004-2005 academic year.

(b) The board shall adopt the initial rules for awarding loan repayment under this subchapter as soon as practicable after this subchapter becomes law. The board may adopt those initial rules in the manner provided by law for emergency rules.

(c) This section expires January 1, 2006.

Floor Amendment No. 5 on Third Reading

Amend **CSSB 286** on third reading by adding the following new appropriately numbered SECTION and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0102 to read as follows:

Sec. 130.0102. MEXICAN-AMERICAN STUDIES PROGRAM OR COURSE WORK. The governing board of a public junior college district located in one or more counties with a substantial and growing Mexican-American population shall evaluate the demand for and feasibility of establishing a Mexican-American studies program or other course work in Mexican-American studies at one or more junior colleges in the district. With approval of the Texas Higher Education Coordinating Board, the governing board may establish a Mexican-American studies program or other course work in Mexican-American studies at any of those colleges if the governing board determines that such a program or course work is desirable and feasible.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 286** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Averitt, Bivins, Ratliff, and Ellis.

SENATE BILL 396 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 396** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 396** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to a technology immersion pilot project in public schools.

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

SECTION 1. Chapter 32, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. TECHNOLOGY IMMERSION PILOT PROJECT

Sec. 32.151. ESTABLISHMENT OF PILOT PROJECT. The agency may by rule establish the technology immersion pilot project to provide a wireless mobile computing device to each student in a participating school and implement the use of software, on-line courses, and other appropriate learning technologies that have been shown to improve academic achievement and the progress measures listed in Section 32.155(e).

Sec. 32.152. PILOT PROJECT ADMINISTRATION. If the agency establishes the pilot project under Section 32.151, the agency shall establish a procedure and develop criteria for the administration of the pilot project. In administering the pilot project, the agency shall:

- (1) select participating school districts or schools;
- (2) define the conditions for the distribution and use of computer equipment and other technologies;
- (3) purchase and distribute computer equipment and other technologies;
- (4) enter into contracts as necessary to implement the pilot project;
- (5) monitor local pilot project implementation; and
- (6) conduct a final evaluation of the pilot project.

Sec. 32.153. PILOT PROJECT FUNDING. (a) To implement the pilot project, the agency may use any gift, grant, or donation given for the pilot project. The agency may solicit and accept a gift, grant, or donation of any kind from any source, including from a foundation, private entity, governmental entity, and institution of higher education, for the implementation of the pilot project. The agency may not use money from the general revenue fund for purposes of the pilot project.

(b) Funds for the pilot project may not be used for the construction of a building or other facility.

(c) The agency shall use pilot project funds for:

(1) the purchase of wireless mobile computing devices so that each student in a participating classroom has a wireless mobile computing device for use at school and at home;

(2) the purchase of other equipment, including additional computer hardware and software;

(3) the hiring of technical support staff for school districts or schools participating in the pilot project; and

(4) the purchase of technology-based learning materials and resources.

(d) The agency may not allocate more than \$1 million for a school participating in the pilot project.

(e) The pilot project may be implemented only if sufficient funds are available under this section for that purpose.

Sec. 32.154. DISTRICT OR SCHOOL SELECTION. (a) A school district may apply to the agency for the establishment of a technology immersion pilot project for the entire district or for a particular school or group of schools in the district.

(b) The agency shall select the participating districts and schools for the pilot project based on each district's or school's need for the pilot project. In selecting participants, the agency shall consider the following criteria:

(1) whether the district or school has limited access to educational resources that could be improved through the use of wireless mobile computing devices and other technologies;

(2) whether the district or school has the following problems and whether those problems can be mitigated through the use of wireless mobile computing devices and other technologies:

(A) documented teacher shortages in critical areas;

(B) limited access to advanced placement courses;

(C) low rates of satisfactory performance on assessment instruments under Subchapter B, Chapter 39; and

(D) high dropout rates;

(3) the district's or school's readiness to incorporate technology into its classrooms;

(4) the possibility of obtaining a trained technology support staff and high-speed Internet services for the district or school; and

(5) the methods the district or school will use to measure the progress of the pilot project in the district or school in accordance with Section 32.155(e).

(c) The agency shall if possible select at least five schools to participate in the pilot project. At least one pilot project should include students in grades 6-12. The agency may select at least one entire school district and at least one entire school in a second district to participate in the pilot project.

Sec. 32.155. COMMUNITY EDUCATIONAL PIPELINE PROGRESS TEAM.

(a) Each participating school district or school shall establish a community educational pipeline progress team to assist in developing and implementing the technology immersion pilot project.

(b) The board of trustees of a participating school district, or of a district in which a participating school is located, shall appoint individuals to the team. The team may be composed of:

(1) educators;

(2) district-level administrators;

(3) community leaders;

(4) parents of students who attend a participating school; and

(5) any other individual the board finds appropriate.

(c) The team shall develop an academic improvement plan that details how the pilot project should be implemented in the participating district or school. In developing the academic improvement plan, the team shall consider:

(1) the educational problems in the district or school that could be mitigated through the implementation of the pilot project; and

(2) the technological and nontechnological resources that are necessary to ensure the successful implementation of the pilot project.

(d) The team shall recommend to the board how the pilot project funds should be used to implement the academic improvement plan developed under Subsection (c). The team may recommend annually any necessary changes in the academic improvement plan to the board. The agency must approve the academic improvement plan, or any changes in the academic improvement plan, before disbursing pilot project funds to the board.

(e) The board of trustees of each district participating in the pilot project shall send an annual progress report to the agency not later than August 1 of each year that the district is participating in the pilot project. The report must state in detail the type of plan being used in the district or school and the effect of the pilot project on the district or school, including:

(1) the academic progress of students who are participating in a pilot project, as measured by performance on assessment instruments;

(2) if applicable, a comparison of student progress in a school or classroom that is participating in the pilot project as compared with student progress in the schools or classrooms in the district that are not participating in the pilot project;

(3) any elements of the pilot project that contribute to improved student performance on assessment instruments administered under Section 39.023 or any other assessment instrument required by the agency;

(4) any cost savings and improved efficiency relating to school personnel and the maintenance of facilities;

(5) any effect on student dropout and attendance rates;

(6) any effect on student enrollment in higher education;

(7) any effect on teacher performance and retention;

(8) any improvement in communications among students, teachers, parents, and administrators;

(9) any improvement in parent involvement in the education of the parent's child;

(10) any effect on community involvement and support for the district or school; and

(11) any increased student proficiency in technologies that will help prepare the student for becoming a member of the workforce.

Sec. 32.156. COMPUTER RETENTION. Each student participating in the pilot project may retain the wireless mobile computing device provided under the pilot project as long as the student is enrolled in a school in a participating school district. The student may retain the wireless mobile computing device after the expiration of the pilot project.

Sec. 32.157. PILOT PROJECT EVALUATION; EXPIRATION. (a) After the expiration of the three-year pilot project, the agency may review the pilot project based on the annual reports the agency receives from the board of trustees of participating school districts. The agency may include the review of the pilot project in the comprehensive annual report required under Section 39.182 that covers the 2006-2007 school year.

(b) This subchapter expires August 31, 2007.

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 Shapleigh moved to concur in the House amendment to **SB 396**.

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

CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 68

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HJR 68** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HJR 68** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Bivins, Duncan, Ellis, and Estes.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 30, 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 REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 518

House Conferees: Menendez - Chair/Dutton/Goodman/Morrison/Reyna/

HB 645

House Conferees: Puente - Chair/Geren/Menendez/Mowery/Wolens/

HB 727

House Conferees: Delisi - Chair/Capelo/Gutierrez/Harper-Brown/Miller/

HB 1204

House Conferees: Baxter - Chair/Elkins/Haggerty/Howard/Wohlgemuth/

HB 1314

House Conferees: Pitts - Chair/Branch/Dawson/Grusendorf/West, George "Buddy"/

HB 1538

House Conferees: Chisum - Chair/Berman/Christian/Hupp/Noriega/

HB 2971

House Conferees: Harper-Brown - Chair/Garza/Hamric/Krusee/Laubenberg/

HB 3042

House Conferees: Cook, Robby - Chair/Casteel/Chisum/Menendez/Solomons/

HB 3441

House Conferees: Pickett - Chair/Davis, John/Hupp/Isett/McClendon/

HB 3442

House Conferees: Pickett - Chair/Davis, John/Hupp/Isett/McClendon/

HB 3578

House Conferees: Wong - Chair/Hunter/Menendez/Talton/Van Arsdale/

HB 3587

House Conferees: Callegari - Chair/Bonnen/Chisum/McCall/Wilson/

HB 3588

House Conferees: Krusee - Chair/Delisi/Garza/Hill/Phillips/

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

SB 117

House Conferees: Hope - Chair/Berman/Ellis/Hopson/Hupp/

SB 361

House Conferees: Hill - Chair/Garza/Hamric/Harper-Brown/Krusee/

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1320 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 1320** 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 1320** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain advance directives for medical treatment and medical treatment decisions.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by amending Subdivision (7) and adding Subdivision (15) to read as follows:

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

SECTION 2. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.010 to read as follows:

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

SECTION 3. Section 166.044, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) A physician, nurse, or other person acting under the direction of a physician who participates in the withholding or withdrawal of cardiopulmonary resuscitation from a patient who, in reasonable medical judgment, has a terminal or irreversible condition is not civilly or criminally liable for failure to provide resuscitation if, in reasonable medical judgment, in the event of cardiopulmonary arrest, the patient's death would occur within minutes to hours regardless of the provision of resuscitation. Nothing in this section may be construed to limit the authority of a physician, nurse, or other person to comply with an otherwise valid and applicable patient's directive to physicians or out-of-hospital do-not-resuscitate order, or the decision of a competent patient or the person responsible for the health care decisions of the patient, that authorizes a do-not-resuscitate order under other circumstances.

SECTION 4. The heading to Section 166.046, Health and Safety Code, is amended to read as follows:

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR TREATMENT DECISION.

SECTION 5. Section 166.046, Health And Safety Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (e-1) to read as follows:

(a) If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient ~~[under Section 166.039]~~, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement; ~~and~~

(2) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052;

and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Health Care Information Council under Section 166.053; and

(3) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process.

(e) If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed ~~have decided~~ is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

SECTION 6. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Sections 166.052 and 166.053 to read as follows:

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue
You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, he or she will request that the case be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

If you wish, you are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given the requested life-sustaining treatment until he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not appropriate.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 10 days, life-sustaining treatment may be withdrawn on the 11th day unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 10-day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted. You will probably need a lawyer's help if you wish to consider seeking this type of extension.

* "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician
Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment* and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, he or she will request that the case be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

If you wish, you are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Texas Health Care Information Council. You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

* "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) An attending physician or health care facility may, if it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas Health Care Information Council shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the council they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The Texas Health Care Information Council shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients and shall provide a clearly identifiable link from its home page to the registry page. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;
(2) those patients on whose behalf the withholding or withdrawal of
life-sustaining treatment is being sought; and
(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Texas Health Care Information Council their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Texas Health Care Information Council nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

SECTION 7. Subchapter C, Chapter 166, Health and Safety Code, is amended by adding Section 166.102 to read as follows:

Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

(b) When responding to a call for assistance, emergency medical services personnel shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter.

SECTION 8. Section 166.081(1), Health and Safety Code, is repealed.

SECTION 9. 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

CSSB 1320 is amended as follows:

A). Strike SECTION 3 in its entirety, and renumber the remaining sections accordingly.

B). Section 166.046(b), Health and Safety Code, as amended by SECTION 5 is amended to read as follows:

(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to section 166.046 adopted by the health care facility;

(2)[(1)] shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement; ~~and~~

(3)[(2)] at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Health Care Information Council under Section 166.053; and

(4)(~~3~~) is entitled to:

(A) attend the meeting; and

(B) receive a written explanation of the decision reached during the review process."

C). Section 166.052(a) and (b), Health and Safety Code, as added by SECTION 6, is amended as follows:

(1) On page 5, line 16, strike "he or she will request that" and between "case" and "be", insert "will";

(2) On page 5, line 23, strike "If you wish, you" and substitute "You";

(3) On page 6, line 12, strike "the requested";

(4) On page 6, line 21, strike "on the 11th day";

(5) On page 6, line 27 and page 7, line 1, strike "You will probably need a lawyer's help if you wish to consider seeking this type of extension.";

(6) On page 8, lines 3-4, strike "he or she will request that" and between "case" and "be", insert "will"; and

(7) On page 8, line 10, strike "If you wish, you" and substitute "You".

Floor Amendment No. 2

Amend **CSSB 1320** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION _____. Section 166.085, Health and Safety Code, is amended to read as follows:

Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

(1) the minor's parents;

(2) the minor's legal guardian; or

(3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1320** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Janek, Deuell, Carona, and Gallegos.

CONFERENCE COMMITTEE ON HOUSE BILL 335

Senator Lindsay called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 335** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 335** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lindsay, Chair; Deuell, Brimer, Gallegos, and Wentworth.

SENATE BILL 624 WITH HOUSE AMENDMENTS

Senator Lindsay called **SB 624** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **SB 624** as follows:

(1) On page 3, line 8, between "Travis County," and "Harris County," insert the following: "Williamson County".

Floor Amendment No. 2

Amend **SB 624** as follows:

(1) In SECTION 2 of the bill, strike proposed Section 49.107(h), Water Code (House committee printing, page 2, lines 17-22), and substitute the following:

(h) To the extent authorized by Section 59, Article XVI, Texas Constitution, an operation and maintenance tax to be used for recreational facilities, as defined by Section 49.462, levied by a district located in a county with a population of more than 3.3 million or in a county adjacent to that county may not exceed 10 cents per \$100 of assessed valuation of taxable property in the district.

(2) Strike SECTION 5 of the bill (House committee printing, page 2, line 26, through page 3, line 3), and substitute the following:

SECTION 5. Section 49.464, Water Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Section 49.4645, a [A] district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

(d) A district may issue bonds payable solely from revenues by resolution or order of the board without an election.

(3) In SECTION 6 of the bill, in proposed Section 49.4645(a), Water Code (House committee printing, page 3, line 8), between "in" and "Travis", insert "Bastrop County, Bexar County, Waller County".

(4) In SECTION 6 of the bill, in proposed Section 49.4645(a), Water Code (House committee printing, page 3, line 9), strike "Fort Bend County, or Montgomery County" and substitute "or Fort Bend County".

(5) In SECTION 6 of the bill, in proposed Section 49.4645(a), Water Code (House committee printing, page 3, lines 21-22), strike "The board may issue bonds payable solely from revenues by resolution or by order of the board without an election.".

The amendments were read.

Senator Lindsay moved to concur in the House amendments to **SB 624**.

The motion prevailed by a viva voce vote.

SENATE BILL 1652 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 1652** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 1652** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to institutions of higher education, including the administration, operation, governance, and financing of those institutions.

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

ARTICLE 1. FINANCIAL MATTERS

SECTION 1.01. Subsection (e), Section 11.11, Tax Code, is amended to read as follows:

(e) Property [~~It is provided, however, that property~~] that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by Section 61.003 [~~in Chapter 61~~], [~~Texas~~] Education Code, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. If a portion of property of an institution of higher education is used for public purposes and a portion is not used for those purposes, the portion of the property used for public purposes is exempt under this subsection. All oil, gas, and other mineral interests owned by an institution of higher education are exempt from all ad valorem taxes. Property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent's death, unless:

(1) the property is leased for compensation to a private business enterprise as provided in this subsection; or

(2) the transfer of the property to an institution is contested in a probate court, in which~~[-In this]~~ case~~[,]~~ ad valorem taxes shall be assessed to the estate of the decedent until the final determination of the disposition of the property is made. The property is exempt from the assessment of ad valorem taxes upon vesting of the property in the institution.

SECTION 1.02. Subdivision (2), Section 2254.021, Government Code, is amended to read as follows:

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

SECTION 1.03. Section 2254.028, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Subsection (a)(3) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

SECTION 1.04. Subsections (b) and (d), Section 2254.031, Government Code, are amended to read as follows:

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

SECTION 1.05. Section 54.5011, Education Code, is amended to read as follows:

Sec. 54.5011. CHARGES AND ~~[CREDIT CARD]~~ FEES FOR CERTAIN PAYMENTS. (a) This section applies to a payment of tuition, a fee, or another charge to an institution of higher education that is made or authorized in person, by mail, by telephone call, or through the Internet by means of:

(1) an electronic funds transfer; or

(2) a credit card.

(b) An institution of higher education may charge a fee or other amount in connection with a payment to which this section applies, in addition to the amount of the tuition, fee, or other charge being paid, including:

(1) a discount, convenience, or service charge for the transaction; or

(2) a service charge in connection with a payment transaction that is dishonored or refused for lack of funds or insufficient funds [that accepts payment of tuition, a fee, or other charge by credit card may charge the credit card user a fee for processing the payment].

(c) ~~(b)~~ A fee or other charge [charged] under this section must be in an amount reasonably related to the expense incurred by the institution in processing and handling [may not exceed the amount charged the institution by the issuer of the credit card in connection with] the payment or payment transaction.

(d) ~~(e)~~ Before accepting a payment by credit card, the institution shall notify the student of any fee to be charged under this section.

SECTION 1.06. Section 153.006, Education Code, is amended to read as follows:

Sec. 153.006. SUPPORT OF CENTERS. (a) In order to carry out the purposes of this chapter and to support the activities of centers described in this chapter, to the extent authorized by its governing board, an institution of higher education may:

(1) enter into agreements establishing royalties, fees, and other consideration for technology developed in whole or part by it;

(2) accept equity interests in organizations that license, manage, or otherwise administer rights to technology belonging to it or under its control in exchange for such rights, in whole or in part;

(3) accept equity interests in organizations that license or otherwise have rights in its technology as consideration for its providing monetary, business, scientific, or engineering services or technical assistance;

(4) use income from the commercialization of technology to fund the activities of the center;

(5) solicit, accept, and administer gifts, grants, and donations; ~~and~~

(6) enter into contracts for legal services with a competent lawyer or law firm to:

(A) prepare, file, pursue, and maintain patent applications in the United States or foreign jurisdictions;

(B) secure copyright protection for computer software;

(C) prepare, file, and pursue trademark and service mark applications;

(D) pursue litigation to prevent or stop infringement of any intellectual property rights of the institution; or

(E) handle any other legal matter related to the operation and activities of the center; and

(7) enter into such other business arrangements as may be appropriate for achieving the purposes of this chapter.

(b) The fees or other compensation paid in connection with a legal services contract authorized by Subsection (a) may be paid on a contingency fee basis, at an hourly rate, or on another basis the governing board of the institution considers appropriate.

SECTION 1.07. Section 2254.102, Government Code, is amended by adding Subsection (c) to read as follows:

(c) This subchapter does not apply to a contract for legal services entered into by an institution of higher education under Section 153.006, Education Code.

SECTION 1.08. Subsection (d), Section 404.097, Government Code, is amended to read as follows:

(d) Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only:

(1) after the funds are deposited in accordance with this section; and

(2) in accordance with Subchapter C, Chapter 2254, if that subchapter applies to the contract.

SECTION 1.09. Section 21.042, Property Code, is amended by adding Subsection (f) to read as follows:

(f) In awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, the special commissioners may not include in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

SECTION 1.10. Section 55.004, Property Code, is amended by adding Subsection (f) to read as follows:

(f) If the physician is employed in that capacity by an institution of higher education, as defined by Section 61.003, Education Code, and the lien does not include the amount of the physician's reasonable and necessary charges described by Subsection (c), the physician has a lien on the cause of action in the same manner as a hospital under this chapter. The lien is subject to provisions of this chapter applicable to a hospital lien, and the physician or the physician's employing institution may secure and enforce the lien in the manner provided by this chapter.

SECTION 1.11. Subchapter A, Chapter 56, Education Code, is amended by adding Section 56.004 to read as follows:

Sec. 56.004. FILING FEES IN SUITS TO COLLECT DELINQUENT STUDENT LOANS. Notwithstanding any other law, if an institution of higher education brings suit to collect or enforce the repayment of a delinquent student loan, the institution is required to pay in advance one-half of the applicable filing fee and other costs payable in advance to the clerk of the court. If the defaulting borrower prevails in the suit, the institution shall pay the remaining one-half of the filing fee and costs on the date of the final disposition of the suit. If the institution prevails in the suit:

(1) the judgment shall include a finding that the defaulting borrower is liable to the institution for the full amount of the filing fee and costs; and

(2) the institution shall pay the remaining one-half of the filing fee and costs not later than the seventh day after the date on which the defaulting borrower pays to the institution the full amount, including the amount of the filing fee and costs, for which the borrower is liable to the institution.

SECTION 1.12. Section 403.072, Government Code, is amended by adding Subsection (d) to read as follows:

(d) In its rules adopted under this section, the comptroller may not require an institution of higher education, as defined by Section 61.003, Education Code, that processes its own payroll to submit payroll information to the comptroller relating to individual employees of the institution that is not required by the comptroller to make any distribution of state money to the institution to cover the institution's payroll.

SECTION 1.13. Section 56.004, Education Code, as added by this article, applies only to a suit filed by an institution to collect or enforce the repayment of a delinquent student loan on or after the effective date of this Act. A suit filed before the effective date is covered by the law in effect when the suit was filed, and the former law is continued in effect for that purpose.

ARTICLE 2. HUMAN RESOURCES

SECTION 2.01. Section 609.001, Government Code, is amended by adding Subdivision (2-a) and amending Subdivision (8) to read as follows:

(2-a) "Institution of higher education" means an institution of higher education as defined by Section 61.003, Education Code, other than a public junior college.

~~(8) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including an institution of higher education [as defined by Section 61.003, Education Code, but does not include a public junior college].~~

SECTION 2.02. Section 609.002, Government Code, is amended to read as follows:

Sec. 609.002. QUALIFICATIONS FOR QUALIFIED VENDOR. A vendor may be a qualified vendor for a 457 plan or a 401(k) plan created by a political subdivision, ~~or~~ group of political subdivisions, an institution of higher education, or a group of institutions of higher education only if the vendor satisfies the requirements for participation in the deferred compensation plan provided by:

- (1) this chapter; and
- (2) the plan administrator.

SECTION 2.03. Subsection (b), Section 609.003, Government Code, is amended to read as follows:

(b) The approval of an investment product for a 401(k) plan of a political subdivision, ~~or~~ group of political subdivisions, an institution of higher education, or a group of institutions of higher education, or for a 457 plan of an institution of higher education or group of institutions of higher education, must be in accordance with a contract between the plan administrator and a qualified vendor.

SECTION 2.04. Section 609.007, Government Code, is amended by adding Subsection (e) to read as follows:

(e) An institution of higher education may contract with an employee of the institution of higher education for the deferment of any part of the employee's compensation.

SECTION 2.05. Chapter 609, Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION

Sec. 609.701. DEFINITIONS. In this subchapter:

(1) "Deferred compensation plan" means a plan established under this subchapter.

(2) "Deferred compensation trust fund" means the fund in which deferred amounts and investment income of participating employees are temporarily held.

(3) "Investment product" includes a fixed or variable rate annuity, mutual fund, certificate of deposit, money market account, passbook savings account, stock, bond, obligation, and any other investment product not prohibited under Section 457, Internal Revenue Code of 1986, as amended.

Sec. 609.702. CREATION OF PLAN. (a) An institution of higher education may create and administer for its employees a 457 plan under this subchapter.

(b) An institution of higher education may contract with other institutions of higher education to create a single deferred compensation plan for their employees under Subsection (a).

Sec. 609.703. DESIGNATION OF PLAN ADMINISTRATOR. (a) An institution of higher education that creates a deferred compensation plan shall designate a plan administrator for the plan.

(b) Institutions of higher education that create a single plan shall designate jointly a plan administrator for the plan.

(c) A plan administrator may be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another institution of higher education, or an association of institutions of higher education.

Sec. 609.704. REMOVAL OF PLAN ADMINISTRATOR. An institution of higher education or group of institutions of higher education that designates a plan administrator may remove the plan administrator at any time unless specifically provided otherwise by contract.

Sec. 609.705. OVERSIGHT COMMITTEE. (a) An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may direct and supervise the activities of the plan administrator through an oversight committee.

(b) The institution of higher education or group shall determine the authority, activities, and composition of an oversight committee created under this section.

Sec. 609.706. AUTHORITY OF PLAN ADMINISTRATOR. (a) A plan administrator shall execute necessary contracts for the administration of the deferred compensation plan, subject to any prior approval required by the institution of higher education or group of institutions of higher education that created the plan.

(b) A plan administrator shall develop and implement criteria and procedures for any matter not covered by this subchapter that the plan administrator considers appropriate for the operation of the deferred compensation plan.

Sec. 609.707. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. The plan administrator shall:

(1) invest the deferred amounts and investment income of a participating employee in the qualified investment products designated by the employee; and

(2) transfer the deferred amounts and investment income of a participating employee from one qualified investment product to another on the employee's request.

Sec. 609.708. PARTICIPATION OF INDEPENDENT CONTRACTORS. (a) The plan administrator shall determine whether a person who provides services as an independent contractor to an institution of higher education that created the plan may participate in the deferred compensation plan.

(b) For the purposes of Subchapter A and this subchapter, an independent contractor that is authorized to participate in a deferred compensation plan is treated as an employee of the institution of higher education creating the plan.

Sec. 609.709. CHANGING AMOUNT DEFERRED. An employee may change the amount to be deferred by notifying the plan administrator of the change in accordance with the requirements of the administrator.

Sec. 609.710. DISTRIBUTION. A plan administrator shall develop and implement procedures for:

(1) the designation by a participating employee of a beneficiary to receive the employee's deferred amounts and investment income after the employee's death; and

(2) the distribution of a participating employee's deferred amounts and investment income to the employee or the employee's beneficiary, as appropriate, because of the employee's death or termination of employment, a financial hardship, or another reason permissible under federal law.

Sec. 609.711. FEE. (a) An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may assess a fee for the administration of the plan against each participating employee.

(b) The institution of higher education or group of institutions of higher education shall determine the method for computing and assessing the fee.

Sec. 609.712. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) A plan administrator shall develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor.

(b) A plan administrator may not approve a vendor's application if the vendor is: (1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board; or

(3) an insurance company that: (A) is not a member of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or

(B) is an impaired or insolvent insurer under Article 21.28-D, Insurance Code.

(c) On written request, the Texas Department of Insurance shall certify in writing to a plan administrator whether an insurance company is prohibited from being approved as a qualified vendor under Subsection (b)(3). The plan administrator may rely on the certification.

Sec. 609.713. NUMBER OF VENDORS UNDER 457 PLAN. The plan administrator of a 457 plan shall determine the minimum and maximum number of vendors that may be qualified vendors for the plan at any given time.

Sec. 609.714. CONTRACT WITH QUALIFIED VENDOR. (a) After a plan administrator approves an application of a vendor to become a qualified vendor, the plan administrator shall execute a written contract with the vendor to participate in the deferred compensation plan.

(b) A plan administrator shall develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) A qualified vendor may offer to employees participating in a 457 plan only qualified investment products.

Sec. 609.715. REGULATION OF QUALIFIED VENDORS. A plan administrator shall develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters.

Sec. 609.716. TRANSFER ON VENDOR'S FAILURE. An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator.

SECTION 2.06. Subsection (a), Section 51.964, Education Code, is amended to read as follows:

(a) An institution of higher education as defined by Section 61.003 may employ a person who has retired under the Teacher Retirement System (Subtitle C, Title 8, Government Code) or the optional retirement program (Chapter 830, Government Code) if:

(1) the governing board of the institution determines that the employment is in the best interests of the institution; and

(2) the person has been retired for at least 30 days [~~one calendar year~~] before the effective date of the employment, except that a person retired under the optional retirement program may be rehired after retirement without a break in service.

SECTION 2.07. Subchapter A, Chapter 51, Education Code, is amended by adding Section 51.0065 to read as follows:

Sec. 51.0065. APPLICABILITY OF ACROSS-THE-BOARD SALARY INCREASE. An institution of higher education that has adopted a pay-for-performance program that is in effect when an across-the-board salary increase for state employees made by an appropriation act of the legislature takes effect is entitled to receive any appropriation made for purposes of the across-the-board salary increase, and may use the amount appropriated for an across-the-board salary increase or for increases in compensation under the institution's pay-for-performance program.

SECTION 2.08. Section 1601.102, Insurance Code, is amended by amending Subsection (b) and adding Subsections (f) and (g) to read as follows:

(b) An individual is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least 10 [~~three~~] years of service with a system for which the individual was eligible to participate in the uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teacher [~~Teachers~~] Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

(f) Notwithstanding Subsection (b), an individual to whom this subsection applies is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least three years of service with a system for which the individual was eligible to participate in the uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teacher Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

(g) Subsection (f) applies only to a person who, on August 31, 2003:

(1) was eligible to participate in the uniform program as an employee under Section 1601.101; or

(2) was eligible to participate in the uniform program as a retired employee under this section as this section existed on January 1, 2003.

SECTION 2.09. The heading to Section 51.961, Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 51.961. LEAVE PROVISIONS FOR [~~CERTAIN~~] EMPLOYEES OF UNIVERSITY SYSTEM OR COMPONENT INSTITUTION OF SYSTEM.

SECTION 2.10. Subsections (a) and (b), Section 51.961, Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, are amended to read as follows:

(a) In this section:

(1) "Governing board[;]" [~~"medical and dental unit,"~~] and "university system" have the meanings assigned by Section 61.003.

(2) "Leave" includes vacation leave, sick leave, and holidays.

(b) The governing board of a university system may adopt a comprehensive leave policy that applies to employees ~~[working in a hospital or clinic of a medical and dental unit]~~ of the university system or any component institution of the system.

SECTION 2.11. Section 1601.101, Insurance Code, as effective June 1, 2003, is amended by adding Subsection (d) to read as follows:

(d) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual is serving a postdoctoral fellowship with an institution in a system.

SECTION 2.12. The changes in law made by this article to Sections 609.001, 609.002, 609.003, and 609.007, Government Code, and Subchapter D, Chapter 609, Government Code, as added by this article, take effect January 1, 2004.

SECTION 2.13. Subsection (d), Section 1601.101, Insurance Code, as added by this article, takes effect September 1, 2003.

ARTICLE 3. INFORMATION TECHNOLOGY

SECTION 3.01. Section 2054.100, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The biennial operating plan of an institution of higher education is required to include only operational projects and infrastructure projects. The instructions provided under Section 2054.101 may not require an institution of higher education to include other projects in the plan.

SECTION 3.02. Section 2054.121, Government Code, is amended to read as follows:

Sec. 2054.121. COORDINATION WITH ~~[AMONG]~~ INSTITUTIONS OF HIGHER EDUCATION. (a) An institution of higher education shall coordinate its use of information technologies with other such institutions to more effectively provide education, research, and community service.

(b) The Information Technology Council for Higher Education consists of the chief information officer or equivalent employee of:

- (1) The Texas A&M University System;
- (2) The University of Texas System;
- (3) The Texas State University System;
- (4) The University of North Texas System;
- (5) The University of Houston System;
- (6) The Texas Tech University System; and
- (7) one institution of higher education, other than a public junior college,

not included in a university system listed in this subsection who is selected by a majority of the chief executive officers of all the institutions of higher education, other than public junior colleges, not included in a listed university system.

(c) Before adopting a proposed rule that applies to institutions of higher education, the department shall prepare, in consultation with the council established by Subsection (b), an analysis of the impact of the rule on institutions of higher education that includes consideration of:

(1) the impact of the rule on the mission of higher education, student populations, and federal grant requirements;

(2) alternate methods of implementation to achieve the purpose of the rule;

and

(3) exempting institutions of higher education from all or part of the requirements of the rule.

(d) The department shall include its analysis as part of the notice of the proposed rule that the agency files with the secretary of state for publication in the Texas Register and shall provide copies to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) Each department rule that applies to institutions of higher education and that is in effect on September 1, 2003, ceases to apply to institutions of higher education on September 1, 2004, unless readopted by the department on or after September 1, 2003, in a form that expressly applies to institutions of higher education.

ARTICLE 4. REGULATORY AND ADMINISTRATIVE MATTERS

SECTION 4.01. Subsection (i), Section 51.782, Education Code, is amended to read as follows:

(i) A construction manager-at-risk shall publicly advertise, in the manner prescribed by the institution, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than ~~the minor work that may be included in the~~ general conditions work. A construction manager-at-risk may seek to perform major elements ~~[portions]~~ of the work itself if the construction manager-at-risk submits its bid or proposal for that ~~[those portions of the]~~ work in the same manner as all other trade contractors or subcontractors and if the board determines that the construction manager-at-risk's bid or proposal provides the best value for the institution. If no satisfactory bid or proposal for a major element of the work is received in the time allowed, the board may negotiate directly with the construction manager-at-risk for performance of that work. The board may negotiate directly with the manager-at-risk for the performance of minor elements of the work that are not included in major work packages.

SECTION 4.02. Subchapter B, Chapter 502, Labor Code, is amended by adding Section 502.025 to read as follows:

Sec. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

- (1) is hired or not hired in this state;
- (2) does not work in this state;
- (3) works both in this state and out of state;
- (4) is injured outside this state; or
- (5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.03. Subchapter B, Chapter 503, Labor Code, is amended by adding Section 503.025 to read as follows:

Sec. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

- (1) is hired or not hired in this state;
- (2) does not work in this state;
- (3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.04. Section 65.45, Education Code, is amended to read as follows:

Sec. 65.45. SCIENCE AND [CENTER FOR] TECHNOLOGY DEVELOPMENT, MANAGEMENT, AND TRANSFER. (a) The legislature finds that it is essential to the economic growth of the state that the potential for the development and growth of high technology industry be promoted and expanded. As a means of accomplishing this purpose, the board [~~is authorized to establish, maintain, and support a Center for Technology Development and Transfer at The University of Texas at Austin and may accept and administer, upon terms and conditions acceptable to the board, gifts, grants, and donations to aid in the establishment, maintenance, and operation of the center.~~

[(b) Subject to the rules and regulations of the board, the center] may enter into [solicit and submit for approval of the board] agreements with individuals, corporations, partnerships, associations, and local, state, or federal agencies for funding the discovery, development, and commercialization of new products, technology, and scientific information, including an agreement to manage a national laboratory engaged in any of those endeavors. At the discretion of the board, research facilities, funding, and personnel at the various component institutions of The University of Texas System may be utilized to achieve the purposes of this section.

(b) [(c)] As a means of carrying out the purposes of [the center under] this section, the board may, [either through the center or] through one or more corporations incorporated by the board or under any other cooperative arrangement:

(1) own and license rights to products, technology, and scientific information;

(2) own shares in corporations engaged in the discovery, development, manufacture, management, or marketing of products, technology, or scientific information in this state or outside this state [under a license from the board, the center, or a corporation owned or controlled by the board];

(3) participate [~~as the general partner or as a limited partner~~], either directly or through a subsidiary corporation or other legal entity formed for that purpose, [~~in limited partnerships, general partnerships, or joint ventures engaged~~] in the discovery, development, manufacture, management, or marketing of products, technology, or scientific information on behalf of the United States or a state or local governmental entity [under a license from the board, the center, or a corporation owned or controlled by the board]; and

(4) carry on and support such other activities as the board may deem appropriate for achieving the purposes of this section.

(c) [(d) The Center for Technology Development and Transfer established by this section shall not receive general revenue funds through special item appropriation in the biennial General Appropriations Act.

~~[(e)]~~ The board may [Center for Technology Development and Transfer established by this section shall] cooperate in any manner the board considers appropriate [fully] with similar programs operated by other state-supported institutions of higher education in this state or in other states.

SECTION 4.05. The heading to Section 551.121, Government Code, is amended to read as follows:

Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION; BOARD FOR LEASE OF UNIVERSITY LANDS.

SECTION 4.06. Subsections (b), (c), and (e), Section 551.121, Government Code, are amended to read as follows:

(b) This chapter does not prohibit the governing board of an institution of higher education or the Board for Lease of University Lands from holding an open or closed meeting by telephone conference call.

(c) A meeting held by telephone conference call may be held only if:

(1) the meeting is a special called meeting and immediate action is required; and

(2) the convening at one location of a quorum of the governing board or Board for Lease of University Lands is difficult or impossible.

(e) The notice of a ~~the~~ telephone conference call meeting of a governing board must specify as the location of the meeting the location where meetings of the governing board are usually held. For a meeting of the governing board of a university system, the notice must specify as the location of the meeting the board's conference room at the university system office. For a meeting of the Board for Lease of University Lands, the notice must specify as the location of the meeting a suitable conference or meeting room at The University of Texas System office.

SECTION 4.07. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.1235 to read as follows:

Sec. 552.1235. EXCEPTION: IDENTITY OF PRIVATE DONOR TO INSTITUTION OF HIGHER EDUCATION. (a) The name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.

(c) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

SECTION 4.08. Subsection (a), Section 2161.123, Government Code, is amended to read as follows:

(a) Each state agency, including the commission, that is required to have a [shall prepare as part of its] strategic plan under Chapter 2056 shall include in its strategic plan a written plan for increasing the agency's use of historically underutilized businesses in purchasing and public works contracting. The governing board of each university system or institution of higher education not included in a university

system, other than a public junior college, shall prepare a written plan for increasing the use of historically underutilized businesses in purchasing and public works contracting by the system or institution.

SECTION 4.09. Section 85.51, Education Code, is amended to read as follows:

Sec. 85.51. AUTHORITY TO LEASE. (a) The board may lease for oil, gas, sulphur, mineral ore, and other mineral developments [to the highest bidder at public auction] all lands and mineral interests [used for experimental stations and all other lands] under its [exclusive] control, [or any part of those lands,] owned or in the future acquired by the state for the use of the university system.

(b) The board shall offer oil and gas leases at public auction, by sealed bid, by negotiated agreement, or through any other means that the board considers to be in the best interest of the university system.

SECTION 4.10. Subchapter B, Chapter 85, Education Code, is amended by adding Section 85.18 to read as follows:

Sec. 85.18. MANDATORY VENUE. (a) Venue for a suit filed against the board or a member of the board in the member's official capacity is in Brazos County.

(b) Venue for a suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located.

(c) This section does not waive any defense to or immunity from suit or liability that may be asserted by an entity or individual described by this section.

(d) In case of a conflict between this section and any other law, this section controls.

(e) The changes in law made by the adoption of this section apply only to an action brought on or after September 1, 2003.

SECTION 4.11. Sections 502.025 and 503.025, Labor Code, as added by this article, apply only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date the injury occurred, and the former law is continued in effect for that purpose.

SECTION 4.12. Section 552.1235, Government Code, as added by this article, applies to a request for information made before, on, or after the effective date of this Act.

ARTICLE 5. REPORTING

SECTION 5.01. Subsections (b) and (c), Section 51.680, Education Code, are amended to read as follows:

(b) No later than January 31, 1988, the commissioner of higher education shall inform institutions of higher education whether their intellectual property policies meet the minimum standards set out in Subsection (a) [of this section]. Thereafter, an institution [institutions] of higher education may file or post on the institution's website on the Internet in a manner available to the public policies amended to overcome any failure to meet the [said] standards. The commissioner shall within a reasonable time after receiving an amended policy inform the submitting institution whether it meets the [said] standards.

(c) It is a policy of the state that each institution of higher education shall at all times after August 31, 1988, have ~~[on file with the Coordinating Board, Texas College and University System,]~~ a current copy of its intellectual property policies that~~[, which policies shall at all times]~~ meet the minimum standards set out in Subsection (a) on file with the Texas Higher Education Coordinating Board or posted on the institution's website on the Internet in a manner available to the public ~~[of this section]~~. The commissioner of higher education shall establish procedures for the monitoring of this policy of the state.

SECTION 5.02. Section 2152.064, Government Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.03. Section 2155.448, Government Code, is amended by adding Subsection (d) to read as follows:

(d) This section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.04. Subsection (a), Section 2166.101, Government Code, is amended to read as follows:

(a) This section applies to a state-owned building, including a building otherwise exempt from this chapter under Section 2166.003, except that this section does not apply to a building owned by an institution of higher education as defined by Section 61.003, Education Code.

SECTION 5.05. Subsection (f), Section 2166.101, Government Code, is repealed.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act, 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. 2

Amend **CSSB 1652** (House committee printing) by adding the following appropriately numbered SECTION to Article 4 of the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 51.936, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) Subchapter F, Chapter 37, applies to a postsecondary ~~[hazing at an]~~ educational institution under this section in the same manner as that subchapter applies to a public or private high school.

(b) For purposes of this section, in Subchapter F, Chapter 37, "postsecondary educational institution" means:

(1) an institution of higher education as defined by Section 61.003;

(2) a private or independent institution of higher education as defined by Section 61.003; or

(3) a private postsecondary educational institution as defined by Section 61.302.

(e) Section 1.001(a) does not limit the application of this section to postsecondary educational institutions supported in whole or part by state tax funds.

Floor Amendment No. 3

Amend **CSSB 1652** by adding the following appropriately numbered SECTIONS to ARTICLE 1 and renumbering the other SECTIONS of ARTICLE 1 accordingly:

SECTION 1. __. 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:

(i) incorporated by and under the exclusive control of an institution of higher education; or

(ii) incorporated and operating for the exclusive benefit of an institution of higher education and authorized by the governing board of the institution to enter into a transaction as a borrower under this chapter;

(C) an accredited primary or secondary school; or

(D) an authorized charter school.

SECTION 1. __. 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 the 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 1. __. 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 1. Subsection (b), Section 53.35, 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 1. __. 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.

Floor Amendment No. 4

Amend **CSSB 1652** by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Section 55.1732(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 University of Texas System may issue in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board bonds for the following institutions not to exceed the following aggregate principal amounts to finance projects specified as follows:

(1) The University of Texas at Arlington, \$16,635,945 to construct a science building;

(2) The University of Texas at Brownsville, \$26,010,000 to construct a life and health science and education facility (Phase II) and to procure and install permanent equipment and other fixtures in the facility;

(3) The University of Texas at Dallas, \$21,993,750 to renovate Founders Hall, Founders Annex, and Berkner Hall;

(4) The University of Texas at El Paso, \$12,750,000 to construct a biomedical and health sciences research center;

(5) The University of Texas–Pan American, \$29,950,000 for education complex, library, and multipurpose center renovation and construction;

(6) The University of Texas of the Permian Basin, \$5,610,000 for integrated Mesa Building renovations and gymnasium renovations;

(7) The University of Texas at San Antonio, \$22,950,000 to construct a science building on the main campus;

(8) The University of Texas at Tyler, \$20,910,000 to construct an engineering, sciences, and technology building and make other physical plant improvements;

(9) The University of Texas Southwestern Medical Center at Dallas, \$40 million for North Campus phase IV construction;

(10) The University of Texas Medical Branch at Galveston, \$20 million to renovate and expand research facilities;

(11) The University of Texas Health Science Center at Houston, \$19,550,000 to construct or purchase a classroom building;

(12) The University of Texas Health Science Center at San Antonio, \$28.9 million to construct a facility for student services and academic administration and to construct and develop a facility at the Laredo Extension Campus for educational and administrative purposes;

(13) the Regional Academic Health Center established under Section 74.611, \$25.5 million to construct a teaching and learning laboratory in or near the city of Harlingen;

(14) The University of Texas Health Center at Tyler, \$11,513,250 to construct a biomedical research center addition; and

(15) The University of Texas M. D. Anderson Cancer Center, \$20 million to construct a basic sciences research building.

SECTION _____. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.17421 to read as follows:

Sec. 55.17421. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL REVENUE BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for The University of Texas Health Science Center at Houston for the replacement of research and academic facilities lost in Tropical Storm Allison, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with its systemwide revenue financing program and secured as provided by that program, in aggregate principal amounts not to exceed \$30 million.

(b) The board may pledge irrevocably to the payment of the bonds authorized by Subsection (a) all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges required or authorized by law to be imposed on students enrolled at an institution, branch, or entity of The University of Texas System. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its constitutional and statutory duties and purposes.

SECTION _____. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4) or Sections 55.1713-55.17421[; 55.1713 55.1718, 55.1721 55.1728, or 55.174], except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION _____. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4) or Sections 55.1713-55.17421[; 55.1713 55.1718, 55.1721 55.1728, or 55.174], except that the board shall review all

construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

Floor Amendment No. 5

Amend **CSSB 1652** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter D, Chapter 85, Education Code, is amended by adding Section 85.511 to read as follows:

Sec. 85.511. STUDY REGARDING MAXIMIZATION OF USE OF FIELD. (a) In this section, "bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(b) The bureau shall conduct a study of the East Texas Oil Field for the purpose of making comprehensive recommendations regarding measures that should be taken to maximize the ultimate recovery of oil and gas from the field.

(c) The bureau shall make a report on or before January 1, 2005, to the governor, lieutenant governor, and speaker of the house of representatives containing comprehensive recommendations regarding measures that should be taken to maximize the ultimate recovery of oil and gas from the East Texas Oil Field.

(d) This section expires September 1, 2005.

Floor Amendment No. 6

Amend **CSSB 1652** in ARTICLE 1 by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of ARTICLE 1 accordingly:

SECTION 1. ___. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9461 to read as follows:

Sec. 51.9461. CHARGES AND FEES FOR CERTAIN PAYMENTS TO PRIVATE INSTITUTIONS OF HIGHER EDUCATION. A private or independent institution of higher education, as defined by Section 61.003, may charge any fee or other amount in connection with a payment to the institution that a public institution of higher education may charge under Section 54.5011. The amount of the fee or other charge may not exceed the maximum amount that a public institution of higher education may charge under Section 54.5011 for the same type of fee or charge.

Floor Amendment No. 7

Amend **CSSB 1652**, in ARTICLE 4 of that bill, by adding the following appropriately numbered SECTIONS and renumbering the SECTIONS in that ARTICLE appropriately:

SECTION _____. Section 1954.254, Occupations Code, is amended to read as follows:

Sec. 1954.254. CONFLICT OF INTEREST FOR CERTAIN LICENSE HOLDERS. A person licensed under this chapter to perform asbestos inspections or surveys, write management plans, or design abatement specifications for an asbestos abatement project may also engage in the removal of asbestos from the building or facility at which an asbestos abatement project takes place only if the person is retained to remove the asbestos by a municipality, university, school district, or other governmental entity.

SECTION _____. Section 1954.255(b), Occupations Code, is amended to read as follows:

(b) An independent third-party monitor may not be employed by the asbestos abatement contractor to analyze an area sample collected during the abatement project, but the monitor may collect such a sample if:

(1) the monitor is employed by a university, school district, or other governmental entity; and

(2) the analysis of the sample is performed by an analyst not employed by the contractor.

Floor Amendment No. 8

Amend **CSSB 1652** (House committee report) by adding the following appropriately numbered SECTION to ARTICLE 4 of the bill and renumbering the other SECTIONS of ARTICLE 4 of the bill appropriately:

SECTION _____. Subchapter G, Chapter 61, Education Code, is amended by adding Section 61.3035 to read as follows:

Sec. 61.3035. EXEMPTION FOR CERTAIN SEMINARIES. Notwithstanding this chapter or any other law, a nonprofit corporation may operate a seminary or similar institution and confer or offer to confer degrees or credits toward degrees for a "master of divinity," "master of ministry," "doctor of ministry," or other similar exclusively religious degrees if:

(1) the seminary or other institution:

(A) is affiliated with an association of churches, synagogues, or other similar religious organizations; and

(B) operates at least:

(i) one campus located in a county with a population greater than three million;

(ii) one campus located in a county with a population of 250,000 or more and less than 500,000; or

(iii) one campus located in a county with a population of less than 250,000;

(2) each campus of the seminary or other institution is contained in a building owned by a religious organization; and

(3) each building in which the seminary or other institution operates contains, or is adjacent to, a religious organization's principal place of worship.

Floor Amendment No. 11

Amend **CSSB 1652** by adding the following appropriately numbered ARTICLE and renumbering the other ARTICLES accordingly:

ARTICLE ____ . STUDY OF ORGANIZATION, OPERATIONS, AND
FUNDING OF HIGHER EDUCATION

SECTION __.01. The legislature finds that:

(1) it is vital to the economy of this state that all areas of the state have access to quality higher education;

(2) it is in the interest of all residents of this state that an efficient and sufficiently funded higher education infrastructure exist that affords residents opportunities to become educated and productive members of the state's economy; and

(3) the Texas Higher Education Coordinating Board's report on closing the gaps provides an appropriate starting point for constructing a plan for meeting the state's current and future higher education needs.

SECTION __.02. (a) An interim committee is established to study the organization, operations, and funding of higher education. The interim committee is composed of:

(1) eight members of the house of representatives appointed by the speaker of the house;

(2) six members of the senate appointed by the lieutenant governor; and

(3) four public members appointed by the governor.

(b) The membership of the committee must be representative of all geographic areas of the state.

(c) The committee shall be co-chaired by the chairs of the standing committee of each house of the legislature with primary jurisdiction over higher education.

(d) The committee shall:

(1) study the structure and organization of higher education in this state, including the administration and operations of public and independent institutions of higher education; and

(2) study the equity and adequacy of higher education funding and its relationship to the purposes of higher education, including providing opportunities to students to achieve their educational goals, furthering knowledge through research, and providing direct services as local, regional, and state engines of economic development.

(e) In its review, the committee shall examine the effects of student and community characteristics on the costs of higher education, including the income and education levels of the families of students, unemployment rates, population growth, and other uncontrollable factors.

(f) In its review, the committee shall identify the number and types of classified and unclassified positions in the administration of each university system and examine each major function, service, or activity performed by university system offices, including:

(1) central administration;

(2) academic affairs coordination and support;

(3) general counsel and other legal services;

(4) budgeting, accounting, and data reporting;

(5) fiscal management;

(6) facilities planning and construction;

- (7) governmental relations;
- (8) audit services;
- (9) real estate management;
- (10) information technology services; and
- (11) aircraft operation and usage.

(g) In its recommendations, the committee shall identify opportunities for legislative and administrative action relating to:

(1) changes in the organization and operations of institutions of higher education that will improve opportunities for residents of all areas of the state to enroll in and complete programs of higher education;

(2) changes in the funding of institutions of higher education and university systems to maximize the state's limited resources to meet the higher education needs of the state, including incentives for sharing arrangements to improve productivity;

(3) accountability measures and performance incentives for institutions of higher education and university systems that are aligned with the purposes of higher education and that are sensitive to mission differentiation among institutions of higher education;

(4) the consolidation or reorganization of university system office functions and services, including the consolidation or reorganization of university systems to promote efficiency and productivity; and

(5) potential reductions in personnel and other cost savings associated with the committee's recommendations.

(h) The committee's recommendations under Subsection (g) must include a plan for deregulating seminaries and similar institutions offering exclusively religious education or training. The plan must permit those institutions to confer or offer to confer religious degrees without accreditation and may include disclosure requirements and other appropriate safeguards to address potential fraud or deception. The requirements or safeguards may not authorize the state or a political subdivision of the state to assert regulatory authority over religious degree programs offered by those institutions.

(i) Not later than November 1, 2004, the committee shall prepare a report describing its findings and recommendations and deliver the report to the governor, lieutenant governor, speaker of the house of representatives, Legislative Budget Board, and members of the standing committee of each house of the legislature with primary jurisdiction over higher education.

(j) The committee is abolished and this section expires September 1, 2005.

Floor Amendment No. 12

Amend **CSSB 1652** by adding the following appropriately numbered ARTICLE and by renumbering existing ARTICLES accordingly:

ARTICLE ____ . ESTABLISHMENT OF RIO GRANDE
STATE UNIVERSITY

SECTION ____ . Section 96.01, Education Code, is amended to read as follows:

Sec. 96.01. SUL ROSS STATE UNIVERSITY. Sul Ross State University is a coeducational institution of higher education located in the city of Alpine, ~~with an upper level educational center known as Sul Ross State University Rio Grande~~

~~College operated in the cities of Del Rio, Eagle Pass, and Uvalde~~]. The university is under the management and control of the Board of Regents of the Texas State University System.

SECTION _____. Chapter 96, Education Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. RIO GRANDE STATE UNIVERSITY

Sec. 96.11. RIO GRANDE STATE UNIVERSITY. Rio Grande State University is a coeducational institution of higher education located in the cities of Del Rio, Eagle Pass, and Uvalde. The university is under the management and control of the Board of Regents of the Texas State University System.

Sec. 96.12. IMPLEMENTATION OF UNIVERSITY. The board of regents shall establish the university as soon as practicable.

(b) The property, facilities, faculty, and staff of Sul Ross State University Rio Grande College are transferred to Rio Grande State University on the date prescribed by the board of regents for the initial operation of the university.

SECTION _____. Section 96.02, Education Code, is repealed.

Floor Amendment No. 13

Amend **CSSB 1652** by adding a new section to the bill, numbered appropriately, to read as follows and renumbering the existing sections of the bill accordingly:

SECTION _____. (a) Section 51.214, Education Code, is amended to read as follows:

Sec. 51.214. SECURITY OFFICERS FOR MEDICAL CORPORATIONS IN CERTAIN MUNICIPALITIES. (a) In any municipality with a population of 1.18 million or more, the governing board of a private, nonprofit medical corporation that provides security services for an institution of higher education or a private postsecondary educational institution and other entities located within the same medical complex, or that provides security services for a branch of that medical corporation ~~[complex]~~, may employ and commission security personnel to enforce the law of this state within the jurisdiction designated by Subsection (c) ~~[at the medical complex and its branches]~~.

(b) An officer commissioned under this section may make arrests and has all the powers, privileges, and immunities of a peace officer while ~~[on the property under the control and jurisdiction of the medical corporation or while otherwise]~~ performing the officer's ~~[his]~~ assigned duties within the jurisdiction designated by Subsection (c). An officer assigned to duty and commissioned shall take and file the oath required of peace officers and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the governor, with two or more good and sufficient sureties, conditioned that the officer ~~[he]~~ will fairly, impartially, and faithfully perform the duties required of the officer ~~[him]~~ by law. The bond may be sued on from time to time in the name of the person injured until the whole amount is recovered.

(c) The jurisdiction of an officer commissioned under this section is limited to:

(1) property owned, leased, managed, or controlled by the medical corporation; and

(2) a street or alley that abuts the property or an easement in or a right-of-way over or through the property.

(d) An officer commissioned by a medical corporation under this section is not entitled to compensation or benefits provided by this state or a political subdivision of this state.

(e) The state or a political subdivision of this state is not liable for an act or omission of an officer commissioned under this section during the performance of the officer's assigned duties.

(f) A medical corporation may not commission a person under this section unless the person obtains a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education. The medical corporation shall pay to the Commission on Law Enforcement Officer Standards and Education on behalf of an employee any fees that are necessary to obtain a required license.

(g) A person's commission and any authority to act as an officer under this section are automatically revoked if the person's employment with a medical corporation is terminated for any reason.

(b) This section takes effect September 1, 2003.

(c) A person commissioned before the effective date of this section by a private nonprofit medical corporation under Section 51.214, Education Code, must obtain a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education not later than September 1, 2004. If that person does not obtain the license by that date, the person's commission and any authority to act as an officer under Section 51.214, Education Code, as amended by this section, are automatically revoked.

Floor Amendment No. 14

Amend **CSSB 1652** (House committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering the other ARTICLES of the bill appropriately:

ARTICLE ____ . PROTECTION FROM ACTS OF VIOLENCE BY STUDENTS AND EMPLOYEES

Section __.01. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9365 to read as follows:

Sec. 51.9365. PROTECTION FROM ACTS OF VIOLENCE BY STUDENTS AND EMPLOYEES. (a) The president or other chief executive officer of an institution of higher education, as defined by Section 61.003, shall provide for the identification of a student or employee who constitutes a substantial threat to human life on the campus or other facility of the institution.

(b) A student or employee who is determined to be a substantial threat to another student or employee under this section may be removed from the campus or facility.

(c) An institution of higher education shall establish procedures under this section for:

(1) the filing of complaints or reports by students and employees of persons who may constitute a substantial threat to human life; and

(2) the removal of a student or employee from the campus or facility.

(d) The procedures established under this section shall ensure due process rights for all persons under applicable state and federal law, and, as appropriate, ensure adequate confidentiality of records.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1652** on third reading by adding the following appropriately numbered SECTIONS to ARTICLE 1 of the bill and renumber the other SECTIONS accordingly:

SECTION 1. __. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.2111 to read as follows:

Sec. 54.2111. EXEMPTIONS FOR ADOPTED STUDENTS FORMERLY IN FOSTER OR OTHER RESIDENTIAL CARE. A student is exempt from the payment of tuition and fees authorized by this chapter if the student was:

(1) adopted; and

(2) the subject of an adoption assistance agreement under Subchapter D, Chapter 162, Family Code.

SECTION 1. __. Section 54.2111, Education Code, as added by this Act, applies beginning with tuition and fees charged for the 2003 fall semester. Tuition and fees charged for a semester or session before the 2003 fall semester are governed by the applicable law in effect before the effective date of this Act, and that law is continued in effect for that purpose.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1652** on third reading by adding the following appropriately numbered article to the bill:

ARTICLE __. INTERCOLLEGIATE ATHLETICS FEE AT
PRAIRIE VIEW A&M UNIVERSITY

SECTION __.01. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5393 to read as follows:

Sec. 54.5393. INTERCOLLEGIATE ATHLETICS FEE: PRAIRIE VIEW A&M UNIVERSITY. (a) The board of regents of The Texas A&M University System may impose an intercollegiate athletics fee on each student enrolled at Prairie View A&M University in an amount not to exceed \$10 per semester credit hour.

(b) The amount of the fee imposed on a student in a semester or session may not exceed the amount of the fee imposed on a student enrolled in 15 semester credit hours during the same semester or session.

(c) The fee may not be imposed unless approved by a majority vote of the students of the university participating in a general student election held for that purpose.

(d) A fee imposed under this section shall be used to develop and maintain an intercollegiate athletics program at the university.

(f) A fee imposed under this section is in addition to any other fee authorized by law and may not be considered in determining the maximum amount of student services fees that may be imposed under Section 54.503.

(g) This section expires September 1, 2013.

SECTION __.02. This article applies beginning with the 2003 fall semester.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 1652**, on third reading, by adding the following appropriately numbered ARTICLE to the bill and renumbering existing ARTICLES of the bill accordingly:

ARTICLE _____. UNIVERSITY OF NORTH TEXAS AT DALLAS

SECTION __.01. Section 105.451(d), Education Code, is amended to read as follows:

(d) Notwithstanding any other provision of this subchapter, the University of North Texas at Dallas may operate as a general academic teaching institution with its own chief executive officer, administration, and faculty only after the Texas Higher Education Coordinating Board certifies that enrollment at the University of North Texas System Center at Dallas has reached an enrollment equivalent to 935 [~~2,500~~] full-time students for one semester. Until that enrollment level is reached, the board may operate a system center of the University of North Texas in the city of Dallas.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1652** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Averitt, Janek, Ogden, and West.

SENATE BILL 871 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 871** 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 871** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the sex offender registration program and to requirements imposed on certain persons under the program.

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

SECTION 1. Article 62.01, Code of Criminal Procedure, is amended by adding Subdivisions (8) and (9) to read as follows:

(8) "Public or private institution of higher education" includes a college, university, community college, or technical or trade institute.

(9) "Authority for campus security" means the authority with primary law enforcement jurisdiction over property under the control of a public or private institution of higher education, other than a local law enforcement authority.

SECTION 2. Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.0102 to read as follows:

Art. 62.0102. DETERMINATION REGARDING PRIMARY REGISTRATION AUTHORITY. (a) For each person subject to registration under this chapter, the department shall determine which local law enforcement authority serves as the person's primary registration authority based on the municipality or county in which the person resides or, as provided by Article 62.061, as added by Chapters 1193 and 1415, Acts of the 76th Legislature, Regular Session, 1999, the municipality or county in which the person works or attends school.

(b) The department shall notify each person subject to registration under this chapter of the person's primary registration authority in a timely manner.

SECTION 3. Article 62.011, Code of Criminal Procedure, is amended to read as follows:

Art. 62.011. WORKERS OR STUDENTS. (a) A person is employed or carries on a vocation for purposes of this chapter if the person works or volunteers on a full-time or part-time basis for a consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year. A person works for purposes of this subsection regardless of[;] whether the person works for compensation or for governmental or educational benefit.

(b) A person is a student for purposes of this chapter if the person enrolls on a full-time or part-time basis in any educational facility, including:

(1) a public or private primary or secondary school, including a high school or alternative learning center; or

(2) a public or private institution of higher education~~[, including a college, university, community college, or technical or trade institute].~~

SECTION 4. Subsections (b) and (g), Article 62.02, Code of Criminal Procedure, are amended to read as follows:

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority, authority for campus security, county jail, and court with a form for registering persons required by this chapter to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.08(f), that is held or sought by the person; ~~[and]~~

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and

(7) any other information required by the department.

(g) If the other state has a registration requirement for sex offenders, a person who has a reportable conviction or adjudication, who resides in this state, and who is employed, carries on a vocation, or is a student in another state shall, not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information. If the person is employed, carries on a vocation, or is a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, the person shall also register with that authority not later than the 10th day after the date on which the person begins to work or attend school.

SECTION 5. Subsections (a), (e), and (h), Article 62.03, Code of Criminal Procedure, are amended to read as follows:

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Youth Commission shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.035 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the seventh day after the date on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must:

(i) register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside; or

(ii) if the person has not moved to an intended residence, report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(B) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department [~~with whom the person last registered~~] and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(C) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders; [~~and~~]

(D) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; and

(E) the person must notify appropriate entities of any change in status as described by Article 62.05;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (h) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d), the local law enforcement authority shall verify the age of the victim, ~~[the age of the person subject to registration,]~~ the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The [If the victim is a child younger than 17 years of age and the basis on which the person is subject to registration is not an adjudication of delinquent conduct and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, the] authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county, except as provided by Article 62.031. If the authority publishes notice under this subsection, the [The] authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. The local law enforcement [If the victim is a child younger than 17 years of age or the person subject to registration is 17 years of age or older and a student enrolled in a public or private secondary school, regardless of the basis on which the person is subject to registration, the] authority shall also immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate, in accordance with Article 62.032. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

(h) Before a person who will be subject to registration under this chapter is due to be released from a penal institution in this state, an official of the penal institution shall inform the person that:

(1) if the person intends to reside in another state and to work or attend school in this state, the person must, not later than the seventh day after the date on which the person begins to work or attend school, register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to work or attend school; ~~and~~

(2) if the person intends to reside in this state and to work or attend school in another state and if the other state has a registration requirement for sex offenders, the person must:

(A) [7] not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information; and

(B) if the person intends to be employed, carry on a vocation, or be a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, register with that authority not later than the 10th day after the date on which the person begins to work or attend school; and

(3) regardless of the state in which the person intends to reside, if the person intends to be employed, carry on a vocation, or be a student at a public or private institution of higher education in this state, the person must:

(A) not later than the seventh day after the date on which the person begins to work or attend school, register with:

(i) the authority for campus security for that institution; or

(ii) except as provided by Article 62.064(e), if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(a) the municipality in which the institution is located; or

(b) the county in which the institution is located, if the institution is not located in a municipality; and

(B) not later than the seventh day after the date the person stops working or attending school, notify the appropriate authority for campus security or local law enforcement authority of the termination of the person's status as a worker or student.

SECTION 6. Chapter 62, Code of Criminal Procedure, is amended by adding Articles 62.031 and 62.032 to read as follows:

Art. 62.031. LIMITATIONS ON NEWSPAPER PUBLICATION. (a) A local law enforcement authority may not publish notice in a newspaper under Article 62.03(e) or 62.04(f) if the basis on which the person is subject to registration is:

(1) an adjudication of delinquent conduct; or

(2) a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under Section 25.02, Penal Code, if the victim was at the time of the offense a child younger than 17 years of age.

(b) In addition to the prohibition on publication established under Subsection (a), a local law enforcement authority may not publish notice in a newspaper under Article 62.04(f) if the person subject to registration is assigned a numeric risk level of one.

Art. 62.032. CIRCUMSTANCES REQUIRING NOTICE TO SUPERINTENDENT OR SCHOOL ADMINISTRATOR. (a) A local law enforcement authority shall provide notice to the superintendent and each administrator under Article 62.03(e) or 62.04(f) only if:

(1) the victim was at the time of the offense a child younger than 17 years of age or a student enrolled in a public or private secondary school;

(2) the person subject to registration is a student enrolled in a public or private secondary school; or

(3) the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 43.25 or 43.26, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under either of those sections.

(b) A local law enforcement authority may not provide notice to the superintendent or any administrator under Article 62.03(e) or 62.04(f) if the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 25.02, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under that section.

SECTION 7. Subsections (a), (b), (e), and (f), Article 62.04, Code of Criminal Procedure, are amended to read as follows:

(a) If a person required to register intends to change address, regardless of whether the person intends to move to another state, the person shall, not later than the seventh day before the intended change, report in person to the local law enforcement authority designated as the person's primary registration authority by the department [~~with whom the person last registered~~] and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person required to register changes address, the person shall, not later than the seventh day after changing the address, report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

(b) Not later than the third day after receipt of notice under Subsection (a), the person's juvenile probation officer, community supervision and corrections department officer, or parole officer shall forward the information provided under Subsection (a) to the local law enforcement authority designated as the person's primary registration authority by the department [~~with whom the person last registered~~] and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(e) If a person who reports to a local law enforcement authority under Subsection (a) does not move on or before the anticipated move date or does not move to the new address provided to the authority, the person shall:

(1) not later than the seventh day after the anticipated move date, report to the local law enforcement authority designated as the person's primary registration authority by the department [with whom the person last registered not later than the seventh day after the anticipated move date] and provide an explanation to the authority regarding any changes in the anticipated move date and intended residence; and

(2) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person not less than weekly during any period in which the person has not moved to an intended residence.

(f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a). Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) or under this subsection, the authority shall verify the age of the victim, ~~[the age of the person subject to registration,]~~ the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The [If the victim is a child younger than 17 years of age, the basis on which the person is subject to registration is not an adjudication of delinquent conduct and is not a conviction or a deferred adjudication for an offense under Section 25.02, Penal Code, and the person is not assigned a numeric risk level of one, the] authority shall immediately publish notice in English and Spanish in the newspaper of greatest paid circulation in the county in which the person subject to registration intends to reside or, if there is no newspaper of paid circulation in that county, in the newspaper of greatest general circulation in the county, except as provided by Article 62.031. If the authority publishes notice under this subsection, the [The local law enforcement] authority shall publish a duplicate notice in the newspaper, with any necessary corrections, during the week immediately following the week of initial publication. The local law enforcement [If the victim is a child younger than 17 years of age or the person subject to registration is 17 years of age or older and a student enrolled in a public or private secondary school, regardless of the basis on which the person is subject to registration or the person's numeric risk level, the] authority shall also immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate, in accordance with Article 62.032. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

SECTION 8. Article 62.05, Code of Criminal Procedure, is amended to read as follows:

Art. 62.05. STATUS REPORT BY SUPERVISING OFFICER OR LOCAL LAW ENFORCEMENT AGENCY. (a) If the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including a change in the person's physical health, job or educational status, higher educational status, incarceration, or terms of release, the supervising officer shall promptly notify the appropriate local law enforcement authority or authorities of that change. If the person required to register intends to change address, the ~~[person's]~~ supervising officer shall notify the local law enforcement authorities designated by Article 62.04(b). Not later than the seventh day after the date the supervising officer receives the relevant information, the supervising officer shall notify the local law enforcement authority of any change in the person's job or educational status in which the person:

(1) becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education; or

(2) terminates the person's status in that capacity.

(b) Not later than the seventh day after the date of the change, a [A] person subject to registration under this chapter shall report to the local law enforcement authority designated as the person's primary registration authority by the department any change in the person's physical health or in the person's job or educational status, including higher educational status [not later than the seventh day after the date of the change]. For purposes of this subsection, a person's job status changes if the person leaves employment for any reason, remains employed by an employer but changes the location at which the person works, or begins employment with a new employer. For purposes of this subsection, a person's health status changes if the person is hospitalized as a result of an illness. For purposes of this subsection, a change in a person's educational status includes the person's transfer from one educational facility to another. Not later than the seventh day after the date the local law enforcement authority receives the relevant information, the local law enforcement authority shall notify the department of any change in the person's job or educational status in which the person:

(1) becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education; or

(2) terminates the person's status in that capacity.

SECTION 9. Subsections (a), (b), and (d), Article 62.06, Code of Criminal Procedure, are amended to read as follows:

(a) A person subject to registration under this chapter who has for a sexually violent offense been convicted two or more times, received an order of deferred adjudication two or more times, or been convicted and received an order of deferred adjudication shall report to the local law enforcement authority designated as the person's primary registration authority by the department [with whom the person is required to register] not less than once in each 90-day period following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. A person subject to registration under this chapter who is not subject to the 90-day reporting requirement described by

this subsection shall report to the local law enforcement authority designated as the person's primary registration authority by the department ~~[with whom the person is required to register]~~ once each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the person's date of birth to verify the information in the registration form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 90-day period following a date if the person registers at any time on or after the 83rd day following that date but before the 98th day after that date.

(b) A local law enforcement authority designated as a person's primary registration authority by the department ~~[with whom a person is required to register under this chapter]~~ may direct the person to report to the authority to verify the information in the registration form maintained by the authority for that person. The authority may direct the person to report under this subsection once in each 90-day period following the date the person first registered under this chapter, if the person is required to report not less than once in each 90-day period under Subsection (a) or once in each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the person's date of birth, if the person is required to report once each year under Subsection (a). A local law enforcement authority may not direct a person to report to the authority under this subsection if the person is required to report under Subsection (a) and is in compliance with the reporting requirements of that subsection.

(d) A local law enforcement authority designated as a person's primary registration authority by the department ~~[with whom a person is required to register under this chapter]~~ may at any time mail a nonforwardable verification form to the last reported address of the person. Not later than the 21st day after receipt of a verification form under this subsection, the person shall:

- (1) indicate on the form whether the person still resides at the last reported address and, if not, provide on the form the person's new address;
- (2) complete any other information required by the form;
- (3) sign the form; and
- (4) return the form to the authority.

SECTION 10. Subsection (a), Article 62.061, Code of Criminal Procedure, as added by Chapter 444, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(a) Notwithstanding Article 62.06, if an individual subject to registration under this chapter is civilly committed as a sexually violent predator, the person shall report to the local law enforcement authority designated as the person's primary registration authority by the department ~~[with whom the person is required to register]~~ not less than once in each 30-day period following the date the person first registered under this chapter to verify the information in the registration person form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 30-day period following a date if the person registers at any time on or after the 27th day following that date but before the 33rd day after that date.

SECTION 11. Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.064 to read as follows:

Art. 62.064. REGISTRATION OF WORKERS OR STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION. (a) Not later than the seventh day after the date on which the person begins to work or attend school, a person required to register under Article 62.061, as added by Chapters 1193 and 1415, Acts of the 76th Legislature, Regular Session, 1999, or any other provision of this chapter who is employed, carries on a vocation, or is a student at a public or private institution of higher education in this state shall report that fact to:

(1) the authority for campus security for that institution; or

(2) if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(A) the municipality in which the institution is located; or

(B) the county in which the institution is located, if the institution is not located in a municipality.

(b) A person described by Subsection (a) shall provide the authority for campus security or the local law enforcement authority with all information the person is required to provide under Article 62.02(b).

(c) A person described by Subsection (a) shall notify the authority for campus security or the local law enforcement authority not later than the seventh day after the date of termination of the person's status as a worker or student at the institution.

(d) The authority for campus security or the local law enforcement authority shall promptly forward to the administrative office of the institution any information received from the person under this article and any information received from the department under Article 62.08.

(e) Subsection (a)(2) does not require a person to register at a local law enforcement authority if the person is otherwise required by this chapter to register at that authority.

(f) This article does not impose the requirements of public notification or notification to public or private primary or secondary schools on:

(1) an authority for campus security; or

(2) a local law enforcement authority, if those requirements relate to a person about whom the authority is not otherwise required by this chapter to make notifications.

(g) Notwithstanding Article 62.062, the requirements of this article supersede those of Article 62.062 for a person required to register under both this article and Article 62.062.

(h) Regardless of the date on which the person began to work or attend school, a person described by Subsection (a) who is employed, carrying on a vocation, or is a student at a public or private institution of higher education in this state on September 1, 2003, shall report that fact not later than October 1, 2003, to the appropriate authority as described by Subsection (a). This subsection expires September 1, 2004.

SECTION 12. Article 62.08, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (h) and (i) to read as follows:

(b) The information contained in the database is public information, with the exception of any information:

(1) regarding the person's social security number, driver's license number, or telephone number;

(2) that is required by the department under Article 62.02(b)(7) [~~62.02(b)(6)~~]; or

(3) that would identify the victim of the offense for which the person is subject to registration.

(h) Not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration or under Article 62.05, the department shall send notice of any person required to register under this chapter who is or will be employed, carrying on a vocation, or a student at a public or private institution of higher education in this state to:

(1) for an institution in this state:

(A) the authority for campus security for that institution; or

(B) if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(i) the municipality in which the institution is located; or

(ii) the county in which the institution is located, if the institution is not located in a municipality; or

(2) for an institution in another state, any existing authority for campus security at that institution.

(i) On the written request of an institution of higher education described by Subsection (h) that identifies an individual and states that the individual has applied to work or study at the institution, the department shall release any information described by Subsection (a) to the institution.

SECTION 13. Subsections (a) and (d), Article 62.09, Code of Criminal Procedure, are amended to read as follows:

(a) The department, a penal institution, ~~[or]~~ a local law enforcement authority, or an authority for campus security may release to the public information regarding a person required to register only if the information is public information under this chapter.

(d) A private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education may release to the public information regarding a person required to register only if the information is public information under this chapter and is released to the administrator under Article 62.03, ~~[or]~~ 62.04, 62.064, or 62.08. A private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education is not liable under any law for damages arising from conduct authorized by this subsection.

SECTION 14. Subsection (a), Article 62.12, Code of Criminal Procedure, as amended by Chapters 211 and 1297, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(4) an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015~~], as added by Chapter 1193, Acts of the 76th Legislature, Regular Session, 1999,~~] or, for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter.

SECTION 15. Article 62.13, Code of Criminal Procedure, is amended by amending Subsections (k), (o), (q), and (r) and adding Subsection (q-1) to read as follows:

(k) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order requiring the respondent to register as a sex offender but provide that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies and public or private institutions of higher education. Information obtained under this subsection may not be posted on the Internet or released to the public.

(o) To the extent feasible, the motion under Subsection (l) shall identify those public and private agencies and organizations, including public or private institutions of higher education, that possess sex offender registration information about the case.

(q) If the court grants the motion, a copy of the court's order shall be sent to:

(1) each public or [and] private agency or organization that the court determines may be in possession of sex offender registration information pertaining to the person required to register under this chapter; and

(2) at the request of the person required to register under this chapter, each public or private agency or organization that at any time following the initial dissemination of the order under Subdivision (1) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subdivision (1).

(q-1) An [The] order under Subsection (q) shall require the recipient to conform its records to the court's orders either by deleting the sex offender registration information or changing its status to nonpublic, as the order requires. A public or private institution of higher education may not be required to delete the sex offender registration information under this subsection.

(r) A private agency or organization that possesses sex offender registration information it obtained from a state, county, or local governmental entity is required to conform its records to the court's order on or before the 30th day after the date of its entry. Failure to comply in that period automatically bars an [the] agency or

organization, other than a public or private institution of higher education, from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

SECTION 16. (a) The Department of Public Safety of the State of Texas shall establish the procedures required by Subsections (h) and (i), Article 62.08, Code of Criminal Procedure, as added by this Act, not later than October 1, 2003.

(b) The change in law made by this Act applies to a person subject to registration under Chapter 62, Code of Criminal Procedure, for an offense or conduct that was committed before, on, or after the effective date of this Act.

SECTION 17. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 871** (House committee report) by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Subdivision (4), Section 841.002, Health and Safety Code, is amended to read as follows:

(4) "Council" means the [~~Interagency~~] Council on Sex Offender Treatment.

SECTION _____. Sections 841.005, 841.006, and 841.007, Health and Safety Code, are amended to read as follows:

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. (a) Except as provided by Subsection (b), the [The] Office of State Counsel for Offenders shall represent an indigent [a] person subject to a civil commitment proceeding under this chapter.

(b) If for any reason the Office of State Counsel for Offenders is unable to represent an indigent person described by Subsection (a) at a civil commitment proceeding under this chapter, the court shall appoint other counsel to represent the indigent person.

Sec. 841.006. APPLICATION OF CHAPTER. This chapter does not:

(1) prohibit a person committed under this chapter from filing at any time a petition for release under this chapter; or

(2) create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B, C, or D.

Sec. 841.007. DUTIES OF [~~INTERAGENCY~~] COUNCIL ON SEX OFFENDER TREATMENT. The [~~Interagency~~] Council on Sex Offender Treatment is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION _____. Section 841.022, Health and Safety Code, is amended to read as follows:

Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive director of the Texas Department of Criminal Justice and the commissioner of the Texas Department of Mental Health and Mental Retardation jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) two persons from the Texas Department of Mental Health and Mental Retardation;

- (2) two [~~three~~] persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;
- (3) one person from the Texas Department of Public Safety; and
- (4) two persons [~~one person~~] from the council or council personnel.

(b) The multidisciplinary team may request the assistance of other persons in making an assessment [~~a determination~~] under this section.

(c) Not later than the 60th [~~30th~~] day after the date the multidisciplinary team receives notice under Section 841.021(a) or (b), the team shall:

(1) assess [~~determine~~] whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;

(2) give notice of that assessment [~~determination~~] to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

SECTION _____. Section 841.023, Health and Safety Code, is amended to read as follows:

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY.

(a) Not later than the 60th [~~30th~~] day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate, shall assess [~~determine~~] whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment [~~determination~~], the department required to make the assessment [~~determination~~] shall use an expert to examine the person. That department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment [~~the determination~~].

(b) If as a result of the assessment the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation believes [~~determines~~] that the person suffers from a behavioral abnormality, the department making the assessment [~~determination~~] shall give notice of that assessment [~~determination~~] and provide corresponding documentation to the attorney representing the state not later than the 60th [~~30th~~] day after the date of a recommendation under Section 841.022(c).

SECTION _____. Subsection (b), Section 841.041, Health and Safety Code, is amended to read as follows:

(b) A petition described by Subsection (a) must be:

(1) filed not later than the 90th [~~60th~~] day after the date the person is referred to the attorney representing the state; and

(2) served on the person as soon as practicable after the date the petition is filed.

SECTION _____. Section 841.061, Health and Safety Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f) to read as follows:

(a) Not later than the 270th ~~[60th]~~ day after the date a petition is served on the person ~~[filed]~~ under Section 841.041, the judge shall conduct a trial to determine whether the person is a sexually violent predator.

(c) The person and the state are each entitled to an immediate examination of the person by an expert. All components of the examination must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) except as provided by Subsection (f), the right to present evidence on the person's behalf;

(3) the right to cross-examine a witness who testifies against the person; and

(4) the right to view and copy all petitions and reports in the court file.

(f) A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert examinations that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to expert examination on the state's behalf as required by this subsection is subject to the following consequences:

(1) the person's failure to participate may be used as evidence against the person at trial;

(2) the person may be prohibited from offering into evidence the results of an expert examination performed on the person's behalf; and

(3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to an expert examination on the state's behalf.

SECTION _____. Section 841.063, Health and Safety Code, is amended to read as follows:

Sec. 841.063. CONTINUANCE. The judge may continue a trial or hearing conducted under this chapter ~~[Section 841.061]~~ if the person is not substantially prejudiced by the continuance and:

(1) on the request of either party and a showing of good cause; or

(2) on the judge's own motion in the due administration of justice.

SECTION _____. Section 841.081, Health and Safety Code, is amended to read as follows:

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. (a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for outpatient treatment and supervision to be coordinated by the case manager. The commitment order is effective immediately on entry of the order, except that the ~~[The]~~ outpatient treatment and supervision begins ~~[must begin]~~ on the person's release from a secure correctional facility or discharge from a state hospital and continues ~~[must continue]~~ until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the case manager may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

SECTION _____. Section 841.082, Health and Safety Code, is amended to read as follows:

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a particular location;
- (2) prohibiting the person's contact with a victim or potential victim of the person;
- (3) prohibiting the person's use of alcohol or a controlled substance;
- (4) requiring the person's participation in a specific course of treatment;
- (5) requiring the person to submit to tracking under a particular type of tracking service and to any other appropriate supervision;
- (6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;
- (7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone;
- (8) requiring the person to notify the case manager immediately but in any event within 24 [~~48~~] hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and
- (9) any other requirements determined necessary by the judge.

(b) The judge may request assistance from the council in determining an appropriate residence for the person.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the council. The council shall provide a copy of those requirements to the case manager and to the service providers.

(d) [~~(e)~~] Immediately after the case becomes final for purposes of appeal [person's commitment], the judge shall transfer jurisdiction of the case to a district court, other than a family district court, having jurisdiction in the county in which the person [defendant] is residing, except that the judge retains jurisdiction of the case with respect to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified at any time after notice to each affected party to the proceedings and a hearing.

SECTION _____. Subsections (b), (c), and (d), Section 841.083, Health and Safety Code, are amended to read as follows:

(b) The case manager shall provide supervision to the person. The provision of supervision shall include a tracking service [~~services~~] and, if required by court order, supervised housing.

(c) The council shall enter into an interagency agreement with the Texas Department of Public Safety for the provision of a tracking service [~~services~~]. If the equipment necessary to implement that service is available through a contract entered into by [The Department of Public Safety shall contract with] the Texas Building and

Procurement [General Services] Commission, the Department of Public Safety shall acquire that equipment through that contract [for the equipment necessary to implement those services].

(d) The council shall enter into an interagency agreement with the Texas Department of Criminal Justice [contract] for any necessary supervised housing. The council shall reimburse that department for housing costs under this section. The committed person may not be housed for any period of time in a mental health facility, state school, or community center. In this subsection:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State school" has the meaning assigned by Section 531.002.

SECTION _____. Section 841.084, Health and Safety Code, is amended to read as follows:

Sec. 841.084. [~~PROVIDER~~] STATUS REPORTS. A treatment provider or tracking service personnel [a supervision provider] other than the case manager shall submit, monthly or more frequently if required by the case manager, a report to the case manager stating whether the person is complying with treatment or tracking [supervision] requirements, as applicable.

SECTION _____. Subsection (a), Section 841.141, Health and Safety Code, is amended to read as follows:

(a) The council by rule shall administer treatment and supervision under this chapter. Rules adopted by the council under this section must be:

(1) related to treatment and supervision under this chapter; and

(2) consistent with the purposes of this chapter.

SECTION _____. Subsections (a), (c), and (d), Section 841.142, Health and Safety Code, are amended to read as follows:

(a) To protect the public and to enable an assessment or [a] determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or [a] determination under this chapter.

(c) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or [a] determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

SECTION _____. Section 841.144, Health and Safety Code, is amended to read as follows:

Sec. 841.144. COUNSEL. (a) Immediately after the filing of a petition under Section 841.041 [At all stages of the civil commitment proceedings under this chapter], a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceeding.

(b) If the person is indigent, the court shall appoint counsel as appropriate under Section 841.005 [through the Office of State Counsel for Offenders] to assist the person.

SECTION _____. Subsections (b) and (c), Section 841.146, Health and Safety Code, are amended to read as follows:

(b) Except as otherwise provided by this subsection, a [A] civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) In an amount not to exceed \$2,500 [\$1,600], the State of Texas [state] shall pay all [the] costs associated with [of] a civil commitment proceeding conducted under Subchapter D. The State of Texas [For any civil commitment proceeding conducted under this chapter, the state] shall pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and shall pay the reasonable costs of the person's outpatient treatment and supervision.

SECTION _____. Subchapter H, Chapter 841, Health and Safety Code, is amended by adding Sections 841.1461, 841.1462, 841.1463, and 841.150 to read as follows:

Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. A person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for purposes of Section 15-a, Article I, Texas Constitution.

Sec. 841.1462. PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM. Personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Sec. 841.1463. FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR. The periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Sec. 841.150. EFFECT OF CERTAIN SUBSEQUENT CONVICTIONS, JUDGMENTS, OR VERDICTS ON ORDER OF CIVIL COMMITMENT. (a) Except as provided by Subsection (b), the following convictions, judgments, or verdicts do not affect an order of civil commitment under this chapter:

(1) a conviction for a felony if a sentence is not imposed;

(2) a conviction for a misdemeanor, regardless of whether a sentence is imposed; and

(3) a judgment or verdict of not guilty by reason of insanity for any offense absent a corresponding commitment to the Texas Department of Mental Health and Mental Retardation.

(b) The statutory duties imposed by this chapter are suspended for the duration of any confinement of a person who receives a conviction described by Subsection (a)(2).

SECTION _____. Section 841.147, Health and Safety Code, is amended to read as follows:

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health, or the council;

(2) a member of the multidisciplinary team established under Section 841.022;

(3) an employee of the division of the prison prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter [~~the attorney representing the state~~]; and

(4) a person contracting, appointed, or volunteering to perform a service under this chapter.

SECTION _____. The change in law made by this Act in amending Chapter 841, Health and Safety Code, applies to civil commitment proceedings initiated before, on, or after the effective date of this Act.

Floor Amendment No. 2

Amend Floor Amendment No. 1 by Allen to **CSSB 871** as follows:

(1) In amended Section 841.082(a), Health and Safety Code (page 6, lines 13-19), strike Subdivisions (3) - (5) and substitute the following:

(3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;

(4) requiring the person's participation in and compliance with a specific course of treatment;

(5) requiring the person to:

(A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and

(B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;

(2) Strike amended Section 841.084, Health and Safety Code (page 8, lines 18-23), and substitute the following:

Sec. 841.084. [~~PROVIDER~~] STATUS REPORTS AND OTHER INFORMATION. (a) A treatment provider or a supervision provider, other than the case manager or tracking service personnel, shall submit, monthly or more frequently if required by the case manager, a report to the case manager stating whether the person is complying with treatment or supervision requirements, as applicable.

(b) Tracking service personnel may provide to the case manager specific information relating to the person, including the person's compliance with a tracking requirement or involvement in criminal activity, if:

(1) the council and the Department of Public Safety have entered into a memorandum of understanding governing:

(A) the release of the information by the tracking personnel; and

(B) the use or dissemination of the information by the case manager; and

(2) the release, use, or dissemination is not prohibited by other law or agreement.

(3) Strike the SECTION of the amendment that amends Section 841.141(a), Health and Safety Code (page 8, lines 24-31).

(4) In amended Section 841.147, Health and Safety Code (page 12, lines 4-5), strike Subdivision (4) and substitute the following:

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 871** on third reading by adding the following appropriately numbered SECTION to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION ____ . Article 62.02(c), Code of Criminal Procedure, is amended to read as follows:

(c) Not later than the third day after a person's registering, the local law enforcement authority with whom the person registered shall send a copy of the registration form to the department and, if the person resides on the campus of a public or private institution of higher education, to any authority for campus security for that institution.

The amendments were read.

Senator Shapiro moved to concur in the House amendments to **SB 871**.

The motion prevailed by a viva voce vote.

(Senator Shapleigh in Chair)

VOTE RECONSIDERED ON COMMITTEE SUBSTITUTE HOUSE BILL 2877

CSHB 2877 was laid before the Senate. The bill had been passed in the Senate, returned to the House, and sent back to the Senate for further consideration:

CSHB 2877, Relating to the permitting procedures of the Texas Commission on Environmental Quality.

On motion of Senator Armbrister and by unanimous consent, the vote by which **CSHB 2877** was finally passed was reconsidered.

Question — Shall **CSHB 2877** be again finally passed?

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **CSHB 2877** by striking Floor Amendment Nos. 1, 3, 4, 6, and 8.

The floor amendment was read and was adopted without objection.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 2 on Third Reading

Amend **CSHB 2877** by deleting Section 6 and renumbering the subsequent sections accordingly.

The floor amendment was read and was adopted without objection.

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

CSHB 2877 as again amended was again finally passed by a viva voce vote.

RESOLUTIONS SIGNED

The Presiding Officer announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 125, HCR 272, HJR 16.**

SENATE BILL 381 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 381** 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 381** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to food manufacturer and food wholesaler licensing requirements under the Texas Food, Drug, and Cosmetic Act.

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

SECTION 1. Section 431.221, Health and Safety Code, is amended by amending Subdivisions (2) and (3) and adding Subdivision (6) to read as follows:

(2) "Food manufacturer" means a person who combines, purifies, processes, or packages food for sale through a wholesale outlet. The term also includes a retail outlet that packages or labels food before sale and a person that represents itself as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address. The term does not include a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food manufacturer under this subdivision.

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include:

(A) a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership; [or]

(B) an establishment engaged solely in the distribution of nonalcoholic beverages in sealed containers; or

(C) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food wholesaler under this subdivision.

(6) "Licensed nonprofit organization" means an organization that is licensed under any statutory authority of the State of Texas and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, as an organization described in Section 501(c)(3) of that code.

SECTION 2. Section 431.2211(a), Health and Safety Code, is amended to read as follows:

(a) A person is not required to hold a license under this subchapter if the person is:

(1) a person, firm, or corporation that only harvests, packages, washes, or ships raw fruits or vegetables;

(2) an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller; ~~[or]~~

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

(4) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be required to hold a license under this subchapter.

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 amendment was read.

Senator Armbrister moved to concur in the House amendment to **SB 381**.

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

SENATE BILL 1252 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1252** 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 1252** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of certain activities associated with providing private security.

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

SECTION 1. Section 1702.002, Occupations Code, is amended by amending Subdivisions (1) and (6) and adding Subdivision (6-a) to read as follows:

(1) "Alarm system" means:

(A) electronic equipment and devices designed to detect or signal:

(i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or

(ii) the occurrence of a robbery or other emergency;

(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business; or

(C) a television camera or still camera system that records, archives, or monitors property or individuals in a public or private area of a residence or business [an alarm system, burglar alarm signal device, burglar alarm, robbery alarm, television camera, or still camera used to signal the presence of an emergency to which law enforcement or emergency services are expected to respond].

(6) "Detection device" means an electronic device used as a part of an alarm system [a burglar or robbery alarm], including a control, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring, or similar device.

(6-a) "Electronic access control device" means an electronic, electrical, or computer-based device that allows access to a controlled area of a business, but that is not monitored and does not send a signal to which law enforcement or emergency services respond. The term does not include a mechanical device, such as a deadbolt or lock.

SECTION 2. Subchapter D, Chapter 1702, Occupations Code, is amended by adding Section 1702.0635 to read as follows:

Sec. 1702.0635. RESTRICTIONS ON CERTAIN RULES. The commission may not adopt rules or establish unduly restrictive experience or education requirements that limit a person's ability to be licensed as an electronic access control device company or be registered as an electronic access control device installer.

SECTION 3. Subchapter F, Chapter 1702, Occupations Code, is amended by adding Section 1702.1025 to read as follows:

Sec. 1702.1025. ELECTRONIC ACCESS CONTROL DEVICE COMPANY LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as an electronic access control device company, a person may not:

(1) act as an electronic access control device company;

(2) offer to perform the services of an electronic access control device company; or

(3) engage in business activity for which a license is required under this chapter.

(b) A person licensed as an electronic access control device company may not install alarm systems unless otherwise licensed or registered to install alarm systems under this chapter.

SECTION 4. Subsections (a) and (b), Section 1702.103, Occupations Code, are amended to read as follows:

(a) The license classifications are:

(1) Class A: investigations company license, covering operations of an investigations company;

(2) Class B: security services contractor license, covering operations of a security services contractor; ~~and~~

(3) Class C: covering the operations included within Class A and Class B;
and

(4) Class D: electronic access control device license, covering operations of an electronic access control device company.

(b) A Class A, B, ~~C~~, or D license does not authorize the license holder to perform a service for which the license holder has not qualified. A person may not engage in an operation outside the scope of that person's license. The commission shall indicate on the license the services the license holder is authorized to perform. The license holder may not perform a service unless it is indicated on the license.

SECTION 5. Subchapter F, Chapter 1702, Occupations Code, is amended by adding Sections 1702.1055 and 1702.1056 to read as follows:

Sec. 1702.1055. ELECTRONIC ACCESS CONTROL DEVICE COMPANY. A person acts as an electronic access control device company for the purposes of this chapter if the person installs or maintains an electronic access control device.

Sec. 1702.1056. LOCKSMITH COMPANY. A person acts as a locksmith company for the purposes of this chapter if the person sells, installs, or maintains mechanical security devices, including deadbolts and locks, and:

(1) advertises services offered by the company using the term "locksmith";
or

(2) includes the term "locksmith" in the company's name.

SECTION 6. Subsection (a), Section 1702.124, Occupations Code, is amended to read as follows:

(a) The commission may not issue a license unless the applicant files with the commission:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance ~~[commission]~~ and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981 ~~[Article 1.14 2]~~, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

SECTION 7. Section 1702.221, Occupations Code, is amended to read as follows:

Sec. 1702.221. REGISTRATION REQUIRED. An individual must register with the commission as provided by commission rule if the individual:

(1) is employed as an alarm systems installer, alarm systems monitor, electronic access control device installer, locksmith, dog trainer, manager or branch office manager, noncommissioned security officer, private investigator, private security consultant, or security salesperson; or

(2) is an owner, officer, partner, or shareholder of a license holder.

SECTION 8. Subchapter J, Chapter 1702, Occupations Code, is amended by adding Section 1702.2225 to read as follows:

Sec. 1702.2225. LOCKSMITH COMPANY REGISTRATION REQUIRED. Unless the person is registered as a locksmith company, a person may not:

(1) act as a locksmith company;

(2) offer to perform the services of a locksmith company; or

(3) engage in business activity for which registration is required under this chapter.

SECTION 9. Subchapter J, Chapter 1702, Occupations Code, is amended by adding Sections 1702.2226 and 1702.2227 to read as follows:

Sec. 1702.2226. ELECTRONIC ACCESS CONTROL DEVICE INSTALLER.

(a) An individual acts as an electronic access control device installer for purposes of this chapter if the individual installs, maintains, or repairs an electronic access control device.

(b) A person registered as an electronic access control device installer may not install alarm systems unless the person is registered under this chapter as an alarm systems installer.

Sec. 1702.2227. LOCKSMITH. An individual acts as a locksmith for the purposes of this chapter if the person sells, installs, or maintains mechanical security devices, including deadbolts and locks, and advertises or offers services to the public or represents to the public that the person is a locksmith.

SECTION 10. Subchapter J, Chapter 1702, Occupations Code, is amended by adding Section 1702.236 to read as follows:

Sec. 1702.236. EXAMINATION AND TRAINING REQUIREMENTS FOR ELECTRONIC ACCESS CONTROL DEVICE INSTALLERS. (a) The commission shall require an individual who applies for registration as an electronic access control device installer to pass an examination given by the commission or a person approved by the commission. The examination must cover material related to access control.

(b) Before September 1, 2005, the commission shall allow an electronic access control device installer to obtain or renew a certificate of registration by fulfilling the requirements of a commission-approved, industry-based educational training program. This subsection expires September 1, 2006.

(c) On and after September 1, 2005, the commission by rule may allow an electronic access control device installer to obtain or renew a certificate of registration by fulfilling the requirements of a commission-approved, industry-based educational training program.

(d) A party who asserts that the commission has adopted a rule in violation of Subsection (b) or (c) may appeal to the attorney general for a determination of whether the rule violates the subsection because the rule does not comply with reasonable business practices. The attorney general shall make a determination on an appeal submitted under this section not later than the 90th day after the date the appeal is submitted or within a reasonable time as circumstances require. The challenged rule may not take effect until after the attorney general makes a determination. This subsection expires September 1, 2007.

SECTION 11. Section 1702.223, Occupations Code, is amended to read as follows:

Sec. 1702.223. ALARM SYSTEMS INSTALLER. (a) An individual acts as an alarm systems installer for purposes of this chapter if the individual installs, maintains, or repairs an alarm system or detection device.

(b) An alarm systems installer may install, maintain, or repair an electronic access control device.

SECTION 12. Subsection (a), Section 1702.239, Occupations Code, is amended to read as follows:

(a) The commission may require that an individual employed as an alarm systems installer or security salesperson hold a certification by a commission-approved training program to renew an initial registration. The commission may approve only nationally recognized training programs that consist of at least 16 ~~20~~ hours of classroom study in the areas of work allowed by the registration. To be approved, a training program must offer at least two certification programs each year, sufficient to complete the requirements of this subsection, within 100 miles of each county in the state that has a population of more than 500,000.

SECTION 13. Subsection (b), Section 1702.324, Occupations Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor who sells equipment to a license holder or registrant that is used in the operations for which the person is required to be licensed or registered;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) ~~a locksmith who:~~

~~(A) does not install or service detection devices;~~

~~(B) does not conduct investigations; and~~

~~(C) is not a security services contractor;~~

~~(5)~~ a person who:

(A) is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; and

(B) does not perform any other service that requires a license under this chapter;

(5) ~~(6)~~ a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(6) ~~(7)~~ a licensed ~~professional~~ engineer practicing engineering or directly supervising engineering practice under Chapter 1001 ~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~, including forensic analysis, burglar alarm system engineering, and necessary data collection;

(7) ~~(8)~~ an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(8) ~~(9)~~ a landman performing activities in the course and scope of the landman's business;

(9) ~~(10)~~ an attorney while engaged in the practice of law;

(10) ~~(11)~~ a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition; ~~or~~

(11) ~~(12)~~ an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person; or

(12) a person who on the person's own property or on property owned or managed by the person's employer:

(A) installs, changes, or repairs a mechanical security device;

(B) repairs an electronic security device; or

(C) cuts or makes a key for a security device.

SECTION 14. Section 1702.328, Occupations Code, is amended to read as follows:

Sec. 1702.328. SECURITY SYSTEMS SALES AND INSTALLATION. This chapter does not apply to:

(1) a person who owns and installs a burglar detection or alarm device on the person's own property or, if the person does not charge for the device or the installation, installs the device for the protection of the person's personal property located on another person's property and does not, as a normal business practice, install the devices on the property of another;

(2) a person in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person is a party to a contract that provides that:

(i) the installation will be performed under the direct supervision of, and inspected and certified by, a person licensed to install and certify the alarm or detection device; and

(ii) the license holder assumes full responsibility for the installation of the alarm or detection device; and

(B) the person does not service or maintain alarm systems, electronic access control devices, locks, ~~burglar alarms~~ or detection devices;

(3) a person who sells or installs automobile burglar alarm devices and who does not perform any other act that requires a license under this chapter; or

(4) a person who sells exclusively over the counter or by mail order ~~burglar~~ alarm systems, electronic access control devices, locks, or detection ~~signal~~ devices~~, burglary alarms, television cameras, still cameras, or other electrical, mechanical, or electronic devices used for preventing or detecting burglary, theft, or other losses~~.

SECTION 15. (a) Not later than January 1, 2004, the Texas Commission on Private Security shall adopt the rules necessary to administer the changes in law made by this Act to Chapter 1702, Occupations Code.

(b) Notwithstanding Sections 1702.1025 and 1702.2225, Occupations Code, as added by this Act, and Section 1702.221, Occupations Code, as amended by this Act, a person is not required to hold a license as an electronic access control device company or be registered as an electronic access control device installer, a locksmith company, or a locksmith before September 1, 2004.

SECTION 16. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Sections 1702.1025 and 1702.2225, Occupations Code, as added by this Act, take effect January 1, 2004.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1252** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Fraser, Williams, Lucio, and Hinojosa.

SENATE BILL 1262 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1262** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1262** by striking SECTION 2 of the bill and substituting the following:

SECTION 2. (a) 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) This Act applies only to an economic incentive agreement, including a renewal or renegotiation of a previous agreement, entered into on or after the effective date of this Act. An economic incentive agreement, including a renewal or renegotiation of a previous agreement, entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and that law is continued in effect for that purpose.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1262** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Madla, Brimer, Ratliff, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 1883

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1883** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1883** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ogden, Chair; Shapleigh, Wentworth, Madla, and Barrientos.

SENATE BILL 346 WITH HOUSE AMENDMENT

Senator Ogden called **SB 346** 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 346** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to an optional flexible year program for public school students who fail to perform satisfactorily on an assessment instrument or who would not otherwise be promoted.

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

SECTION 1. Subchapter C, Chapter 29, Education Code, is amended by adding Section 29.0821 to read as follows:

Sec. 29.0821. OPTIONAL FLEXIBLE YEAR PROGRAM. (a) A school district may provide a flexible year program for students who did not or are likely not to perform successfully on an assessment instrument administered under Section 39.023 or who would not otherwise be promoted to the next grade level.

(b) To enable a school district to provide additional instructional days for a program under this section, with the approval of the commissioner, a school district may:

(1) provide a number of days of instruction during the regular school year that is not more than 10 days fewer than the number required under Section 25.081(a); and

(2) use for instructional purposes not more than five days that would otherwise be used for staff development or teacher preparation.

(c) Notwithstanding any reduction in the number of instructional days in the regular school year or in the number of staff development days, each educator employed under a 10-month contract must provide the minimum days of service required under Section 21.401.

(d) A school district may require educational support personnel to provide service as necessary for an optional flexible year program.

(e) The commissioner may adopt rules for the administration of programs provided under this section.

SECTION 2. Subsection (a), Section 25.081, Education Code, is amended to read as follows:

(a) Except as authorized under Subsection (b) of this section, ~~or~~ Section 25.084, or Section 29.0821, for each school year each school district must operate so that the district provides for at least 180 days of instruction for students.

SECTION 3. Subsection (a), Section 42.005, Education Code, is amended to read as follows:

(a) In this chapter, average daily attendance is:

(1) the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under Section 25.081(a) divided by the minimum number of days of instruction; or

(2) for a district that operates under a flexible year program under Section 29.0821, the quotient of the sum of attendance for each actual day of instruction as permitted by Section 29.0821(b)(1) divided by the number of actual days of instruction as permitted by Section 29.0821(b)(1).

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 346**.

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

SENATE BILL 1932 WITH HOUSE AMENDMENT

Senator Ogden called **SB 1932** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1932**, in SECTION 1 of the bill, in proposed Section 43.171(c), Government Code (page 1, line 14), before "This subsection expires February 1, 2005." by inserting "The duties under this subsection are in addition to the duties of the prison prosecution unit and the attorney employed by the prison prosecution unit. The prison prosecution unit and the attorney employed by the prison prosecution unit are not entitled to additional compensation or reimbursement."

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 1932**.

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

SENATE BILL 1488 WITH HOUSE AMENDMENT

Senator Ogden called **SB 1488** 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 1488** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the misconduct of a person who is employed by or is seeking employment by a school district, regional education service center, or shared services arrangement.

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

SECTION 1. Subsection (b), Section 12.104, Education Code, is amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38; ~~and~~

(L) public school accountability under Subchapters B, C, D, and G, Chapter 39; and

(M) the requirement under Section 21.006 to report an educator's misconduct.

SECTION 2. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.006 to read as follows:

Sec. 21.006. REQUIREMENT TO REPORT MISCONDUCT. (a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if the superintendent or director has reasonable cause to believe that:

(1) an educator employed by or seeking employment by the district, service center, or shared services arrangement has a criminal record;

(2) an educator's employment at the district, service center, or shared services arrangement was terminated based on a determination that the educator:

(A) abused or otherwise committed an unlawful act with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq., and its subsequent amendments;

(C) illegally transferred, appropriated, or expended funds or other property of the district, service center, or shared services arrangement;

(D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or

(E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event; or

(3) the educator resigned and reasonable evidence supports a recommendation by the superintendent or director to terminate the educator based on a determination that the educator engaged in misconduct described by Subdivision (2).

(c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh day after the date the superintendent or director first learns about an alleged incident of misconduct described by Subsection (b). The report must be:

(1) in writing; and

(2) in a form prescribed by the board.

(d) The superintendent or director shall notify the board of trustees or governing body of the school district, regional education service center, or shared services arrangement and the educator of the filing of the report required by Subsection (c).

(e) A superintendent or director who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section is immune from civil or criminal liability that might otherwise be incurred or imposed.

(f) The State Board for Educator Certification shall determine whether to impose sanctions against a superintendent or director who fails to file a report in violation of Subsection (c).

(g) The State Board for Educator Certification shall propose rules as necessary to implement this section.

SECTION 3. Subsection (d), Section 261.105, Family Code, is amended to read as follows:

(d) If the department initiates an investigation and determines that the abuse or neglect does not involve a person responsible for the child's care, custody, or welfare, the department shall refer the report to a law enforcement agency for further investigation. If the department determines that the abuse or neglect involves an employee of a public primary or secondary school, and that the child is a student at the school, the department shall orally notify the superintendent of the school district in which the employee is employed about the investigation.

SECTION 4. This Act applies beginning with the 2003-2004 school year.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Ogden moved to concur in the House amendment to **SB 1488**.

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

SENATE BILL 1912 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1912** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1912** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of the Harborside Management District; providing authority to impose taxes and issue bonds.

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

SECTION 1. CREATION OF DISTRICT. (a) The Harborside Management District is a special district created under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the name of the district.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the board of directors of the district.

(2) "District" means the Harborside Management District.

SECTION 3. DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this Act.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the area of the district.

(c) The creation of the district and this legislation may not be interpreted to relieve Galveston County or the City of Galveston from providing the level of services provided, as of the effective date of this Act, to the area in the district. The district is created to supplement and not to supplant the county or city services provided in the area in the district.

(d) By creating the district and in authorizing the City of Galveston, Galveston County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

SECTION 4. BOUNDARIES. The district includes all the territory contained in the following described area:

BEGINNING at the intersection of the Southerly right-of-way line of Harborside Dr. and the Westerly right-of-way line of 77th Street;

THENCE proceeding in a Northerly direction a distance of approximately 6,414 feet, from said BEGINNING POINT, across Harborside Dr. along the Westerly right-of-way line of 77th Street and continuing beyond the street's terminus along a projection to a point for corner in Galveston Bay at the Southerly boundary of the Intercoastal Waterway;

THENCE in an Easterly direction a distance of approximately 9,827 feet along the Southerly boundary of the Intercoastal Waterway to a point for a corner in the Bay where the Northerly projection of the Easterly right-of-way line of 57th Street intersects said Southerly Intercoastal Waterway boundary;

THENCE in a Southerly direction a distance of approximately 4,385 feet along said Northerly projection of the Easterly right-of-way line of 57th Street to a point for corner where said projection intersects the Southerly right-of-way of Harborside Dr.;

THENCE in a Westerly direction a distance of approximately 8,697 feet along the Southerly right-of-way of Harborside Dr. to the PLACE OF BEGINNING.

SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, the mistake does not in any way affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bond for a purpose for which the district is created or to pay the principal of and interest on a bond;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit. All the land and other property included in the district will be benefited by the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this Act.

(b) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of development and diversification of the economy of the state; and

(2) eliminate unemployment and underemployment and develop or expand transportation and commerce.

(c) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district and the general public;

(2) provide needed funding to preserve, maintain, and enhance the economic health and vitality of the district as a community and business center; and

(3) further promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(d) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(e) The district will not act as the agent or instrumentality of any private interest even though many private interests will, as well as the general public, be benefited by the district.

SECTION 7. APPLICATION OF OTHER LAW. (a) Except as otherwise provided by this Act, Chapter 375, Local Government Code, applies to the district.

(b) Chapter 311, Government Code, applies to this Act.

SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally construed in conformity with the findings and purposes stated in this Act.

SECTION 9. BOARD OF DIRECTORS IN GENERAL. (a) Except as provided by Subsection (c), the district is governed by a board of five voting directors appointed under Section 10 and nonvoting directors as provided by Section 11.

(b) Voting directors serve staggered terms of four years, with three directors' terms expiring June 1 of an odd-numbered year and two directors' terms expiring June 1 of the following odd-numbered year.

(c) The board may increase or decrease the number of directors on the board by resolution, provided that it is in the best interest of the district to do so and that the board consists of not fewer than five and not more than 15 directors.

SECTION 10. APPOINTMENT OF DIRECTORS. The governing body of the City of Galveston shall appoint voting directors to the board.

SECTION 11. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting directors:

(1) the directors of the following departments of the City of Galveston or their designees:

(A) parks and recreation;

(B) planning and zoning; and

(C) public works; and

(2) the city manager of the City of Galveston or the city manager's designee.

(b) If an agency, department, or division described by Subsection (a) is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed agency, department, or division as a nonvoting director. If an agency, department, or division described by Subsection (a) is abolished, the board may appoint a representative of another agency, department, or division that performs duties comparable to those performed by the abolished entity.

(c) Nonvoting directors are not counted for the purposes of establishing a quorum of the board.

SECTION 12. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT.

(a) Except as provided by this section:

(1) a director may participate in all board votes and decisions; and

(2) Chapter 171, Local Government Code, governs conflicts of interest for directors.

(b) Section 171.004, Local Government Code, does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have a similar interest in the same entity; or

(2) all other similar business or charitable entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that public entity.

(d) For purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002, Local Government Code.

SECTION 13. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that section;

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district;

(3) entities described in Chapters 441 and 284, Transportation Code, and may exercise those powers as if specifically named therein; and

(4) districts governed by Subchapters E and M, Chapter 60, Water Code, and Section 61.116, Water Code.

SECTION 14. AGREEMENTS; GRANTS. (a) The district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

SECTION 15. LAW ENFORCEMENT SERVICES. To protect the public interest, the district may contract with Galveston County or the City of Galveston to provide law enforcement services in the district for a fee.

SECTION 16. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act on behalf of the district in implementing a project or providing a service authorized by this Act.

(b) The board shall appoint the board of directors of a nonprofit corporation created under this section. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

(c) A nonprofit corporation created under this section has the powers of and is considered for purposes of this Act to be a local government corporation created under Chapter 431, Transportation Code.

(d) A nonprofit corporation created under this section may implement any project and provide any service authorized by this Act.

SECTION 17. REQUIREMENTS FOR FINANCING SERVICES AND IMPROVEMENTS. The board may not finance a service or improvement project with assessments under this Act unless a written petition requesting that improvement or service has been filed with the board. The petition must be signed by the owners of a majority of the assessed value of real property in the district subject to assessment as determined by the most recent certified tax appraisal roll for Galveston County.

SECTION 18. ELECTIONS. (a) The district shall hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district imposes a maintenance tax or issues a bond payable from ad valorem taxes.

(b) The board may not include more than one purpose in a single proposition at an election.

(c) Section 375.243, Local Government Code, does not apply to the district.

SECTION 19. MAINTENANCE TAX. (a) If authorized at an election held in accordance with Section 18, the district may impose an annual ad valorem tax on taxable property in the district for the maintenance and operation of the district and the improvements constructed or acquired by the district or for the provision of services.

(b) The board shall determine the tax rate.

SECTION 20. ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this Act.

(b) Assessments, including assessments resulting from an addition to or correction of the assessment roll by the district, reassessments, penalties and interest on an assessment or reassessment, expenses of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) A lien is effective from the date of the resolution of the board imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) Without necessity of notice and hearing in the manner required for additional assessments, the board may make corrections to or deletions from the assessment roll provided that such corrections or deletions do not increase the amount of assessment of any parcel of land.

SECTION 21. UTILITIES. The district may not impose an impact fee or assessment on the property, equipment, rights of way, facilities, or improvements of an electric utility or a power generation company as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or of a person that provides to the public cable television or advanced telecommunications services. If the district, in the exercise of the powers conferred upon it herein, requires or requests the relocation, rerouting, or removal of electric, gas, water, sewer, communications, or other public utilities, as defined in Sections 31.002, 101.003, 121.001, and 51.002, Utilities Code, such relocation, rerouting, or removal shall be at the sole expense of the district.

SECTION 22. BONDS. (a) The district may issue bonds or other obligations payable in whole or in part from ad valorem taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation, or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

SECTION 23. MUNICIPALITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, a municipality is not required to pay a bond, note, or other obligation of the district.

SECTION 24. DISBURSEMENTS OR TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

SECTION 25. COMPETITIVE BIDDING LIMIT. Section 375.221, Local Government Code, applies to the district only for a contract that has a value greater than \$15,000.

SECTION 26. EXCEPTION FOR DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The board may vote to dissolve a district that has debt. If the vote is in favor of dissolution, the district shall remain in existence solely for the limited purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

(b) Section 375.264, Local Government Code, does not apply to the district.

SECTION 27. INITIAL DIRECTORS. (a) The initial board consists of the following persons:

Pos. No.	Name of Director
1	John Sullivan
2	Richard Ryan

- 3 John Kelso
- 4 Douglas Harris
- 5 Glenn Forman, Jr.

(b) Of the initial directors, the terms of directors appointed for positions 1 through 3 expire June 1, 2007, and the terms of directors appointed for positions 4 and 5 expire June 1, 2005.

(c) Section 10 does not apply to this section.

(d) This section expires September 1, 2007.

SECTION 28. TAX AND ASSESSMENT ABATEMENTS. Without further authorization or other procedural requirement, the district may grant, consistent with Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

SECTION 29. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to an organization that enjoys tax-exempt status under Section 501(c)(3), (4), or (6), Internal Revenue Code of 1986, as amended, and that performs services or provides activities consistent with the furtherance of the purposes of the district. An expenditure of public money for membership in the organization is considered to further the purposes of the district and to be for a public purpose.

SECTION 30. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible, notwithstanding other statutory criteria, to be included in a tax increment reinvestment zone created by the City of Galveston under Chapter 311, Tax Code, or included in a tax abatement reinvestment zone created by the City of Galveston under Chapter 312, Tax Code. All or any part of the area of the district is also eligible to be included in an enterprise zone created by the City of Galveston under Chapter 2303, Government Code.

SECTION 31. ECONOMIC DEVELOPMENT PROGRAMS. The district may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the district, to promote state or local economic development and to stimulate business and commercial activity in the district. The district has all of the powers and authority of a municipality under Chapter 380, Local Government Code.

SECTION 32. LEGISLATIVE FINDINGS. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 33. EFFECTIVE DATE. 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 Jackson moved to concur in the House amendment to **SB 1912**.

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

SENATE BILL 1161 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1161** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1161** as follows:

(1) In Section 1 of the bill, in amended Section 132.007(b), Local Government Code (engrossed version, page 1, line 16), strike "a service" and substitute "access, collecting payments, or providing services [~~a service~~]".

(2) In Section 1 of the bill, in amended Section 132.007(d), Local Government Code (engrossed version, page 2, line 4), strike "perform a service" and substitute "provide access, collect payments, or provide services [~~perform a service~~]".

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **SB 1161**.

The motion prevailed by a viva voce vote.

SENATE BILL 1597 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 1597** 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 1597** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to policies by law enforcement agencies regarding the arrest of persons for certain offenses.

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

SECTION 1. Chapter 14, Code of Criminal Procedure, is amended by adding Article 14.07 to read as follows:

Art. 14.07. LAW ENFORCEMENT AGENCY POLICIES ON ARRESTS WITHOUT WARRANT. (a) Each law enforcement agency in this state shall adopt a detailed written policy relating to the arrest of persons without a warrant for misdemeanor offenses, including traffic offenses, that are punishable by fine only.

(b) The policy adopted by the law enforcement agency must:

(1) clearly describe the circumstances in which a peace officer of the law enforcement agency is authorized by the law enforcement agency to make a warrantless custodial arrest of a person for a misdemeanor offense that is punishable by fine only; and

(2) provide for a review of each warrantless custodial arrest of a person for a misdemeanor offense that is punishable by fine only by the immediate supervisor, if any, of the officer making the arrest.

(c) Article 38.23 of this code does not apply to evidence arising out of an arrest made in violation of a policy adopted under Subsection (a) or where an arrest is made in the absence of a policy required to be adopted by this article.

SECTION 2. A law enforcement agency required by Article 14.07, Code of Criminal Procedure, as added by this Act, to adopt an arrest policy shall adopt the policy not later than January 1, 2004.

SECTION 3. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 1597** by adding the following appropriately numbered SECTION to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Article 17.29, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty, except as provided by this article.

(e) Before releasing on bail a person arrested for an offense under Chapter 49, Penal Code, the law enforcement agency holding the person shall make a determination that the person is no longer intoxicated as defined by Section 49.01, Penal Code.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1597** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Hinojosa, Chair; Whitmire, Ellis, Ogden, and Carona.

SENATE BILL 1464 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1464** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1464** (engrossed version) as follows:

(1) In SECTION 3 of the bill, in proposed Section 284.2031, Transportation Code (page 5, lines 5-6), strike "or liable for an administrative violation under Section 284.208".

(2) After SECTION 5 of the bill (page 7, between lines 7 and 8), insert the following SECTION:

SECTION 6. Section 284.208, Transportation Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) If a person is found liable under Subsection (a) for a violation of the order, a county may impose, in addition to other costs, \$1 as a cost associated with the hearing.

(e) Money collected under Subsection (d) shall be deposited in the county treasury in a special fund to be administered by the county attorney or district attorney. Expenditures from this fund shall be at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney or district attorney supplement his or her own salary from this fund.

(3) Renumber the remaining SECTIONS of the bill accordingly.

The amendment was read.

Senator Lindsay moved to concur in the House amendment to **SB 1464**.

The motion prevailed by a viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 3015

Senator Shapiro called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3015** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3015** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Bivins, Ogden, West, and Duncan.

SENATE BILL 1936 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1936** 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 1936** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Buffalo Bayou Management District; providing the authority to impose taxes and issue bonds.

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

SECTION 1. CREATION OF DISTRICT. (a) The Buffalo Bayou Management District is a special district created under Section 59, Article XVI, Texas Constitution.

(b) The board by resolution may change the name of the district.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the board of directors of the district.

(2) "District" means the Buffalo Bayou Management District.

SECTION 3. DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this Act.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the area of the district.

(c) This Act and the creation of the district may not be interpreted to relieve Harris County or the City of Houston from providing the level of services provided as of the effective date of this Act, to the area in the district. The district is created to supplement and not to supplant the county or city services provided in the area in the district.

(d) By creating the district and in authorizing the City of Houston, Harris County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

SECTION 4. BOUNDARIES. The district includes all the territory contained in the following described area:

POINT OF BEGINNING at the intersection of the west boundary line of the Houston Downtown Management District and the north boundary of Memorial Drive right-of-way, then west along the north boundary of Memorial Drive right-of-way to the north boundary of Memorial Drive's Heights North exit ramp, then northwest along the north boundary of Memorial Drive's Heights North exit ramp to the east boundary of Heights boulevard right-of-way, then west across Heights Boulevard from the east boundary of Heights Boulevard right-of-way to the west boundary of the Heights Boulevard right-of-way, then south along the west boundary of Heights boulevard right-of-way to the north boundary of Memorial Drive's Memorial West entrance ramp, then southwest along the north boundary of Memorial Drive's Memorial West entrance ramp to the northern boundary line of Memorial Drive right-of-way, then west along the northern boundary line of Memorial Drive right-of-way to the west boundary line of Shepherd Drive right-of-way, then south along the west boundary line of Shepherd Drive right-of-way to the centerline of West Dallas, then east along the centerline of West Dallas to the west boundary of Montrose

right-of-way, then north along the west boundary of Montrose right-of-way to the south boundary line of Allen Parkway right-of-way (inclusive of the adjacent feeder road), then east along the south boundary line of Allen Parkway right-of-way (inclusive of the adjacent feeder road) to the western boundary line of the Houston Downtown Management District, then north along the western boundary line of the Houston Downtown Management District to the POINT OF BEGINNING.

SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bond for a purpose for which the district is created or to pay the principal of and interest on a bond;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this Act.

(c) The creation of the district is in the public interest and is essential to:

- (1) further the public purposes of development and diversification of the economy of the state;
- (2) eliminate unemployment and underemployment; and
- (3) develop or expand transportation and commerce.

(d) The district will:

- (1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district, and of the public;
- (2) provide needed funding to preserve, maintain, and enhance the economic health and vitality of the district as a community and business center; and
- (3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

SECTION 7. APPLICATION OF OTHER LAW. (a) Except as otherwise provided by this Act, Chapter 375, Local Government Code, applies to the district.

(b) Chapter 311, Government Code (Code Construction Act), applies to this Act.

SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally construed in conformity with the findings and purposes stated in this Act.

SECTION 9. BOARD OF DIRECTORS IN GENERAL. (a) The district is governed by a board of 14 voting directors appointed under Section 10 and nonvoting directors as provided by Section 11.

(b) Voting directors serve staggered terms of four years, with six directors' terms expiring June 1 of an odd-numbered year and eight directors' terms expiring June 1 of the following odd-numbered year.

(c) The board may increase or decrease the number of directors on the board by resolution if the board finds that it is in the best interest of the district. The board may not consist of fewer than five or more than 15 directors.

SECTION 10. APPOINTMENT OF DIRECTORS. The mayor and members of the governing body of the City of Houston shall appoint voting directors. A person is appointed if a majority of the members of the governing body, including the mayor, vote to appoint that person.

SECTION 11. NONVOTING DIRECTORS. (a) The following persons shall serve as nonvoting directors:

(1) the directors of the following departments of the City of Houston or a person designated by that director:

- (A) parks and recreation;
- (B) planning and development;
- (C) public works; and
- (D) civic center; and

(2) the City of Houston's chief of police.

(b) If a department described by Subsection (a) is consolidated, renamed, or changed, the board may appoint a director of the consolidated, renamed, or changed department as a nonvoting director. If a department described by Subsection (a) is abolished, the board may appoint a representative of another department that performs duties comparable to those performed by the abolished department.

(c) Nonvoting directors are not counted for the purposes of establishing a quorum of the board.

SECTION 12. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT. (a) Except as provided by this section:

(1) a voting director may participate in all board votes and decisions; and

(2) Chapter 171, Local Government Code, governs conflicts of interest for voting directors.

(b) Section 171.004, Local Government Code, does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have a similar interest in the same entity; or

(2) all other similar business or charitable entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that same public entity.

(d) For purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002, Local Government Code.

SECTION 13. ADDITIONAL POWERS OF DISTRICT. The district may exercise the powers given to:

(1) a corporation created under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, and maintain projects described by that section; and

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

SECTION 14. AGREEMENTS; GRANTS. (a) The district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

SECTION 15. LAW ENFORCEMENT SERVICES. To protect the public interest, the district may contract with Harris County or the City of Houston to provide law enforcement services in the district for a fee.

SECTION 16. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act on behalf of the district in implementing a project or providing a service authorized by this Act.

(b) The board shall appoint the board of directors of a nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

(c) The nonprofit corporation:

(1) has the powers of and is considered for purposes of this Act to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this Act.

SECTION 17. REQUIREMENTS FOR FINANCING SERVICES AND IMPROVEMENTS. The board may not finance a service or improvement project with assessments under this Act unless a written petition requesting that improvement or service has been filed with the board. The petition must be signed by the owners of a majority of the assessed value of real property in the district subject to assessment as determined by the most recent certified tax appraisal roll for Harris County.

SECTION 18. ELECTIONS. (a) The district shall hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district imposes a maintenance tax or issues bonds payable from ad valorem taxes.

(b) The board may not submit multiple purposes in a single proposition at an election.

(c) Section 375.243, Local Government Code, does not apply to the district.

SECTION 19. MAINTENANCE TAX. (a) If authorized at an election held in accordance with Section 18, the district may impose an annual ad valorem tax on taxable property in the district for the:

(1) maintenance and operation of the district and the improvements constructed or acquired by the district; or

(2) provision of a service.

(b) The board shall determine the tax rate.

SECTION 20. ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this Act.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the resolution of the board imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) The board may make corrections to or deletions from the assessment roll without providing notice and holding a hearing in the manner required for additional assessments, if the corrections or deletions do not increase the amount of assessment of any parcel of land.

SECTION 21. UTILITIES. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of an electric utility or a power generation company as defined by Section 31.002, Utilities Code, or a gas utility as defined by Section 101.003 or 121.001, Utilities Code, or a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522 and its subsequent amendments.

SECTION 22. BONDS. (a) The district may issue bonds or other obligations payable in whole or in part from ad valorem taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

SECTION 23. MUNICIPALITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, the City of Houston is not required to pay a bond, note, or other obligation of the district.

SECTION 24. DISBURSEMENTS OR TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

SECTION 25. COMPETITIVE BIDDING LIMIT. Section 375.221, Local Government Code, applies to the district only for a contract that has a value of more than \$15,000.

SECTION 26. EXCEPTION FOR DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The board may vote to dissolve a district that has debt. If the vote is in favor of dissolution, the district shall remain in existence solely for the limited purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

(b) Section 375.264, Local Government Code, does not apply to the district.

SECTION 27. TAX AND ASSESSMENT ABATEMENTS. The district may grant in the manner authorized by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

SECTION 28. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to an organization that:

(1) enjoys tax-exempt status under Section 501(c)(3), 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)), as amended; and

(2) perform services or provide activities consistent with the furtherance of the purposes of the district.

SECTION 29. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created by the City of Houston under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created by the City of Houston under Chapter 312, Tax Code; or

(3) an enterprise zone created by the City of Houston under Chapter 2303, Government Code.

SECTION 30. ECONOMIC DEVELOPMENT PROGRAMS. The district may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the district, to promote state or local economic development and to stimulate business and commercial activity in the district. The district has all of the powers and authority of a municipality under Chapter 380, Local Government Code.

SECTION 31. INITIAL DIRECTORS. (a) The initial board consists of the following persons:

Pos. No.	Name of Director
1	Kay Crooker
2	Mike Garver
3	Gerald Higdon
4	Marcia Johnson
5	Susan Keeton
6	Mark Lee
7	Maria Munoz-Blanco
8	Kelley Parker

9	Max Schuette
10	Robert Smith, III
11	Terri Thomas
12	William Taylor
13	William Paul Thomas
14	Craig Jackson

(b) Of the initial directors, the terms of directors appointed for positions 1 through 6 expire June 1, 2005, and the terms of directors appointed for positions 7 through 14 expire June 1, 2007.

(c) Section 10 does not apply to this section.

(d) This section expires September 1, 2007.

SECTION 32. LEGISLATIVE FINDINGS. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 33. EFFECTIVE DATE. 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 Ellis moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1936** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Whitmire, Deuell, Lindsay, and Gallegos.

SENATE BILL 206 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 206** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 206** by striking the language beginning on page 6, line 24, "H.J.R. 66 or S.J.R. 13", and substituting "H.J.R. 68".

Floor Amendment No. 2

Amend **SB 206** by inserting the following new section and renumbering the subsequent sections accordingly.

Section 1. Sections 41.0021(a) and (e), Education Code, are amended to read as follows:

(a) Notwithstanding Section 41.002, for the ~~[2001-2002, 2002-2003, and]~~ 2003-2004 and 2004-2005 and 2005-2006 school years, a school district that in the 1999-2000 school year did not offer each grade level from kindergarten through 12 may elect to have its wealth per student determined under this section.

(e) This section expires September 1, 2006 ~~[2004]~~.

The amendments were read.

Senator Ellis moved to concur in the House amendments to **SB 206**.

The motion prevailed by a viva voce vote.

RECESS

On motion of Senator Ellis, the Senate at 1:35 p.m. recessed until 3:30 p.m. today.

AFTER RECESS

The Senate met at 3:30 p.m. and was called to order by Senator Lucio.

HOUSE CONCURRENT RESOLUTION 277

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, **SJR 42** has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

WHEREAS, The resolution contains technical errors that should be corrected; now, therefore, be it

RESOLVED by the 78th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct Senate Joint Resolution No. 42, in SECTION 1 of the resolution, by striking Sections 50(a)(6)(M)(ii) and (iii), Article XVI, Texas Constitution, as amended by the Wolens second reading amendment, House Floor Amendment No. 2, and substituting the following:

(ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good

cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) [(ii)] the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

CARONA

The resolution was read.

On motion of Senator Carona and by unanimous consent, the resolution was considered immediately and was adopted without objection.

(Senator Carona in Chair)

SENATE BILL 1902 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 1902** 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 1902** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Rio Grande Regional Water Authority and to the powers and duties of the Rio Grande watermaster and the delivery of water down the banks and bed of the Rio Grande; authorizing the issuance of bonds.

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

ARTICLE I. GENERAL PROVISIONS

SECTION 1.01. DEFINITIONS. In this Act:

- (1) "Authority" means the Rio Grande Regional Water Authority.
- (2) "Board" means the board of directors of the authority.
- (3) "Bond" includes a note.
- (4) "Commission" means the Texas Commission on Environmental Quality.
- (5) "Director" means a member of the board.

SECTION 1.02. CREATION. (a) A conservation and reclamation district, to be known as the Rio Grande Regional Water Authority is created.

(b) The authority is created under and is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

(c) The authority is a governmental agency and a political subdivision of this state.

SECTION 1.03. PURPOSE OF AUTHORITY. The authority is created to supplement, and not to replace, the services, regulatory powers, and authority of irrigation districts, water development supply corporations, counties, municipalities, and other political subdivisions within their respective boundaries and corporate limits.

SECTION 1.04. FINDING OF BENEFIT AND PUBLIC PURPOSE. (a) The authority is created to serve a public use and benefit.

(b) All of the land and other property included within the boundaries of the authority will be benefited by the improvement projects and the services that are to be accomplished by the authority under powers conferred by Section 59, Article XVI, Texas Constitution, and other powers granted under this Act.

SECTION 1.05. BOUNDARIES. The boundaries of the authority are coextensive with the boundaries of Cameron, Hidalgo, Starr, Webb, Willacy, and Zapata counties, except that the authority does not include the area within the corporate limits of the city of Laredo.

SECTION 1.06. WATER RIGHTS NOT AFFECTED. This Act does not affect any existing rights, or existing priorities in the rights, to water from the source of supply. The formation of a contract for the purchase of water with the authority is not an abandonment or waiver of those rights or priorities and is not an abandonment of the original point of diversion from the source of supply.

SECTION 1.07. AUTHORITY PROHIBITED FROM CONDEMNING WATER RIGHTS. The authority is prohibited from condemning water rights.

ARTICLE II. BOARD OF DIRECTORS

SECTION 2.01. BOARD OF DIRECTORS. (a) The board consists of 15 directors.

(b) Nine directors are appointed by the governor, with the advice and consent of the senate, as follows:

- (1) six directors who represent irrigation districts;
- (2) one director who represents independent irrigation water rights holders and holds a certificate of adjudication for at least 500 acre-feet irrigation water rights;
- (3) one director who represents water utilities; and
- (4) one director who represents municipalities.

(c) One director is appointed from each of the six counties in the authority by majority vote of the commissioners court of that county. In January of a year in which a director's term expires, the commissioners court of the appropriate county shall appoint a director for a two-year term beginning February 1 of that year. A director appointed as provided by this subsection must:

- (1) be a registered voter;
- (2) reside in the county from which the director is appointed; and
- (3) be certified to the board by the county judge of the county from which the director is appointed.

(d) Directors appointed under Subsection (b) of this section shall be appointed to ensure that at all times:

- (1) at least one director is a qualified voter of each county in the authority; and
- (2) not more than three directors are qualified voters of the same county.

(e) Initial directors serve until permanent directors are appointed.

(f) Permanent directors appointed under Subsection (b) of this section serve staggered four-year terms. Permanent directors appointed under Subsection (c) of this section serve staggered two-year terms.

(g) Except as provided by Subsection (c), each director must be a qualified voter of the state residing within the boundaries of the authority.

SECTION 2.02. INITIAL DIRECTORS. (a) In appointing the initial directors of the board, the governor shall appoint four directors to terms expiring February 1, 2005, and five directors to terms expiring February 1, 2007.

(b) In appointing the initial directors of the board, the commissioners courts of Webb, Cameron, and Starr counties shall appoint directors to terms expiring February 1, 2004, and the commissioners courts of Hidalgo, Zapata, and Willacy counties shall appoint directors to terms expiring February 1, 2005.

SECTION 2.03. VACANCY. (a) The governor shall fill a vacancy that occurs in the office of a director appointed by the governor.

(b) The commissioners court of a county shall fill a vacancy that occurs in the office of a director appointed from that county.

(c) A person appointed to a vacant position serves for the unexpired part of the term.

SECTION 2.04. OATH AND BOND REQUIREMENT FOR DIRECTOR.

(a) Each director, not later than 15 days after the date of appointment, must qualify by taking the constitutional oath of office and by filing a good and sufficient bond with the secretary of state.

(b) The bond is subject to approval by the secretary of state and must be:

- (1) in the amount of \$1,000;
- (2) payable to the authority; and
- (3) conditioned on the faithful performance of the duties as a director.

SECTION 2.05. DIRECTOR COMPENSATION AND REIMBURSEMENT OF EXPENSES. (a) A director is not entitled to any compensation for service on the board.

(b) A director is entitled to receive reimbursement for actual and necessary expenses incurred in connection with service on the board or attendance at board meetings or other board business.

SECTION 2.06. OFFICERS. (a) The board shall elect from among its members a president, a vice president, and a secretary-treasurer.

(b) The president is the chief executive officer of the authority.

(c) The vice president shall act as president if the president is absent or unable to act.

(d) The secretary-treasurer shall act as secretary of the board. The board shall select a temporary secretary if the secretary-treasurer is absent or unable to act.

SECTION 2.07. MEETINGS. (a) The president shall preside at all meetings of the board.

(b) The board shall set, by order entered in the minutes of its proceedings, a specified time for the regular meetings of the board. The board may meet for a specific occasion if called by order of the president, vice president, or a majority of the directors.

(c) The board shall hold its meetings at its office unless the board directs otherwise for a specific occasion.

SECTION 2.08. EMPLOYEES. The authority may hire employees to obtain any service or material required by the authority.

SECTION 2.09. DUTIES OF GENERAL MANAGER. The board may employ a general manager for the authority and may delegate to the general manager full authority to manage and operate the affairs of the authority subject only to the orders of the board.

SECTION 2.10. COMPENSATION OF EMPLOYEES. The board shall set the reasonable compensation to be paid to the general manager and other employees of the authority.

SECTION 2.11. SURETY BOND. A bond required to be given by a director, officer, or employee of the authority must be executed by a surety company authorized to do business in this state, as surety on the bond.

SECTION 2.12. CONFLICT OF INTEREST. The board shall comply with Chapter 171, Local Government Code, relating to conflicts of interest with a business entity in which a board member has a substantial interest.

SECTION 2.13. REGULAR OFFICE OF AUTHORITY. The board shall establish and maintain a regular office for conducting authority business within the authority's territory.

SECTION 2.14. RECORDS. The secretary-treasurer of the board shall keep a record of all proceedings and orders of the board.

ARTICLE III. POWERS AND DUTIES

SECTION 3.01. POWER UNDER CONSTITUTION AND OTHER LAW. The authority has all of the rights, powers, privileges, authority, functions, and duties, except as limited by this Act, of a conservation and reclamation district under the constitution and other laws of this state, including those:

(1) expressly authorized or implied by Section 59, Article XVI, Texas Constitution, for a conservation and reclamation district; and

(2) given by general law, including Chapters 49, 51, and 54, Water Code.

SECTION 3.02. AD VALOREM TAX PROHIBITED. Notwithstanding Section 3.01 of this Act, the authority may not impose an ad valorem tax.

SECTION 3.03. NONCONTRACTUAL FEES PROHIBITED. Notwithstanding Section 3.01 of this Act, the authority may impose a fee on a public or private entity only if:

(1) a contractual relationship exists between the authority and the entity; and

(2) the authority expressly authorizes the fee.

SECTION 3.04. STATE SUPERVISION AND APPROVAL. The authority is subject to the commission's continuing supervision under Chapters 5 and 12, Water Code.

SECTION 3.05. ADDITIONAL POWERS RELATING TO ACQUISITION OR OPERATION OF PROPERTY. (a) In this section, "property" includes a right, including a water right, land, tenement, easement, improvement, reservoir, dam, canal, lateral, plant, work, and facility.

(b) The authority may investigate, plan, acquire, construct, maintain, or operate any property the authority considers necessary or proper for the accomplishment of the purposes of the authority, including water treatment, wastewater treatment, water conveyance, and desalination of water.

(c) The power described by Subsection (b) of this section includes the power to acquire property inside or outside the authority that is incidental or helpful to carrying out the authority's purposes under this Act.

SECTION 3.06. ADDITIONAL POWERS RELATING TO CONTRACT, LEASE, AGREEMENT, OR CONVEYANCE. (a) The authority may enter into a contract, lease, or other agreement necessary or convenient to carry out a power given to the authority by this Act.

(b) The authority may enter into a contract, lease, or agreement with any person, including:

- (1) an individual or artificial entity;
- (2) a corporation, including a municipal corporation and a public or private corporation; and
- (3) a government or governmental agency, including the United States and this state, or a political subdivision of this state.

(c) The authority may enter into an international cooperation agreement to accomplish the purposes of this Act or any other law as provided by Chapter 792, Government Code.

(d) The authority may:

- (1) convey or cause to be conveyed any of its property to the United States;
- (2) enter into a lease, regardless of whether it includes a privilege of purchase, with the United States relating to any property and obligating the authority to pay rent under the lease from the income or other revenue of the property;
- (3) apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source; and
- (4) participate with the commission in an action authorized under Section 5.127, Water Code, as added by Chapter 728, Acts of the 77th Legislature, Regular Session, 2001.

(e) A contract, lease, or agreement under this section must be approved by resolution of the board.

(f) This section does not authorize the assumption by the authority of any obligation requiring a payment from taxes.

(g) The property to which Subsection (d) of this section applies includes a right, land, tenement, easement, improvement, reservoir, dam, canal, plant, lateral, work, and facility.

SECTION 3.07. COURT-APPOINTED RECEIVER. The authority may serve as the court-appointed receiver in a matter determined by a court concerning the disposition of assets of any district authorized by Section 59, Article XVI, Texas Constitution.

ARTICLE IV. GENERAL FINANCIAL MATTERS

SECTION 4.01. PROCEDURE FOR PAYMENT. A warrant for the payment of money by the authority may be drawn and signed by the president and the secretary-treasurer if the account under which the payment is to be made results from a contract made by the board and is ordered paid by the board.

SECTION 4.02. RECORDS RELATING TO MONEY. The secretary-treasurer shall:

- (1) receive and give a receipt for all money received by the authority; and

(2) keep records of all money received and spent by the authority.

SECTION 4.03. FILING OF AUDIT. In addition to copies of the annual audit of the authority that are filed as required by Section 49.194, Water Code, a copy shall be filed with the depository of the authority and the office of the auditor.

ARTICLE V. BONDS

SECTION 5.01. BOND PROVISIONS. (a) For the purpose of providing funds for purchasing or otherwise providing works, plants, facilities, or appliances necessary to the accomplishment of the purposes authorized by this Act, and for the purpose of carrying out any other power conferred by this Act, the authority may borrow money and issue negotiable bonds.

(b) A bond issued under this section may be:

(1) sold for cash, at a public or private sale, at a price determined by the board;

(2) issued on terms determined by the board in exchange for property of any kind or any interest in property that the board determines necessary or convenient for any corporate purpose; or

(3) issued to refund bonds issued at any time under this Act.

(c) The issuance of bonds must be authorized by resolution of the board, and the bonds must mature, serially or otherwise, in not more than 50 years from their date of issuance.

(d) A resolution authorizing the issuance of bonds may contain provisions that become part of the contract between the authority and the purchasers and subsequent holders of the bonds:

(1) reserving the right to redeem the bonds at the time or times, in the amounts, and at the prices provided;

(2) providing for the setting aside of sinking funds or reserve funds and the regulation and disposition of those funds;

(3) pledging, to secure the payment of the principal of and interest on the bonds and the sinking fund or reserve fund payments agreed to be made with respect to the bonds, all or any part of the gross or net revenues subsequently received by the authority with respect to the property to be acquired or constructed with the bonds or with proceeds of the bonds, or all or any part of the gross or net revenues subsequently received by the authority from any source;

(4) prescribing the purposes to which the bonds or any bonds later issued, or the proceeds of the bonds, may be applied;

(5) agreeing to set and collect rates and charges sufficient to produce revenues that are adequate to pay the items specified in any resolution or resolutions authorizing any bonds, and prescribing the use and disposition of all revenues;

(6) prescribing limitations on the issuance of additional bonds and on all agreements that may be made with the purchasers and successive holders of the bonds;

(7) relating to the construction, extension, improvement, operation, maintenance, depreciation, replacement, and repair of the properties of the authority and the carrying of insurance on all or any part of the property covering loss or damage or loss of use and occupancy resulting from specified risks;

(8) fixing the procedure, if any, by which, if the authority desires, the terms of any contract with the holders of bonds may be amended or abrogated and setting the amount of bonds the holders of which must consent to amendment or abrogation, and the manner in which the consent shall be evidenced;

(9) providing for the execution and delivery by the authority to a bank or trust company authorized by law to accept trusts, or to the United States or any office or agency of the United States, of indentures or agreements authorized to be made with or for the benefit of the holders of the bonds and other provisions that may be contained in the indentures or agreements; or

(10) making any other provisions, not inconsistent with provisions of this Act, that the board may approve.

SECTION 5.02. DEED OF TRUST OR MORTGAGE LIEN. Bonds, within the discretion of the board, may be additionally secured by a deed of trust or mortgage lien on physical properties of the authority, and all franchises, easements, water rights and appropriation permits, leases, contracts, and all rights appurtenant to the properties, vesting in the trustee power to sell the properties for the payment of the indebtedness, power to operate the properties, and all other powers and authority for the further security of the bonds.

SECTION 5.03. ELECTION FOR REVENUE BONDS NOT REQUIRED. The authority may issue bonds payable solely from revenues without an election.

SECTION 5.04. LIMITATIONS ON AUTHORITY TO ISSUE BONDS. The authority may not issue bonds or create indebtedness that would in any way be payable from ad valorem taxes levied by the authority on property within the authority.

SECTION 5.05. BONDS EXEMPT FROM TAXATION. Bonds and the interest on bonds issued under this Act are exempt from taxation, except inheritance taxes, by this state or by any municipal corporation, county, or other political subdivision or taxing district of this state.

SECTION 5.06. FULL AUTHORITY. The authority set out in this Act for the authorization and issuance of bonds is in addition to, and not in lieu of, the authority otherwise established under general law and may not be construed as a limitation on, or a modification of, general law providing for authorization and issuance of bonds, notes, and other forms of obligations. Nothing in this Act may be construed as affecting any existing contract, bond, note, or other obligation of the authority or any indenture, covenant, mortgage, or other agreement relating to them.

ARTICLE VI. RIO GRANDE WATERMASTER

SECTION 6.01. Subchapter G, Chapter 11, Water Code, is amended by adding Section 11.3271 to read as follows:

Sec. 11.3271. POWERS AND DUTIES OF RIO GRANDE WATERMASTER: DELIVERY OF WATER DOWN BANKS AND BED OF RIO GRANDE. (a) This section applies only to the watermaster with jurisdiction over the Rio Grande and the water division for which that watermaster is appointed.

(b) The watermaster shall divide the water of the streams or other sources of supply of the division in accordance with the adjudicated water rights.

(c) The watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of the division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(d) The watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

(e) The watermaster's duties do not include activities that relate to other programs of the commission, except as provided by this section. The watermaster's duties shall include activities that relate to situations of imminent threat to public health and safety or the environment. The commission shall adopt rules:

- (1) defining situations of imminent threat under this section; and
- (2) addressing the watermaster's duties in response to terrorism.

(f) The watermaster may store in a reservoir for release at a later time water in transit that is being conveyed down the banks and bed of the Rio Grande under a permit issued by the commission and in accordance with rules prescribed by the commission. In this section, "water in transit" means privately owned water, not including state water, that a person has pumped from an underground reservoir and that is in transit between the point of discharge into the river and the place of use or the point of diversion by a person who has contracted with the owner of the water to purchase the water. The contract must specify that the contract is for the purchase and delivery of a specified amount of water less the carriage losses incurred in transit, as described and measured according to commission rules.

(g) The watermaster may store water under Subsection (f) only if the storage does not hinder the ability of any other holders of Rio Grande surface water rights to store the maximum authorized capacity in a reservoir as specified by commission rules and relevant permits, certified filings, or certificates of adjudication.

(h) Before granting a permit to convey water down the banks and bed of the Rio Grande, the commission shall adopt rules that provide for the methods and procedures by which the watermaster shall account for any discharge, delivery, conveyance, storage, diversion, or associated loss of water conveyed down the banks and bed of the Rio Grande. A permit to convey water down the banks and bed of the Rio Grande may not allow the permit holder to share in any beneficial state water inflows into the Rio Grande. The permit holder is entitled to convey only the amount of water specified in the permit, less the carriage losses incurred in transit, as described and measured according to commission rules. A rule adopted by the commission under this subsection must be consistent with the Treaty Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, concluded by the United States and the United Mexican States on February 3, 1944, and with any minute order adopted by the International Boundary and Water Commission.

(i) In considering an application for a permit to convey water down the banks and bed of the Rio Grande, the commission shall consider the quality of the water to be conveyed. The commission may not issue a permit if it determines that the water to be conveyed would degrade the water quality of the Rio Grande.

(j) Notwithstanding any other law, the watermaster is the official recorder for all instruments, including deeds, deeds of trust, financing statements, security agreements, and liens, that the commission authorizes or requires to be filed in connection with water rights relating to water in the lower, middle, or upper basin of the Rio Grande that are subject to a permit, certified filing, or certificate of adjudication. An instrument shall be filed with the watermaster under this subsection in the same manner as required by other law for the same type of instrument. The filing of an instrument under this subsection results in the same legal and administrative status and consequences as a filing under other law for the same type of instrument. An instrument filed under this subsection shall be construed by a court, financial institution, or other affected person in the same manner as an instrument of the same type that is filed under other law. The watermaster may charge and collect a fee for the recordation of instruments under this subsection in the same amount as the fee collected by the county clerk of Cameron County for the recordation of similar instruments. The commission by rule shall prescribe the procedures necessary for the proper implementation of this subsection, including reasonable transition provisions, if appropriate.

(k) This section does not apply to the Rio Grande above the Fort Quitman Dam.

ARTICLE VII. EFFECTIVE DATE; TRANSITION

SECTION 7.01. EFFECTIVE DATE. This Act takes effect September 1, 2003.

SECTION 7.02. As soon as practicable after September 1, 2003, the Texas Commission on Environmental Quality shall adopt rules necessary for the implementation of Section 11.3271, Water Code, as added by this Act, and shall expedite any application for a permit for the delivery of water down the banks and bed of the Rio Grande under Section 11.042, Water Code.

Floor Amendment No. 1

Amend **CSSB 1902** in SECTION 2.01 by deleting subsection (b)(2) on page 3, lines 7-9 and inserting the following:

"(2) one director who represents the public;"

The amendments were read.

Senator Lucio moved to concur in the House amendments to **SB 1902**.

The motion prevailed by a viva voce vote.

SENATE BILL 284 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 284** 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 284** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas State Affordable Housing Corporation.

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

SECTION 1. Section 1372.0221, Government Code, is amended to read as follows:

Sec. 1372.0221. DEDICATION OF PORTION OF STATE CEILING FOR PROFESSIONAL EDUCATORS [~~TEACHERS~~] HOME LOAN PROGRAM. Until August 1, out [~~Out~~] of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, \$25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the professional educators [~~teachers~~] home loan program established under Section 2306.562.

SECTION 2. Section 1372.023(b), Government Code, is amended to read as follows:

(b) Until August 1 [~~15~~], of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds, one-fifth [~~one-fourth~~] is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Section 1372.0231.

SECTION 3. Section 1372.0231, Government Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) Until August 1 [~~15~~], of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified residential rental project bonds:

(1) 20 [~~25~~] percent is available exclusively to the Texas Department of Housing and Community Affairs in the manner described by Subsection (b); [~~and~~]

(2) 70 [~~75~~] percent is available exclusively to housing finance corporations in the manner described by Subsections (c)-(f); and

(3) 10 percent is available exclusively to the Texas State Affordable Housing Corporation in the manner described by Subsection (b-1).

(b-1) With respect to the amount of the state ceiling set aside under Subsection (a)(3), the board shall issue qualified residential rental project bonds and allocate bond funds at the direction of the Texas State Affordable Housing Corporation as provided by Section 2306.565. Issuances made by the board under this subsection are subject to review and approval by the board under Section 1231.041.

SECTION 4. Section 2306.057, Government Code, is amended by adding Subsection (d) to read as follows:

(d) In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section 2306.081, including compliance information provided to the department by the Texas State Affordable Housing Corporation.

SECTION 5. Section 2306.0721, Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) The department shall include the plan developed by the Texas State Affordable Housing Corporation under Section 2306.565 in the department's resource allocation plan under Subsection (c)(5).

(h) The department shall consider and incorporate the specific results of the programs of the Texas State Affordable Housing Corporation in the department's estimate and analysis of the housing supply in each uniform state service region under Subsection (c)(9).

SECTION 6. Section 2306.0722(b), Government Code, is amended to read as follows:

(b) In preparing the annual report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the director shall:

(1) coordinate local, state, and federal housing resources, including tax exempt housing bond financing and low income housing tax credits;

(2) set priorities for the available housing resources to help the neediest individuals;

(3) evaluate the success of publicly supported housing programs;

(4) survey and identify the unmet housing needs of individuals the department is required to assist;

(5) ensure that housing programs benefit an individual without regard to the individual's race, ethnicity, sex, or national origin;

(6) develop housing opportunities for individuals and families of low and very low income and individuals with special housing needs;

(7) develop housing programs through an open, fair, and public process;

(8) set priorities for assistance in a manner that is appropriate and consistent with the housing needs of the populations described by Section 2306.0721(c)(1);

(9) incorporate recommendations that are consistent with the consolidated plan submitted annually by the state to the United States Department of Housing and Urban Development;

(10) identify the organizations and individuals consulted by the department in preparing the annual report and state low income housing plan and summarize and incorporate comments and suggestions provided under Subsection (a) as the board determines to be appropriate;

(11) develop a plan to respond to changes in federal funding and programs for the provision of affordable housing;

(12) use the following standardized categories to describe the income of program applicants and beneficiaries:

(A) 0 to 30 percent of area median income adjusted for family size;

(B) more than 30 to 60 percent of area median income adjusted for family size;

(C) more than 60 to 80 percent of area median income adjusted for family size;

(D) more than 80 to 115 percent of area median income adjusted for family size; or

(E) more than 115 percent of area median income adjusted for family size; ~~and~~

(13) use the most recent census data combined with existing data from local housing and community service providers in the state, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies; and

(14) provide the needs assessment information compiled for the report and plan to the Texas State Affordable Housing Corporation.

SECTION 7. Section 2306.081, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) The department shall create an easily accessible database that contains all project compliance information developed under this chapter, including project compliance information provided to the department by the Texas State Affordable Housing Corporation.

(e) The department shall allow the Texas State Affordable Housing Corporation timely access to the information in the database.

SECTION 8. Section 2306.5521, Government Code, is amended to read as follows:

Sec. 2306.5521. SUNSET PROVISION. The Texas State Affordable Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, 2009 ~~2003~~.

SECTION 9. Sections 2306.553(a) and (b), Government Code, are amended to read as follows:

(a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income, and for professional educators ~~teachers~~ under the professional educators ~~teachers~~ home loan program as provided by Section 2306.562. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing by issuing qualified 501(c)(3) bonds and qualified residential rental project bonds and by ~~the~~ making ~~of~~ affordable loans to individuals and families of low, very low, and extremely low income, and to professional educators ~~teachers~~ under the professional educators ~~teachers~~ home loan program. The corporation may make first lien, single family purchase money mortgage loans for single family homes only to individuals and families of low, very low, and extremely low income if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department. The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

SECTION 10. Section 2306.554, Government Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) A member of the corporation's board of directors is not entitled to compensation, but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the board to the same extent~~[-as]~~ provided by the General Appropriations Act for a member of a state board.

(f) Appointments to the board of directors of the corporation shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 11. Subchapter Y, Chapter 2306, Government Code, is amended by adding Sections 2306.5541, 2306.5542, and 2306.5543 to read as follows:

Sec. 2306.5541. TERMS OF MEMBERS. The members of the board of directors of the corporation serve staggered six-year terms, with the terms of one or two members expiring on February 1 of each odd-numbered year.

Sec. 2306.5542. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board of directors of the corporation that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.554;

(2) does not maintain during service on the board of directors of the corporation the qualifications required by Section 2306.554;

(3) is ineligible for membership under Sections 2306.554 and 2306.5545;

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

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

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

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

Sec. 2306.5543. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the corporation's board of directors 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) the legislation that created the corporation and the corporation's board of directors;

(2) the programs operated by the corporation;

(3) the role and functions of the corporation;

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

(5) the current budget for the corporation;

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

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

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

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

laws; and

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

(c) A person appointed to the corporation's board of directors is entitled to reimbursement, to the same extent provided by the General Appropriations Act for a member of a state board, 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 12. Section 2306.5545, Government Code, is amended to read as follows:

Sec. 2306.5545. CONFLICT OF INTEREST POLICIES. (a) The board of directors of the corporation shall develop and implement policies relating to employee conflicts of interest that are substantially similar to comparable policies that govern state employees.

(b) A person may not be a member of the corporation's board of directors and may not be a corporation 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 banking, real estate, housing development, or housing construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction.

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

(d) 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.

SECTION 13. Subchapter Y, Chapter 2306, Government Code, is amended by adding Sections 2306.5546, 2306.5547, and 2306.5548 to read as follows:

Sec. 2306.5546. STANDARDS OF CONDUCT. The president of the corporation or the president's designee shall provide to members of the board of directors of the corporation and to corporation employees, as often as necessary,

information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 2306.5547. DIVISION OF RESPONSIBILITY. The board of directors of the corporation shall develop and implement policies that clearly separate the policymaking responsibilities of the board of directors and the management responsibilities of the president and the staff of the corporation.

Sec. 2306.5548. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The president of the corporation or the president'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 corporation 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 corporation'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 be:

(1) updated annually; and

(2) filed with the governor's office.

SECTION 14. The heading to Section 2306.562, Government Code, is amended to read as follows:

Sec. 2306.562. PROFESSIONAL EDUCATORS ~~[TEACHERS]~~ HOME LOAN PROGRAM.

SECTION 15. Sections 2306.562(a)-(d) and (f), Government Code, are amended to read as follows:

(a) In this section:

(1) "Home" means a dwelling in this state in which a professional educator ~~[teacher]~~ intends to reside as the professional educator's ~~[teacher's]~~ principal residence.

(2) "Mortgage lender" has the meaning assigned by Section 2306.004.

(3) "Professional educator" means a classroom teacher, full-time paid teacher's aide, full-time librarian, full-time counselor certified under Subchapter B, Chapter 21, Education Code, or full-time school nurse.

(4) "Program" means the professional educators ~~[teachers]~~ home loan program.

~~[(4) "Teacher" means a person who is a classroom teacher as defined by Section 5.001, Education Code.]~~

(b) The corporation shall establish a program to provide eligible professional educators ~~[teachers]~~ whose income does not exceed 115 percent of area median family income, adjusted for family size, with low-interest home mortgage loans.

(c) To be eligible for a loan under this section, a professional educator ~~[teacher]~~ must:

(1) ~~[have been residing in this state for the five year period preceding the date the teacher files an application for a loan under this section;~~

~~[(2) have been working as a teacher for the three year period preceding the application date; and~~

~~[(3)]~~ reside in this state on the application date; and

(2) be employed by a school district in this state on the application date.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as professional educators ~~[teachers]~~ under this section or otherwise to administer all or part of this section.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the professional educator ~~[teacher]~~ as the professional educator's ~~[teacher's]~~ principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

SECTION 16. Subchapter Y, Chapter 2306, Government Code, is amended by adding Sections 2306.563 through 2306.569 to read as follows:

Sec. 2306.563. PUBLIC BENEFIT REQUIREMENT. (a) The corporation shall implement a requirement that a community housing development organization that receives an issuance of qualified 501(c)(3) bonds from the corporation to develop property must invest at least one dollar in projects and services that benefit income-eligible persons for each dollar of taxes that is not imposed on the property as a result of a property tax exemption received under Section 11.182, Tax Code.

(b) The projects and services must benefit income-eligible persons in the county in which the property supported with the tax exemption is located.

(c) The projects and services must consist of:

(1) rent reduction;

(2) capital improvement projects; or

(3) social, educational, or economic development services.

(d) The corporation and the organization may determine on a case-by-case basis the specific projects and services in which the organization must invest under this section.

(e) The dollar-for-dollar public benefit requirement imposed by this section shall be reduced by an amount equal to each dollar that, in lieu of taxes, a community housing development organization pays to a taxing unit for which the property receives an exemption under Section 11.182, Tax Code.

(f) In implementing the public benefit requirement, the corporation shall adopt guidelines for reasonable rent reductions, capital improvement projects, and social, educational, and economic development services.

Sec. 2306.564. REVIEW OF QUALIFIED 501(c)(3) BOND ISSUANCE POLICIES. (a) The corporation shall review annually its qualified 501(c)(3) bond issuance policies, including the public benefit requirement implemented under Section 2306.563.

(b) The corporation shall give to the secretary of state for publication in the Texas Register any proposed policy revisions and allow a reasonable period for public comment.

(c) The board of directors of the corporation must approve any change to the bond issuance policies.

Sec. 2306.565. ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS; ALLOCATION OF BOND FUNDS. (a) The corporation shall direct the Bond Review Board on the issuance of the portion of state ceiling set aside for the corporation under Section 1372.0231(a).

(b) The board of directors of the corporation shall adopt guidelines governing the method by which the corporation identifies target areas for the allocation of qualified residential rental project bond funds. The guidelines must include a clear demonstration of local need and community support for a housing development.

(c) The corporation shall research the state's strategic housing needs by coordinating with the department and reviewing relevant needs assessment information, as required by Section 2306.566. The corporation shall also solicit information regarding housing needs from local and regional housing organizations.

(d) The board of directors of the corporation shall adopt criteria governing the method by which the corporation solicits proposals for housing developments in areas targeted by the corporation. The guidelines must state the criteria to be included in the corporation's requests for proposals. The requests for proposals must comply with any relevant federal requirements.

(e) The board of directors of the corporation shall adopt criteria governing the method by which the staff of the corporation scores and ranks applications for an allocation under this section that are received in response to a request for proposals. The criteria must include:

(1) the cost per unit of the housing development;

(2) the proposed rent for a unit; and

(3) the income ranges of individuals and families to be served by the housing development.

(f) The board of directors of the corporation shall identify housing developments with respect to which the board anticipates directing the Bond Review Board to allocate bond funds under this section, based on the highest scores received in the scoring and ranking process described by Subsection (e).

(g) After the board of directors of the corporation has identified housing developments under Subsection (f), the corporation shall hold public hearings, as required by federal law, on the housing developments identified by the board.

(h) Following the public hearings, the staff shall prepare final evaluations and recommendations for the board, incorporating any public comments received at the hearings. The board shall consider the staff's recommendations in making its final decisions regarding the allocation of bond funds for housing developments under this section and shall inform the Bond Review Board of those decisions.

(i) The corporation shall pay the department a reasonable fee for underwriting an application for an allocation of low income housing tax credits if the housing development proposed in the application is or will be supported by an allocation of bond funds under this section.

(j) The decisions made by the corporation regarding the allocation of bond funds under this section are not subject to the restrictions in Section 1372.0321, as added by Chapter 1367 or 1420, Acts of the 77th Legislature, Regular Session, 2001.

Sec. 2306.566. COORDINATION REGARDING STATE LOW INCOME HOUSING PLAN. (a) The corporation shall review the needs assessment information provided to the corporation by the department under Section 2306.0722(b).

(b) The corporation shall develop a plan to meet the state's most pressing housing needs identified in the needs assessment information and provide the plan to the department for incorporation into the state low income housing plan.

(c) The corporation's plan must include specific proposals to help serve rural and other underserved areas of the state.

Sec. 2306.567. COMPLIANCE INFORMATION. (a) The corporation shall provide to the department electronic copies of all compliance information compiled by the corporation.

(b) Before approving an application regarding a housing development, the corporation shall consider any relevant compliance information in the department's database created under Section 2306.081.

Sec. 2306.568. RECORD OF COMPLAINTS. (a) The corporation shall maintain a file on each written complaint filed with the corporation. The file must include:

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

and

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

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

(c) The corporation, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 2306.569. EFFECTIVE USE OF TECHNOLOGY. The corporation's board of directors shall develop and implement a policy requiring the president of the corporation and corporation employees to research and propose appropriate technological solutions to improve the corporation's ability to perform its functions. The technological solutions must:

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

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

(A) interact with the corporation 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 corporation's planning processes.

SECTION 17. Section 6, Chapter 1194, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 6. The Texas State Affordable Housing Corporation shall[+]

~~[(1) give priority to a teacher who resides or teaches in an area of the state with a teacher shortage, as determined by the commissioner of education;~~

[(2)] aggressively pursue funding for the professional educators [teachers] home loan program required by Section 2306.562, Government Code[, as added by this Act; and

~~[(3) implement the teachers home loan program required by that section not later than September 1, 2002].~~

SECTION 18. (a) The change in law made by this Act in amending Chapter 1372, Government Code, applies only to an application for an amount of the state ceiling set aside for issuers of qualified mortgage bonds or qualified residential rental project bonds in a year beginning on or after January 1, 2004. An application for an amount of the state ceiling set aside for issuers of qualified mortgage bonds or qualified residential rental project bonds in 2003 is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The offices of the board of directors of the Texas State Affordable Housing Corporation serving immediately before the effective date of this Act are abolished at the time three or more of the newly appointed directors under Subsection (c) of this section qualify for office. The changes in law made by this Act to the qualifications of or prohibitions on members of the board of directors do not affect the entitlement of a member serving immediately before the effective date of this Act to continue to serve as provided by this subsection.

(c) The governor shall make five appointments to the board of directors of the Texas State Affordable Housing Corporation in accordance with Section 2306.554, Government Code, as amended by this Act, as soon as possible on or after the effective date of this Act. In making appointments under this subsection, the governor shall designate:

(1) one member for a term expiring February 1, 2005;

(2) two members for terms expiring February 1, 2007; and

(3) two members for terms expiring February 1, 2009.

(d) A member of the board of directors of the Texas State Affordable Housing Corporation appointed under Subsection (c) of this section is not required to comply with the training requirement prescribed by Section 2306.5543, Government Code, as added by this Act, until September 1, 2004.

(e) This Act does not prohibit a person who is a member of the board of directors of the Texas State Affordable Housing Corporation immediately before the effective date of this Act from being appointed as a member of the board of directors on or after the effective date of this Act if the person has the qualifications required for the position under Subchapter Y, Chapter 2306, Government Code, as amended by this Act.

SECTION 19. Section 2306.568, Government Code, as added by this Act, applies only to a complaint filed with the board of directors of the Texas State Affordable Housing Corporation on or after the effective date of this Act, regardless of whether the conduct or act that is the subject of the complaint occurred or was committed before, on, or after the effective date of this Act.

SECTION 20. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 284** as follows:

(1) On page 1, line 18, strike "1" and substitute "15".

(2) On page 2, line 3, strike "1" and substitute "15".

The amendments were read.

Senator Lucio moved to concur in the House amendments to **SB 284**.

The motion prevailed by a viva voce vote.

SENATE BILL 826 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 826** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 826**, on third reading, by adding the following appropriately numbered SECTIONS to the bill and by renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.65 to read as follows:

Art. 11.65. BOND FOR CERTAIN APPLICANTS. (a) This article applies to an applicant for a writ of habeas corpus seeking relief from the judgment in a criminal case, other than an applicant seeking relief from a judgment imposing a penalty of death.

(b) On making proposed findings of fact and conclusions of law jointly stipulated to by the applicant and the state, or on approving proposed findings of fact and conclusions of law made by an attorney or magistrate appointed by the court to perform that duty and jointly stipulated to by the applicant and the state, the convicting court may order the release of the applicant on bond, subject to conditions imposed by the convicting court, until the applicant is denied relief, remanded to custody, or ordered released.

(c) For the purposes of this chapter, an applicant released on bond under this article remains restrained in his liberty.

(d) Article 44.04(b) does not apply to the release of an applicant on bond under this article.

SECTION _____. Article 11.65, Code of Criminal Procedure, as added by this Act, applies to:

(1) any applicant who on or after the effective date of this Act applies for a writ of habeas corpus; and

(2) any applicant whose application for a writ of habeas corpus is pending on the effective date of this Act, regardless of when the application was filed.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 826** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Whitmire, Chair; Williams, Ratliff, Hinojosa, and Nelson.

SENATE BILL 618 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 618** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Carona in Chair, laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 618** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the consequences of a public school's being considered low-performing.

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

SECTION 1. Subsection (f), Section 7.056, Education Code, is amended to read as follows:

(f) A school district or campus that is required to develop and implement a student achievement improvement plan under Section 39.131 or 39.132 may receive an exemption or waiver under this section from any law or rule other than:

(1) a prohibition on conduct that constitutes a criminal offense;

(2) a requirement imposed by federal law or rule;

(3) a requirement, restriction, or prohibition imposed by state law or rule

relating to:

(A) public school accountability as provided by Subchapters B, C, D, and G, Chapter 39; or

(B) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22; or

(4) textbook selection under Chapter 31.

SECTION 2. Subsection (b), Section 12.013, Education Code, is amended to read as follows:

(b) A home-rule school district is subject to:

(1) a provision of this title establishing a criminal offense;

(2) a provision of this title relating to limitations on liability; and

(3) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) educator certification under Chapter 21 and educator rights under Sections 21.407, 21.408, and 22.001;

(C) criminal history records under Subchapter C, Chapter 22;

(D) student admissions under Section 25.001;

(E) school attendance under Sections 25.085, 25.086, and 25.087;

(F) inter-district or inter-county transfers of students under Subchapter B, Chapter 25;

(G) elementary class size limits under Section 25.112, in the case of any campus in the district that is considered low-performing under Section 39.132 [~~39.131(b)~~];

(H) high school graduation under Section 28.025;

(I) special education programs under Subchapter A, Chapter 29;

(J) bilingual education under Subchapter B, Chapter 29;

(K) prekindergarten programs under Subchapter E, Chapter 29;

(L) safety provisions relating to the transportation of students under Sections 34.002, 34.003, 34.004, and 34.008;

(M) computation and distribution of state aid under Chapters 31, 42, and 43;

(N) extracurricular activities under Section 33.081;

(O) health and safety under Chapter 38;

(P) public school accountability under Subchapters B, C, D, and G, Chapter 39;

(Q) equalized wealth under Chapter 41;

(R) a bond or other obligation or tax rate under Chapters 42, 43, and 45; and

(S) purchasing under Chapter 44.

SECTION 3. Subsection (a), Section 29.202, Education Code, is amended to read as follows:

(a) A student is eligible to receive a public education grant or to attend another public school in the district in which the student resides under this subchapter if the student is assigned to attend a public school campus:

(1) at which 50 percent or more of the students did not perform satisfactorily on an assessment instrument administered under Section 39.023(a) or (c) in any two of the preceding three years; or

(2) that was, at any time in the preceding three years, considered [identified as] low-performing [by the commissioner] under Section 39.132 [Subchapter D, Chapter 39].

SECTION 4. Subsection (c), Section 39.072, Education Code, is amended to read as follows:

(c) The agency shall evaluate against state standards and shall, not later than August 1 of each year, report the performance of each campus in a district and each open-enrollment charter school on the basis of the campus's performance on the indicators adopted under Sections 39.051(b)(1) through (7).

SECTION 5. Subchapter G, Chapter 39, Education Code, is amended by amending Section 39.131 and adding Sections 39.132 through 39.138 to read as follows:

Sec. 39.131. SANCTIONS FOR DISTRICTS. (a) If a district does not satisfy the accreditation criteria, the commissioner shall take any of the following actions, listed in order of severity, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees of the district for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve;

(3) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the district's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(4) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees of the district and the superintendent shall appear and explain the district's low performance, lack of improvement, and plans for improvement;

(5) arrange an on-site investigation of the district;

(6) appoint an agency monitor to participate in and report to the agency on the activities of the board of trustees or the superintendent;

(7) appoint a master to oversee the operations of the district;

(8) appoint a management team to direct the operations of the district in areas of unacceptable performance or require the district to obtain certain services under a contract with another person;

(9) if a district has been rated as academically unacceptable for a period of one year or more, appoint a board of managers to exercise the powers and duties of the board of trustees; or

(10) if a district has been rated as academically unacceptable for a period of two years or more:

(A) annex the district to one or more adjoining districts under Section 13.054; or

(B) in the case of a home-rule school district or open-enrollment charter school, order closure of all programs operated under the district's or school's charter.

(b) [~~(a-1)~~] This subsection applies regardless of whether a district has satisfied the accreditation criteria. If for a period of one year or more a district has had a master or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees.

Sec. 39.132. SANCTIONS FOR CAMPUSES. (a) [~~(b)~~] If a campus performance is below any standard under Section 39.073(b), the campus is considered a low-performing campus and the commissioner may take any of the following actions, listed in order of severity, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;
 (2) order a hearing conducted by the board of trustees at the campus for the purpose of:

(A) notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve within a designated period of time; and

(B) [~~(c)~~] soliciting public comment on the initial steps being taken to improve performance;

(3) order the preparation of a report regarding the parental involvement program at the campus and a plan describing strategies for improving parental involvement at the campus;

(4) order the preparation of a report regarding the effectiveness of the district- and campus-level planning and decision-making committees established under Subchapter F, Chapter 11, and a plan describing strategies for improving the effectiveness of those committees;

(5) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the campus's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(6) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement;

(7) appoint a special campus intervention team to:

(A) conduct a comprehensive on-site evaluation of the [~~each low-performing~~] campus to determine the cause for the campus's low performance and lack of progress;

(B) recommend actions, including reallocation of resources and technical assistance, changes in school procedures or operations, staff development for instructional and administrative staff, intervention for individual administrators or teachers, waivers from state statute or rule, or other actions the team considers appropriate;

(C) assist in the development of a campus plan for student achievement; and

(D) assist the commissioner in monitoring the progress of the campus in implementing the campus plan for improvement of student achievement; or

(8) if a campus has been a low-performing campus for a period of one year or more, appoint a board of managers composed of residents of the district to exercise the powers and duties of the board of trustees of the district in relation to the campus[; or

~~(9) if a campus has been a low-performing campus for a period of two years or more, order closure of the school program on the campus].~~

(b) If a campus has been a low-performing campus for a period of two consecutive years or more, the commissioner shall reconstitute the campus. In reconstituting the campus, a special campus intervention team shall be assembled for the purpose of deciding which educators may be retained at that campus. If an educator is not retained:

(1) the educator's employment with the school district may be terminated under Section 21.157, if applicable; or

(2) the educator may be assigned to another position in the district.

Sec. 39.133. ANNUAL REVIEW. ~~(c)~~ The commissioner shall review annually the performance of a district or campus subject to this subchapter ~~[section]~~ to determine the appropriate actions to be implemented under this subchapter ~~[section]~~. The commissioner must review at least annually the performance of a district for which the accreditation rating has been lowered due to unacceptable student performance and may not raise the rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

Sec. 39.134. COSTS PAID BY DISTRICT. ~~(c)~~ The costs of providing a monitor, master, management team, or special campus intervention team shall be paid by the district. If the district fails or refuses to pay the costs in a timely manner, the commissioner may:

(1) pay the costs using amounts withheld from any funds to which the district is otherwise entitled; or

(2) recover the amount of the costs in the manner provided for recovery of an overallocation of state funds under Section 42.258.

Sec. 39.135. MASTER OR MANAGEMENT TEAM. (a) ~~(c)~~ The commissioner shall clearly define the powers and duties of a master or management team appointed to oversee the operations of the district.

(b) At least every 90 days, the commissioner shall review the need for the master or management team and shall remove the master or management team unless the commissioner determines that continued appointment is necessary for effective governance of the district or delivery of instructional services.

(c) A master or management team, if directed by the commissioner, shall prepare a plan for the implementation of action under Section 39.131(a)(9) ~~[Subsection (a)(9)]~~ or (10). The master or management team:

- (1) may direct an action to be taken by the principal of a campus, the superintendent of the district, or the board of trustees of the district;
- (2) may approve or disapprove any action of the principal of a campus, the superintendent of the district, or the board of trustees of the district;
- (3) may not take any action concerning a district election, including ordering or canceling an election or altering the date of or the polling places for an election;
- (4) may not change the number of or method of selecting the board of trustees;
- (5) may not set a tax rate for the district; and
- (6) may not adopt a budget for the district that provides for spending a different amount, exclusive of required debt service, from that previously adopted by the board of trustees.

Sec. 39.136. BOARD OF MANAGERS. (a) ~~[(f)]~~ A board of managers may exercise all of the powers and duties assigned to a board of trustees of a school district by law, rule, or regulation. This subchapter ~~[section]~~ applies to a district governed by a board of managers in the same manner that this subchapter ~~[section]~~ applies to any other district.

(b) If the commissioner appoints a board of managers to govern a district, the powers of the board of trustees of the district are suspended for the period of the appointment and the commissioner shall appoint a district superintendent. Notwithstanding any other provision of this code, the board of managers may amend the budget of the district.

(c) If the commissioner appoints a board of managers to govern a campus, the powers of the board of trustees of the district in relation to the campus are suspended for the period of the appointment and the commissioner shall appoint a campus principal. Notwithstanding any other provision of this code, the board of managers may submit to the commissioner for approval amendments to the budget of the district for the benefit of the campus. If the commissioner approves the amendments, the board of trustees of the district shall adopt the amendments.

(d) A master or a member of a management team appointed to serve on a board of managers may continue to be compensated as determined by the commissioner.

(e) At the direction of the commissioner but not later than the second anniversary of the date the board of managers of a district was appointed, the board of managers shall order an election of members of the district board of trustees. The election must be held on a uniform election date on which an election of district trustees may be held under Section 41.001, Election Code, that is at least 180 days after the date the election was ordered. On qualification of members for office, the board of trustees assumes all of the powers and duties assigned to a board of trustees by law, rule, or regulation.

Sec. 39.137. SPECIAL CAMPUS INTERVENTION TEAM. ~~[(g)]~~ A special campus intervention team appointed under this subchapter ~~[section]~~ may consist of teachers, principals, other educational professionals, and superintendents recognized for excellence in their roles and appointed by the commissioner to serve as members of a team.

Sec. 39.138. IMMUNITY FROM CIVIL LIABILITY. ~~[(h) If the commissioner appoints a board of managers to govern a district, the powers of the board of trustees of the district are suspended for the period of the appointment and the commissioner shall appoint a district superintendent. Notwithstanding any other provision of this code, the board of managers may amend the budget of the district.~~

~~[(i) If the commissioner appoints a board of managers to govern a campus, the powers of the board of trustees of the district in relation to the campus are suspended for the period of the appointment and the commissioner shall appoint a campus principal. Notwithstanding any other provision of this code, the board of managers may submit to the commissioner for approval amendments to the budget of the district for the benefit of the campus. If the commissioner approves the amendments, the board of trustees of the district shall adopt the amendments.~~

~~[(j)] An employee, volunteer, or contractor acting on behalf of the commissioner under this subchapter is immune from civil liability to the same extent as a professional employee of a school district under Section 22.051.~~

SECTION 6. Subsection (c), Section 302.006, Labor Code, is amended to read as follows:

(c) To be eligible to receive a scholarship awarded under this section, a person must:

(1) be employed in a child-care facility, as defined by Section 42.002, Human Resources Code;

(2) intend to obtain a credential, certificate, or degree specified in Subsection (b);

(3) agree to work for at least 18 additional months in a child-care facility, as defined by Section 42.002, Human Resources Code, that accepts federal Child Care Development Fund subsidies and that, at the time the person begins to fulfill the work requirement imposed by this subdivision, is located:

(A) within the attendance zone of a public school campus considered low-performing under Section 39.132 ~~[39.131(b)]~~, Education Code; or

(B) in an economically disadvantaged community, as determined by the commission; and

(4) satisfy any other requirements adopted by the commission.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act applies beginning with the 2004-2005 school year.

(b) Subsection (b), Section 39.132, Education Code, as added by this Act, applies beginning with the 2005-2006 school year.

SECTION 8. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 618** as follows:

(1) In SECTION 5 of the bill, in amended Section 39.131(a)(7), Education Code (House committee printing, page 5, line 11), strike "master" and substitute "conservator ~~[master]~~".

(2) In SECTION 5 of the bill, in added Section 39.131(b), Education Code (House committee printing, page 6, line 3), strike "master" and substitute "conservator ~~[master]~~".

(3) In SECTION 5 of the bill, in added Section 39.134, Education Code (House committee printing, page 9, line 4), strike "master" and substitute "conservator [~~master~~]".

(4) In SECTION 5 of the bill, in the heading to added Section 39.135, Education Code (House committee printing, page 9, line 13), strike "MASTER" and substitute "CONSERVATOR".

(5) In SECTION 5 of the bill, in added Sections 39.135(a), (b), and (c), Education Code (House committee printing, page 9, lines 14, 18, 19, 22, and 24), strike "master" each place it appears and substitute "conservator [~~master~~]".

(6) In SECTION 5 of the bill, in added Section 39.136(d), Education Code (House committee printing, page 11, line 9), strike "master" and substitute "conservator [~~master~~]".

Floor Amendment No. 2

Amend **CSSB 618** in SECTION 5 of the bill, in added Section 39.132(b), Education Code (House committee printing, page 8, lines 14-18), by striking the semicolon after "retained" and the remainder of the subsection and substituting ", the educator shall be assigned to another position in the district.".

The amendments were read.

Senator Shapleigh moved to concur in the House amendments to **SB 618**.

The motion prevailed by a viva voce vote.

SENATE BILL 1413 WITH HOUSE AMENDMENTS

Senator Deuell called **SB 1413** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend engrossed version **SB 1413** by adding Section 6. and renumbering accordingly.

Sec. 6. Section 146.021, Agriculture Code, is amended to read as follows:

Section 146.021. DEPARTMENT FACILITIES. The department may receive and hold for processing animals and animal products transported in international trade and may establish and collect reasonable fees for yardage, maintenance, feed, medical care, facility use and other necessary expenses incurred in the course of processing those animals.

Floor Amendment No. 2

Amend **SB 1413** in SECTION 1(2) of the bill (committee printing page 1, line 10), between "145," and "and", by inserting "149,".

Floor Amendment No. 3

Amend **SB 1413** by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Section 71.008, Agriculture Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not restrict the department's authority to establish on its own initiative an eradication program within a quarantined area to protect the state's agricultural resources.

SECTION _____. Subchapter A, Chapter 71, Agriculture Code, is amended by adding Section 71.0092 to read as follows:

Sec. 71.0092. SEIZURE, TREATMENT, HANDLING, AND DESTRUCTION OF CERTAIN MATERIALS WITHIN QUARANTINED AREA. (a) In this section, "quarantined article" means:

(1) a plant, plant product, substance, or other item capable of hosting or facilitating the dissemination of an insect pest or plant disease that is the subject of a quarantine established by the department under this subchapter; or

(2) a motor vehicle, railcar, other conveyance, or equipment used for, or intended for use in, the transportation or production of an item described by Subdivision (1).

(b) The department by rule may establish treatment and handling requirements for a quarantined article found within a quarantined area. The requirements must be designed to:

(1) prevent dissemination of a dangerous insect pest or plant disease outside the quarantined area or into a pest-free area in the state;

(2) prevent infestation of a quarantined article by a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter;

(3) decrease the occurrence in this state or a quarantined area of this state of a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter; or

(4) facilitate the eradication of a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter.

(c) A person in possession or control of a quarantined article located in a quarantined area shall comply with department rules and orders regarding treatment and handling of the quarantined article.

(d) If a person in possession or control of a quarantined article located in a quarantined area fails to comply with a department rule or order under this section, the department may at the expense of the person or of the owner of the article:

(1) seize the quarantined article and, subject to available department resources and Section 71.010:

(A) isolate the article in a manner designed to prevent the dissemination of the dangerous insect pest or plant disease until the article no longer represents a danger of dissemination or until the person agrees to comply with the rule or order;

(B) treat the article to eliminate the danger of dissemination of the dangerous insect pest or plant disease; or

(C) destroy the article; or

(2) seek an injunction from a district court in Travis County ordering the person to:

(A) comply with the department's rule or order; or

(B) surrender possession of the quarantined article to the department for disposition under Subdivision (1).

(e) If the owner of a quarantined article seized under this section is unknown to the department, the department shall publish notice that not earlier than the fifth day after the date on which the notice is published or posted the department may destroy, treat, or isolate the quarantined article at the owner's expense. The department must publish the notice for three consecutive days in a newspaper of general circulation in the county in which the quarantined article was seized. The notice must include a description of the quarantined article. If an owner claims the quarantined article before the date described by the notice and agrees in writing to treat or handle the article in a manner provided by department rule or order, the department shall deliver the quarantined article to the owner at the owner's expense. If an owner does not claim the quarantined article before the date described by the notice, the department may destroy or arrange for the destruction of the quarantined article or continue to isolate or treat the quarantined article at the owner's expense. If an owner refuses to agree in writing to comply with the department's rule or order regarding treatment or handling of a quarantined article, the department may destroy or arrange for the destruction of the quarantined article or continue to isolate or treat the quarantined article at the owner's expense, subject to Section 71.010.

(f) In enforcing this section, the department may seek the assistance of the Department of Public Safety under Section 71.0101, or any law enforcement officer of the county in which the quarantined article is located. The Department of Public Safety or local law enforcement officer shall cooperate with the department and provide any assistance necessary to implement this section.

(g) The owner of a quarantined article treated, isolated, or destroyed by the department under this section is liable to the department for the costs of treatment, isolation, and destruction, and the department may bring suit to collect the costs.

(h) The attorney general is entitled to court costs and reasonable attorney's fees in any suit brought on behalf of the department under this section, including any suit for an injunction.

(i) The department may enter into an agreement with a public or private entity to obtain assistance in defraying the cost of implementing this section.

Floor Amendment No. 4

Amend **SB 1413** by adding the following appropriately numbered Section to the bill and renumbering the subsequent Sections accordingly:

SECTION _____. Chapter 12, Agriculture Code is amended by adding Section 12.0012 to read as follows:

Section 12.0012 The department shall, upon submission for publication, notify the Department of Public Safety's Division of Emergency Management of each quarantine it adopts. The department shall thereafter cooperate with the Division of Emergency Management in implementing any necessary safeguards to protect the state's agricultural resources from potential economic, health, or ecological disaster that may result from the quarantined pest or disease.

Floor Amendment No. 1 on Third Reading

Amend **SB 1413**, on third reading, by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Section 60.063(c), Agriculture Code, is amended to read as follows:

(c) ~~A [If notice is given at closing, a]~~ purchaser or the purchaser's heirs, successors, or assigns may not maintain any action for damages or maintain any action against the seller, title insurance company, real estate brokers, or lienholder, or any agent, representative, or person acting in their behalf, by reason of the imposition of fees or assessments by the district authorized by this chapter. Notice is not required to be given pursuant to this section ~~[paragraph]~~ unless a certified copy of the order creating the district has been recorded in the real property records in the county in which the land is located and such order contains the legal description of the district. A purchaser, seller, lender, real estate broker, title insurance company, and title insurance agent may conclusively rely on the recorded certified copy of the order.

SECTION _____. SECTION _____, amending Section 60.063(c), Agriculture Code, takes effect only if House Bill 3383, proposed by the 78th Legislature, Regular Session, 2003, relating to agricultural development districts, is passed and becomes law. If that bill does not become law, this section has no effect.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1413** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Deuell, Chair; Barrientos, Jackson, Staples, and Madla.

SENATE BILL 1382 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1382** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1382** by adding the following new SECTION 5 to the bill and by renumbering existing SECTION 5 of the bill as SECTION 6 of the bill:

SECTION 5. If a conflict exists between this Act and another Act of the 78th Legislature, Regular Session, 2003, that amends the Self-Directed Semi-Independent Agency Project Act (Article 8930, Revised Statutes), including an Act that continues a project agency in accordance with Chapter 325, Government Code (Texas Sunset Act), this Act controls without regard to the relative dates of enactment.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **SB 1382**.

The motion prevailed by a viva voce vote.

SENATE BILL 1633 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1633** 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 1633** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the installation and use of a water softener or reverse osmosis system by an owner of an on-site sewage disposal system.

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

SECTION 1. Subchapter B, Chapter 366, Health and Safety Code, is amended by adding Section 366.013 to read as follows:

Sec. 366.013. INSTALLATION AND USE OF WATER SOFTENERS AND REVERSE OSMOSIS SYSTEMS. (a) Except as provided by Subsection (b), an owner may install or use a water softener that discharges effluent into an on-site sewage disposal system only if the installed water softener:

(1) conserves water by design;

(2) regenerates using a demand-initiated regeneration control device, commonly known as a DIR device; and

(3) is clearly labeled as being equipped with a DIR device, with the label affixed to the outside of the system so that it may be inspected and easily read.

(b) An owner may use a water softener that discharges effluent into an on-site sewage disposal system and that does not meet the requirements of Subsection (a) if the water softener was installed before September 1, 2003. The owner must replace the water softener with a water softener that meets the requirements of Subsection (a) if the owner:

(1) replaces the water softener; or

(2) installs a new on-site sewage disposal system for the building or other property served by the existing system.

(c) An owner may install and use a point-of-use reverse osmosis system that discharges effluent into an on-site sewage disposal system.

(d) An owner may install and use a point-of-entry reverse osmosis system that discharges effluent into an on-site sewage disposal system if the calculated volume of effluent:

(1) does not cause hydraulic overloading; or

(2) has been adequately addressed in the design of the on-site sewage disposal system.

(e) This section does not apply to an aerobic, nonstandard, or proprietary on-site sewage treatment system unless the water softener drain line to the system bypasses the treatment system and flows into the pump tank or directly into the discharge method.

(f) The commission by rule shall adopt and implement standards for the use of water softeners and reverse osmosis systems in a building or other property served by an on-site sewage disposal system.

SECTION 2. The Texas Commission on Environmental Quality shall adopt rules to implement the standards required by Section 366.013(f), Health and Safety Code, as added by this Act, not later than June 1, 2004.

SECTION 3. This Act takes effect September 1, 2003.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 1633**.

The motion prevailed by a viva voce vote.

SENATE BILL 1165 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1165** 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 1165** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain fees in Title IV-D cases.

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

SECTION 1. Section 231.202, Family Code, is amended to read as follows:

Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D CASES. In a Title IV-D case filed under this title, the Title IV-D agency shall pay:

(1) filing fees and fees for issuance and service of process as provided by Chapter 110 of this code and by Sections 51.317, 51.318(b)(2), and 51.319(2), Government Code;

(2) fees for transfer as provided by Chapter 110;

(3) fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110;

(4) the [a] fee that sheriffs and constables are authorized to charge for serving process under Section 118.131, Local Government Code, [of \$45] for each item of process to each individual on whom service is required, including service by certified or registered mail, to be paid to a sheriff, constable, or clerk whenever service of process is required; and

(5) the fee for filing an administrative writ of withholding under Section 158.503(d).

SECTION 2. This Act takes effect September 1, 2003, and applies only to a service of process made on or after that date. A service of process made before the effective date of this Act is governed by the law in effect on the date the service of process is made, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **SB 1165**.

The motion prevailed by a viva voce vote.

SENATE BILL 1470 WITH HOUSE AMENDMENT

Senator West called **SB 1470** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1470** as follows:

(1) On page 2, line 16, strike "one half" and substitute "one third".

(2) Strike lines 21 on page 2 through line 11 on page 3 and substitute the following:

(f) A ~~[Except as otherwise provided by this subsection, a]~~ student participating in a program authorized by this section must have taken the ~~[exit-level]~~ assessment instruments specified by Section ~~[39.025(a)]~~ 39.023(a) for grade 9 before entering the program and ~~[or]~~ must take each grade level ~~[those]~~ assessment instrument administered ~~[instruments]~~ during the period [first year] in which the student is enrolled in the program. ~~[The commissioner may authorize a student to take the assessment instruments required by Section 39.023(a) to be administered to students in grade 10 instead of the exit-level assessment instruments.]~~ A student participating in the program may not take the high school equivalency examination unless the student has taken the assessment instruments required by this subsection.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1470**.

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

SENATE BILL 19 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Ratliff, called **SB 19** 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 19** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to audit and other related functions of the State Auditor and of certain other state entities.

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

SECTION 1. Section 320.001, Government Code, is amended to read as follows:

Sec. 320.001. DEFINITION ~~[DEFINITIONS]~~. In this chapter, "mandate"~~[-~~

~~[(1) "interagency work group" means the unfunded mandates interagency work group.~~

~~[(2) "Mandate"]~~ means a requirement made by a statute enacted by the legislature on or after January 1, 1997, that requires a political subdivision to establish, expand, or modify an activity in a way that requires the expenditure of revenue by the political subdivision that would not have been required in the absence of the statutory provision.

SECTION 2. Section 321.001, Government Code, is amended to read as follows:

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Audit plan" means the outline of work approved by the committee for the State Auditor's Office in a year for the performance of audits and related services, including technical assistance, data analysis, consulting and oversight functions, investigations, and the preparation of audit reports and other types of communications.

(2) "Audit working paper" means all documentary and other information prepared or maintained in conducting an audit or investigation, including all intra-agency and interagency communications relating to an audit or investigation and all draft reports or portions thereof.

(3) ~~[(2)]~~ "Committee" means the legislative audit committee.

(4) ~~[(3)]~~ "Department" includes every state department, agency, board, bureau, institution, or commission.

(5) "Risk assessment" means the process by which the State Auditor analyzes risks to the state on the basis of, at a minimum, the following:

(A) the identification of problems that can occur in operational or program areas of departments, including institutions of higher education, that are subject to audit by the State Auditor;

(B) a determination of the potential adverse effects from the problems;
and

(C) a ranking of the risks associated with the problems.

SECTION 3. Subsection (a), Section 321.012, Government Code, is amended to read as follows:

(a) The committee directs and controls the expenditure of any money appropriated to the office of the State Auditor and must approve the State Auditor's appropriation requests and audit plan.

SECTION 4. Section 321.013, Government Code, is amended by amending Subsections (c) and (f) and adding Subsection (j) to read as follows:

(c) The State Auditor shall recommend the audit plan for the state for each ~~fiscal~~ year to the committee. In devising the plan, the State Auditor shall consider recommendations concerning coordination of agency functions made jointly by representatives of the Legislative Budget Board, Sunset Advisory Commission, and State Auditor's Office. The State Auditor shall also consider the extent to which a department has received a significant increase in appropriations, including a significant increase in federal or other money passed through to the department, and shall review procurement activities for compliance with Section 2161.123. The plan shall provide for auditing of federal programs at least as often as required under

federal law [~~once in each fiscal biennium~~] and shall ensure that audit requirements of all bond covenants and other credit or financial agreements are satisfied. The committee shall review and approve the plan.

(f) The State Auditor may conduct financial audits, compliance audits and investigations, and, with specific authority from the committee, economy and efficiency audits, effectiveness audits, and special audits[~~, and investigations~~] as defined by this chapter and specified in the audit plan.

(j) In devising the audit plan under Subsection (c), the State Auditor shall perform risk assessments as required by law. The process of assessing risks to the state is the first stage of auditing, and all records of risk assessment are part of the working papers of the State Auditor. Accordingly, all documentation of risk assessments by the State Auditor is exempt from disclosure under Section 552.116.

SECTION 5. Subsections (b) and (g), Section 321.014, Government Code, are amended to read as follows:

(b) The written report must include [~~a management letter with~~] comments about internal controls, compliance with state or federal laws, and recommendations for improving financial operations or program effectiveness, as applicable. The report must also include an opinion on fair presentation of financial statements if the State Auditor considers an opinion to be necessary.

(g) If a department or entity does not agree with a recommendation contained in [~~implement a change recommended by~~] the state auditor's report, the department or entity shall file a report with the state auditor and the persons specified by Subsection (c). The report must:

(1) identify the recommendation with which the department or entity did not agree [~~implement~~]; [~~and~~]

(2) state the reason the department or entity did not agree with [~~implement~~] the recommendation; and

(3) state whether the department or entity intends to implement the recommendation.

SECTION 6. Section 325.008, Government Code, is amended by adding Subsection (c) to read as follows:

(c) Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 7. Subsection (b), Section 325.012, Government Code, is amended to read as follows:

(b) On the date the commission presents its report to the legislature under Section 325.010, the commission shall present to the state auditor the commission's recommendations that do not require a statutory change to be put into effect. Based on a risk assessment and subject to the legislative audit committee's approval of including the examination in the audit plan under Section 321.013, the [~~The~~] state auditor may [~~shall~~] examine the recommendations and include[~~;~~] as part of the next approved [~~scheduled~~] audit of the agency[~~, shall prepare~~] a report on whether the [~~manner in which the~~] agency has implemented the recommendations and, if so, in what manner.

SECTION 8. Subsection (d), Section 326.003, Government Code, is amended to read as follows:

(d) Not later than one month after the date of a meeting, the [The] committee shall submit its recommendations in writing to the head of each agency and the members of the legislative audit committee [not later than one month after the date of a meeting].

SECTION 9. Section 403.028, Government Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Except as provided by Subsection (f), the [The] comptroller[~~, in consultation with the state auditor's office,~~] shall conduct a study each biennium to determine:

(1) the number and type of potential fraudulent claims for medical or health care benefits submitted:

(A) under the state Medicaid program, including the Medicaid managed care program implemented under Chapter 533; or

(B) by or on behalf of a state employee and administered by the attorney general under Chapter 501, Labor Code; and

(2) the need for changes to the eligibility system used under the state Medicaid program.

(f) The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the state auditor's advisory function in the audit plan under Section 321.013, may advise the comptroller in its conduct of the study required under Subsection (a).

SECTION 10. Subsection (c), Section 403.031, Government Code, is amended to read as follows:

(c) The comptroller, in consultation with the state auditor and the attorney general, may develop standards and criteria to account for or to reclassify receivables determined to be uncollectible. The standards and criteria developed by the comptroller must comply with generally accepted accounting principles as prescribed or modified by the Governmental Accounting Standards Board or its successors and must provide proper accounting controls to protect state finances. ~~The [state auditor and the] attorney general shall review and approve the standards and criteria for classification of receivables. Receivables may be reclassified as collectible or uncollectible [according to the process approved by the state auditor or] on a case-by-case basis as determined or approved by the attorney general [that office].~~ The classification of receivables as uncollectible under this subsection does not constitute forgiveness of the debt, and any person indebted to the state remains subject to Section 403.055.

SECTION 11. Section 403.250, Government Code, is amended to read as follows:

Sec. 403.250. DUTIES OF STATE AUDITOR. The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, may [shall routinely] audit state agencies for the proper use of petty cash accounts and promptly report shortages, abuses, or unwarranted uses of petty cash accounts to the legislature and the comptroller.

SECTION 12. Subsection (b), Section 403.272, Government Code, is amended to read as follows:

(b) All personal property owned by the state shall be accounted for by the agency that possesses the property. The comptroller shall define personal property by rule for the purposes of this subchapter. In adopting rules, the comptroller shall consider the value of the property, its expected useful life, and the cost of recordkeeping. ~~[The comptroller shall consult with the state auditor in drafting rules. The state auditor shall cooperate with the comptroller by giving technical assistance and advice.]~~

SECTION 13. Subsection (h), Section 403.273, Government Code, is amended to read as follows:

(h) The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the examination in the audit plan under Section 321.013, may [shall] periodically examine property records or inventory as necessary to determine if controls are adequate to safeguard state property.

SECTION 14. Subsections (c) and (d), Section 441.185, Government Code, are amended to read as follows:

(c) The state records administrator and the state archivist shall review the schedule and recommend the schedule's approval or disapproval to the director and librarian and the state auditor. The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, may review the schedule.

(d) If the director and librarian, and the state auditor, if the state auditor reviewed the schedule under Subsection (c), approve the schedule, the schedule may be used as the basis for the lawful disposition of state records under Section 441.187 for a period to be determined by the commission.

SECTION 15. Section 441.203, Government Code, is amended by adding Subsection (k) to read as follows:

(k) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 16. Subsection (d), Section 445.012, Government Code, is amended to read as follows:

(d) The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, may [shall annually] review the annual report on the fund, and any information used in preparing the report as the auditor determines necessary, and shall report any findings or recommendations to the museum and the legislative audit committee.

SECTION 17. Section 651.007, Government Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsection (j) to read as follows:

(b) Each state agency shall conduct an exit interview with an employee who leaves employment with the agency. The state agency shall conduct the exit interview by having the employee access the questionnaire posted on the state auditor's Internet

site and electronically submit the completed questionnaire to the state auditor. The questionnaire must state that the employee has the option of having the employee's questionnaire furnished to the head of the agency or the governor's office.

(c) The state agency shall conduct the exit interview in a manner that allows the employee alone to describe the employee's reason for leaving employment. The state agency may not alter the description stated by the employee. The state agency may not have access to the questionnaire unless it is provided by the employee under Subsection (b).

(d) Subject to Subsection (j), the [The] state auditor shall develop the exit interview questionnaire. In developing the questionnaire under this subsection, the state auditor shall consult with the comptroller and representatives designated by the comptroller from small, medium, and large state agencies.

(e) Not later than the 15th day following the end of the calendar quarter, the state auditor shall submit, subject to Subsection (j), a report to each state agency containing the responses to the exit interview questionnaire submitted by each former employee of the agency during the preceding quarter. The state auditor's report may not contain the name of an employee or any other information identifying the employee.

(g) The responses to an exit interview questionnaire are confidential and not subject to disclosure under Chapter 552, including responses to a questionnaire furnished to an entity listed under Subsection (b). The responses may be disclosed only to a law enforcement agency in a criminal investigation or on order of a court.

(h) Subject to Subsection (j), the [The] state auditor may audit each state agency's records to determine whether the agency is complying with the requirements of this section.

(j) Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 18. Section 654.037, Government Code, is amended to read as follows:

Sec. 654.037. SALARY STUDIES AND RECOMMENDATIONS. (a) The classification officer shall:

(1) make periodic studies of salary rates in other governmental units and in industry for similar work performed in state government; and

(2) report the classification officer's findings from the studies made under Subdivision (1) [and recommendations for adjusting state salary ranges] to the governor's budget office and the Legislative Budget Board not later than October 1 preceding each regular session of the legislature.

(b) The classification officer shall conduct, before September 1 of each even-numbered year, a survey of local law enforcement departments that employ more than 1,000 commissioned law enforcement officers to gather information about the total compensation provided by the departments to law enforcement officers. Before January 1 of each odd-numbered year, the classification officer shall analyze the findings of the most recent survey conducted in accordance with this subsection and shall submit to the legislature a report on the findings of the survey and analysis.

The report must identify the five local law enforcement departments that provide the highest average total compensation to local law enforcement officers who have been employed by the local law enforcement departments at the maximum salary level.

(c) To improve the ability of the state to recruit and retain qualified law enforcement officers, the legislature may consider the report submitted under Subsection (b) in determining the salaries of all state law enforcement officers who hold a position classified under the state employee classification system and are compensated under Salary Schedule C of the General Appropriations Act.

SECTION 19. Section 654.041, Government Code, is amended to read as follows:

Sec. 654.041. EXAMINATION FOR COMPLIANCE BY STATE AUDITOR; REPORTS. The state auditor, subject to a risk assessment and to the Legislative Audit Committee's approval of including the examination in the audit plan under Section 321.013, may ~~shall~~:

(1) examine or cause to be examined, in periodic postaudits of their expenditures and by methods the auditor considers appropriate and adequate, whether departments and agencies are in compliance with this chapter; and

(2) report the findings to the governor, the comptroller, and the Legislative Audit Committee.

SECTION 20. Subsections (b) and (c), Section 660.030, Government Code, are amended to read as follows:

(b) The comptroller ~~[and the state auditor]~~ periodically shall examine the vouchers and other expense reimbursement forms submitted by a state agency for payment of a travel expense payable under this chapter to determine compliance with Section 660.003(e) and:

(1) whether the travel expenses were incurred in the conduct of official state business;

(2) whether the state-business-related activities conducted during the travel were necessary to perform the state business;

(3) whether the travel was necessary to perform the state business conducted; and

(4) in a case in which vouchers or other expense reimbursement forms have been submitted for more than one individual for the same or similar travel, whether the number of individuals traveling was necessary to perform the state business.

(c) The comptroller ~~[and the state auditor each]~~ shall develop procedures for examining travel vouchers and other expense reimbursement forms. ~~[If the comptroller believes that the criteria prescribed by Subsection (b) have not been satisfied, the comptroller shall provide that information to the state auditor for review.]~~

SECTION 21. Section 751.011, Government Code, is amended to read as follows:

Sec. 751.011. BOARD DUTIES. ~~[(a)]~~ The board shall review the office's priorities and strategies set forth in the annual report and deliver to the director any suggested modifications.

~~[(b) The board shall review any interagency contract under Section 751.012 and shall approve a contract only if the contract meets the requirements of that section.]~~

SECTION 22. Subsection (d), Section 813.506, Government Code, is amended to read as follows:

(d) As part of the audit of the Texas Department of Criminal Justice by the state auditor in accordance with Chapter 321, the state auditor may verify the accuracy of reports submitted to the retirement system under this section. ~~[The state auditor shall review biennially the standards adopted by the department under Subsection (a).]~~

SECTION 23. Section 2052.104, Government Code, is amended to read as follows:

Sec. 2052.104. STATE AUDITOR'S POWERS AND DUTIES. (a) Subject to Subsection (c), the ~~[The]~~ state auditor may audit a state agency to ensure:

- (1) the accuracy of information reported under this subchapter; and
- (2) compliance with this subchapter.

(b) The state auditor shall:

(1) ~~[adopt rules for the manner in which a report must be made under Section 2052.103;~~

~~[(2)]~~ prepare annual ~~[quarterly]~~ summary reports from ~~[the]~~ information provided in the reports filed under Section 2052.103; and

~~(2) [(3)]~~ provide copies of the summary reports to:

- (A) the Legislative Budget Board;
- (B) the governor; and
- (C) the comptroller.

(c) Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 24. Subsection (a), Section 2054.060, Government Code, is amended to read as follows:

(a) A digital signature may be used to authenticate a written electronic communication sent to a state agency if it complies with rules adopted by the department. ~~[Before adopting the rules, the department shall consult with the comptroller, state auditor, attorney general, secretary of state, and office of court administration, and with representatives of county and municipal governments, regarding the content of the rules. When adopting the rules, the department shall consider factors that may affect the reliability of a digital signature, including whether a digital signature is:~~

~~[(1) unique to the person using it;~~

~~[(2) capable of independent verification;~~

~~[(3) under the sole control of the person using it; and~~

~~[(4) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.]~~

SECTION 25. Subsections (a) and (b), Section 2054.123, Government Code, are amended to read as follows:

(a) The department, in consultation with the Texas Building and Procurement [General Services] Commission, the state auditor, and the comptroller, shall create an interagency panel of representatives appointed by those agencies and officers to coordinate and maintain ~~[develop and establish]~~ a training program to assist state agencies in performing software audits, managing software, and purchasing software

and software licenses. Each state agency shall cooperate with the panel in the evaluation of the agency's needs for software management and shall donate agency resources to the evaluation of the agency as the panel requires.

(b) The interagency panel initially shall concentrate on the software purchasing and management needs of the 20 state agencies that have the largest amounts budgeted for expenditures related to software. The 20 state agencies shall send employees, appropriately selected, to attend training programs developed under this section.

SECTION 26. Subsection (b), Section 2054.253, Government Code, as added by Chapter 342, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(b) With the approval of the legislative audit committee, a [A] representative of the state auditor shall advise the authority.

SECTION 27. Section 2055.056, Government Code, is amended to read as follows:

Sec. 2055.056. QUALITY ASSURANCE. (a) In coordination with the ~~[state auditor, the]~~ Legislative Budget Board, ~~[and]~~ the affected state agency, and, subject to Subsection (b), the state auditor, the office shall provide quality assurance services to monitor electronic government projects selected under Section 2055.101.

(b) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 28. Section 2055.057, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) In coordination with the comptroller, the Governor's Office of Budget and Planning, the [state auditor, and] Legislative Budget Board, and, subject to Subsection (c), the state auditor, the office shall develop a model for funding the office from a portion of the money appropriated for projects selected under Section 2055.101, including staff necessary for the office.

(c) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 29. Section 2055.101, Government Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The office, in coordination with the governor, ~~the [state auditor, and]~~ Legislative Budget Board, and, subject to Subsection (d), the state auditor, shall develop selection criteria for the type of electronic government projects that require direct oversight by the office. The criteria must include:

- (1) issues related to interagency cooperation and implementation;
- (2) costs, including reimbursement strategies;
- (3) requirements for authentication and security implications; and
- (4) the state's strategic vision regarding electronic government projects.

(c) Based on any selection criteria adopted under Subsection (b) and in coordination with the governor, ~~the [state auditor, and]~~ Legislative Budget Board, and, subject to Subsection (d), the state auditor, the office may select proposed or existing electronic government projects.

(d) Participation by the state auditor under Subsections (a) and (c) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 30. Section 2055.151, Government Code, is amended by adding Subsection (e) to read as follows:

(e) Participation by the state auditor on the committee is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 31. Section 2055.153, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) In coordination with the quality assurance team of the Legislative Budget Board and, subject to Subsection (c), the state auditor, the office shall establish a state agency reporting system that requires state agencies to report to the office on:

(1) electronic government projects selected under Section 2055.101 so that the office may effectively monitor those projects; and

(2) all other electronic government projects for that agency.

(c) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 32. Section 2102.012, Government Code, is amended to read as follows:

Sec. 2102.012. PROFESSIONAL DEVELOPMENT. (a) Subject to approval by the legislative audit committee, the [The] state auditor may [shall] make available and [shall] coordinate a program of training and technical assistance to ensure that state agency internal auditors have access to current information about internal audit techniques, policies, and procedures and to provide general technical and audit assistance to agency internal auditors on request.

(b) The state auditor is entitled to reimbursement for costs associated with providing the services under the terms of interagency cooperation contracts negotiated between the state auditor and each agency. The costs may not exceed those allowed by the General Appropriations Act. Work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 33. Section 2104.0215, Government Code, is amended by adding Subsection (e) to read as follows:

(e) Participation by the state auditor under Subsection (a) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 34. Section 2156.004, Government Code, is amended to read as follows:

Sec. 2156.004. BID DEPOSIT. (a) The commission, as considered necessary, may require a bid deposit in an amount determined by the commission. The amount of the deposit, if any, must be stated in the public notice and the invitation to bid.

(b) ~~[The commission, with the cooperation of the state auditor, shall establish and maintain a record of each bid deposit and its disposition.]~~

~~(e)~~ On the award of a bid or the rejection of all bids, the commission shall refund the bid deposit of an unsuccessful bidder.

(c) ~~(d)~~ The commission may accept from a bidder a bid deposit in the form of a blanket bond.

SECTION 35. Subsection (d), Section 2161.123, Government Code, is amended to read as follows:

(d) The commission and the state auditor shall cooperate to develop procedures providing for random periodic monitoring of ~~[to periodically monitor]~~ state agency compliance with this section. The state auditor shall report to the commission a state agency that is not complying with this section. In determining whether a state agency is making a good faith effort to comply, the state auditor shall consider whether the agency:

- (1) has adopted rules under Section 2161.003;
- (2) has used the commission's directory under Section 2161.064 and other resources to identify historically underutilized businesses that are able and available to contract with the agency;
- (3) made good faith, timely efforts to contact identified historically underutilized businesses regarding contracting opportunities; and
- (4) conducted its procurement program in accordance with the good faith effort methodology set out in commission rules.

SECTION 36. Subsection (b), Section 2161.124, Government Code, is amended to read as follows:

(b) The commission~~[, in cooperation with the state auditor,]~~ shall develop a standard form for the report.

SECTION 37. Section 2175.061, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Subject to Subsection (c) ~~[the review and comment of the state auditor]~~, the commission may prescribe forms and reports necessary to administer this chapter and may adopt necessary rules, including rules governing the sale or transfer of surplus or salvage property to state agencies, political subdivisions, or assistance organizations.

(c) Subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, the state auditor may review and comment on the forms and reports prescribed and the rules adopted by the commission under Subsection (b).

SECTION 38. Section 2177.003, Government Code, is amended to read as follows:

Sec. 2177.003. CONSULTATION. The commission, at least quarterly, shall consult with the following entities to ensure that the electronic procurement system meets the needs of users of the system:

- (1) the department;
- (2) ~~[the state auditor;~~
- ~~(3)~~ groups, including coordinating councils, created by the commission to assist with electronic commerce initiatives;
- (3) ~~(4)~~ the vendor advisory committee established under Section 2155.081; and
- (4) ~~(5)~~ other state agencies and local governments that use the system.

SECTION 39. Subsections (a) and (c), Section 2205.004, Government Code, are amended to read as follows:

(a) The board is composed of:

- (1) a member appointed by the governor;
- (2) a member appointed by the lieutenant governor;
- (3) a member appointed by the speaker of the house of representatives; and
- (4) a representative of the Texas Building and Procurement [General Services] Commission, designated from time to time by the presiding officer of the commission~~;~~ and

~~[(5) a representative of the state auditor's office, designated from time to time by the state auditor].~~

(c) The representative [representatives] of the Texas Building and Procurement [General Services] Commission is an [and the state auditor's office are] ex officio, nonvoting member [members] of the board and serves [serve] only in an advisory capacity.

SECTION 40. Subsection (n), Section 2256.005, Government Code, is amended to read as follows:

(n) Except as provided by Subsection (o), at least once every two years a state agency shall arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies. The compliance audit shall be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Not later than January 1 of each even-numbered year~~;~~ a state agency shall report the results of the most recent audit performed under this subsection to the state auditor. Subject to a risk assessment and to the legislative audit committee's approval of including a review by the state auditor in the audit plan under Section 321.013, the state auditor may review information provided under this section. If review by the state auditor is approved by the legislative audit committee, the state auditor may, based on its review, require a [A] state agency to also [shall] report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. A report under this subsection shall be prepared in a manner the state auditor prescribes.

SECTION 41. Section 2256.022, Government Code, is amended to read as follows:

Sec. 2256.022. EXPANSION OF INVESTMENT AUTHORITY. Expansion of investment authority granted by this chapter shall require a risk assessment by the state auditor or performed at the direction of the state auditor, subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013.

SECTION 42. Section 2261.203, Government Code, is amended to read as follows:

Sec. 2261.203. COMPARABLE COSTS. ~~(e)~~ Each state agency that makes procurements to which this chapter applies shall monitor performance under a contract to verify that comparable costs are being charged for comparable goods and services.

~~[(b) The state auditor on request shall assist a state agency's monitoring efforts under this section.]~~

SECTION 43. Subchapter A, Chapter 2262, Government Code, is amended by adding Section 2262.003 to read as follows:

Sec. 2262.003. REQUIRED CONTRACT PROVISION RELATING TO AUDITING. (a) Each state agency shall include in each of its contracts a term that provides that:

(1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract; and

(2) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

(b) The state auditor shall provide assistance to a state agency in developing the contract provisions.

SECTION 44. Subsection (a), Section 2262.051, Government Code, is amended to read as follows:

(a) In consultation with the Texas Building and Procurement Commission, the Department of Information Resources, the comptroller, and the state auditor, the attorney general shall develop and periodically update a contract management guide for use by state agencies. Participation by the state auditor under this subsection is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

SECTION 45. Subsection (b), Section 2262.052, Government Code, is amended to read as follows:

(b) Subject to the legislative audit committee's approval of including the work described by this subsection in the audit plan under Section 321.013(c), the [The] state auditor may ~~shall~~:

- (1) periodically monitor compliance with this section;
- (2) report any noncompliance to:
 - (A) the governor;
 - (B) the lieutenant governor;
 - (C) the speaker of the house of representatives; and
 - (D) the team; and

(3) assist, in coordination with the attorney general and the comptroller, a noncomplying state agency to comply with this section.

SECTION 46. Section 2262.053, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Building and Procurement Commission shall administer the training program under this section.

SECTION 47. Subsection (a), Section 2306.074, Government Code, is amended to read as follows:

(a) The ~~[state auditor or a certified public accountant shall audit the]~~ department's books and accounts must be audited each fiscal year by a certified public accountant or, if requested by the department and if the legislative audit committee

approves including the audit in the audit plan under Section 321.013(c), by the state auditor. A ~~and file a~~ copy of the audit must be filed with the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report as required by the General Appropriations Act. If the state auditor is conducting the audit and it is not available by the 30th day after the submission date as required by the General Appropriations Act for annual financial reporting, it must be filed as soon as it is available.

SECTION 48. Subsection (b), Section 16.142, Water Code, is amended to read as follows:

(b) The board by rule shall set the fee at an amount it considers necessary to recover the costs incurred or to be incurred by the board in administering the project over its life, including the costs of processing an application, monitoring construction, and auditing and monitoring the project. The state auditor may ~~shall~~ review fees charged by the board to determine whether the fees are set consistent with this subsection, based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

SECTION 49. Subsection (b), Section 20.020, Water Code, is amended to read as follows:

(b) The ~~board shall have an audit made by the~~ state auditor may audit ~~or by a certified public accountant of~~ the authority's books and accounts, based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, Government Code ~~for each fiscal year~~. The cost of an an ~~the~~ audit shall be paid by the authority.

SECTION 50. Subsection (b), Section 36.061, Water Code, is amended to read as follows:

(b) The state auditor may audit the records ~~financial transactions~~ of any district if the state auditor determines that the audit is necessary.

SECTION 51. Section 36.153, Water Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Annually and subject to Subsection (c), the board shall have an audit made of the financial condition of the district.

(c) The district is exempt from the requirement under Subsection (a) if it had:

(1) not more than \$500 in receipts from operations, tax assessments, loans, contributions, or any other sources during the calendar year;

(2) not more than \$500 in disbursements of funds during the calendar year;

(3) no bonds or other liabilities with terms of more than one year outstanding during the calendar year; and

(4) no cash or investments amounting to more than \$5,000 at any time during the calendar year.

(d) A financially dormant district may elect to submit to the executive director a financial dormancy affidavit instead of complying with the audit requirements of Section 49.191.

SECTION 52. Subsections (b), (c), and (d), Section 36.302, Water Code, are amended to read as follows:

(b) The commission, the Texas Water Development Board, and the Parks and Wildlife Department shall provide technical assistance to the state auditor's office for a ~~the~~ review performed under Subsection (a).

(c) In a review performed under Subsection (a), the ~~The~~ state auditor shall make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an analysis ~~audit~~ of the district's activities ~~performance under the plan~~.

(d) The state auditor may perform the review under Subsection (a) ~~shall conduct such audits~~ following the first anniversary of the initial certification of the plan by the Texas Water Development Board under Section 36.1072 and at least as often as once every seven years after that date, subject to a risk assessment and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code ~~following the end of every five year period thereafter~~.

SECTION 53. Section 49.195, Water Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Subject to Subsection (f), the ~~The~~ commission may request that the state auditor assist in the establishment of standards and procedures for review of district audits by the executive director.

(f) Participation by the state auditor under Subsection (b) is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

SECTION 54. Subsection (b), Section 152.203, Water Code, is amended to read as follows:

(b) The river authority shall:

(1) maintain the appraisal on file as a public record; and

(2) file a copy of the appraisal with the Texas Commission on Environmental Quality ~~state auditor~~.

SECTION 55. Subsection (h), Section 22.004, Education Code, is amended to read as follows:

(h) An audited financial statement provided under this section must be made in accordance with rules adopted by the commissioner of insurance or with generally accepted accounting principles ~~state auditor~~, as applicable.

SECTION 56. Subsection (q), Section 42.152, Education Code, is amended to read as follows:

(q) The State Board of Education, with the assistance of the ~~state auditor and the~~ comptroller, shall develop and implement by rule a reporting and auditing system for district and campus expenditures of compensatory education funds to ensure that compensatory education funds, other than the indirect cost allotment, are spent only to supplement the regular program. The commissioner, in the year following an audit of compensatory education expenditures, shall withhold from a district's foundation school fund payment an amount equal to the amount of compensatory education funds the agency determines were not used in compliance with Subsection (c). The commissioner shall release to a district funds withheld under this subsection when the district provides to the commissioner a detailed plan to spend those funds in compliance with Subsection (c).

SECTION 57. Subsection (e), Section 43.006, Education Code, is amended to read as follows:

(e) If an investment contract entered into under Subsection (b) includes the permanent school fund within the scope of funds under the control and management of the State Board of Education to be invested by the corporation, the board shall provide for an annual financial audit of the permanent school fund. Subject to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013(c), Government Code, the ~~The~~ audit shall be performed by the state auditor.

SECTION 58. Section 102.52, Education Code, is amended to read as follows:

Sec. 102.52. TRANSFER OF MONEY; DISBURSEMENTS. All money so received shall be transferred as soon as available to the West Texas State University Foundation or to any other fund or foundation chosen by agreement between the donors and the administration of the university. The disbursement of all this money is under the supervision of the business manager of the university~~[-, subject to accounting procedures approved by the state auditor].~~

SECTION 59. Subsection (c), Section 130.0035, Education Code, is amended to read as follows:

(c) The Legislative Budget Board shall be responsible for recommending ~~develop recommended~~ standards for reports under this section, in consultation with junior college districts, the Texas Higher Education Coordinating Board, and the governor's office of budget and planning~~[-, and the state auditor].~~

SECTION 60. Subsection (a), Section 21.455, Labor Code, is amended to read as follows:

(a) A state agency shall reimburse the commission through interagency contract for the reasonable and necessary expenses incurred by the commission in conducting a review under Section 21.453. ~~[The actual expenses incurred by the commission shall be determined by the state auditor's office.]~~

SECTION 61. Subsection (e), Section 21.556, Labor Code, is amended to read as follows:

(e) An agency required to participate in a program under this section shall pay the cost of attending the program or shall reimburse the commission or state agency providing the program through interagency contract. The cost of providing the program shall be determined and approved by the commission or state agency ~~in cooperation with the state auditor's office~~. The state auditor may audit the commission's expenditure of fees collected under this section based on a risk assessment performed by the state auditor and subject to the approval by the legislative audit committee of including the audit in the audit plan under Section 321.013, Government Code.

SECTION 62. Subsection (d), Section 205.019, Labor Code, is amended to read as follows:

(d) The state auditor may ~~shall~~ review the reimbursement of funds ~~affected entities~~ for compliance by the affected entities with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

SECTION 63. Subsection (d), Section 506.002, Labor Code, is amended to read as follows:

(d) The state auditor may ~~[shall]~~ review affected entities for compliance with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

SECTION 64. Subsection (a), Section 140.007, Local Government Code, is amended to read as follows:

(a) To assist counties, ~~[the state auditor in consultation with]~~ the comptroller of public accounts may develop, promulgate, and widely distribute forms, with instruction, for cost accounting for public improvements. The ~~[auditor and the]~~ comptroller shall consult with large and small governmental entities and the construction industry prior to the promulgation of the forms and instructions.

SECTION 65. Subsection (e), Section 391.0095, Local Government Code, is amended to read as follows:

(e) A commission shall send to the state auditor, the comptroller, and the Legislative Budget Board a copy of each report and audit required under this section or under Section 391.009. The state auditor may ~~[shall]~~ review each audit and report, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code. If the state auditor reviews the audit report, the state auditor ~~[and]~~ must be given access to working papers and other supporting documentation that the state auditor determines is necessary to perform the review. If the state auditor finds significant issues involving the administration or operation of a commission or its programs, the state auditor shall report its findings and related recommendations to the legislative audit committee, the governor, and the commission. The governor and the legislative audit committee may direct the commission to prepare a corrective action plan or other response to the state auditor's findings or recommendations. The legislative audit committee may direct the state auditor to perform any additional audit or investigative work that the committee determines is necessary.

SECTION 66. Subsection (b), Section 11.017, Health and Safety Code, is amended to read as follows:

(b) The state auditor may ~~[shall]~~ audit the financial transactions of the board in accordance with Chapter 321, Government Code, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013, Government Code.

SECTION 67. Subsection (b), Section 242.005, Health and Safety Code, is amended to read as follows:

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

SECTION 68. Subsection (b), Section 451.452, Transportation Code, is amended to read as follows:

(b) The state auditor may elect to ~~[shall]~~ file any comments about the audit with the legislative audit committee and the board, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the preparation of the comments in the audit plan under Section 321.013, Government Code.

SECTION 69. Subsection (b), Section 452.452, Transportation Code, is amended to read as follows:

(b) The state auditor may elect to ~~[shall]~~ file any comments about the audit with the legislative audit committee and the subregional board, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the preparation of the comments in the audit plan under Section 321.013, Government Code.

SECTION 70. Section 58.017, Agriculture Code, is amended to read as follows:

Sec. 58.017. PERFORMANCE MEASURES. The Board, in conjunction with the Legislative Budget Board~~[, the state auditor,]~~ and the Office of the Governor, shall develop a minimum of two performance measures that provide information on the benefits of the authority's loan programs. The performance measures shall be included in the report required under Section 58.016(d) of this code or as a component of the measures incorporated into the General Appropriations Act.

SECTION 71. Article 60.02, Code of Criminal Procedure, is amended by adding Subsection (m) to read as follows:

(m) Notwithstanding Subsection (j), work performed under this section by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

SECTION 72. Subsection (d), Section 231.011, Family Code, as added by Chapter 556, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(d) Each agency represented on the work group shall identify specific child support services that are related to the agency's areas of core competence and may be provided by the agency under a contract. The ~~[state auditor and the State Council on Competitive Government shall assist:~~

~~[(1) the agencies in identifying the child support services that are within the agency's core competency; and~~

~~[(2) the work group shall develop [in developing] strategies to obtain child support services from the agencies.~~

SECTION 73. Subsection (d), Section 11.0182, Parks and Wildlife Code, is amended to read as follows:

(d) ~~The [At least once each biennium the]~~ state auditor may ~~[shall]~~ audit the fund-raising activities performed under this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013(c), Government Code. If the state auditor performs an audit, the ~~[The]~~ audit shall disclose who has engaged in fund-raising activities for the department and the value of gifts each person has received or solicited. The state auditor shall report the results of the audit to the

presiding officer of each house of the legislature and of each committee having primary jurisdiction over the department. Each member of the legislature may access the report.

SECTION 74. The following laws are repealed:

- (1) Sections 320.002, 481.123, 552.010, 659.2552, 751.012, 772.0031, 2155.071, 2170.006, and 2176.108, Government Code;
- (2) Subsection (g), Section 2155.067, Subsection (l), Section 2155.083, and Subsection (e), Section 2155.144, Government Code;
- (3) Article 24.21, Insurance Code;
- (4) Subsection (d), Section 302.057, Occupations Code;
- (5) Section 4, Chapter 314, Acts of the 45th Legislature, Regular Session, 1937 (Article 6144cc, Vernon's Texas Civil Statutes); and
- (6) Section 17, Article 5.76-3, Insurance Code.

SECTION 75. The change in law made by Section 2262.003, Government Code, as added by this Act:

- (1) applies only in relation to a state contract entered into on or after the effective date of this Act; and
- (2) does not affect any authority under other law to conduct an audit or investigation in relation to a state contract entered into before the effective date of this Act.

SECTION 76. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 19** as follows:

Amend SECTION 74 as follows:

In Subdivision 1, insert "(d)" following "751.012" and insert Section 751.012(c)(4). Conform subsequent sections following Section 751.012(c) appropriately.

The amendments were read.

Senator Armbrister, on behalf of Senator Ratliff, moved to concur in the House amendments to **SB 19**.

The motion prevailed by a viva voce vote.

(Senator Armbrister in Chair)

SENATE BILL 1192 WITH HOUSE AMENDMENT

Senator Carona called **SB 1192** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1192** to read as follows:

1) On page 2, beginning on line 7, strike "self-insured governmental entity, or self-insurance pool or joint insurance fund created by one or more political subdivisions under Chapter 791, Government Code, or Chapter 504, Labor Code,"

2) On page 2, beginning on line 12, after "insurer," strike "self-insurer governmental entity, or self-insurance pool or joint insurance fund created by one or more political subdivisions under Chapter 791, Government Code, or Chapter 504, Labor Code,"

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1192**.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 30, 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 CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 1887 (House concurs by a vote of 133 yeas, 2 nays, 3 pnv)

HJR 51 (House concurs by a vote of 143 yeas, 0 nays, 1 pnv)

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

HB 1606

House Conferees: Wolens - Chair/Denny/Keel/Madden/Wilson/

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

SB 16

House Conferees: Woolley - Chair/Canales/Eissler/Grusendorf/Madden/

SB 160

House Conferees: Capelo - Chair/Laubenberg/McReynolds/Naishtat/Zedler/

SB 463

House Conferees: Eiland - Chair/Bonnen/Deshotel/Ritter/Seaman/

SB 473

House Conferees: Giddings - Chair/Corte/Elkins/Oliveira/Talton/

SB 610

House Conferees: Capelo - Chair/Laubenberg/Naishtat/Truitt/Zedler/

SB 631

House Conferees: Talton - Chair/Denny/Ellis/Howard/Keel/

SB 976

House Conferees: Morrison - Chair/Brown, Fred/Delisi/Goolsby/West, George "Buddy"/

SB 1015

House Conferees: Elkins - Chair/Keel/Martinez Fischer/Talton/Wise/

SB 1059

House Conferees: Marchant - Chair/Cook, Byron/Elkins/Lewis/Madden/

SB 1639

House Conferees: Hope - Chair/Cook, Robby/Geren/Miller/Puente/

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 1165 (non-record vote)

HB 1702 (House adopts ccr by a vote of 135 yeas, 0 nays, 2 pnv)

SB 418 (House concurs by a vote of 146 yeas, 0 nays, 1 pnv)

SB 827 (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 705 WITH HOUSE AMENDMENT

Senator Jackson called **SB 705** 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 705** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the donation by a county of salvage and surplus property to a civic or charitable organization.

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

SECTION 1. Section 263.152(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may:

(1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property;

(2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county; ~~[or]~~

(3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made; or

(4) dispose of the property by donating it to a civic or charitable organization located in the county if the commissioners court determines that:

(A) undertaking to sell the property under Subdivision (1) would likely result in no bids or a bid price that is less than the county's expenses required for the bid process;

(B) the donation serves a public purpose; and

(C) the organization will provide the county with adequate consideration, such as relieving the county of transportation or disposal expenses related to the property.

SECTION 2. Chapter 285, Health and Safety Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 285.901. DISPOSITION OF SALVAGE AND SURPLUS PROPERTY. (a)

In this section:

(1) "Salvage property" has the meaning assigned by Section 263.151, Local Government Code.

(2) "Surplus property" has the meaning assigned by Section 263.151, Local Government Code.

(b) The governing board of a hospital district may dispose of the hospital district's surplus or salvage property in the same way that a commissioners court of a county may dispose of the county's surplus or salvage property under Section 263.152, Local Government Code.

SECTION 3. Section 263.152(c), Local Government Code, is repealed.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The amendment was read.

Senator Jackson moved to concur in the House amendment to **SB 705**.

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

SENATE BILL 1343 WITH HOUSE AMENDMENT

Senator Jackson called **SB 1343** 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 1343** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation and operation of certain career schools and colleges.

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

ARTICLE 1. SUBSTANTIVE CHANGES REGARDING CAREER
SCHOOLS AND COLLEGES

SECTION 1.01. Section 132.001, Education Code, is amended by amending Subdivisions (1)-(8), (10), and (12) and adding Subdivision (13) to read as follows:

(1) "Career school or college" [~~"Proprietary school"~~] means any business enterprise operated for a profit[?] or on a nonprofit basis[?] that maintains a place of business within this state[?] or solicits business within this state, [~~and~~] that is not specifically exempted by this chapter, and:

(A) that offers or maintains a course or courses of instruction or study;

or

(B) at which place of business such a course or courses of instruction or study are [~~is~~] available through classroom instruction or by distance education [~~correspondence~~], or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(2) "Owner" of a career school or college [~~proprietary school~~] means:

(A) in the case of a career school or college owned by an individual, that individual;

(B) in the case of a career school or college owned by a partnership, all full, silent, and limited partners;

(C) in the case of a career school or college owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares;

(D) in the case of a career school or college in which the ownership interest is held in trust, the beneficiary of that trust; or

(E) in the case of a career school or college owned by another legal entity, a person who owns at least 10 percent ownership interest in the entity.

(3) "School employee" means any person, other than an owner, who directly or indirectly receives compensation from a career [~~proprietary~~] school or college for services rendered.

(4) "Representative" means a person employed by a career [~~proprietary~~] school or college, whether the school or college is located within or without this state, to act as an agent, solicitor, broker, or independent contractor to directly procure students for the school or college by solicitation within or without this state at any place.

(5) "Agency administrator" means the agency administrator of the Texas Workforce Commission or a person, knowledgeable in the administration of regulating career [~~proprietary~~] schools and colleges, designated by the agency administrator to administer this chapter.

(6) "Notice to the career school or college" [~~proprietary school~~] means written correspondence sent to the address of record for legal service contained in the application for a certificate of approval. "Date of Notice" means the date the notice is mailed by the commission.

(7) "Support" or "supported" means the primary source and means by which a career [~~proprietary~~] school or college derives revenue to perpetuate its operation.

(8) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination [~~thereof~~].

(10) "Small career school or college" [~~proprietary school~~] means a career [~~proprietary~~] school or college that does not receive any payment from federal funds under 20 U.S.C. Section 1070 et seq. and its subsequent amendments or a prepaid federal or state source as compensation in whole or in part for any student tuition and fees or other charges and either:

(A) has an annual gross income from student tuition and fees that is less than or equal to \$100,000 for programs regulated by the agency;

(B) exclusively offers programs to assist students to prepare for an undergraduate or graduate course of study at a college or university; or

(C) exclusively offers programs to assist students, who have obtained, or who are in the process of obtaining, degrees after completing an undergraduate or graduate course of study at a college or university, to prepare for an examination.

(12) "Division" means the division of education of [~~the~~] the commission.

(13) "Distance education" means a formal education process in which:

(A) the student and instructor are separated by physical distance; and

(B) a variety of communication technologies may be used to deliver synchronous or asynchronous instruction to the student.

SECTION 1.02. Subchapter A, Chapter 132, Education Code, is amended by adding Section 132.0015 to read as follows:

Sec. 132.0015. REFERENCE TO PROPRIETARY SCHOOL. A reference in this code or another law to a proprietary school means a career school or college.

SECTION 1.03. Section 132.002, Education Code, is amended by amending Subsections (a) and (d) and adding Subsections (e), (f), and (g) to read as follows:

(a) The following schools or educational institutions may be exempted [~~are specifically exempt~~] from this chapter by the commission under Subsection (d) [~~and are not within the definition of "proprietary school"~~]:

(1) a school or educational institution supported by taxation from either a local or state source;

(2) a nonprofit school [~~schools~~] owned, controlled, operated, and conducted by a bona fide religious, denominational, eleemosynary, or similar public institution [~~institutions~~] exempt from property taxation under the laws of this state[, ~~but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, are subject to this chapter as determined by the commission~~];

(3) a school or training program that offers instruction of purely avocational or recreational subjects as determined by the commission;

(4) a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

(5) a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

(6) a private college [~~colleges~~] or university [~~universities~~] that awards [~~award~~] a recognized baccalaureate, or higher degree, and that maintains [~~maintain~~] and operates [~~operate~~] educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or state source;

(7) a school or course that is otherwise regulated and approved under and pursuant to any other law or rulemaking process of this state or approved for continuing education credit by an organization that accredits courses for the maintenance of a license, except as provided by Subsection (c);

(8) an aviation school [~~schools~~] or instructor [~~instructors~~] approved by and under the supervision of the Federal Aviation Administration;

(9) a school that offers intensive review of a student's acquired education, training, or experience to prepare the student for an examination, other than a high school equivalency examination, that the student by law may not take unless the student has completed or substantially completed a particular degree program, or that the student is required to take as a precondition for enrollment in or admission to a particular degree program;

(10) a private school offering primary or secondary education, which may include a kindergarten or prekindergarten program, and that satisfies the compulsory attendance requirements of Section 25.085 pursuant to Section 25.086(a)(1);

(11) a course or courses of instruction by bona fide electrical trade associations for the purpose of preparing students for electrical tests required for licensing and for the purpose of providing continuing education to students for the renewal of electrical licenses;

(12) a nonprofit arts organization that has as its primary purpose the provision of instruction in the dramatic arts and the communications media to persons younger than 19 years of age;

(13) a course or training program conducted by a nonprofit association of air conditioning and refrigeration contractors approved by the Air Conditioning and Refrigeration Contractors Advisory Board to provide instruction for technical, business, or license examination preparation programs relating to air conditioning and refrigeration contracting, as that term is defined by Chapter 1302, Occupations Code [~~the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes)~~];

(14) a course of instruction by a plumbing trade association to prepare students for a plumbing test or program required for licensing, certification, or endorsement or to provide continuing education approved by the Texas State Board of Plumbing Examiners; and

(15) a course of instruction in the use of technological hardware or software if the course is offered to a purchaser of the hardware or software or to the purchaser's employee by a person who manufactures and sells, or develops and sells, the

hardware or software, and if the seller is not primarily in the business of providing courses of instruction in the use of the hardware or software, as determined by the commission.

(d) Except as provided by Subsection (g), a school or educational institution is exempt from regulation under this chapter only if:

(1) the owner of the school or educational institution:

(A) applies to the commission for an exemption under this section; and

(B) provides to the commission any information considered necessary by the commission to support the owner's application for an exemption; and

(2) the commission declares that the school or educational institution is exempt after finding that the school or institution is a school or institution listed in Subsection (a).

(e) After a school or educational institution is declared exempt by the commission under this section, the commission may inspect the school or institution or require the owner of the school or institution to provide any information the commission considers necessary for the commission to ensure the school or institution's continued compliance with the requirements of the exemption.

(f) A school or educational institution listed in Subsection (a) may seek a certificate of approval under ~~[Notwithstanding the exemptions listed in Subsection (a), a dispute resolution organization, as defined by Section 154.001, Civil Practice and Remedies Code, may seek a certificate of approval pursuant to]~~ Subchapter C.

(g) An institution of higher education or a private or independent institution of higher education, as defined by Section 61.003, that was exempt from regulation under this chapter before September 1, 2003, remains exempt from regulation under this chapter and is not required to comply with this section.

SECTION 1.04. Section 132.051(b), Education Code, is amended to read as follows:

(b) Any contract entered into with any person for a course of instruction by or on behalf of any person operating any ~~career [proprietary]~~ school or college to which a certificate of approval has not been issued pursuant to this chapter is unenforceable in any action brought thereon. Any note, other instrument of indebtedness, or contract relating to payment for educational services obtained from a career school or college that does not hold a certificate of approval issued under this chapter is unenforceable in any action brought on the note, instrument, or contract.

SECTION 1.05. Section 132.055, Education Code, is amended to read as follows:

Sec. 132.055. CRITERIA. The commission may approve the application of such ~~career [proprietary]~~ school or college when the school or college is found, upon investigation at the premises of the school or college, to have met the following criteria:

(a) The courses, curriculum, and instruction are of such quality, content, and length as may reasonably and adequately achieve the stated objective for which the courses, curriculum, or instruction is ~~are~~ offered. Before a school or college conducts a course of instruction in court reporting, the school or college must produce evidence that the school or college has obtained approval for the curriculum from the Court Reporters Certification Board.

(b) There is in the school or college adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(c) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(d) The school or college maintains a written record of the previous education and training of the applicant student and clearly indicates that appropriate credit has been given by the school or college for previous education and training, with the new training period shortened where warranted through use of appropriate skills or achievement tests and the student so notified.

(e) A copy of the course outline; schedule of tuition, fees, refund policy, and other charges; regulations pertaining to absence, grading policy, and rules of operation and conduct; regulations pertaining to incomplete grades; the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the agency; the current rates of job placement and employment of students issued a certificate of completion; and notification of the availability of the cost comparison information prepared under Section 132.021(b) through the commission will be furnished the student prior to enrollment.

(f) Except as provided by Section 132.062, on completion of training, the student is given a certificate by the school or college indicating the course and that training was satisfactorily completed.

(g) Adequate records as prescribed by the commission are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(h) The school or college complies with all local, city, county, municipal, state, and federal regulations, such as fire, building, and sanitation codes. The commission may require such evidence of compliance as is deemed necessary.

(i) The school or college is financially sound and capable of fulfilling its commitments for training.

(j) The school's or college's administrators, directors, owners, and instructors are of good reputation and character.

(k) The school or college has, maintains, and publishes in its catalogue and enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges in the event the student enrolled by the school or college fails to take the course or withdraws or is discontinued therefrom at any time prior to completion.

(l) The school or college does not utilize erroneous or misleading advertising, either by actual statement, omission, or intimation as determined by the commission.

(m) Such additional criteria as may be required by the commission.

(n) The school or college does not use a name like or similar to an existing [~~tax~~ supported] school or college unless the commission approves the school's or college's use of the name [in the same area].

(o) The school or college furnishes to the commission the current rates of students who receive a certificate of completion and of job placement and employment of students issued a certificate of completion.

(p) The school or college furnishes to the commission for approval or disapproval student admission requirements for each course or program offered by the school or college.

(q) The school or college furnishes to the commission for approval or disapproval the course hour lengths and curriculum content for each course offered by the school or college.

(r) The school or college does not owe a penalty under Section 132.152, 132.155, or 132.157.

SECTION 1.06. Section 132.061, Education Code, is amended to read as follows:

Sec. 132.061. REFUND POLICY. (a) Except as provided by Subsection (g), as a condition for granting certification each career [~~proprietary~~] school or college must maintain a cancellation and settlement policy that must provide a full refund of all monies paid by a student if:

(1) the student cancels the enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student; or

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school or college, or representations by the owner or representatives of the school or college.

(b) Except as provided by Subsection (g), as a condition for granting certification each career [~~proprietary~~] school or college must maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter the course, withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide:

(1) refunds for resident courses and synchronous distance education courses will be based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes in residence schools or colleges will be the earliest of the following:

(A) the last date of attendance, if the student is terminated by the school or college;

(B) the date of receipt of written notice from the student; or

(C) 10 school days following the last date of attendance;

(3) if tuition and fees are collected in advance of entrance, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the residence school or college, not more than \$100 shall be retained by the school or college;

(4) for the student who enters a residence or a synchronous distance education course of not more than 12 months in length, terminates, or withdraws, the school or college may retain \$100 of tuition and fees and the minimum refund of the remaining tuition and fees will be:

(A) during the first week or one-tenth of the course, whichever is less, 90 percent of the remaining tuition and fees;

(B) after the first week or one-tenth of the course, whichever is less, but within the first three weeks or one-fifth of the course, whichever is less, 80 percent of the remaining tuition and fees;

(C) after the first three weeks or one-fifth of the course, whichever is less, but within the first quarter of the course, 75 percent of the remaining tuition and fees;

(D) during the second quarter of the course, 50 percent of the remaining tuition and fees;

(E) during the third quarter of the course, 10 percent of the remaining tuition and fees; or

(F) during the last quarter of the course, the student may be considered obligated for the full tuition and fees;

(5) for residence or synchronous distance education courses more than 12 months in length, the refund shall be applied to each 12-month period paid, or part thereof separately, and the student is entitled to a refund as provided by Subdivision (4);

(6) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, where these items are separately stated and shown in the data furnished the student before enrollment, will be made in a reasonable manner acceptable to the commission;

(7) refunds based on enrollment in residence and synchronous distance education schools or colleges will be totally consummated within 60 days after the effective date of termination;

(8) refunds for asynchronous distance education [~~correspondence~~] courses will be computed on the basis of the number of lessons in the course;

(9) the effective date of the termination for refund purposes in asynchronous distance education [~~correspondence~~] courses will be the earliest of the following:

(A) the date of notification to the student if the student is terminated;

(B) the date of receipt of written notice from the student; or

(C) the end of the third calendar month following the month in which the student's last lesson assignment was received unless notification has been received from the student that the student wishes to remain enrolled;

(10) if tuition and fees are collected before any lessons have been completed, and if, after expiration of the 72-hour cancellation privilege, the student fails to begin the course, not more than \$50 shall be retained by the school or college;

(11) in cases of termination or withdrawal after the student has begun the asynchronous distance education [~~correspondence~~] course, the school or college may retain \$50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition, fees, and other charges that the number of lessons completed and serviced by the school or college bears to the total number of lessons in the course; and

(12) refunds based on enrollment in asynchronous distance education [~~correspondence~~] schools or colleges will be totally consummated within 60 days after the effective date of termination.

(c) In lieu of the refund policy herein set forth, for programs of instruction not regularly offered to the public, the commission may, for good cause shown, amend, modify, or substitute the terms of a career school's or college's ~~[proprietary school's]~~ policy due to the specialized nature and objective of the school's or college's course of instruction.

(d) If a course of instruction is discontinued by the career ~~[proprietary]~~ school or college and this prevents the student from completing the course, all tuition and fees paid are then due and refundable.

(e) If a refund is not made within the period required by this section, the career ~~[proprietary]~~ school or college shall pay a penalty. If the refund is made to a lending institution, the penalty shall also be paid to that institution and applied against the student's loan. The commission annually shall establish the level of the penalty at a level sufficient to provide a deterrent to the retention of student funds. The commission may exempt a school or college from the payment of the penalty if the school or college makes a good faith effort to refund the tuition, fees, and other charges but is unable to locate the student. The school or college shall provide to the commission on request documentation of the effort to locate the student.

(f) A career ~~[proprietary]~~ school or college shall record a grade of "incomplete" for a student who withdraws but is not entitled to a refund under Subsection (b)(4)(F) if the student requests the grade at the time the student withdraws and the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may re-enroll in the program during the 12-month period following the date the student withdraws and complete those incomplete subjects without payment of additional tuition.

(g) A program that is 40 hours or less of class time, or a seminar or workshop, is exempt from the 72-hour rule provided by Subsection (a). The career ~~[proprietary]~~ school or college shall maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student fails to enter the course, withdraws from the course, or is discontinued from the class at any time before completion of the course as provided by this section. The policy must provide that:

(1) refunds are based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes is the earlier of:

(A) the last date of attendance; or

(B) the date the school or college receives written notice from the student that the student is withdrawing from the class; and

(3) the student will be refunded the pro rata portion of tuition, fees, and other charges that the number of class hours remaining in the course after the effective date of the termination bears to the total number of class hours in the course.

SECTION 1.07. Sections 132.152(c)-(i), Education Code, are amended to read as follows:

(c) If, after examination of a possible violation and the facts relating to that possible violation, the commission concludes that a violation has occurred, the commission shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed ~~[recommended]~~, and the amount of the penalty to be assessed ~~[recommended]~~. Not

later than the 10th day after the date on which the commission issues the preliminary report, the commission shall send a copy of the report ~~[by certified mail]~~ to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty.

(d) Not later than the 20th day after the date on which the ~~[person receives the]~~ report is sent, the person charged must either make a written request for a hearing or remit the amount of the administrative penalty to the commission. Failure either to request a hearing or to remit the amount of the administrative penalty within the time provided by this subsection results in a waiver of a right to a hearing under this section. If the person charged requests a hearing, the hearing shall be conducted in the same manner as a hearing on the denial of a certificate of approval under Section 132.101. If the hearing results in a finding that a violation has occurred, the commission shall:

- (1) provide to the person written notice of:
 - (A) the findings established at the hearing; and
 - (B) the amount of the penalty; and

(2) enter an order requiring the person to pay the amount of the penalty [by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of the proposed penalty. Based on the findings of fact, conclusions of law, and proposal for decision, the commission by order may:

- ~~[(1) find that a violation has occurred and impose a penalty; or~~
- ~~[(2) find that a violation has not occurred].~~

(e) ~~[The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.~~

~~[(f)]~~ Not later than the 30th day after the date the person receives the order entered by the commission under Subsection (d) [commission's order is final under Section 2001.144, Government Code], the person shall:

- (1) pay the amount of the penalty;
- (2) remit [pay] the amount of the penalty to the commission for deposit in an escrow account and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty and file with the court a sworn affidavit stating that the person is financially unable to pay the amount of the penalty.

(f) The commission's order is subject to judicial review in the same manner as an appeal of a decision to deny a certificate of approval under Section 132.102.

(g) If on review the court does not sustain the occurrence of the violation or finds that the amount of the penalty should be reduced, the commission shall remit the appropriate amount to the person charged with the violation not later than the 30th day after the date the court's judgment becomes final. [Within the period prescribed by Subsection (f), a person who acts under Subsection (f)(3) may:

[(1) stay enforcement of the penalty by:

[(A) paying the amount of the penalty to the court for placement in an escrow account; or

[(B) giving to the court a supersedeas bond approved by the court that is in the amount of the penalty and that is effective until all judicial review of the commission'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 amount of the penalty and is financially unable to give the supersedeas bond; and

[(B) giving a copy of the affidavit to the commission by certified mail.]

(h) If the court sustains the occurrence of the violation:

(1) the court:

(A) shall order the person to pay the amount of the penalty; and

(B) may award to the commission the attorney's fees and court costs incurred by the commission in defending the action; and

(2) the commission shall remit the amount of the penalty to the comptroller for deposit in the general revenue fund. [The commission may file with the court a contest to an affidavit received under Subsection (g)(2) not later than the fifth day after the date the commission receives the copy. 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 amount of the penalty and to give a supersedeas bond.]

(i) If the person does not pay the amount of the penalty after the commission's order becomes final for all purposes [and the enforcement of the penalty is not stayed], the commission may refer the matter to the attorney general for collection of the amount of the penalty.

SECTION 1.08. Subchapter I, Chapter 132, Education Code, is amended by adding Section 132.2415 to read as follows:

Sec. 132.2415. TUITION TRUST ACCOUNT. (a) The Texas Workforce Commission depository bonds guaranty trust account is renamed the career school or college tuition trust account. The career school or college tuition trust account is the account designated to receive all amounts related to the protection of career school or college tuition. The balance of the trust account may not exceed \$1 million.

(b) The commission may collect annually a fee from each career school or college to be deposited to the credit of the career school or college tuition trust account. The total amount of the fees collected in a year shall be set by the commission in the amount estimated as necessary to pay the liabilities of the trust

account during that year, not to exceed 0.2 percent of the gross amount of tuition and fees charged by career schools and colleges in that year, excluding amounts refunded under Section 132.061.

(c) If, at the end of a fiscal year, the commission determines that the commission has collected fees under this chapter in excess of the amount necessary to defray the expense of administering this chapter, the commission may transfer any portion of the excess amount to the career school or college tuition trust account.

(d) From money in the career school or college tuition trust account, the commission shall attempt to provide a full refund to each student of a closed career school or college of the amount owed to the student as determined under Section 132.061. The commission may provide a partial refund to a student only if the commission determines that the amount in the trust account is insufficient to provide a full refund to the student. The commission shall consider the following factors in determining the amount of a partial refund to be paid to a student:

(1) the amount of money in the trust account;

(2) the cost and number of claims against the trust account resulting from closure of the school or college;

(3) the average cost of a claim paid from the trust account in the past; and

(4) the availability of other licensed career schools or colleges at which the student may complete the student's training.

SECTION 1.09. Section 132.242, Education Code, is amended to read as follows:

Sec. 132.242. CLOSED SCHOOL OR COLLEGE. (a) If a career [proprietary] school or college closes, the commission shall attempt to arrange for students of the closed school or college to attend another career [proprietary] school or college.

(b) The expense incurred by a career [proprietary] school or college in providing a teachout that is directly related to educating a student placed in the school or college under this section, including the applicable tuition for the period for which the student has paid tuition, shall be paid from the career [proprietary] school or college tuition trust account [protection fund].

(c) If the student cannot be placed in another career [proprietary] school or college, the student's tuition and fees shall be refunded under Section 132.061(d).

(d) If a student does not accept a place that is available and reasonable in another career [proprietary] school or college, the student's tuition and fees shall be refunded under the refund policy maintained by the closing career [proprietary] school or college under Section 132.061~~(b)~~.

(e) For each closed career school or college, refunds shall be paid from the career school or college [If the amount of the closed proprietary school's bond under Section 132.060 is less than the amount required for student refunds under Subsections (c) and (d), the refunds shall be paid from the proprietary school] tuition trust account [protection fund] in an amount not to exceed \$150,000 ~~[\$50,000]~~.

(f) If another career [proprietary] school or college assumes responsibility for the closed career school's or college's [proprietary school's] students with no significant changes in the quality of training, the student is not entitled to a refund under Subsection (c) or (d).

(g) Attorney's fees, court costs, or damages may not be paid from the career [~~proprietary~~] school or college tuition trust account [~~protection fund~~].

SECTION 1.10. The following laws are repealed:

- (1) Sections 132.152(j)-(m), Education Code; and
- (2) Sections 132.060 and 132.241, Education Code.

SECTION 1.11. The change in law made by this article to Section 132.051(b), Education Code, applies only to a note or other instrument issued, or a contract entered into, on or after the effective date of this Act. A note or other instrument issued, or a contract entered into, before the effective date of this Act is governed by the law in effect on the date the note or other instrument was issued or the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 1.12. The change in law made by this article to Section 132.055, Education Code, applies only to an application for a certificate of approval filed with the Texas Workforce Commission on or after the effective date of this Act. An application for a certificate of approval filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 1.13. The changes in law made by this article to Section 132.061(b), Education Code, apply only to the refund policy of a career school or college to which a certificate of approval is granted or renewed by the Texas Workforce Commission on or after the effective date of this Act.

SECTION 1.14. The changes in law made by this article to Section 132.152, Education Code, apply only to an alleged violation of Section 132.151, Education Code, that occurs on or after the effective date of this Act. An alleged violation that occurs before the effective date of this Act is governed by the law in effect on the date the alleged violation occurred, and the former law is continued in effect for that purpose.

SECTION 1.15. On or after the effective date of this article, any amount remaining in or payable to the credit of the tuition protection fund under Section 132.241, Education Code, as that section existed before repeal by this Act, shall be transferred to the credit of the career school or college tuition trust account established under Section 132.2415, Education Code, as added by this article.

ARTICLE 2. CONFORMING AMENDMENTS REGARDING CAREER SCHOOLS AND COLLEGES

SECTION 2.01. Section 52.32(b), Education Code, is amended to read as follows:

(b) If a loan applicant is enrolled at a career [~~proprietary~~] school or college in a degree program that is approved by the board, the applicant is not required to provide evidence that the applicant [~~he~~] is unable to obtain a guaranteed student loan from a commercial lender under Subsection (a)(2) of this section.

SECTION 2.02. Section 53.02(5), Education Code, is amended to read as follows:

(5) "Institution of higher education" means (i) any institution of higher education as defined by Subdivision (8) of Section 61.003 of this code, or (ii) a degree-granting college or university corporation accredited by the Texas Education Agency or by a recognized accrediting agency, as defined by Subdivision (13) of

Section 61.003 of this code, or (iii) a postsecondary career ~~[proprietary]~~ school or college accredited by the Association of Independent Colleges and Schools, the National Association of Trade and Technical Schools, or the National Accrediting Commission of Cosmetology Arts and Sciences.

SECTION 2.03. Section 54.6001, Education Code, is amended to read as follows:

Sec. 54.6001. PUBLIC PURPOSE. An educated population being necessary to the social development and economic health of this state, the legislature finds and declares it to be an urgent public necessity to assist young Texans in obtaining a higher education. Because the state's population is rapidly growing and is diverse, the state is required to use all of the higher education facilities and resources within the state, both public and private, to provide a wide variety of educational environments and instructional options and to preserve the partnership between the state and private or independent institutions of higher education and between the state and career ~~[proprietary]~~ schools and colleges, as defined by Section 132.001, that offer a two-year associate degree as approved by the Texas Higher Education Coordinating Board. Therefore, the prepaid higher education tuition program is established to help Texas students attend the institution that best meets their individual needs.

SECTION 2.04. Section 54.601(9), Education Code, is amended to read as follows:

(9) "Career school or college" ~~["Proprietary school"]~~ means a career ~~[proprietary]~~ school or college, as defined by Section 132.001, that offers a two-year associate degree as approved by the Texas Higher Education Coordinating Board.

SECTION 2.05. Section 54.605(a), Education Code, is amended to read as follows:

(a) A prepaid tuition contract remains in effect after the program is terminated if, when the program is terminated, the beneficiary:

(1) has been accepted by or is enrolled in an institution of higher education, a private or independent institution of higher education, or a career ~~[proprietary]~~ school or college; or

(2) is projected to graduate from high school not later than the third anniversary of the date the program is terminated.

SECTION 2.06. Section 54.618(b), Education Code, is amended to read as follows:

(b) The board may:

(1) adopt an official seal;

(2) adopt rules to implement this subchapter;

(3) sue and be sued;

(4) enter into contracts and other necessary instruments;

(5) enter into agreements or other transactions with the United States, state agencies, including institutions of higher education, private or independent institutions of higher education, career ~~[proprietary]~~ schools and colleges, and local governments;

(6) appear in its own behalf before governmental agencies;

(7) contract for necessary goods and services and engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;

(8) solicit and accept gifts, grants, loans, and other aid from any source or participate in any other way in any government program to carry out this subchapter;

(9) impose administrative fees;

(10) contract with a person to market the program;

(11) purchase liability insurance covering the board and employees and agents of the board; and

(12) establish other policies, procedures, and eligibility criteria to implement this subchapter.

SECTION 2.07. Section 54.619(h), Education Code, is amended to read as follows:

(h) Notwithstanding other provisions of this subchapter, any contract benefits purchased under this subchapter may be applied to the payment of tuition and required fees at a career [proprietary] school or college as if the [proprietary] school or college were an institution of higher education or private or independent institution of higher education. On the purchaser's request, the board shall apply, in accordance with Section 54.628, any existing amount of prepaid tuition contract benefits to the payment of tuition and required fees at a career [proprietary] school or college. The board is not responsible for the payment of tuition and required fees at the career [proprietary] school or college in excess of that amount. The board may adopt rules as necessary to implement this subsection.

SECTION 2.08. The heading to Chapter 132, Education Code, is amended to read as follows:

CHAPTER 132. CAREER [PROPRIETARY] SCHOOLS
AND COLLEGES

SECTION 2.09. Sections 132.021(a) and (b), Education Code, are amended to read as follows:

(a) The commission shall exercise jurisdiction and control of the system of career [proprietary] schools and colleges, and the commission shall carry out supervision of the provisions of this chapter, and enforce minimum standards for approval of career [proprietary] schools and colleges under the operating regulations and policies hereinafter set forth and as may be adopted pursuant to this chapter.

(b) The commission shall prepare a comparison of the cost to a student of courses of instruction or training programs at career [proprietary] schools and colleges to the cost to a student of similar courses or programs at schools that are exempt from this chapter under Section 132.002.

SECTION 2.10. Section 132.022, Education Code, is amended to read as follows:

Sec. 132.022. DUTIES OF COMMISSION. The commission shall carry out the policies of this chapter and enforce the rules adopted under this chapter. The commission shall also certify the names of those career [proprietary] schools and colleges meeting the requirements for a certificate of approval.

SECTION 2.11. Section 132.023, Education Code, is amended to read as follows:

Sec. 132.023. MEMORANDUM OF UNDERSTANDING FOR REGULATION OF CAREER [~~PROPRIETARY~~] SCHOOLS AND COLLEGES. (a) The commission shall develop, in consultation with the Texas Guaranteed Student Loan Corporation and each state agency that regulates career [~~proprietary~~] schools and colleges in this state, a comprehensive strategy to reduce default rates at the regulated career [~~proprietary~~] schools and colleges and to improve the overall quality of the programs operated by these schools and colleges.

(b) The commission shall execute a memorandum of understanding outlining the strategy with the corporation and each state agency regulating career [~~proprietary~~] schools and colleges and shall adopt rules to carry out the commission's [~~its~~] duties under this section. The Texas Guaranteed Student Loan Corporation shall adopt the memorandum of understanding as procedures of the corporation, and each agency by rule shall adopt the memorandum of understanding.

(c) The memorandum of understanding shall:

(1) require the development and monitoring of indicators that identify career [~~proprietary~~] schools and colleges that have excessive loan default rates, poor program performance, or both;

(2) require the sharing of specific information relating to the indicators between the commission and the Texas Guaranteed Student Loan Corporation or other agency; and

(3) require the application of specific sanctions by the commission or by the Texas Guaranteed Student Loan Corporation or other agency, as appropriate, to lower the default rates, improve program performance, or both.

(d) If the commission enters into a memorandum of understanding with the Texas Guaranteed Student Loan Corporation related to the regulation of career [~~proprietary~~] schools and colleges, the commission may require each career [~~proprietary~~] school or college governed by this chapter to provide information to the commission that is necessary for the purposes of the memorandum of understanding.

SECTION 2.12. Section 132.051(a), Education Code, is amended to read as follows:

(a) A career [~~proprietary~~] school or college may not maintain, advertise, solicit for, or conduct any course of instruction in this state before the later of:

(1) the 30th day after the date the school or college applies for a certificate of approval under this chapter; or

(2) the date the school or college receives a certificate of approval from the commission.

SECTION 2.13. Section 132.052, Education Code, is amended to read as follows:

Sec. 132.052. APPLICATION FOR CERTIFICATE OF APPROVAL. Every career [~~proprietary~~] school or college desiring to operate in this state or do business in this state shall make written application to the commission for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the commission, and shall furnish the commission such information as the commission may require.

SECTION 2.14. Section 132.053, Education Code, is amended to read as follows:

Sec. 132.053. STATUTORY WAIVER AUTHORITY. (a) The commission may establish rules that waive, alter, suspend, or replace any of the following provisions governing small career [proprietary] schools and colleges:

(1) the fee schedule authorized under Section 132.201, provided that fees under a fee schedule established by rule may not be less than the reasonable administrative cost for regulation or more than the amount that a small career [proprietary] school or college would otherwise pay if it were not classified as a small career [proprietary] school or college;

(2) participation in the career [proprietary] school or college tuition trust account [~~protection fund~~] required by Section 132.2415 [~~132.241~~];

(3) the refund policy provisions of Section 132.061;

(4) [~~the bonding requirements of Section 132.060~~;

[~~5~~] the examination of a school or college for compliance under Section 132.056(f);

(5) [~~6~~] the reporting requirements of Section 132.055(o); and

(6) [~~7~~] the term for which a certificate of approval is issued under Section 132.056(b), provided that a rule adopted under this section may not provide for a term that exceeds three years or is less than one year.

(b) A rule proposed under this section may be adopted only if it will reduce the regulatory burden for small career [proprietary] schools and colleges and will adequately safeguard the interests of the students of small career [proprietary] schools and colleges to receive either the education for which they have contracted or an appropriate refund.

SECTION 2.15. Section 132.054, Education Code, is amended to read as follows:

Sec. 132.054. SMALL SCHOOL OR COLLEGE EXEMPTION. The commission may exempt small career [proprietary] schools and colleges from any requirement of this chapter to reduce the cost to small schools and colleges of receiving a certificate of approval.

SECTION 2.16. Section 132.056, Education Code, is amended to read as follows:

Sec. 132.056. ISSUANCE OF CERTIFICATE OF APPROVAL; RENEWAL.

(a) The commission, upon review of an application for a certificate of approval duly submitted in accordance with Section 132.052 and meeting the requirements of Section 132.055, shall issue a certificate of approval to the applicant career [proprietary] school or college. The certificate of approval shall be in a form prescribed by the commission and shall state in a clear and conspicuous manner at least the following information:

(1) date of issuance, effective date, and term of approval;

(2) correct name and address of the school or college;

(3) authority for approval and conditions of approval, if any, referring specifically to the approved catalogue or bulletin published by the school or college;

(4) signature of the agency administrator; and

(5) any other fair and reasonable representations that are consistent with this chapter and deemed necessary by the commission.

(b) The term for which a certificate of approval shall be issued may not exceed one year.

(c) The certificate of approval shall be issued to the owner of the applicant career [proprietary] school or college and is nontransferable. In the event of a change in ownership of the school or college, a new owner must, at least 30 days prior to the change in ownership, apply for a new certificate of approval.

(d) At least 30 days prior to expiration of a certificate of approval, the career [proprietary] school or college shall forward to the commission an application for renewal. The commission shall reexamine the premises of the school or college as frequently as the commission considers necessary and renew, revoke, or deny renewal of the school's or college's [school's] certificate of approval. If a school or college fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval, the school or college, as a condition of renewal, must pay, in addition to the annual renewal fee, a late renewal fee in an amount established by commission rule of at least \$100.

(e) A career [proprietary] school or college not yet in operation when its application for a certificate of approval is filed may not begin operation until receipt of the certificate of approval.

(f) The commission shall visit a career [proprietary] school or college to reexamine the school or college for compliance with the criteria provided by Section 132.055 not later than three months after the date the [a] school or college begins operation or after a change in ownership of the [a] school or college.

SECTION 2.17. Section 132.058, Education Code, is amended to read as follows:

Sec. 132.058. REVOCATION OF CERTIFICATE OF APPROVAL. (a) The commission may revoke an issued certificate of approval or place reasonable conditions upon the continued approval represented by the certificate. Prior to revocation or imposition of conditions upon a certificate of approval, the commission shall notify the holder of the certificate, in writing, of the impending action and set forth the grounds for the action. The commission may reexamine a career [proprietary] school or college two or more times during each year in which a notice relating to the school or college has been issued or conditions have been imposed on the school or college under this subsection.

(b) A certificate of approval may be revoked or made conditional if the commission has reasonable cause to believe that the career [proprietary] school or college is guilty of a violation of this chapter or of any rules adopted under this chapter.

SECTION 2.18. Sections 132.059(a), (b), and (d), Education Code, are amended to read as follows:

(a) All representatives employed by a career [proprietary] school or college shall register with the commission. Application for registration may be made at any time and shall be based on information submitted in accordance with the provisions of Section 132.052.

(b) Registration of a representative is effective upon receipt of notice from the commission and remains in effect for a period not in excess of 12 calendar months. Renewal of representative registration shall be in accordance with the renewal application form forwarded to the career [proprietary] school or college by the commission.

(d) Career [Proprietary] schools and colleges domiciled or having their principal place of business outside of this state that engage representatives to canvass, solicit, or contract with any person within this state, are subject to the requirements for registration of representatives.

SECTION 2.19. Section 132.062, Education Code, is amended to read as follows:

Sec. 132.062. WITHHOLDING RECORDS. A career [proprietary] school or college may withhold a student's transcript or certificate of completion of training until the student has fulfilled the student's financial obligation to the school or college.

SECTION 2.20. Section 132.063, Education Code, is amended to read as follows:

Sec. 132.063. APPROVED DEGREES. A career [proprietary] school or college may offer a degree approved by the Texas Higher Education Coordinating Board.

SECTION 2.21. Section 132.064, Education Code, is amended to read as follows:

Sec. 132.064. NONQUALIFICATION AS SMALL CAREER [PROPRIETARY] SCHOOL AND COLLEGE. (a) A career [proprietary] school or college operating as a small career [proprietary] school or college but that has an annual gross income from tuition and fees that exceeds \$100,000 (other than a test preparation school described by Section 132.001(10)(B) or (C)) that intends to receive a payment from federal funds under 20 U.S.C. Section 1070 et seq. or intends to receive prepayment of tuition, fees, or other charges from federal or state funds shall send written notice to the commission. The notice must be sent not later than the following date, as applicable:

(1) the 60th day after the date on which annual gross income is determined to exceed the maximum;

(2) the day before receiving a payment of federal funds under 20 U.S.C. Section 1070 et seq.; or

(3) the day before enrolling a student who will prepay tuition, a fee, or another charge in whole or in part from federal or state funds.

(b) A career [proprietary] school or college that no longer qualifies as a small career [proprietary] school or college shall apply for an initial certificate of approval as a career [proprietary] school or college within 30 days after the date the school has notified the commission that it no longer qualifies as a small career [proprietary] school or college. The commission may apply or prorate any fees paid by the school or college as a small career [proprietary] school or college.

(c) A career [proprietary] school or college that no longer qualifies as a small career [proprietary] school or college shall submit to the commission an amount of money equal to the difference between the fee for the small career [proprietary] school

or college certificate of approval submitted by the school or college and the fee that the school or college would be required to submit after its qualifications as a small career ~~[proprietary]~~ school or college cease.

(d) The authority of a career ~~[proprietary]~~ school or college to operate under a small career ~~[proprietary]~~ school or college certificate of approval terminates on the final determination of issuance or denial of an initial certificate of approval. If a school or college fails to file a complete application within the period required by Subsection (b), the school or college, as a condition of issuance, must pay a late fee in an amount established by commission rule of at least \$100.

SECTION 2.22. Section 132.151, Education Code, is amended to read as follows:

Sec. 132.151. PROHIBITIONS. A person may not:

- (1) operate a career ~~[proprietary]~~ school or college without a certificate of approval issued by the commission;
- (2) solicit prospective students for or on behalf of a career ~~[proprietary]~~ school or college without being registered as a representative of the career ~~[proprietary]~~ school or college as required by this chapter;
- (3) accept contracts or enrollment applications from a representative who is not bonded as required by this chapter;
- (4) utilize advertising designed to mislead or deceive prospective students;
- (5) fail to notify the commission of the discontinuance of the operation of any career ~~[proprietary]~~ school or college within 72 hours of cessation of classes and make available accurate records as required by this chapter;
- (6) fail to secure and file within 30 days an increased bond as required by this chapter;
- (7) negotiate any promissory instrument received as payment of tuition or other charge prior to completion of 75 percent of the course, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the career ~~[proprietary]~~ school or college named as payee; or
- (8) violate any provision of this chapter.

SECTION 2.23. Section 132.153, Education Code, is amended to read as follows:

Sec. 132.153. COMPETITIVE BIDDING; ADVERTISING. The commission may not adopt rules to restrict competitive bidding or advertising by a career ~~[proprietary]~~ school or college except to prohibit false, misleading, or deceptive competitive bidding or advertising practices. Those rules may not restrict:

- (1) the use of an advertising medium;
- (2) the size or duration of an advertisement; or
- (3) advertisement under a trade name.

SECTION 2.24. Section 132.154(a), Education Code, is amended to read as follows:

(a) Whenever the commission has probable cause to believe that any career ~~[proprietary]~~ school or college has committed any acts that would be in violation of this chapter, the commission shall apply for an injunction restraining the commission of such acts.

SECTION 2.25. Section 132.156, Education Code, is amended to read as follows:

Sec. 132.156. SANCTIONS. (a) If the commission has reasonable cause to believe that a career [~~proprietary~~] school or college has violated this chapter or a rule adopted under this chapter, the commission may:

- (1) order a peer review of the school or college; or
- (2) suspend the admission of students to the school or college.

(b) A peer review ordered under this section shall be conducted by a peer review team composed of knowledgeable persons selected by the commission. The commission shall attempt to provide a balance on each team between members assigned to the team who are from this state and those who are from other states. The team shall provide the commission with an objective assessment of the content of the career school's or college's [~~proprietary school's~~] curriculum and its application. The costs of providing a peer review team shall be paid by the school or college.

SECTION 2.26. Sections 132.157(a), (b), (c), and (d), Education Code, are amended to read as follows:

(a) If a career [~~proprietary~~] school or college fails to timely comply with the requirements of Section 132.064, in addition to any other penalties authorized by law, the commission may assess a penalty in an amount not greater than two times the amount that the school or college would have paid in fees and other charges if the school or college had complied with the requirements of Section 132.064 or may assess a penalty in the amount of the tuition or fee charge to any students whose tuition or fees were contracted to be funded by a prepaid federal or state source.

(b) If the commission finds that the career [~~proprietary~~] school or college acted intentionally, the commission may, in addition to any other remedy available under law, assess a penalty against the owner in an amount not greater than four times the amount of the fees and charges that the school or college should have paid or four times the amount of the student tuition that was contracted to be funded from a prepaid federal or state source.

(c) The failure to notify the commission within four months after the career school's or college's [~~proprietary school's~~] earnings exceed that of a small career [~~proprietary~~] school or college gives rise to a rebuttable presumption of intent for purposes of assessment of a penalty.

(d) The failure to notify the commission within 10 days after a career [~~proprietary~~] school or college has enrolled a student whose tuition or fees are paid in whole or in part from a prepaid federal or state source gives rise to a rebuttable presumption of intent for purposes of assessment of a penalty.

SECTION 2.27. Sections 132.201(a), (c), (d), (e), (f), (h), and (i), Education Code, are amended to read as follows:

(a) Certificate and registration fees, except those charged pursuant to Subsection (d), shall be collected by the commission. Each fee shall be in an amount set by the commission in an amount not to exceed 150 percent of each fee in the following schedule:

- (1) the initial fee for a career [~~proprietary~~] school or college:
 - (A) for a certificate of approval is \$2,000; or

(B) for a small career [~~proprietary~~] school or college certificate of approval is \$1,000;

(2) the first renewal fee and each subsequent renewal fee for a career [~~proprietary~~] school or college is the greater of:

(A) an amount that is determined by applying a percentage, not to exceed 0.3 percent, to the gross tuition and fees, excluding refunds as provided by Section 132.061, of the school or college; or

(B) \$500;

(3) the initial registration fee for a representative is \$60;

(4) the annual renewal fee for a representative is \$30;

(5) the fee for a change of a name of a career [~~proprietary~~] school or college or owner is \$100;

(6) the fee for a change of an address of a career [~~proprietary~~] school or college is \$180;

(7) the fee for a change in the name or address of a representative or a change in the name or address of a career [~~proprietary~~] school or college that causes the reissuance of a representative permit is \$10;

(8) the application fee for an additional course is \$150, except for seminar and workshop courses, for which the fee is \$25;

(9) the application fee for a director, administrative staff member, or instructor is \$15;

(10) the application fee for the authority to grant degrees is \$2,000;

(11) the application fee for an additional degree course is \$250; and

(12) the fee for an inspection required by commission rule of classroom facilities that are separate from the main campus is \$250.

(c) For purposes of this section, the gross amount of annual student fees and tuition for a career [~~proprietary~~] school or college is the amount determined by the commission based on any report submitted by the school or college to the commission or other information obtained by the commission.

(d) In connection with the regulation of any career [~~proprietary~~] school or college or course through a memorandum of understanding pursuant to Section 132.002(c), the commission shall set an application and annual renewal fee, not to exceed \$2,000. The fee shall be an amount reasonably calculated to cover the administrative costs associated with assuming the additional regulation.

(e) The fee for an investigation at a career [~~proprietary~~] school or college to resolve a complaint filed against the school or college is \$600. The fee may be charged only if:

(1) the complaint could not have been resolved by telephone or written correspondence only;

(2) a representative of the commission visits the school or college as a part of the complaint resolution process; and

(3) the school or college is found to be at fault.

(f) The commission may allow payment of any fee authorized under this section or under Section 132.2415 [~~132.241~~] that exceeds \$1,000 to be paid by installment. The commission shall provide for appropriate interest charges and late penalties in addition to any other remedy that is provided for by law for the late payment of a fee

installment authorized under this section. The commission may assess a reasonable service charge or interest to be paid by a career [proprietary] school or college that pays a fee by installment in an amount not to exceed 10 percent annually of the fee that is to be paid by installment.

(h) The commission may apply or prorate a fee paid by a small career [proprietary] school or college that has complied with the notification requirements of Section 132.064 toward an initial certificate as a career [proprietary] school or college in the event that a career [proprietary] school or college has ceased to qualify as a small career [proprietary] school or college during a certification period.

(i) The commission may charge each career [proprietary] school or college a fee for the cost of a service that collects, analyzes, and reports student-level data in order to assess the outcome of students who attend career [proprietary] schools and colleges. The total amount of the fees charged under this subsection must not exceed the cost of the service to the commission.

SECTION 2.28. Section 52.013(b), Government Code, is amended to read as follows:

(b) The board may:

- (1) appoint any necessary or proper subcommittee;
- (2) hire necessary employees;
- (3) pay all reasonable expenses from available funds;
- (4) approve curriculum for court reporter career [proprietary] schools and colleges as provided by Section 132.055, Education Code;
- (5) approve court reporter programs in technical institutes and public community colleges for purposes of certification under Section 61.051, Education Code; and
- (6) approve continuing professional education courses for persons certified as court reporters.

SECTION 2.29. Section 305.002(3), Labor Code, is amended to read as follows:

(3) "Eligible institution" means a career [proprietary] school or college in this state that:

(A) holds a certificate of approval under Chapter 132, Education Code; and

(B) is approved by the commission under Section 305.023 for its students to participate in the grant program established under this chapter.

SECTION 2.30. Section 305.023, Labor Code, is amended to read as follows:

Sec. 305.023. APPROVAL OF INSTITUTIONS. The commission shall approve a career [proprietary] school or college for its students to participate in the grant program established under this chapter if the school or college:

(1) has been accredited for not less than five years by an accrediting agency recognized by the United States Department of Education and maintains that accreditation;

(2) has held a certificate of approval under Chapter 132, Education Code, for at least five years; and

(3) offers one or more qualified education programs.

SECTION 2.31. Section E, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas Civil Statutes), is amended to read as follows:

E. This article does not apply to:

- (1) a corporation that solicits funds only from its members;
- (2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of \$10,000 during a fiscal year;
- (3) a career ~~[proprietary]~~ school or college that has received a certificate of approval from the Texas Workforce Commission ~~[State Commissioner of Education]~~, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private or independent institution of higher education as defined by Section 61.003, Education Code, a postsecondary educational institution with a certificate of authority to grant a degree issued by the Texas Higher Education Coordinating Board, ~~[Texas College and University System,]~~ or an elementary or secondary school;
- (4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;
- (5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;
- (6) any insurer licensed and regulated by the Texas Department ~~[State Board]~~ of Insurance;
- (7) an organization whose charitable activities relate to public concern in the conservation and protection of wildlife, fisheries, and allied natural resources;
- (8) an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2003.

The amendment was read.

Senator Jackson moved to concur in the House amendment to **SB 1343**.

The motion prevailed by a viva voce vote.

SENATE CONCURRENT RESOLUTION 60

The Presiding Officer, Senator Armbrister in Chair, laid before the Senate the following resolution:

WHEREAS, The Senate of the State of Texas has passed **HB 2180** and returned it to the House of Representatives of the State of Texas; and

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

RESOLVED, by the Senate of the State of Texas, the House of Representatives of the State of Texas concurring, That the senate hereby respectfully requests that the chief clerk of the house be authorized to return House Bill No. 2180 to the senate for further consideration.

The resolution was read.

On motion of Senator Carona, the resolution was considered immediately and was adopted without objection.

SENATE BILL 4 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 4** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 4** (House committee report) as follows:

(1) In SECTION 1 of the bill, in added Subdivision (1), Section 56.455, Education Code (page 2, line 26), between "Chapter 54" and the semicolon, insert ", except as provided by Subdivision (2)(B) of this section".

(2) In SECTION 1 of the bill, at the end of added Paragraph (A), Subdivision (2), Section 56.455, Education Code (page 3, line 4), strike "; or".

(3) In SECTION 1 of the bill, immediately following added Paragraph (A), Subdivision (2), Section 56.455, Education Code (page 3, between lines 4 and 5), insert the following:

"(B) be a graduate of a high school operated by the United States Department of Defense who:

(i) at the time of graduation lived with a parent or parents stationed outside the United States; and

(ii) is a resident of this state for purposes of Subchapter B, Chapter 54, or intends to become a resident of this state; or"

(4) In SECTION 1 of the bill, in added Paragraph (B), Subdivision (2), Section 56.455, Education Code (page 3, line 5), strike "(B)" and substitute "(C)".

Floor Amendment No. 2

Amend **SB 4** by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0012 to read as follows:

Sec. 130.0012. PILOT PROJECT: BACCALAUREATE DEGREE PROGRAMS. (a) The Texas Higher Education Coordinating Board shall establish a pilot project to examine the feasibility and effectiveness of authorizing public junior colleges to offer baccalaureate degree programs in the fields of applied science and applied technology. Participation in the pilot project does not otherwise alter the role and mission of a public junior college.

(b) The coordinating board shall operate the pilot project at the following public junior colleges:

(1) Brazosport College;

(2) El Centro College of the Dallas County Community College District;

(3) Midland College;

(4) North Harris Montgomery Community College District; and

(5) South Texas Community College.

(c) A public junior college participating in the pilot project must meet all applicable accreditation requirements of the Commission on Colleges of the Southern Association of Colleges and Schools.

(d) A public junior college participating in the pilot project may not offer more than five baccalaureate degree programs under the project at any time. The degree programs are subject to the continuing approval of the coordinating board. In determining what baccalaureate degree programs are to be offered, the junior college and the coordinating board shall consider:

(1) the need for the degree programs in the region served by the junior college;

(2) how those degree programs would complement the other programs and course offerings of the junior college;

(3) whether those degree programs would unnecessarily duplicate the degree programs offered by other institutions of higher education; and

(4) the ability of the junior college to support the program and the adequacy of the junior college's facilities, faculty, administration, libraries, and other resources.

(e) Each public junior college that offers a baccalaureate degree program under the pilot project must enter into an articulation agreement with one or more general academic teaching institutions to ensure that students enrolled in the degree program have an opportunity to complete the degree if the public junior college ceases to offer the degree program. The coordinating board may require a general academic teaching institution that offers a comparable degree program to enter into an articulation agreement with the public junior college as provided by this subsection.

(f) In its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college receive substantially the same state support for junior-level and senior-level courses offered under the pilot project as that provided to a general academic teaching institution for substantially similar courses. In determining the contact hours attributable to students enrolled in a junior-level or senior-level course offered under the pilot project used to determine a public junior college's proportionate share of state appropriations under Section 130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations. This subsection does not prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses offered under the pilot project.

(g) Each public junior college participating in the pilot project shall prepare a biennial report on the operation and effectiveness of the junior college's baccalaureate degree programs offered under the project and shall deliver a copy of the report to the coordinating board in the form and at the time determined by the coordinating board.

(h) Not later than January 1, 2009, the coordinating board shall prepare a progress report on the pilot project. Not later than January 1, 2011, the coordinating board shall prepare a report on the effectiveness of the pilot project, including any recommendations for legislative action regarding the offering of baccalaureate degree programs by public junior colleges. The coordinating board shall deliver a copy of

each report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over higher education.

(i) Unless the authority to continue offering the baccalaureate degree programs is continued by the legislature, a public junior college may not:

(1) enroll a new student in a baccalaureate degree program under the pilot project after the 2011 fall semester;

(2) offer junior-level or senior-level courses for those degree programs after the 2015 fall semester, unless the coordinating board authorizes the college to offer those courses; or

(3) award a baccalaureate degree under the pilot project after the 2015 fall semester, unless the coordinating board approves the awarding of the degree.

(j) The coordinating board shall prescribe procedures to ensure that each public junior college that offers a degree program under the pilot project informs each student who enrolls in the degree program of:

(1) the nature of the pilot project, including the limited duration of the project; and

(2) the articulation agreement entered into under Subsection (e) for the student's degree program.

(k) This section expires January 1, 2020.

Floor Amendment No. 1 on Third Reading

Amend **SB 4** on third reading in SECTION 1 of the bill, in added Paragraph (A), Subdivision (2), Section 56.455, Education Code, by striking "public or accredited private high school" and substituting "public high school or an accredited or unaccredited private high school".

Floor Amendment No. 2 on Third Reading

Amend **SB 4** on third reading by adding an appropriately numbered section to read as follows:

SECTION _____. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9356 to read as follows:

Sec. 51.9356. PILOT PROGRAM REGARDING THE RETENTION OF STUDENTS IN HIGHER EDUCATION. (a) The Texas Higher Education Coordinating Board shall develop a pilot program called the "Freshman SUCCESS Program" that will focus on retention of high-risk students who are first generation in college, low-income, and/or educationally underprepared by providing proactive intervention modalities to meet the demands of college.

(b) The pilot program shall address the students' academic, emotional, behavioral, and financial needs as well as cultural barriers that may affect their success in college.

(c) In conducting this pilot program study, the board shall:

(1) identify and evaluate the potential benefits and advantages of this type of program;

(2) evaluate and make recommendations concerning any legal, administrative, or practical problems with this type of program; and

(3) indicate the impact on the goals for the Texas Higher Education Coordinating Board's Closing the Gaps strategy.

(d) The board shall complete the pilot program study and report the results of the study to the Legislature on or before December 1, 2004. The report must include the board's recommendations concerning the Freshman SUCCESS Program.

(e) In this section, "board" means the Texas Higher Education Coordinating Board.

(f) This section expires September 1, 2005.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 4** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Van de Putte, Shapiro, Whitmire, and Averitt.

SENATE BILL 86 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 86** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 86** by adding the following SECTIONS to read as follows:

SECTION _____. Section 51.801, Education Code, is amended to read as follows:

Sec. 51.801. DEFINITIONS. In this subchapter, "general academic teaching institution," "governing board," "medical and dental unit," "public junior college," "public technical institute," and "university system" have the meanings assigned by Section 61.003.

SECTION _____. Subchapter U, Chapter 51, Education Code, is amended by adding Section 51.8065 to read as follows:

Sec. 51.8065. AUTOMATIC ADMISSION TRACK - HIGH SCHOOL TO JUNIOR COLLEGE TO GENERAL ACADEMIC TEACHING INSTITUTION: (a) In this section, "public upper-level institution of higher education" means an institution of higher education that offers only junior-level and senior-level courses or only junior-level, senior-level, and graduate-level courses.

(b) Except as provided by Subsection (g), each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate transfer student if in the year preceding the academic year for which the applicant is applying for admission under this section the applicant:

(1) received a degree or certificate from a public junior college or public technical institute in a program requiring at least 42 semester credit hours of core curriculum; and

(2) completed the program with a cumulative grade point average of at least a 3.0 on a four-point scale or the equivalent.

(c) To qualify for admission under this section, an applicant must submit an application before the expiration of any application filing deadline established by the institution.

(d) After admitting an applicant under this section, the institution may review the applicant's record and any other factor the institution considers appropriate to determine whether the applicant may require additional preparation for college-level work or would benefit from inclusion in a retention program. The institution may require a student so identified to enroll during the summer immediately after the student is admitted under this section to participate in appropriate enrichment courses and orientation programs. This section does not prohibit a student who is not determined to need additional preparation for college-level work from enrolling, if the student chooses, during the summer immediately after the student is admitted under this section.

(e) Admission to a specific general academic teaching institution is contingent on the availability of space within the institution for the admission of additional students.

(f) Admissions to a particular program or school within a general academic teaching institution are based solely on the requirements of the institution.

(g) This section does not apply to:

(1) a public upper-level institution of higher education; or

(2) any other general academic teaching institution if, with respect to the academic year for which an undergraduate transfer student has applied for admission under this section, the institution has filled through automatic admission as required by the other provisions of this subchapter at least 50 percent of the spaces available for entering undergraduate students at the institution.

SECTION _____. (a) Section 51.8065, Education Code, takes effect immediately and applies beginning with admissions for the 2004 fall semester.

(b) The Texas Higher Education Coordinating Board and each general academic teaching institution shall adopt rules or policies relating to the admission of students under Section 51.8065, Education Code, as added by this Act, not later than January 1, 2004.

Floor Amendment No. 2

Amend **SB 86** by adding the following appropriately numbered SECTION and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Section 28.026, Education Code, is amended to read as follows:

Sec. 28.026. NOTICE OF AUTOMATIC COLLEGE ADMISSION. (a) The board of trustees of a school district shall require each high school in the district to post appropriate signs in each counselor's office, in each principal's office, and in each administrative building indicating the substance of Section 51.803 regarding automatic college admission. To assist in the dissemination of this information, the school district shall:

(1) require that each high school counselor and class advisor be provided a detailed explanation of the substance of Section 51.803;

(2) require that each high school counselor and senior class advisor explain to eligible students the substance of Section 51.803; and

(3) provide each eligible senior student under Section 51.803 and the student's parent or guardian, at the commencement of a class's senior year, with a written notification of the student's eligibility with a detailed explanation of the substance of Section 51.803.

(b) The agency shall adopt a form to use in providing notice under Subsection (a)(3). In providing notice under Subsection (a)(3), a school district shall use the form adopted by the agency.

Floor Amendment No. 3

Amend **SB 86** in SECTION 1 of the bill, immediately following proposed Section 51.803(e), Education Code (page 3, between lines 7 and 8), by inserting the following:

(f) A general academic teaching institution is not required to fill more than 60 percent of the institution's total number of spaces available for first-time resident undergraduate students at the institution through the admission of applicants under Subsection (a). If the number of applications for admission under Subsection (a) received by the institution exceeds 60 percent of the total number of spaces available for first-time resident undergraduate students at the institution, the institution may give automatic admission as provided by this section to those applicants until 60 percent of the institution's total number of spaces available for first-time resident undergraduate students are filled. The institution shall consider the factors listed in Section 51.805 to determine which of the remaining applicants under Subsection (a) the institution will admit.

Floor Amendment No. 4

Amend **SB 86** as follows:

(1) In SECTION 1 of the bill, in added Section 51.803(d), Education Code (committee printing page 2, line 22), strike "2007-2008" and substitute "2008-2009".

(2) In SECTION 2 of the bill, in added Section 28.025(g-1), Education Code (committee printing page 4, line 6), strike "2003-2004" and substitute "2004-2005".

(3) In SECTION 2 of the bill, in added Section 28.025(g-1), Education Code (committee printing page 4, line 7), strike "2004" and substitute "2005".

Floor Amendment No. 5

Amend **SB 86** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. (a) Section 51.805(c), Education Code, is amended to read as follows:

(c) A general academic teaching institution may review other factors in making an admissions decision. A general academic teaching institution must consider the same factors and apply the same standards, criteria, and formulas, including minimum

standards for high school grade point averages or test scores, to all applicants for admission to the institution as entering freshman in ranking those applicants or determining which applicants are to be offered admission.

(b) The change in law made by this Act in amending Section 51.805(c), Education Code, applies beginning with undergraduate admissions to a general academic teaching institution of higher education for the 2004-2005 academic year. Undergraduate admissions to a term or semester before that academic year are covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 86** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Wentworth, Chair; Shapiro, West, Janek, and Madla.

SENATE BILL 474 WITH HOUSE AMENDMENT

Senator Lucio called **SB 474** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 474** House committee report in Section 2 as follows:

On page 3, line 27, subsection (7), strike "one member who has expertise in nutrition" and insert "a licensed or registered dietitian employed by a school district".

On page 4, line 3, strike "and"

On page 4, line 5 strike the period and insert ";

On page 4, after line 5, add two new subsections to read as follows:

"(10) an elected public school board member, appointed by the governor; and"

"(11) a representative of a statewide, voluntary membership organization representing school district boards of trustees, appointed by the governor."

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 474** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Janek, Shapiro, Deuell, and Van de Putte.

SENATE BILL 1782 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1782** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1782** Senate engrossment as follows:

On line page 2, lines 14 through 20, delete the current subsection (d) and substitute the following new subsection (d) to read as follows:

(d) Subsection (b) does not apply when:

(1) the department owns the access rights under Section 203.034; or

(2) the adjacent property owner does not own the abutter's rights of access.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1782** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lindsay, Chair; Shapiro, Shapleigh, Ogden, and Armbrister.

SENATE BILL 1108 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 1108** 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 1108** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to academic achievement in public schools.

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

SECTION 1. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.005 to read as follows:

Sec. 21.005. HIGH-QUALITY TEACHERS. The commissioner may by rule establish a statewide standard to be used to certify each school district that is preparing, training, and recruiting high-quality teachers in a manner consistent with the No Child Left Behind Act of 2001 (Pub. L. No. 107-110).

SECTION 2. Subchapter Z, Chapter 29, Education Code, is amended by adding Section 29.908 to read as follows:

Sec. 29.908. PROGRAMS OF MUTUAL BENEFIT. (a) The commissioner, in coordination with appropriate representatives of institutions of higher education and school districts, shall develop:

(1) a diagnostic and assistance program for each subject assessed by an assessment instrument under Section 39.023(c); and

(2) other academic programs of mutual benefit to school districts and institutions of higher education.

(b) The commissioner shall seek private funding to make available and maintain on the Internet each diagnostic and assistance program developed under Subsection (a)(1).

SECTION 3. Section 39.131(b), Education Code, is amended to read as follows:

(b) If a campus performance is below any standard under Section 39.073(b), the campus is considered a low-performing campus. The [and the] commissioner may permit the campus to participate in an innovative redesign of the campus to improve campus performance or may take any of the other following actions, listed in order of severity, to the extent the commissioner determines necessary:

(1) issue public notice of the deficiency to the board of trustees;

(2) order a hearing conducted by the board of trustees at the campus for the purpose of notifying the public of the unacceptable performance, the improvements in performance expected by the agency, and the sanctions that may be imposed under this section if the performance does not improve within a designated period of time and of soliciting public comment on the initial steps being taken to improve performance;

(3) order the preparation of a report regarding the parental involvement program at the campus and a plan describing strategies for improving parental involvement at the campus;

(4) order the preparation of a report regarding the effectiveness of the district- and campus-level planning and decision-making committees established under Subchapter F, Chapter 11, and a plan describing strategies for improving the effectiveness of those committees;

(5) order the preparation of a student achievement improvement plan that addresses each academic excellence indicator for which the campus's performance is unacceptable, the submission of the plan to the commissioner for approval, and implementation of the plan;

(6) order a hearing to be held before the commissioner or the commissioner's designee at which the president of the board of trustees, the superintendent, and the campus principal shall appear and explain the campus's low performance, lack of improvement, and plans for improvement;

(7) appoint a special campus intervention team to:

(A) conduct a comprehensive on-site evaluation of each low-performing campus to determine the cause for the campus's low performance and lack of progress;

(B) recommend actions, including reallocation of resources and technical assistance, changes in school procedures or operations, staff development for instructional and administrative staff, intervention for individual administrators or teachers, waivers from state statute or rule, or other actions the team considers appropriate;

(C) assist in the development of a campus plan for student achievement; and

(D) assist the commissioner in monitoring the progress of the campus in implementing the campus plan for improvement of student achievement;

(8) if a campus has been a low-performing campus for a period of one year or more, appoint a board of managers composed of residents of the district to exercise the powers and duties of the board of trustees of the district in relation to the campus; or

(9) if a campus has been a low-performing campus for a period of two years or more, order closure of the school program on the campus.

SECTION 4. This Act applies beginning with the 2003-2004 school year, except that the commissioner of education shall make available not later than the beginning of the 2004-2005 school year the programs developed under Section 29.908(a)(1), Education Code, as added by this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 1108** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Subchapter B, Chapter 28, Education Code, is amended by adding Section 28.0212 to read as follows:

Sec. 28.0212. INTENSIVE PROGRAM OF INSTRUCTION. (a) A school district shall offer an intensive program of instruction to a student who does not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39.

(b) A school district shall design the intensive program of instruction described by Subsection (a) to:

(1) enable the student to:

(A) to the extent practicable, perform at the student's grade level at the conclusion of the next regular school term; or

(B) attain a standard of annual growth specified by the school district and reported by the district to the agency; and

(2) if applicable, carry out the purposes of Section 28.0211.

(c) A school district shall use funds appropriated by the legislature for an intensive program of instruction to plan and implement intensive instruction and other activities aimed at helping a student satisfy state and local high school graduation requirements. The commissioner shall distribute funds to districts that implement a program under this section based on the number of students identified by the district who:

(1) do not perform satisfactorily on an assessment instrument administered under Subchapter B, Chapter 39; or

(2) are not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade nine, as determined by the district.

(d) A school district's determination of the appropriateness of a program for a student under this section is final and does not create a cause of action.

Floor Amendment No. 2

Amend **CSSB 1108** between Sections 2 and 3 of the bill (House committee report, page 1, following line 24), by inserting the following new section and renumbering the subsequent sections accordingly:

SECTION _____. (a) Section 39.023(a), Education Code, is amended to read as follows:

(a) The agency shall adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science. All students, except students assessed under Subsection (b) or (l) or exempted under Section 39.027, shall be assessed in:

(1) mathematics, annually in grades three through seven without the aid of technology and in grades eight through 11 with the aid of technology on any assessment instruments that include algebra;

(2) reading, annually in grades three through nine;

(3) writing, including spelling and grammar, in grades four and seven;

(4) English language arts, in grade 10;

(5) social studies, in grades five, eight, and 10; and

(6) science, in grades five, eight, and 10.

(b) The commissioner of education shall adopt rules for the implementation of Sections 39.023(a)(5) and (6), Education Code, as amended by Subsection (a) of this section. The commissioner's rules must provide that:

(1) except as provided by Subdivision (3) of this subsection, not later than the 2006-2007 school year, the State Board of Education shall administer:

(A) a social studies assessment instrument to students in the fifth grade as provided by Section 39.023(a)(5), Education Code, as amended by Subsection (a) of this section; and

(B) a science assessment instrument to students in the eighth grade as provided by Section 39.023(a)(6), Education Code, as amended by Subsection (a) of this section;

(2) except as provided by Subdivision (4) of this subsection, not later than the 2008-2009 school year, the Texas Education Agency, in evaluating the performance of school districts, campuses, and open-enrollment charter schools under Subchapter D, Chapter 39, Education Code, shall include the results of student performance on:

(A) the fifth grade social studies assessment instrument required by Section 39.023(a)(5), Education Code, as amended by Subsection (a) of this section; and

(B) the eighth grade science assessment instrument required by Section 39.023(a)(6), Education Code, as amended by Subsection (a) of this section;

(3) not later than the 2008-2009 school year, the State Board of Education shall administer assessment instruments under Section 39.023(b), Education Code, that correspond to:

(A) the fifth grade social studies assessment instrument required by Section 39.023(a)(5), Education Code, as amended by Subsection (a) of this section; and

(B) the eighth grade science assessment instrument required by Section 39.023(a)(6), Education Code, as amended by Subsection (a) of this section; and

(4) not later than the 2010-2011 school year, the Texas Education Agency shall include the results of student performance on the assessment instruments described by Subdivision (3) of this subsection in evaluating the performance of school districts, campuses, and open-enrollment charter schools under Subchapter D, Chapter 39, Education Code.

Floor Amendment No. 4

Amend **CSSB 1108** by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 29.903, Education Code, as added by Chapter 944, Acts of the 77th Legislature, Regular Session, 2001, is renumbered as Section 29.909, Education Code, and is amended to read as follows:

Sec. 29.909 [~~29.903~~]. ELECTRONIC COURSES. (a) In this section, "electronic course" means an educational program or course:

(1) that includes use of [~~available to students primarily through~~] the Internet or other electronic media; and

(2) in which a student and a teacher are in different locations for a majority of the student's instructional period [~~enrolled in the course is not physically present in the classroom for all or part of the course~~].

(b) The commissioner shall implement a program under which a school district may offer ~~an~~ electronic courses [~~course~~] to students enrolled in the district or to students enrolled in another district, as provided by an agreement between the districts. A district may not require a student to enroll in an electronic course. The district may offer the electronic courses through a designated campus or through a full-time program serving students throughout the district.

(c) The commissioner shall select school districts to participate in the program based on applications submitted by the districts. The commissioner may not require a district to participate in the program. The commissioner may determine the number of

districts permitted to participate in the program, provided that the commissioner shall to the extent possible permit the participation of rural and urban districts with a higher than average:

- (1) number of at-risk students, as determined by the commissioner;
- (2) dropout rate; or
- (3) population of underserved gifted and talented students, as determined by the commissioner.

(d) A school district seeking to participate in the program must submit a written application to the commissioner not later than July 1 preceding the school year the district proposes to begin participation [~~participate~~] in the program, or an earlier date set by the commissioner. The application must include:

- (1) a proposed budget for the program;
- (2) a method to be used to verify student attendance;
- (3) [an accountability plan;

~~[(4) a description of each electronic course to be offered by the district;~~

~~[(5) a description of the students expected to be enrolled in each electronic course;~~

~~[(6)] any requested waiver of a requirement, restriction, or prohibition imposed by this code or by a rule of the State Board of Education or the commissioner, [;] and~~

~~[(7)] the period for which any requested waiver [under Subdivision (6)] is proposed to be in effect; and~~

- (4) the information required under Subsection (f).

(e) The commissioner may collect from each district that submits an application under Subsection (d) a reasonable fee sufficient to pay the costs of administering this section.

(f) Not later than a date determined by the commissioner, each school district participating in the program shall create and maintain on the district's Internet website an "informed choice" report in a format determined by the commissioner. The agency shall maintain on its Internet website a link to each district report under this subsection. Each report must include a description of:

(1) each course of instruction offered to students in the program, including the number of lessons, the expected duration of each lesson, and a description of each lesson that requires use of a computer;

(2) all materials required for each course offered in the program;

(3) the process used to ensure that each course meets the essential knowledge and skills requirements under Subchapter A, Chapter 28, including any consultation with a district curriculum specialist;

(4) the process used to place students in the appropriate academic levels of the program, including:

(A) sample placement evaluations;

(B) information related to each person responsible for placement of a student;

(C) the circumstances in which a student may be placed in different academic levels for different course subjects during a school year; and

(D) the circumstances in which a student may complete more than one course level during a school year;

(5) any technology provided by the program to each student enrolled in the program, including any computer, computer software, or Internet access;

(6) the method used to report attendance in the program;

(7) the method used to authenticate student course work and attendance;

(8) the location and content of each scheduled meeting between parents or guardians of students enrolled in the program and teachers or other school officials, and the method used to notify parents and guardians of the time and location of each meeting;

(9) the program policies relating to:

(A) computer security and privacy; and

(B) truancy, absences, discipline, withdrawal, and expulsion of students;

(10) any extracurricular activities provided by the program, including activities held on a campus in the school district;

(11) the teaching model used by the program, including:

(A) each teacher's responsibilities;

(B) minimum teacher qualifications;

(C) minimum hours of training provided to teachers;

(D) average and maximum student/teacher ratios;

(E) hours of teacher availability; and

(F) for each grade level, minimum and expected amounts of contact between teachers and parents and between teachers and students;

(12) any academic services that the program expects a student's parent or guardian to provide to the student;

(13) each standardized assessment instrument, in addition to any assessment instrument required under Chapter 39, that the student is required to complete during the school year and, if available, the location for administration of the instrument;

(14) a summary of the results of each assessment instrument administered to students in the program during the school year preceding the year the report is submitted; and

(15) the school year calendar for the program, including any options for continued participation outside of the standard school district calendar.

(g) A school district is entitled to receive federal, state, and local funding for a student enrolled in an electronic course in an amount equal to the funding the district is otherwise entitled to receive for a student enrolled in the district. A school district may calculate the average daily attendance of a student enrolled in an electronic course based on:

(1) hours of contact with the student;

(2) the student's successful completion of a course; or

(3) a method approved by the commissioner.

(h) [(e)] The commissioner may waive any requirement, restriction, or prohibition imposed by this code [relating to the computation of daily attendance] to the extent necessary to implement a program under this section.

(i) ~~(f)~~ The commissioner may cooperate with the comptroller, the Department of Information Resources, or any other state agency or commission in adopting technical standards for auditing or verifying student attendance in an electronic course.

(j) ~~(g)~~ Not later than December 1, 2006 ~~[2002]~~, the commissioner shall submit a report to the lieutenant governor and the speaker of the house of representatives. The report must include:

- (1) ~~[proposed]~~ methods proposed by school districts for funding electronic courses, including an evaluation of the fiscal costs or benefits of each method;
- (2) available methods of verifying student attendance in an electronic course, including biometric attendance methods;
- (3) any security or privacy issues involved in providing an electronic course;
- (4) the educational benefits of an electronic course;
- (5) a list of any waiver requests submitted to the commissioner by school districts under Subsection (d)(3) ~~(e)(6)~~; and
- (6) a list of any provisions waived by the commissioner in the implementation of a program under this section.

(k) ~~(h)~~ This subsection and Subsection (j) expire January ~~[section expires September]~~ 1, 2007 ~~[2003]~~.

SECTION _____. Section 29.909(e), Education Code, as added by this Act, applies only to a district that applies for participation in the electronic course program under Section 29.909, Education Code, as renumbered by this Act, on or after the effective date of this Act.

Floor Amendment No. 5

Amend **CSSB 1108** between the enacting clause and SECTION 1 of the bill (House committee printing, page 1, between lines 3 and 4), by inserting the following new SECTIONS and by renumbering subsequent SECTIONS of the bill accordingly:

SECTION 1. Subchapter C, Chapter 12, Education Code, is amended by adding Section 12.0521 to read as follows:

Sec. 12.0521. ALTERNATIVE AUTHORIZATION. (a) Notwithstanding Section 12.052, in accordance with this subchapter and in the manner provided by this section, the board of trustees of a school district or the governing body of a home-rule school district may grant a charter for:

- (1) a new district campus; or
- (2) a program that is operated:

(A) by an entity that has entered into a contract with the district under Section 11.157 to provide educational services to the district through the campus or program; and

(B) at a facility located in the boundaries of the district.

(b) A student's parent or guardian may choose to enroll the student at a campus or in a program under this section. A school district may not assign a student to a campus or program under this section unless the student's parent or guardian has voluntarily enrolled the student at the campus or in the program. A student's parent or

guardian may, at any time, remove the student from a campus or program under this section and enroll the student at the campus to which the student would ordinarily be assigned.

(c) A school district may not assign to a campus or program under this section a teacher who has signed a written statement that the teacher does not agree to that assignment.

SECTION 2. Sections 12.057, 12.058, and 12.062, Education Code, are amended to read as follows:

Sec. 12.057. STATUS. (a) With respect to the operation of a campus or program granted a charter under this subchapter, the [A] governing body of the campus or program provided for under the charter is considered a governmental body for purposes of Chapters 551 and 552, Government Code.

(b) An employee of a campus or program granted a charter under Section 12.052, 12.0521(a)(1), or 12.053 [this subchapter] who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system in the same manner and to the same extent as a qualified employee employed on a regularly operating campus or in a regularly operating program is covered.

(c) A [The] campus or program granted a charter under Section 12.052, 12.0521(a)(1), or 12.053 is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers.

Sec. 12.058. CHARTER POLICY. ~~(a)~~ Each school district shall adopt a campus charter and ~~[campus]~~ program charter policy. The policy must specify:

- (1) the process to be followed for approval of a campus charter or a ~~[campus]~~ program charter;
- (2) the statutory requirements with which a campus charter or ~~[campus]~~ program charter must comply; and
- (3) the items that must be included in a charter application.

~~[(b) Each school district shall adopt a campus charter and campus program charter policy as required by this section not later than January 1, 1998.]~~

Sec. 12.062. REVISION. (a) A charter granted under Section 12.052 or 12.053 [this subchapter] may be revised:

- (1) with the approval of the board of trustees that granted the charter; and
- (2) on a petition signed by a majority of the parents and a majority of the classroom teachers at the campus or in the program, as applicable.

(b) A charter granted under Section 12.0521 may be revised with the approval of the board of trustees that granted the charter. A charter may be revised under this subsection only before the first day of instruction of a school year or after the final day of instruction of a school year.

Floor Amendment No. 6

Amend **CSSB 1108** on page 1, between lines 10 and 11 by inserting the following and renumbering subsequent SECTIONS appropriately:

SECTION 2. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.456 to read as follows:

Sec. 21.456. Training for Teachers of Students of Limited English Proficiency. The commissioner shall develop and make available training materials and other teacher training resources to assist teachers in developing the expertise required to enable students of limited English proficiency meet state performance expectations.

SECTION 3. Section 39.024, Education Code, is amended to read as follows:

(a) Except as otherwise provided by this subsection, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

(b) Each school district shall offer an intensive program of instruction for students who did not perform satisfactorily on an assessment instrument administered under this subchapter. The intensive programs for students who did not perform satisfactorily on an assessment instrument under Section 39.023(a), (c), or (l) shall be designed to enable those students to be performing at grade level at the conclusion of the next regular school term or to attain a standard of annual growth specified by the agency and, if applicable, to carry out the purposes of Section 28.0211. The intensive programs for students who did not perform satisfactorily on an assessment instrument under Section 39.023(b) shall be designed by each student's admission, review, and dismissal committee to enable the student to attain a standard of annual growth on the basis of the student's individualized education program and, if applicable, to carry out the purposes of Section 28.0211.

(c) The agency shall develop study guides for the assessment instruments administered under Sections 39.023(a) and (c). To assist parents in providing assistance during the period that school is recessed for summer, each school district shall distribute the study guides to parents of students who do not perform satisfactorily on one or more parts of an assessment instrument administered under this subchapter.

(d) The agency shall develop and make available teacher training materials and other teacher training resources to assist teachers in enabling students of limited English proficiency meet state performance expectations. The teacher training resources shall be designed to support intensive, individualized, and accelerated instructional programs developed by school districts for students of limited English proficiency.

(e) The commissioner shall retain a portion of the total amount of funds allotted under Section 42.152(a) that the commissioner considers appropriate to finance activities under Subsections (c) and may retain a portion for activities under Subsection (d) and for intensive programs of instruction for students of limited English proficiency offered by school districts [~~development and distribution of the study guides~~] and shall reduce each district's allotment proportionately.

Floor Amendment No. 7

Amend **CSSB 1108** (House committee report), on page 1, between SECTION 2 and SECTION 3, by inserting the following new SECTION and renumbering the remaining sections appropriately:

SECTION 3. Section 39.034(a), Education Code, is amended to read as follows:

(a) Except as otherwise provided by this subsection, the State Board of Education shall determine the level of performance considered to be satisfactory on the assessment instruments. The board may set a level of performance considered to be satisfactory on the assessment instruments for purposes of the academic excellence indicators under Section 39.051(b) that is higher than the level considered to be satisfactory for a student to advance from one grade level to the next under Section 28.0211. The admission, review, and dismissal committee of a student being assessed under Section 39.023(b) shall determine the level of performance considered to be satisfactory on the assessment instruments administered to that student in accordance with criteria established by agency rule.

Floor Amendment No. 8

Amend **CSSB 1108** by adding the following new SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 29.082(a), Education Code, is amended to read as follows:

(a) A school district may set aside an amount from the district's allotment under Section 42.152 or may apply to the agency for funding of an extended year program for a period not to exceed 30 instructional days for students in:

(1) kindergarten through grade 11 [~~8~~] who are identified as likely not to be promoted to the next grade level for the succeeding school year; or

(2) grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year.

Floor Amendment No. 9

Amend **CSSB 1108** by adding the following new SECTIONS to the bill, appropriately numbered, and by renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 28.0211, Education Code, is amended by amending Subsections (a)-(e) and (i) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (b) or (e), a student may not be promoted to:

(1) the fourth grade program to which the student would otherwise be assigned if the student does not:

(A) perform satisfactorily on the third grade reading assessment instrument under Section 39.023; or

(B) meet the alternative promotion criteria established under Subsection (a-1);

(2) the sixth grade program to which the student would otherwise be assigned if the student does not:

(A) perform satisfactorily on the fifth grade mathematics and reading assessment instruments under Section 39.023; or

(B) meet the alternative promotion criteria established under Subsection (a-1); or

(3) the ninth grade program to which the student would otherwise be assigned if the student does not:

(A) perform satisfactorily on the eighth grade mathematics and reading assessment instruments under Section 39.023; or

(B) meet the alternative promotion criteria established under Subsection (a-1).

(a-1) The alternative promotion criteria must include:

(1) the student's performance on the individual assessment instruments administered to the student under Section 39.023;

(2) the student's total score on each assessment instrument specified by Subsection (a)(1)(A), (2)(A), or (3)(A), using only the student's highest scores;

(3) the student's overall academic performance, as evaluated by the student's teacher or teachers based on evidence of satisfactory performance, including the student's:

(A) grades;

(B) portfolios and work samples;

(C) performance on locally administered assessment instruments;

(D) performance on individual reading and mathematics diagnostic tests or inventories; and

(E) improvement in performance on subsequent administrations of an assessment instrument specified under Subsection (a); and

(4) any extenuating circumstances that adversely affected the student's performance on the specified assessment instruments or participation in accelerated instruction.

(b) A school district shall provide to a student who initially fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and who fails to meet the alternative promotion criteria established under Subsection (a-1) at least two additional opportunities to take the assessment instrument. A school district may administer an alternate assessment instrument to a student who has failed an assessment instrument specified under Subsection (a) on the previous two opportunities or has not met the alternative promotion criteria established under Subsection (a-1). Notwithstanding any other provision of this section, a student may be promoted if the student performs at grade level on an alternate assessment instrument under this subsection that is appropriate for the student's grade level and approved by the commissioner.

(c) The first [Each] time a student fails to perform satisfactorily on an assessment instrument specified under Subsection (a), the school district in which the student attends school shall establish a grade placement committee composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the grade placement committee and the purpose of the committee. The grade placement committee shall determine whether the student has met the alternative promotion criteria established under Subsection (a-1). If the grade placement committee determines, as provided by Subsection (e), that the student has not met the alternative promotion criteria established under Subsection (a-1), the committee shall prescribe for [provide to] the student accelerated instruction in the applicable subject area, including reading instruction for a student who fails to

perform satisfactorily on a reading assessment instrument. After a student fails to perform satisfactorily on an assessment instrument a second time or to meet the alternative promotion criteria established under Subsection (a-1), the [a grade placement] committee shall [be established to] prescribe [the] accelerated instruction that the district shall provide to the student before the student is administered the assessment instrument the third time. [The grade placement committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. The district shall notify the parent or guardian of the time and place for convening the grade placement committee and the purpose of the committee.] An accelerated instruction group administered by a school district under this section may not have a ratio of more than 10 students for each teacher.

(d) In addition to providing accelerated instruction to a student under Subsection (c), the district shall notify the student's parent or guardian of:

(1) the student's failure to perform satisfactorily on the assessment instrument or meet the alternative promotion criteria established under Subsection (a-1);

(2) the accelerated instruction program to which the student is assigned; and

(3) the possibility that the student might be retained at the same grade level for the next school year.

(e) A student who, after at least three attempts, fails to perform satisfactorily on an assessment instrument specified under Subsection (a) and who fails to meet the alternative promotion criteria established under Subsection (a-1) or perform satisfactorily on an alternate assessment instrument under Subsection (b) shall be retained at the same grade level for the next school year [in accordance with Subsection (a). The student's parent or guardian may appeal the student's retention by submitting a request to the grade placement committee established under Subsection (c). The school district shall give the parent or guardian written notice of the opportunity to appeal]. The grade placement committee may decide in favor of a student's retention [promotion] only if the grade placement committee established under Subsection (c) concludes, after reviewing all the facts and circumstances in accordance with Subsection (a-1) [using standards adopted by the board of trustees], that even if promoted and given accelerated instruction, the student is not likely to perform at grade level during the next school year. A student may not be retained [promoted] on the basis of the grade placement committee's decision unless that decision is unanimous. The review and final decision of the grade placement committee must be appropriately documented as complying with Subsection (a-1). The commissioner by rule shall establish a time line for making the placement determination. This subsection does not create a property interest in promotion. The decision of the grade placement committee is final and may not be appealed.

(i) If the student is an individual with a disability, as defined by 29 U.S.C. Section 705(20), and its subsequent amendments, the committee established by the school district in compliance with Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and its subsequent amendments, shall determine whether the student has met the alternative promotion criteria established under Subsection (a-1). The admission, review, and dismissal committee of a student who participates in a

district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on an assessment instrument specified under Subsection (a) and administered under Section 39.023(a) or (b) and who does not meet the alternative promotion criteria established under Subsection (a-1) shall determine:

(1) the manner in which the student will participate in an accelerated instruction program under this section; and

(2) whether the student will be promoted or retained under this section.

SECTION _____. Section 28.0211, Education Code, as amended by this Act, applies beginning with the 2003-2004 school year.

Floor Amendment No. 10

Amend **CSSB 1108** (House committee report) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS appropriately:

SECTION _____. Section 39.027, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The commissioner may appoint an advisory committee to study exemptions from and adopt recommendations for reading assessment instruments under this chapter, other than exemptions described by Subsection (b), for dyslexic students. The State Board of Education may adopt the recommendations of the advisory committee. The advisory committee appointed under this subsection must include:

(1) a person involved in public education;

(2) a medical specialist familiar with the diagnosis and treatment of dyslexic students; and

(3) an advocate for dyslexic students.

Floor Amendment No. 11

Amend **CSSB 1108** by adding the following new SECTIONS to the bill, appropriately numbered, and by renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Sections 28.025(a), (c), and (d), Education Code, as amended by Chapters 187 and 834, Acts of the 77th Legislature, Regular Session, 2001, are amended and reenacted to read as follows:

(a) The State Board of Education by rule shall determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under Section 28.002.

(c) A person may receive a diploma if the person is eligible for a diploma under Section 28.0251. In other cases, a [A] student may graduate and receive a diploma only if:

(1) the student successfully completes the curriculum requirements identified by the State Board of Education under Subsection (a) and:

(A) complies with Section 39.025(a); or

(B) meets the alternative graduation criteria prescribed under Section 28.0252; or

(2) the student successfully completes an individualized education program developed under Section 29.005.

(d) A school district may issue a certificate of coursework completion to a student who successfully completes the curriculum requirements identified by the State Board of Education under Subsection (a) but who fails to comply with Section 39.025(a) or the alternative graduation criteria under Section 28.0252. A school district may allow a student who receives a certificate to participate in a graduation ceremony with students receiving high school diplomas.

SECTION _____. Subchapter B, Chapter 28, Education Code, is amended by adding Section 28.0252 to read as follows:

Sec. 28.0252. ALTERNATIVE GRADUATION CRITERIA. (a) The commissioner by rule shall prescribe alternative graduation criteria that a student may meet to graduate and receive a diploma without complying with Section 39.025(a). The alternative graduation criteria must be compensatory criteria. The alternative graduation criteria must include a student's:

- (1) grade point average beginning in grade 9;
- (2) current class ranking;
- (3) performance on the individual assessment instruments specified in Section 39.025(a);
- (4) combined scores, using only the student's highest scores, on the assessment instruments specified in Section 39.025(a); and
- (5) overall academic performance beginning in grade 9, as evaluated by two or more of the student's teachers.

(b) A committee composed of the student's high school principal or the principal's designee and two certified teachers in the student's school district who teach at the high school level shall determine whether a student who has not complied with Section 39.025(a) has met the alternative graduation criteria prescribed under Subsection (a). The commissioner shall adopt rules relating to the selection and operation of a committee under this subsection, including the method by which the committee must notify the student and the student's high school registrar, or the person performing the duties of a registrar, of the committee's decision.

(c) A committee established under Subsection (b) shall determine whether a student who has not complied with Section 39.025(a) has met the alternative graduation criteria prescribed under Subsection (a):

- (1) following the first administration to the student of the assessment instruments specified in Section 39.025(a);
- (2) on written request of the student's parent or guardian, not more than one time in each school year following the school year in which the assessment instruments specified in Section 39.025(a) are first administered to the student; and
- (3) when the principal of the student's high school, or the principal's designee, determines that the student is within one month of completing each requirement for a high school diploma other than compliance with Section 39.025(a).

SECTION _____. (a) Section 28.025, Education Code, as amended by this Act, and Section 28.0252, Education Code, as added by this Act, apply beginning with the 2004-2005 school year.

(b) Not later than June 1, 2004, the commissioner of education shall adopt rules as required by Sections 28.0252(a) and (b), Education Code, as added by this Act.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1108** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; West, Staples, Nelson, and Janek.

SENATE BILL 929 WITH HOUSE AMENDMENTS

Senator Shapiro called **SB 929** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 929** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to regional education service centers.

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

SECTION 1. Subchapter A, Chapter 8, Education Code, is amended by adding Section 8.008 to read as follows:

Sec. 8.008. APPLICABILITY OF CERTAIN LAWS RELATING TO POLITICAL ACTIVITIES. A regional education service center and each center employee is subject to Chapter 556, Government Code, and for purposes of that chapter:

- (1) the center is considered to be a state agency; and
- (2) each center employee is considered to be a state employee.

SECTION 2. Subchapter B, Chapter 8, Education Code, is amended by adding Section 8.056 to read as follows:

Sec. 8.056. LIMITATION ON COMPENSATION FOR CERTAIN SERVICES. A regional education service center that acts as a fiscal agent or broker in connection with an agreement between two school districts under Subchapter E, Chapter 41, may not, unless authorized in writing by the district receiving transferred funds in accordance with the agreement:

- (1) be compensated by the districts in an amount that exceeds the administrative cost of providing the service; or
- (2) otherwise retain for use by the center any amount other than the compensation permitted under Subdivision (1) from the funds transferred between the districts in accordance with the agreement.

SECTION 3. (a) After consulting with the presiding officers of the standing committees in the senate and house of representatives responsible for public education or with one or more committee staff members designated for that purpose by the appropriate presiding officer, 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) The comptroller of public accounts shall provide to the presiding officers of the standing committees in the senate and house of representatives responsible for public education written notice of each meeting concerning the contract entered into under Subsection (a) of this section or the audit described by Subsection (a) of this section between the comptroller or staff members of the comptroller's office and the person with whom the comptroller contracts under Subsection (a) or that person's designee. Each presiding officer or one or more committee staff members designated for that purpose by the appropriate presiding officer is entitled to participate at each of those meetings.

(c) 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.

(d) 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.

SECTION 4. Effective September 1, 2005, Chapter 8, Education Code, is repealed.

SECTION 5. Except as otherwise provided by this Act, this Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 929** as follows:

(1) In SECTION 1 of the bill, in the introductory language (House committee report, page 1, line 5), strike "Section 8.008" and substitute "Sections 8.008 and 8.009".

(2) In SECTION 1 of the bill, immediately following proposed Section 8.008, Education Code (House Committee Report, page 1, between lines 12 and 13), insert the following:

Sec. 8.009. SUNSET PROVISION. Notwithstanding any other law, regional education service centers are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the regional education service centers are abolished and this chapter expires September 1, 2005. Review of regional education service centers under this section shall be conducted in conjunction with review of the agency under Section 7.004.

(3) Strike SECTIONS 3 and 4 of the bill (House committee report, page 2, line 3, through page 4, line 18).

(4) In SECTION 5 of the bill (House committee report, page 4, line 19), strike "SECTION 5. Except as otherwise provided by this Act, this" and substitute "SECTION 3. This".

Floor Amendment No. 3

Amend **CSSB 929** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Subchapter A, Chapter 8, Education Code, is amended by adding Section 8.008 to read as follows:

Sec. 8.008. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. (a) A member of the board of directors and the executive director of a regional education service center are each considered to be a local public official for purposes of Chapter 171, Local Government Code. For purposes of that chapter a member of the board of directors and the executive director of a regional education service center are each considered to have a substantial interest in a business entity if a person related to the member or the executive director in the third degree by

consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest in the business entity under Section 171.002, Local Government Code.

(b) A regional education service center is considered to be a political subdivision for purposes of Section 131.903, Local Government Code.

(c) To the extent consistent with this section, if a law described by this section applies to a school district or the board of trustees of a school district, the law applies to a regional education service center and the board of directors and executive director of a regional education service center.

Floor Amendment No. 1 on Third Reading

On **CSSB 929** on third reading, amend second reading Floor Amendment No. 1 as follows:

Insert the following at the end of Sec. 8009, as added by Floor Amendment No. 1, by Dutton:

To assist the commission in its review, the comptroller of public accounts shall conduct a review of the regional education centers, and report the results of the review to the commission before March 1, 2004. The comptroller of public accounts shall consult with the commission regarding the scope of the review. The report shall also be transmitted to the presiding officers of the standing committee in the senate and house of representatives responsible for public education.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 929** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapiro, Chair; Williams, Bivins, Van de Putte, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 2588

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2588** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2588** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Duncan, Madla, Lucio, and Brimer.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 30, 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 CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 249 (non-record vote)

HB 948 (non-record vote)

HB 999 (non-record vote)

HB 1232 (non-record vote)

HB 1247 (House concurs by a vote of 145 yeas, 0 nays, 2 pnv)

HB 1268 (non-record vote)

HB 1517 (non-record vote)

HB 1534 (non-record vote)

HB 1575 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 1590 (non-record vote)

HB 1614 (House concurs by a vote of 141 yeas, 0 nays, 2 pnv)

HB 1621 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 1650 (House concurs by a vote of 143 yeas, 0 nays, 2 pnv)

HB 1660 (non-record vote)

HB 1661 (non-record vote)

HB 1696 (non-record vote)

HB 1733 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 1743 (non-record vote)

HB 1858 (House concurs by a vote of 146 yeas, 0 nays, 1 pnv)

HB 1895 (non-record vote)

HB 1940 (non-record vote)

HB 1971 (non-record vote)

HB 2343 (non-record vote)

HB 2400 (House concurs by a vote of 143 yeas, 0 nays, 2 pnv)

HB 2458 (non-record vote)

HB 2525 (non-record vote)

HB 2718 (non-record vote)

HB 2795 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 3061 (House concurs by a vote of 145 yeas, 0 nays, 2 pnv)

HB 3303 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 3325 (non-record vote)

HB 3563 (House concurs by a vote of 143 yeas, 0 nays, 2 pnv)

HB 3577 (non-record vote)

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

HB 109

House Conferees: Chavez - Chair/Griggs/Gutierrez/Mowery/Wilson/

HB 1082

House Conferees: Talton - Chair/Christian/Ellis/Hegar/Reyna/

HB 2424

House Conferees: McCall - Chair/Keffer, Jim/Paxton/Pitts/Ritter/

HB 2455

House Conferees: Chisum - Chair/Berman/Hupp/McCall/Solomons/

HB 2533

House Conferees: Brown, Betty - Chair/Casteel/Flynn/Lewis/Smith, Wayne/

HB 3035

House Conferees: Cook, Robby - Chair/Campbell/Hilderbran/Hope/Puente/

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

SB 1413

House Conferees: Hardcastle - Chair/Brown, Betty/Howard/Miller/Wise/

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1131 WITH HOUSE AMENDMENTS

Senator Harris called **SB 1131** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1131** as follows:

- (1) On page 1, line 10, strike "an account" and substitute "a dedicated account".
- (2) On page 2, line 3, strike "\$500,000" and substitute "\$300,000".

- (3) On page 2, line 6, strike "50" and substitute "25".
- (4) On page 3, line 10, strike "20" and substitute "3".
- (5) On page 4, line 7, add "to reimburse for direct services" after "year".
- (6) On page 4, line 21, strike "27" and substitute "72".

Floor Amendment No. 2

Amend **SB 1131** as follows:

(1) In Section 4 of the bill, between proposed Subsections (e) and (f), Article 102.0185, Code of Criminal Procedure (House committee report, page 7, between lines 12 and 13), insert the following:

(f) A municipality or county that keeps records and remits money collected under this article as required by Subsection (e) may retain:

(1) 10 percent of the money collected to cover the municipality's or county's costs in collecting the costs under this article; and

(2) any interest earned on that money before the money is remitted to the comptroller.

(2) In Section 4 of the bill, in proposed Subsection (f), Article 102.0185, Code of Criminal Procedure (House committee report, page 7, line 13), strike "(f)" and substitute "(g)".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1131** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Janek, Lucio, Lindsay, and Deuell.

CONFERENCE COMMITTEE ON HOUSE BILL 1606

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1606** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1606** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Brimer, Whitmire, Ogden, and Ratliff.

SENATE BILL 1828 WITH HOUSE AMENDMENT

Senator Averitt called **SB 1828** 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 1828** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the composition and duties of the State Soil and Water Conservation Board.

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

SECTION 1. Section 201.011, Agriculture Code, is amended to read as follows:

Sec. 201.011. COMPOSITION. (a) The State Soil and Water Conservation Board is a state agency composed of seven ~~five~~ members as follows:

(1) ~~[-with]~~ one member elected from each of the state districts in accordance with this subchapter; and

(2) two members appointed by the governor, each of whom is:

(A) actively engaged in the business of farming, animal husbandry, or other business related to agriculture and who wholly or partly owns or leases land used in connection with that business; and

(B) not a member of the board of directors of a conservation district, but meets the qualifications listed under Section 201.072.

(b) For the purposes of this section, the term "actively engaged" refers to a person who derives at least 51 percent of the person's income from farming, animal husbandry, or other business related to agriculture and who wholly or partly owns land used in connection with that business.

SECTION 2. Section 201.015(b), Agriculture Code, is amended to read as follows:

(b) The term of office of an elected ~~[a]~~ member of the state board begins on the day after the day on which the member was elected. The term of one member appointed by the governor expires February 1 of each odd-numbered year, and the term of the other member appointed by the governor expires February 1 of each even-numbered year.

SECTION 3. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Section 201.0152 to read as follows:

Sec. 201.0152. APPLICATION. Sections 201.0141, 201.0142, and 201.0151 apply to the governor's appointees under this chapter.

SECTION 4. Sections 201.016, Agriculture Code, is amended to read as follows:

Sec. 201.016. VACANCY. Vacancies in the state district positions on the state board are filled by election in the manner provided by this subchapter for an unexpired term or for a full term.

SECTION 5. Section 201.019(a) and (d), Agriculture Code, are amended to read as follows:

(a) The state board shall designate one of its elected members as chairman.

(d) The state board may delegate any power or duty under this chapter to its chairman, one or more of its elected members, or one of more of its agents or employees.

SECTION 6. Subchapter B, Chapter 201, Agriculture Code, is amended by adding Sections 201.028 and 201.029 to read as follows:

Sec. 201.028. SEMIANNUAL REPORT. Not later than January 1 and July 1 of each year, the state board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report relating to the status of the board's activities, including outreach programs, grants made and received, federal funding applied for and received, any special projects, and the board's oversight of water conservation district activities.

Sec. 201.029. MANAGEMENT AUDIT. (a) Not later than March 1, 2004, the state auditor, in coordination with the Legislative Budget Board, shall conduct a management audit of the state board and deliver a report of the audit to the governor, the lieutenant governor, and the speaker of the house of representatives. The audit must include an evaluation of the state board's administrative budget.

(b) This section expires April 1, 2004.

SECTION 7. Sections 203.011, 203.012, 203.013, 203.016, and 203.051, Agriculture Code, are amended to read as follows:

Sec. 203.011. AUTHORITY OF BOARD. The board has jurisdiction over and, with the assistance of local districts, shall administer the brush control program under this chapter.

Sec. 203.012. RULES. The board, after consulting with local districts, shall adopt reasonable rules that are necessary to carry out this chapter.

Sec. 203.013. AUTHORITY OF DISTRICTS. Each district ~~[in which all or part of a critical area is located]~~ may carry out the responsibilities provided by Subchapter D ~~[of this code]~~ as delegated by the board ~~[in that critical area]~~.

Sec. 203.016. CONSULTATION. The State Soil and Water Conservation Board ~~[board]~~ shall consult with:

(1) the Texas Water Development Board in regard to the effects of the brush control program on water quantity;

(2) the department in regard to the effects of the brush control program on agriculture; and

(3) the Parks and Wildlife Department in regard to the effects of the brush control program on fish and wildlife.

Sec. 203.051. STATE PLAN. The board shall prepare and adopt a state brush control plan that shall:

(1) include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem; and

(2) rank [designate] areas of [critical need in] the state in need of a [which to implement the] brush control program, as provided by Section 203.053.

SECTION 8. Sections 203.052(b), (c), and (d), Agriculture Code, are amended to read as follows:

(b) Not less than 30 days before the date the hearing is to be held, the board shall mail written notice of the hearing to each district in the state. The notice must:

(1) include the date and place for holding the hearing;

(2) ~~[and must]~~ state the purpose for holding the hearing; and

(3) include instructions for each district to submit written comments on the proposed plan.

(c) At the hearing, representatives of a district and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and testimony before taking final action on the plan.

(d) After the conclusion of the hearing, the board shall consider the testimony, including the information and suggestions made at the hearing and in written comments, and^[7] after making any changes in the proposed plan that it finds necessary, the board shall adopt the plan.

SECTION 9. Sections 203.053, 203.055, and 203.101, Agriculture Code, are amended to read as follows:

Sec. 203.053. CRITERIA FOR EVALUATING BRUSH CONTROL ~~[DESIGNATING CRITICAL]~~ AREAS. (a) In ranking ~~[designating critical]~~ areas under the plan, the board shall consider:

(1) the location of various brush infestations;

(2) the type and severity of ~~[various]~~ brush infestations;

(3) the various management methods that may be used to control brush;

~~[and]~~

(4) the amount of water produced by a project and the severity of water shortage in the project area; and

(5) any other criteria that the board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.

(b) In ranking ~~[designating critical]~~ areas, the board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

Sec. 203.055. APPROVED METHODS FOR BRUSH CONTROL. (a) The board shall study and must approve all methods used to control brush under this chapter ~~[Act]~~ considering the overall impact of the project ~~[will have within critical areas]~~.

(b) The board may approve a method for use under the cost-sharing program provided by Subchapter E ~~[of this chapter]~~ if the board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will maintain topsoil to prevent erosion or silting of any river or stream; and

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.

Sec. 203.101. GENERAL AUTHORITY. Each district may administer the aspects of the brush control program [~~within any critical area located~~] within the jurisdiction of that district.

SECTION 10. Section 203.154, Agriculture Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

(a) Not more than 70 [~~80~~] percent of the total cost of a single brush control project may be made available as the state's share in cost sharing.

(c) The board may grant an exception to Subsection (b) [~~of this section~~] if the board finds that joint participation of the state brush control program and any federal brush control program will:

- (1) enhance the efficiency and effectiveness of a project; [~~and~~]
- (2) lessen the state's financial commitment to the project; and
- (3) not exceed 80 percent of the total cost of the project.

(d) A political subdivision is eligible for cost sharing under the brush control program, provided that the state's share may not exceed 50 percent of the total cost of a single project.

(e) Notwithstanding any other provision of this section, 100 percent of the total cost of a single project on public lands may be made available as the state's share in cost sharing.

SECTION 11. Sections 203.156, 203.157, and 203.158, Agriculture Code, are amended to read as follows:

Sec. 203.156. APPLICATION FOR COST SHARING. A person, including a political subdivision, that [~~who~~] desires to participate with the state in a brush control project and to obtain cost-sharing participation by the state shall file an application with the district board in the district in which the land on which the project is to be accomplished is located. The application must be in the form provided by board rules.

Sec. 203.157. CONSIDERATIONS IN PASSING ON APPLICATION. In passing on an application for cost sharing, the board shall consider:

(1) the location of [~~whether~~] the project [~~is to be carried out in a critical area~~];

- (2) the method of control that is to be used by the project applicant;
- (3) the plans for revegetation;
- (4) the total cost of the project;
- (5) the amount of land to be included in the project;

(6) whether the applicant for the project is financially able to provide the applicant's [~~his~~] share of the money for the project;

(7) the cost-share percentage, if an applicant agrees to a higher degree of financial commitment;

(8) any comments and recommendations submitted by a local district, the department, the Texas Water Development Board, or [~~of~~] the Parks and Wildlife Department; and

- (9) any other pertinent information considered necessary by the board.

Sec. 203.158. APPROVAL OF APPLICATION. The board may approve an application if, after considering the factors listed in Section 203.157 [~~of this code~~] and any other relevant factors, the board finds:

- (1) the owner of the land fully agrees to cooperate in the project;

(2) the method of eradication is a method approved by the board under Section 203.055 ~~[of this code]~~; and

(3) the project is a higher priority than other projects submitted in accordance with ~~[to be carried out in a critical area designated under]~~ the board's plan.

SECTION 12. Sections 203.159(a) and (c), Agriculture Code, are amended to read as follows:

(a) If the demand for funds under the cost-sharing program is greater than funds available, the board shall ~~[may]~~ establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(c) The quantity of stream flows or groundwater or ~~[amount of land dedicated to the project that will produce significant]~~ water conservation from the eradication of brush is a consideration in assigning priority.

SECTION 13. (a) Section 203.001(5), Agriculture Code, is repealed.

(b) Section 203.155, Agriculture Code, is repealed.

SECTION 14. In making initial appointments to the State Soil and Water Conservation Board under Section 201.011, Agriculture Code, as amended by this Act, the governor shall designate one member to serve a term expiring February 1, 2004, and one member to serve a term expiring February 1, 2005.

SECTION 15. The State Soil and Water Conservation Board shall prepare and deliver the first report required by Section 201.028, Agriculture Code, as added by this Act, not later than January 1, 2004.

SECTION 16. This Act takes effect September 1, 2003.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1828** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Averitt, Chair; Duncan, Bivins, Ellis, and Armbrister.

SENATE BILL 1664 WITH HOUSE AMENDMENTS

Senator Averitt called **SB 1664** 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 1664** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to private activity bonds.

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

SECTION 1. Section 1372.001, Government Code, is amended by adding Subdivision (18) to read as follows:

(18) "Water development issue" means a bond issued as part of an issue of which 95 percent or more of the net proceeds are to be used to provide facilities for furnishing water, conserving water, developing water resources, or making water available.

SECTION 2. Sections 1372.006(a) and (b), Government Code, are amended to read as follows:

(a) An application for a reservation under Subchapter B or a carryforward designation under Subchapter C must be accompanied by a nonrefundable fee in the amount of \$500, except that for issuers of qualified residential rental project bonds the application must be accompanied by a nonrefundable fee of \$5,000, of which the board shall retain \$1,000 to offset the costs of the private activity bond allocation program and the administration of that program and of which the board shall transfer \$4,000 through an interagency agreement to the Texas Department of Housing and Community Affairs for use in the affordable housing research and information program as provided by Section 2306.259.

(b) An issuer, other than an issuer under Section 1372.022(a)(2), shall submit to the board a closing fee in an amount that is equal to the greater of:

(1) \$1,000; or

(2) 0.025 percent of the principal amount of the bonds certified as provided by Section 1372.039(a)(1).

SECTION 3. Section 1372.022, Government Code, as amended by Chapters 1367, 1420, and 1468, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 1372.022. AVAILABILITY OF STATE CEILING TO ISSUERS. (a) ~~[Prior to August 15 of each year through September 1, 2003:~~

~~[(1) 25 percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;~~

~~[(2) 11 percent of the state ceiling is available exclusively for reservations by issuers of state voted issues;~~

~~[(3) 7.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds;~~

~~[(4) 16.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental projects bonds;~~

~~[(5) 10.5 percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53.47, Education Code; and~~

~~[(6) 29.5 percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation. The board shall issue 2 percent of the allocation based on a priority level for projects for the development of new drinking water sources.~~

~~[(b)]~~ If the state ceiling is computed on the basis of \$75 per capita or a greater amount, before August 15 of each year:

(1) 28.0 ~~[29.6]~~ percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds;

(2) 8 percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues;

(3) 2.0 ~~[4.6]~~ percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds and enterprise zone facility bonds;

(4) 22.0 ~~[23]~~ percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental project bonds;

(5) 10.5 ~~[8.8]~~ percent of the state ceiling is available exclusively for reservations by issuers of qualified student loan bonds authorized by Section 53.47, Education Code, that are nonprofit corporations able to issue a qualified scholarship funding bond as defined by Section 150(d)(2), Internal Revenue Code (26 U.S.C. Section 150(d)(2)); and

(6) 29.5 ~~[26]~~ percent of the state ceiling is available exclusively for reservations by any other issuer of bonds that require an allocation.

(b) On and after August 15 but before September 1, that portion of the state ceiling available for reservations becomes available for all applications for reservations in the order determined by the board by lot, subject to Section 1372.0321 ~~[qualified residential rental project issues in the manner described by Section 1372.0321]~~. On and after September 1, that portion of the state ceiling available for reservations becomes available to any issuer for any bonds that require an allocation, subject to the provisions of this subchapter.

~~[(e) This section expires September 1, 2003.]~~

SECTION 4. Section 1372.0231, Government Code, is amended by amending Subsections (b), (c), (d), (e), and (f) and adding Subsections (h) and (i) to read as follows:

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), the board shall grant reservations, subject to Sections 1372.0321(a) and (b):

(1) in the order determined by the board by lot; and

(2) in a manner that ensures that:

(A) the set-aside amount is used for proposed projects that are located throughout the state; and

(B) not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986.

(c) With respect to the amount of the state ceiling set aside under Subsection (a)(2), the board shall grant reservations in a manner that ensures that not more than 50 percent of the set-aside amount is used for proposed projects that are located in

qualified census tracts as defined by the most recent publication by the United States Department of Housing and Urban Development [Section 143(j), Internal Revenue Code of 1986].

(d) Except as provided by Subsection (i), before [Before] June 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) among the uniform state service regions according to the percentage of the state's population that resides in each of those regions.

(e) Until May 15 of each year, for each of [For] the uniform state service regions containing Austin, Dallas, or [and] Houston, the board shall reserve \$15 million of the state ceiling set aside for the region under Subsection (d) for the areas in the region that are located [additionally apportion the amount of the state ceiling set aside for each of those regions under Subsection (d) within the region according to the percentage of the region's population that resides in a metropolitan statistical area and the percentage of the region's population that resides] outside of a metropolitan statistical area.

(f) In each area described by Subsection (d) or (e), the board shall grant reservations based on the priority levels of proposed projects as described by Section 1372.0321 [~~1372.032~~].

(h) An application by an issuer of qualified residential rental project bonds that is submitted after the deadline for eligibility to participate in the lottery has a priority lower than that of every application submitted before that date.

(i) Before June 1, the board shall apportion the amount of the state ceiling set aside under Subsection (a)(2) only among uniform state service regions with respect to which an issuer has submitted an application for a reservation of the state ceiling on or before March 1.

SECTION 5. Sections 1372.024(a) and (b), Government Code, are amended to read as follows:

(a) If, before January 2, applications received for reservations for state-voted issues total more than eight [~~13~~] percent of the available state ceiling for that program year, the percentage of state-voted ceiling requested that is more than eight [~~13~~] percent of the state ceiling:

(1) is removed from the state ceiling available to other issuers on January 2; and

(2) is available for those applications for reservations for state-voted issues.

(b) The amount removed under Subsection (a) may not exceed eight [~~4.5~~] percent of the state ceiling.

SECTION 6. Section 1372.027, Government Code, is amended to read as follows:

Sec. 1372.027. PUBLICATION OF AVAILABLE STATE CEILING. The board shall publish at least weekly on its Internet site [~~biweekly in the Texas Register~~]:

(1) a statement of the amount of the available state ceiling;

(2) a list of the issues that have received a reservation since the preceding publication, including the amount of each reservation; and

(3) a list of the issues that had previously received a reservation that have closed since the preceding publication.

SECTION 7. Section 1372.028, Government Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An issuer may apply for a reservation for a program year not earlier than October 5 ~~[10]~~ of the preceding year. An issuer may not submit an application for a program year after December 1 of that year.

(e) If an issuer applied the previous year for a reservation for qualified mortgage bonds and has not received the reservation at the time of application for the lottery, the issuer, instead of filing a complete application under Subsection (c), may file a statement explaining whether there are any changes in information from the application information filed the previous year. If there are changes, the statement must specify the current information. An issuer that files a statement under this subsection must pay the same application fee required for a complete application.

SECTION 8. Subchapter B, Chapter 1372, Government Code, is amended by adding Section 1372.0281 to read as follows:

Sec. 1372.0281. INFORMATION REQUIRED OF ISSUERS OF CERTAIN QUALIFIED STUDENT LOAN BONDS. (a) An issuer of qualified student loan bonds authorized by Section 53.47, Education Code, shall provide to the board together with its application for a reservation information required by board rule.

(b) The board may require an issuer described by Subsection (a) to provide information with its application, or to supplement the application with information, that includes:

- (1) financial statements;
- (2) portfolio amounts;
- (3) default rates;
- (4) descriptions of how student loans are being used or spent; and
- (5) information about the issuer's client agencies.

SECTION 9. Section 1372.031, Government Code, is amended to read as follows:

Sec. 1372.031. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS. Subject to Sections ~~[Section]~~ 1372.0321 and 1372.0231, if, on or before October 20, more than one issuer in a category described by Section 1372.022(a)(2), (3), (4), or (6) applies for a reservation of the state ceiling for the next program year, the board shall grant reservations in that category in the order determined by the board by lot.

SECTION 10. Section 1372.0321, Government Code, as added by Chapters 1367 and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES. (a) In granting reservations to issuers of qualified residential rental project issues, the board shall[~~]~~

~~[(+)]~~ give first priority to:

(1) ~~[(+)]~~ projects in which:

(A) 50 ~~[100]~~ percent of the residential units in the project ~~[projects]~~

are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 50 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 50 percent of the area median income; and

(B) the remaining 50 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(2) projects in which:

(A) 15 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 30 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 30 percent of the area median income; and

(B) the remaining 85 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income;

(3) projects:

(A) in which 100 percent of the residential units in the project are:

(i) under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(ii) reserved for families and individuals earning not more than 60 percent of the area median income; and

(B) which are located in a census tract in which the median income, based on the most recent information published by the Bureau of the Census, is higher than the median income for the county, metropolitan statistical area, or primary metropolitan statistical area in which the census tract is located as established by the United States Department of Housing and Urban Development; or

(4) [~~(B)~~] on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development.

(a-1) In granting reservations to issuers of qualified residential rental project issues, the board shall [±

[(2)] give second priority to projects in which 100 percent of the residential units in the project [projects] are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program.

(a-2) In granting reservations to issuers of qualified residential rental project issues, the board shall [±and

[(3)] give third priority to any other qualified residential rental project.

(b) The board may not reserve a portion of the state ceiling for a first or second priority project described by this section ~~Subsection (a)]~~ unless the board receives evidence that an application has been filed with the Texas Department of Housing and Community Affairs for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

SECTION 11. Section 1372.033, Government Code, is amended to read as follows:

Sec. 1372.033. PRIORITIES FOR RESERVATIONS AMONG CERTAIN ISSUERS OF QUALIFIED STUDENT LOAN BONDS. (a) In this section:

(1) "Additional need" means the additional need of a qualified nonprofit corporation determined by subtracting the floor allocation for that qualified nonprofit corporation from that corporation's annual need.

(2) "Annual need" means, for a qualified nonprofit corporation, one-half of the total principal amount of Texas eligible loans the qualified nonprofit corporation purchased in the two most recently completed fiscal years ending June 30.

(3) "Floor allocation" means, for a qualified nonprofit corporation, an allocation in the amount of the lesser of \$27 million or the qualified nonprofit corporation's annual need.

(4) "Qualified nonprofit corporation" has the meaning assigned by Section 53.47, Education Code.

(5) "Remaining amount to be allocated" is the total amount to be allocated under Section 1372.022(a)(5) in a calendar year less the sum of the floor allocations of the qualified nonprofit corporations that have applied for a student loan bond allocation for the calendar year.

(6) "Student loan bond allocation" means an allocation for private activity bonds under Section 1372.022(a)(5).

(7) "Texas eligible loan" means a Texas loan purchased from the originating lender by a nonprofit corporation acting as described by Section 53.47(g), Education Code.

(8) "Texas loan" means a guaranteed student loan, as defined by Section 53.47, Education Code, made on behalf of a borrower who is:

(A) a resident of this state; or

(B) a student attending an accredited institution, as defined by Section 53.47, Education Code, that is located in this state.

(9) "Total amount to be allocated" means the total available under Section 1372.022(a)(5) for all applicants.

(b) Only a qualified nonprofit corporation may apply for a student loan bond allocation.

(c) An application for a student loan bond allocation must include a statement as provided by this subsection. The statement must be certified by an officer of the applicant, whose signature must be notarized. The statement must be audited by an independent auditor, and the report of the independent auditor must be attached to the statement. The statement must list:

(1) the principal amount of Texas eligible loans the applicant purchased in the two most recently completed fiscal years ending June 30;

(2) the agencies that are guaranteeing the Texas eligible loans listed and the amount of Texas eligible loans guaranteed by each agency;

(3) the originating lenders from whom the Texas eligible loans were purchased and the amount of Texas eligible loans each originating lender sold; and

(4) the date of each purchase transaction.

(d) Each qualified nonprofit corporation that applies for a student loan bond allocation in compliance with all applicable application requirements is entitled to receive a floor allocation except as provided by this section. If the total amount to be allocated is less than the sum of the floor allocations for all of the applicants, each applicant is entitled to a proportion of the total amount to be allocated equal to the proportion its floor allocation bears to the total of the floor allocation for all of the applicants. A qualified nonprofit corporation whose annual need is zero is not entitled to apply for a student loan bond allocation.

(e) If, after allocations are computed under Subsection (d), there is a remaining amount to be allocated and there are one or more applicants with additional need, each applicant with additional need is entitled to a proportion of the remaining amount to be allocated equal to the proportion the applicant's additional need bears to the total of the additional need of all applicants but not to exceed the amount of the applicant's additional need. Any amount remaining after distribution to applicants with additional need shall be allocated in equal amounts to the other applicants that have a floor allocation of greater than \$27 million.

(f) Notwithstanding Subsection (e), if an applicant's share of the remaining amount to be allocated is greater than 50 percent, that applicant is entitled to 50 percent of the remaining amount to be allocated. The other 50 percent of the remaining amount to be allocated shall be distributed to the other applicants in proportion to their unmet additional need, except that the allocations may not exceed, for any applicant, the additional need of the applicant. If, after the additional needs of the other applicants are met, there remains any amount of the remaining amount to be allocated available for distribution, that amount shall be distributed to the applicant with the share of more than 50 percent of the remaining amount to be allocated in an amount not to exceed the amount of the applicant's additional need.

(g) A qualified nonprofit corporation that receives a student loan bond allocation may not:

(1) transfer the allocation to another entity; or

(2) loan to another entity other than a student proceeds of bonds issued under the allocation [~~If, on or before October 20, more than one issuer authorized by Section 53.47, Education Code, to issue qualified student loan bonds applies for a reservation of the state ceiling for qualified student loan bonds for the next program year, the board shall grant reservations in that category in reverse order of the date of the most recent closing of qualified student loan bonds by each issuer. The issuer that had the most recent closing shall be the last to receive a reservation.~~

~~[(b) If closings occurred on the same date, the board shall grant reservations in the order determined by the board by lot.~~

~~[(c) The board shall grant a reservation to an issuer described by Subsection (a) in an amount not to exceed the lesser of:~~

~~[(1) \$35 million;~~

~~[(2) the full amount of the state ceiling for qualified student loan bonds for which the issuer applied; or~~

~~[(3) the amount of the state ceiling for qualified student loan bonds remaining after reservations have been granted to issuers with a higher priority under Subsection (a).~~

~~[(d) Notwithstanding Subsection (c)(1) or Section 1372.037(5), after each issuer described by Subsection (a) that applies for a reservation has been offered a reservation in the maximum amount available to the issuer, the board shall grant in equal portions, as additional reservations, any remaining amount of the state ceiling for qualified student loan bonds to issuers that:~~

~~[(1) received and accepted a reservation; and~~

~~[(2) do not refuse an additional reservation under this subsection].~~

SECTION 12. Section 1372.036(b), Government Code, is amended to read as follows:

(b) Beginning [~~If, after~~] June 1 [~~and before August 25~~], partial reservations may be offered once to each applicant in each [~~any portion of the state ceiling in a~~] category described by Section 1372.022(a) until an applicant in the category accepts the partial reservation or until additional volume is returned in an amount sufficient to grant a full reservation [~~from which issuers were granted reservations becomes available in that category:~~

~~[(1) those amounts of the state ceiling shall be aggregated; and~~

~~[(2) the board shall grant reservations from that category on August 25].~~

SECTION 13. Section 1372.037, Government Code, is amended to read as follows:

Sec. 1372.037. LIMITATIONS ON GRANTING OF RESERVATIONS FOR INDIVIDUAL PROJECTS. (a) Except as provided by Subsection (b), before [~~Before~~] September 1[, ~~for any one project,~~] the board may not grant for any single project a reservation for that year that is greater than:

(1) \$25 million, if the issuer is an issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs;

(2) \$50 million, if the issuer is an issuer of a state-voted issue, other than the Texas Higher Education Coordinating Board, or \$75 million, if the issuer is the Texas Higher Education Coordinating Board;

(3) the amount to which the Internal Revenue Code limits issuers of qualified small issue bonds and enterprise zone facility bonds, if the issuer is an issuer of those bonds;

(4) the lesser of \$15 million or 15 percent of the amount set aside for reservation by issuers of qualified residential rental project bonds, if the issuer is an issuer of those bonds;

(5) \$35 million, if the issuer is an issuer authorized by Section 53.47, Education Code, to issue qualified student loan bonds; or

(6) \$25 million, if the issuer is any other issuer of bonds that require an allocation.

(b) In addition to a reservation under Subsection (a)(2), the board may grant to the Texas Water Development Board a reservation for not more than \$100 million of the available state ceiling for a water development issue.

SECTION 14. Section 1372.039, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Not later than the 35th day after an issuer's reservation date, the issuer shall submit to the board:

(1) a certificate signed by an authorized representative of the issuer that certifies the principal amount of the bonds to be issued; and

(2) a list of finance team members and their addresses and telephone numbers.

(d) If an issuer does not submit the documents during the period provided by Subsection (a), the issuer may submit the documents not later than the third day after the end of the 35-day period together with a statement and evidence regarding extenuating circumstances that prevented a timely filing. The board shall review the statement and the evidence and may, based on the statement and evidence, permit the late filing.

SECTION 15. Section 1372.040, Government Code, is amended to read as follows:

Sec. 1372.040. RESERVATION BY CERTAIN ISSUERS OF QUALIFIED MORTGAGE BONDS OF MONEY FOR MORTGAGES FOR CERTAIN PERSONS. An issuer of qualified mortgage bonds, other than the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation, shall reserve for six months 50 percent of the funds available for loans outside the federally designated target areas to provide mortgages to individuals and families with incomes below 80 percent of the applicable median family income, as defined by Section 143(f)(4), Internal Revenue Code (26 U.S.C. Section 143(f)(4)).

SECTION 16. Section 1372.042, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) An issuer other than an issuer of qualified residential rental project bonds, an issuer of state-voted issues, or an issuer of qualified mortgage bonds shall close on the bonds for which the reservation was granted not later than the 120th day after the reservation date.

(a-1) An issuer of qualified residential rental project bonds shall close on the bonds for which the reservation was granted not later than the 150th day after the reservation date. If an issuer of qualified residential rental project bonds fails to close

on the bonds for which a reservation was granted, the issuer shall pay the full closing fee provided by Section 1372.006(b) if the application is not withdrawn before the 120th day after the reservation date.

(b) An issuer of state-voted issues or an issuer of qualified mortgage revenue bonds shall close on the bonds for which the reservation was granted not later than the 180th day after the reservation date.

(c) Notwithstanding Subsections (a), (a-1), and (b), if the 120-day period, the 150-day period, or the 180-day period, as applicable, expires on or after December 24 of the year in which the reservation was granted, the issuer shall close on the bonds before December 24, except that if the applicable period expires after December 31 of that year, the issuer may notify the board in writing before December 24 of the issuer's election to carry forward the reservation and of the issuer's expected bond closing date. In compliance with the requirements of Section 146(f), Internal Revenue Code of 1986, the board shall file in a timely manner a carryforward election with respect to any bonds expected to close after December 31 to permit the bonds to close by the expected date, except that the board may not file the carryforward election after February 15 of the year following the year in which the reservation was granted. The grant of the reservation for the balance of the 120-day period, the 150-day period, or the 180-day period, as applicable, is automatically and immediately reinstated on the board's filing of a carryforward election with respect to the reservation.

SECTION 17. Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.259 to read as follows:

Sec. 2306.259. AFFORDABLE HOUSING RESEARCH AND INFORMATION PROGRAM. With money available under Section 1372.006(a), the department shall establish an affordable housing research and information program in which the department shall contract for:

(1) periodic market studies to determine the need for housing for families of extremely low, very low, and low income in census tracts throughout the state;

(2) research from qualified professionals to determine the effect of affordable housing developments on property values, social conditions, and quality of life in surrounding neighborhoods;

(3) independent research in affordable housing design and development approaches that enhance community acceptance of affordable housing and improve the quality of life for the residents of the housing; and

(4) public education and outreach efforts to assist the public in understanding the nature and purpose of affordable housing and the process for public participation in the administration of affordable housing programs.

SECTION 18. Section 53.47(k), Education Code, is repealed.

SECTION 19. This Act takes effect September 1, 2003. Except for the changes in law made by this Act to Sections 1372.0231(f), 1372.027, and 1372.036(b), Government Code, the changes in law made by this Act apply only in relation to a reservation of the state ceiling that will be granted on or after January 1, 2004.

Floor Amendment No. 1

Amend **CSSB 1664** (House committee printing), on page 17, line 11, by striking the words "35 million" and substituting "the amount as prescribed in 1372.033(d), (e), and (f)".

Floor Amendment No. 2

Amend **CSSB 1664** in Section 4 of the bill by striking amended Subsection (b), Section 1372.0231, Government Code (House committee printing, page 4, lines 10-20), and substituting:

(b) With respect to the amount of the state ceiling set aside under Subsection (a)(1), subject to Sections 1372.0321(a) and (b), the board shall grant reservations[~~±~~ [(1) in the order determined by the board by lot; and [(2)] in a manner that ensures that:

(1) [(A)] the set-aside amount is used for proposed projects that are located throughout the state; and

(2) [(B)] not more than 50 percent of the set-aside amount is used for proposed projects that are located in qualified census tracts as defined by Section 143(j), Internal Revenue Code of 1986.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1664** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Averitt, Chair; Lindsay, Bivins, Williams, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 1538

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1538** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Armbrister in Chair, asked if there were any motions to instruct the conference committee on **HB 1538** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Wentworth, Nelson, Whitmire, and Ratliff.

CONFERENCE COMMITTEE ON HOUSE BILL 2593

Senator Estes called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2593** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2593** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Estes, Chair; Madla, Lindsay, Van de Putte, and Fraser.

CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 85

Senator Estes called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HJR 85** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HJR 85** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Estes, Chair; Madla, Lindsay, Van de Putte, and Fraser.

CONFERENCE COMMITTEE ON HOUSE BILL 3546

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3546** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3546** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Madla, Brimer, Staples, and Ogden.

SENATE BILL 76 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 76** 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 76** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the provision of subsidized child-care services.

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

SECTION 1. Subchapter E, Chapter 29, Education Code, is amended by adding Section 29.1533 to read as follows:

Sec. 29.1533. ESTABLISHMENT OF NEW PREKINDERGARTEN PROGRAM. Before establishing a new prekindergarten program, a school district shall investigate the possibility of sharing use of an existing Head Start or other child-care program site as a prekindergarten site.

SECTION 2. Section 29.155, Education Code, is amended by adding Subsections (g) through (j) to read as follows:

(g) From amounts appropriated for the purposes of this subsection, the commissioner may also provide for:

(1) coordinating early childhood care and education programs;

(2) developing and disseminating for programs described by Subdivision (1) prekindergarten instructional materials and school-readiness information for parents; and

(3) developing standards for model early childhood care and education coordination.

(h) The model program standards developed under Subsection (g) must focus on pre-literacy skills, including language acquisition, vocabulary development, and phonological awareness.

(i) In carrying out the purposes of Subsection (g), a school district or open-enrollment charter school may use funds granted to the district or school under this subsection in contracting with another entity, including a private entity.

(j) If a school district or open-enrollment charter school returns to the commissioner funds granted under this section, the commissioner may grant those funds to another entity, including a private entity, for the purposes of Subsection (g).

SECTION 3. Subchapter E, Chapter 29, Education Code, is amended by adding Section 29.1561 to read as follows:

Sec. 29.1561. ADMINISTRATION OF EARLY CHILDHOOD CARE AND EDUCATION PROGRAMS. (a) The commissioner may waive a law or rule relating to early childhood care and education programs:

(1) to the extent that the law or rule is more restrictive than required by federal law; or

(2) to the extent necessary to comply with federal law.

(b) Notwithstanding any restriction imposed by this title, the commissioner may administer grants for early childhood care and education programs under Section 29.155 or 29.156, including Head Start and Early Head Start programs, in a manner that provides the greatest flexibility allowed under federal law.

SECTION 4. Subchapter E, Chapter 29, Education Code, is amended by adding Sections 29.158, 29.159, and 29.160 to read as follows:

Sec. 29.158. COORDINATION OF SERVICES. (a) In a manner consistent with federal law and regulations, each prekindergarten program provider, Head Start and Early Head Start program provider, and provider of an after-school child-care program provided at a school shall coordinate with the agency, the Texas Workforce Commission, and local workforce development boards regarding subsidized child-care services.

(b) The coordination required by this section must include:

(1) providing to an applicant for a child-care service information regarding:
(A) child-care resource and referral agencies serving the applicant's community;
(B) information and referral providers serving the applicant's community; or
(C) the prekindergarten program, local child-care and development fund contractor, or Head Start program administrator serving the applicant's community;
and

(2) coordinating to ensure, to the extent practicable, that full-day, full-year child-care services are available to meet the needs of low-income parents who are working or participating in workforce training or workforce education.

(c) The coordination required by this section may also include:

(1) cooperating with each state agency regarding child-care or child-development studies conducted by that agency;

(2) collecting data necessary to determine a child's eligibility for subsidized child-care services or a prekindergarten, Head Start or Early Head Start, or after-school child-care program, to the extent that the collection of data does not violate the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g);

(3) cooperating to provide for staff training and professional development activities;

(4) identifying and developing methods for the collaborative provision of subsidized child-care services and prekindergarten, Head Start or Early Head Start, or after-school child-care program services, including:

(A) operating a combined system for eligibility determination or registration processes so that an applicant may apply for all services available in an applicant's community through a single point of access;

(B) sharing facilities or staff; and

(C) increasing the enrollment capacity of those programs;

(5) identifying child-care facilities located in close proximity to prekindergarten, Head Start or Early Head Start, or after-school child-care programs;

(6) coordinating transportation between child-care facilities identified under Subdivision (5) and a prekindergarten, Head Start or Early Head Start, or after-school child-care program; and

(7) coordinating with the State Center for Early Childhood Development to develop longitudinal studies to measure the effects of quality early childhood care and education programs on educational achievement, including high school performance and completion.

(d) In coordinating child-care services under this section and in making any related decision to contract with another provider for child-care services, the agency, Texas Workforce Commission, local workforce development boards, and each prekindergarten program provider, Head Start and Early Head Start program provider, and provider of an after-school child-care program provided at a school shall consider the quality of the services involved in the proposed coordination or contracting decision. Any appropriate indicator of quality services may be considered under this subsection, including whether the provider of the services:

(1) meets the Texas Rising Star Provider criteria described by 40 T.A.C. Section 809.15(b);

(2) is accredited by a nationally recognized accrediting organization approved by the Texas Workforce Commission and the Department of Protective and Regulatory Services;

(3) meets standards developed by the State Center for Early Childhood Development; or

(4) has achieved any other measurable target relevant to improving the quality of child care in this state.

(e) Any coordination required by this section that involves a prekindergarten program must be approved by the commissioner.

Sec. 29.159. PROVISION OF CERTAIN INFORMATION. (a) Except as otherwise provided by this section, each provider of government-funded child-care services shall, at the time that a child is enrolled with the provider, furnish to the child's parent information regarding:

(1) effective early education settings; and

(2) any indicators that a child is ready for kindergarten that have been developed at the time the child is enrolled.

(b) If a provider does not have sufficient resources to provide the information specified by Subsection (a), the provider shall:

(1) furnish the parent with the appropriate telephone numbers or Internet sites through which the parent may obtain the information; or

(2) refer the parent to a local child-care resource and referral agency.

Sec. 29.160. DEMONSTRATION PROJECTS. (a) The State Center for Early Childhood Development, in conjunction with a school district, regional education service center, institution of higher education, local government, local workforce development board, or community organization, may develop a quality rating system demonstration project under which prekindergarten program providers, licensed child-care facilities, or Head Start and Early Head Start program providers are assessed under a quality rating system.

(b) In developing the quality rating system demonstration project, the State Center for Early Childhood Development is entitled to:

(1) reasonable access to the sites at which the programs to be rated are operated, which may include sites under the authority of school districts or the Department of Protective and Regulatory Services; and

(2) technical assistance and support from the agency, the Texas Workforce Commission, and the Department of Protective and Regulatory Services to the extent that those agencies have the ability to provide assistance and support using existing agency resources.

(c) A school district, regional education service center, institution of higher education, local government, local workforce development board, or community organization may develop one or more coordination-of-resources demonstration projects under which government-funded child-care services are operated in a coordinated manner. An entity that develops a proposed demonstration project under this subsection must obtain approval of the project from the state agency or agencies with regulatory jurisdiction over the subject matter involved in the project.

(d) An entity that obtains approval of a coordination-of-resources demonstration project is entitled to a waiver or modification of any existing rule, policy, or procedure of the agency, the Texas Workforce Commission, or the Department of Protective and Regulatory Services that impairs the coordinated provision of government-funded child-care services, provided that the waiver or modification does not adversely affect the health, safety, or welfare of the children receiving services under the project. In addition, if applicable, the appropriate state agency must seek on behalf of the entity any available federal waiver from a federal rule, policy, or procedure imposed in connection with a Head Start program that impairs the coordinated provision of government-funded child-care services.

(e) The State Center for Early Childhood Development and any other entity that implements a demonstration project under this section must provide a report to the legislature and to the state agency or agencies with regulatory jurisdiction over the subject matter involved in the project. The report must include:

- (1) an evaluation of the effectiveness of the project; and
- (2) recommendations on statewide implementation of the project.

(f) The report required by Subsection (e) must be provided at the time specified jointly by the state agency or agencies with regulatory jurisdiction over the subject matter involved in the demonstration project.

SECTION 5. (a) The director of the State Center for Early Childhood Development shall establish an advisory committee on child-care coordination to evaluate the feasibility of coordinating government-funded child-care programs in a manner that promotes access to child-care programs and results in improved school readiness. The advisory committee must include representatives of:

- (1) the Office of Early Childhood Coordination established under Subchapter H, Chapter 531, Government Code;
- (2) the Texas Workforce Commission;
- (3) the Texas Education Agency;
- (4) the Department of Protective and Regulatory Services;
- (5) independent school districts;
- (6) local workforce development boards;
- (7) child-care development fund contractors;
- (8) Head Start program providers;
- (9) the Head Start Association;
- (10) the Head Start Collaboration Office;
- (11) nonprofit child-care providers;
- (12) for-profit child-care providers;
- (13) administrators of government-funded child-care programs;
- (14) parents of children receiving government-funded child-care services or other consumers of government-funded child-care services; and
- (15) any other appropriate group, as determined by the director of the State Center for Early Childhood Development.

(b) The advisory committee is not subject to Chapter 2110, Government Code.

(c) A member of the advisory committee may not receive compensation for serving on the committee.

(d) The director of the State Center for Early Childhood Development shall designate a member of the advisory committee to serve as presiding officer of the committee.

(e) The advisory committee shall meet at the call of the presiding officer of the committee.

(f) A member of the advisory committee serves at the will of the director of the State Center for Early Childhood Development.

(g) The advisory committee may coordinate its activities with the activities of the Office of Early Childhood Coordination advisory committee established under Section 531.286, Government Code.

(h) Not later than September 1, 2004, the advisory committee shall prepare and deliver a report to the governor, lieutenant governor, speaker of the house of representatives, and clerks of the standing committees of the senate and house of representatives with primary jurisdiction over state-subsidized child-care services. The report must identify the types of data collected and maintained by government-funded child-care providers, including Head Start program providers and providers under contract with local workforce development boards. The report must also include recommendations for:

- (1) effective models of child-care coordination;
- (2) effective administrative structure at the state and local level to facilitate coordination of child-care resources;
- (3) revision of statutes and policies to facilitate child-care coordination;
- (4) one or more methods of including the collected and maintained data identified in this subsection in the public school information maintained by the agency through the Public Education Information Management System (PEIMS); and
- (5) promotion of school readiness through early child-care and education programs.

(i) On December 31, 2004, the advisory committee is abolished and this section expires.

SECTION 6. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 76** in SECTION 4 of the bill, in proposed Section 29.158(d), Education Code (House committee report, page 5, line 9), between "decision" and the period, by inserting "and shall give preference to services of the highest quality".

Floor Amendment No. 3

Amend **CSSB 76** as follows:

Page 8, line 16 amend section 5(a) to read as follows:

(a) The Commissioner of Education shall establish a 15 member advisory committee on child-care coordination to evaluate the feasibility of coordinating government-funded child-care programs in a manner that promotes access to child-care programs and results in improved school readiness. The advisory committee must include a representative of:

- (1) the Office of Early Childhood Coordination established under Subchapter H, Chapter 531, Government Code;
- (2) the Texas Workforce Commission;

- (3) the Texas Education Agency;
- (4) the Department of Protective and Regulatory Services;
- (5) independent school districts;
- (6) local workforce development boards;
- (7) child-care development fund contractors;
- (8) Head Start program providers;
- (9) The Head Start Association;
- (10) The Head Start Collaboration Office;
- (11) Nonprofit child-care providers;
- (12) For-profit child-care providers;
- (13) Administrators of government-funded child-care programs;
- (14) Parents of children receiving government-funded child-care programs;
- (15) Texas Licensed Child Care Association

Floor Amendment No. 1 on Third Reading

Amend **CSSB 76** on third reading as follows:

(1) In SECTION 4 of the bill, in the first sentence of added Subsection (d), Section 29.158, Education Code (page 5, lines 3 through 4), strike "Texas Workforce Commission."

(2) In SECTION 4 of the bill, in the first sentence of added Subsection (d), Section 29.160, Education Code (page 7, line 18), strike "is entitled to" and substitute "may request, from the appropriate state agency."

(3) In SECTION 4 of the bill, in the second sentence of added Subsection (d), Section 29.160, Education Code (page 7, line 26), strike "must" and substitute "may".

(4) In SECTION 4 of the bill, at the end of added Subsection (d), Section 29.160, Education Code (page 8, line 2), insert "A state agency receiving a request from an entity to seek an available federal waiver under this subsection shall, not later than the 30th day after the date on which the request is made, notify the entity whether the agency intends to seek the waiver. A request for a federal waiver under this subsection may only be rejected if the state agency has reason to believe that the operation of the federal waiver would result in the state agency's failure to comply with federal law or regulations or could result in penalties to the state.".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 76** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Zaffirini, Chair; Shapiro, Carona, Van de Putte, and Shapleigh.

CONFERENCE COMMITTEE ON HOUSE BILL 1163

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1163** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1163** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Armbrister, Ratliff, Madla, and Nelson.

CONFERENCE COMMITTEE ON HOUSE BILL 1493

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1493** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1493** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris, Chair; Jackson, Averitt, Staples, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 1695

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1695** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1695** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Ellis, Armbrister, Shapiro, and Staples.

SENATE BILL 671 WITH HOUSE AMENDMENTS

Senator Staples called **SB 671** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 671** by striking all below the enacting clause and substituting the following:

SECTION 1. Title 1, Tax Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. DETERMINATION OF SCHOOL DISTRICT PROPERTY
VALUES AND APPRAISAL DISTRICT ACCOUNTABILITY
CHAPTER 51. DETERMINATION OF SCHOOL DISTRICT PROPERTY
VALUES AND APPRAISAL DISTRICT ACCOUNTABILITY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.01. PURPOSE. It is the policy of this state to ensure equity among taxpayers in the burden of school district taxes and among school districts in the distribution of state financial aid for public education. The purpose of this chapter is to promote that policy by providing for uniformity in local property appraisal practices and procedures and for determining property values for schools in order to distribute state funding equitably.

Sec. 51.02. DEFINITIONS. In this chapter:

(1) "Annual study" means a study conducted under Section 51.21.

(2) "Eligible school district" means a school district for which the commissioner has determined the following:

(A) in the most recent annual study, the local value is invalid under Section 51.21(c) and does not exceed the state value for the school district determined in the annual study;

(B) in the annual study for each of the two years preceding the most recent annual study, the school district's local value was valid; and

(C) in the most recent annual study, the aggregate local value of all of the categories of property sampled by the commissioner is not less than 95 percent of the lower limit of the margin of error as determined by the commissioner of the aggregate value as determined by the commissioner of all of the categories of property sampled by the commissioner.

(3) "Local value" means the market value of property in a school district as determined by the appraisal district that appraises property for the school district, less the total amounts and values listed in Section 51.21(d) as determined by that appraisal district.

(4) "Ratio study" means a study conducted under Section 51.41.

(5) "State value" means the value of property in a school district as determined in the annual study as provided by Section 51.21(c).

[Sections 51.03-51.20 reserved for expansion]

SUBCHAPTER B. DETERMINATION OF SCHOOL DISTRICT
PROPERTY VALUES

Sec. 51.21. DETERMINATION OF SCHOOL DISTRICT PROPERTY VALUES. (a) The commissioner shall conduct an annual study to determine the total taxable value of all property in each school district. The annual study shall determine the total taxable value of all property and of each category of property in each school district. The annual study shall also determine the productivity value of all land

designated as agricultural, open-space, or timber land under Chapter 23. The commissioner shall make appropriate adjustments in the study to account for actions taken under Chapter 41, Education Code.

(b) In conducting the annual study, the commissioner shall determine the taxable value of property in each school district:

(1) using, if appropriate, samples selected through generally accepted sampling techniques;

(2) according to generally accepted standard valuation, statistical compilation, and analysis techniques;

(3) ensuring that different levels of appraisal on sold and unsold property do not adversely affect the accuracy of the study; and

(4) using current technology and techniques in appraising commercial personal property.

(c) If after conducting the annual study the commissioner determines that the local value for a school district is valid, the local value is presumed to represent taxable value for the school district. In the absence of that presumption, taxable value for a school district is the state value for the school district determined in the annual study under Subsections (a) and (b), unless the local value exceeds the state value, in which case the taxable value for the school district is the district's local value.

(d) For purposes of this section, "taxable value" means the market value of all taxable property less:

(1) the total dollar amount of any residence homestead exemptions lawfully granted under Section 11.13(b) or (c) in the year that is the subject of the study for each school district;

(2) one-half of the total dollar amount of any residence homestead exemptions granted under Section 11.13(n) in the year that is the subject of the study for each school district;

(3) the total dollar amount of any exemptions granted before May 31, 1993, within a reinvestment zone under agreements authorized by Chapter 312;

(4) subject to Subsection (e), the total dollar amount of any captured appraised value of property that:

(A) is within a reinvestment zone created on or before May 31, 1999, or is proposed to be included within the boundaries of a reinvestment zone as the boundaries of the zone and the proposed portion of tax increment paid into the tax increment fund by a school district are described in a written notification provided by the municipality or the board of directors of the zone to the governing bodies of the other taxing units in the manner provided by Section 311.003(e) before May 31, 1999, and within the boundaries of the zone as those boundaries existed on September 1, 1999, including subsequent improvements to the property regardless of when made;

(B) generates taxes paid into a tax increment fund created under Chapter 311 under a reinvestment zone financing plan approved under Section 311.011(d) on or before September 1, 1999; and

(C) is eligible for tax increment financing under Chapter 311;

(5) the total dollar amount of any exemptions granted under Section 11.251;

(6) the difference between the commissioner's determination of the market value and the productivity value of land that qualifies for appraisal on the basis of its productive capacity under Chapter 23;

(7) the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in the year that is the subject of the study, calculated as if the residence homesteads were appraised at the full value required by law;

(8) a portion of the market value of property not otherwise fully taxable by the district at market value because of:

(A) action required by statute or the constitution of this state that, if the tax rate adopted by the district is applied to it, produces an amount equal to the difference between the tax that the district would have imposed on the property if the property were fully taxable at market value and the tax that the district is actually authorized to impose on the property, if this subsection does not otherwise require that portion to be deducted; or

(B) action taken by the district under Subchapter B or C, Chapter 313;

(9) the market value of all tangible personal property, other than manufactured homes, owned by a family or individual and not held or used for the production of income;

(10) the appraised value of property for which the collection of delinquent taxes is deferred under Section 33.06;

(11) the portion of the appraised value of property for which the collection of delinquent taxes is deferred under Section 33.065; and

(12) the amount by which the market value of a residence homestead to which Section 23.23 applies exceeds the appraised value of that property as calculated under that section.

(e) The total dollar amount deducted in each year as required by Subsection (d)(3) in a reinvestment zone created after January 1, 1999, may not exceed the captured appraised value estimated for that year as required by Section 311.011(c)(8) in the reinvestment zone financing plan approved under Section 311.011(d) before September 1, 1999. The number of years for which the total dollar amount may be deducted under Subsection (d)(3) shall for any zone, including those created on or before January 1, 1999, be limited to the duration of the zone as specified as required by Section 311.011(c)(9) in the reinvestment zone financing plan approved under Section 311.011(d) before September 1, 1999. The total dollar amount deducted under Subsection (d)(3) for any zone, including a zone created on or before January 1, 1999, may not be increased by any reinvestment zone financing plan amendments that occur after August 31, 1999. The total dollar amount deducted under Subsection (d)(3) for any zone, including a zone created on or before January 1, 1999, may not be increased by a change made after August 31, 1999, in the portion of the tax increment retained by the school district.

(f) The annual study shall determine the school district values as of January 1 of each study year.

(g) If after conducting the annual study for the year 2003 or a subsequent year the commissioner determines that a school district is an eligible school district, for that year and the following year the taxable value for the school district is the district's

local value. Not later than the first anniversary of the date of the determination that a school district is an eligible school district, the commissioner shall complete an appraisal standards review as provided by Section 51.42 of each appraisal district that appraises property for the school district.

(h) If the commissioner determines in the annual study conducted for the year 2002 or 2003 that the taxable value for a school district is the local value because the local value is invalid and exceeds the state value, the commissioner of education shall compute the amount by which the funding under Chapter 42, Education Code, of the school district is reduced for the 2003-2004 and 2004-2005 school years, respectively, because of the use of local value rather than state value as taxable value. For each of those school years, the commissioner of education shall allocate an amount equal to the amount of the reduction for that school year to the school districts that receive funding under Chapter 42, Education Code, whose taxable value for the applicable year is the state value, and whose maintenance and operations tax rate for the applicable year exceeds \$1.42 on the \$100 valuation of taxable property. The allocation shall be made in proportion to the amount of funding under Chapter 42, Education Code, that each of those school districts would otherwise have received in that year. This subsection expires September 30, 2005.

(i) The commissioner shall publish preliminary findings, listing values by school district, before February 1 of the year following the study year. Preliminary findings shall be delivered to each school district and shall be certified to the commissioner of education.

(j) For purposes of Section 42.2511, Education Code, the commissioner shall certify to the commissioner of education:

(1) a final value for each school district computed on a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of \$5,000; and

(2) a final value for each school district computed on:

(A) a residence homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, of \$15,000; and

(B) the effect of the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution.

(k) For purposes of Section 42.2522, Education Code, the commissioner shall certify to the commissioner of education:

(1) a final value for each school district computed without any deduction for residence homestead exemptions granted under Section 11.13(n); and

(2) a final value for each school district computed after deducting one-half the total dollar amount of residence homestead exemptions granted under Section 11.13(n).

Sec. 51.22. ADMINISTRATIVE AND JUDICIAL REVIEW. (a) A school district, or a property owner whose property is included in the annual study and whose tax liability on the property is \$100,000 or more, may protest the commissioner's findings by filing a petition with the commissioner. The petition must be filed not later than the 40th day after the date on which the commissioner's findings are certified to the commissioner of education and must include specific pleadings stating the legal and appraisal issues in dispute and the value claimed to be correct.

(b) On receipt of a petition, the commissioner shall hold a hearing. The commissioner has the burden to prove the accuracy of the findings. Until a final decision is made by the commissioner, the taxable value of property in the district is determined, with respect to the property subject to the protest, according to the value of the property claimed by the school district or property owner, except that the value to be used while a final decision is pending may not be less than the value of the property as listed on the school district's appraisal roll for the year of the study. If after the hearing the commissioner concludes that the findings should be changed, the commissioner shall order the appropriate changes and shall certify the changes to the commissioner of education. The commissioner shall complete all protest hearings and certify all changes as necessary to comply with Chapter 42, Education Code. A hearing conducted under this subsection is not a contested case for purposes of Section 2001.003, Government Code.

(c) The commissioner shall adopt procedural rules governing the conduct of protest hearings. The rules shall provide for each protesting school district and property owner to:

(1) be informed of the requirements for submitting a petition initiating a protest;

(2) receive adequate notice of a hearing;

(3) have an opportunity to present evidence and oral argument; and

(4) be given notice by the commissioner of the commissioner's decision on the hearing.

(d) A protesting school district may appeal a determination of protest by the commissioner to a district court in Travis County by filing a petition with the court. An appeal must be filed not later than the 30th day after the date the school district receives notice from the commissioner of the determination. Review is conducted by the court sitting without a jury. The court shall remand the determination to the commissioner if on review the court discovers that substantial rights of the school district have been prejudiced and that:

(1) the commissioner has acted arbitrarily and without regard to the facts; or

(2) the determination of the commissioner is not reasonably supported by substantial evidence introduced before the court.

Sec. 51.23. AUDIT. (a) On request of a school district or the commissioner of education, the commissioner may audit the total taxable value of property in a school district and may revise the annual study findings. The request for audit is limited to corrections and changes in a school district's appraisal roll that occurred after preliminary certification of the annual study findings by the commissioner.

(b) Except as provided by Subsection (c), the request for audit must be filed with the commissioner not later than the third anniversary of the date of the final certification of the annual study findings.

(c) The request for audit may be filed not later than the first anniversary of the date the chief appraiser certifies a change to the appraisal roll if:

(1) the chief appraiser corrects the appraisal roll under Section 25.25 or 42.41; and

(2) the change results in a material reduction in the total taxable value of property in the school district.

(d) The commissioner shall certify the findings of the audit to the commissioner of education.

Sec. 51.24. CONFIDENTIALITY. (a) All information the commissioner obtains from a person, other than a governmental entity, under an assurance that the information will be kept confidential, in the course of conducting the annual study is confidential and may not be disclosed, except as provided by Subsection (b).

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
(2) to the person who gave the information to the commissioner; or
(3) for statistical purposes if in a form that does not identify specific property or a specific owner.

[Sections 51.25-51.40 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF APPRAISAL DISTRICT ACCOUNTABILITY

Sec. 51.41. APPRAISAL DISTRICT RATIO STUDY. (a) The commissioner shall conduct a study in each appraisal district for each tax year to determine the degree of uniformity of and the median level of appraisals by the appraisal district within each major category of property for that tax year. In conducting the study, the commissioner shall apply appropriate standard statistical analysis techniques to data collected as part of the annual study of school district property values required by Section 51.21.

(b) The commissioner shall publish a report of the findings of the study, including the median level of appraisal for each major category of property, the coefficient of dispersion around the median level of appraisal for each major category of property, and any other standard statistical measure that the commissioner considers appropriate. A copy of the published report of the commissioner shall be distributed to each member of the legislature and to each appraisal district.

(c) In conducting a study under this section, the commissioner or the commissioner's authorized representatives may enter the premises of a business, trade, or profession and inspect the property to determine the existence and market value of property used for the production of income. An inspection under this subsection must be made during normal business hours or at a time mutually agreeable to the commissioner or the commissioner's authorized representatives and the person in control of the premises.

Sec. 51.42. APPRAISAL STANDARDS REVIEW. (a) The commissioner shall review the appraisal standards, procedures, and methodology used by each appraisal district that appraises property for an eligible school district to determine compliance with generally accepted appraisal standards and practices. The commissioner by rule may establish procedures and standards for conducting the review.

(b) In conducting the review, the commissioner is entitled to access to all records and reports of the appraisal district and to the assistance of the appraisal district's officers and employees.

(c) If the review results in a finding that an appraisal district is not in compliance with generally accepted appraisal standards and practices, the commissioner shall deliver a report that details the commissioner's findings and recommendations for improvement to:

(1) the appraisal district's chief appraiser and board of directors; and
(2) the superintendent and board of trustees of each school district participating in the appraisal district.

(d) If the appraisal district fails to comply with the recommendations in the report and the commissioner finds that the board of directors of the appraisal district failed to take remedial action before the first anniversary of the date the report was issued, the commissioner shall notify the judge of each district court in the county for which the appraisal district is established, who shall appoint a board of conservators consisting of five members to implement the recommendations. The board of conservators shall exercise supervision and control over the operations of the appraisal district until the commissioner determines under Section 51.21 that in the same year the taxable value of each school district for which the appraisal district appraises property is the local value for the district. The appraisal district shall bear the costs related to the supervision and control of the district by the board of conservators.

Sec. 51.43. APPRAISAL DISTRICT PERFORMANCE AUDITS. (a) The commissioner shall audit the performance of an appraisal district if one or more of the following conditions exist according to each of two consecutive ratio studies conducted under Section 51.41, regardless of whether the prescribed condition or conditions that exist are the same for each of those studies:

(1) the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is less than 0.75;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is more than 0.30; or

(3) the difference between the median levels of appraisal for any two classes of property in the district for which the commissioner determines a median level of appraisal is more than 0.45.

(b) At the written request of the governing bodies of a majority of the taxing units participating in an appraisal district or of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, the commissioner shall audit the performance of the appraisal district. The governing bodies may request a general audit of the performance of the appraisal district or may request an audit of only one or more specific duties, practices, functions, departments, or other appraisal district matters.

(c) At the written request of the owners of not less than 10 percent of the number of accounts or parcels of property in an appraisal district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property within the district in the preceding year, or at the written request of the owners of property representing not less than 10 percent of the appraised value of all property in the district belonging to a single class of property, if the class constitutes at least five percent of the appraised value of taxable property in the district in the preceding year, the commissioner shall audit the performance of the appraisal district. The property owners may request a general audit of the performance of the appraisal district or may request an audit of only one or more specific duties, practices,

functions, departments, or other appraisal district matters. A property owner may authorize an agent to sign a request for an audit under this subsection on the property owner's behalf. The commissioner may require a person signing a request for an audit to provide proof that the person is entitled to sign the request as a property owner or as the agent of a property owner.

(d) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c) if according to each of the two most recently published ratio studies conducted by the commissioner under Section 51.41:

(1) the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is more than 0.90 and less than 1.10;

(2) the coefficient of dispersion around the overall median level of appraisal of the properties used to determine the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal is less than 0.15; and

(3) the difference between the highest and lowest median levels of appraisal in the district for the classes of property for which the commissioner determines a median level of appraisal is less than 0.20.

(e) A request for a performance audit of an appraisal district may not be made under Subsection (b) or (c):

(1) during the two years following the publication of the second of two consecutive ratio studies according to which the commissioner is required to conduct an audit of the district under Subsection (a); or

(2) during the year immediately following the date the results of an audit of the district conducted by the commissioner under Subsection (a) are reported to the chief appraiser of the district.

(f) For purposes of this section, "class of property" means a major kind of property for which the commissioner determines a median level of appraisal under Section 51.41.

(g) In addition to the performance audits permitted by Subsections (a), (b), and (c) and the appraisal standards review required by Section 51.42, the commissioner may audit an appraisal district to analyze the effectiveness and efficiency of the policies, management, and operations of the appraisal district. The results of the audit shall be delivered in a report that details the commissioner's findings and recommendations for improvement to the appraisal district's chief appraiser and board of directors and to the governing body of each taxing unit participating in the appraisal district. The commissioner may require reimbursement by the appraisal district for some or all of the costs of the audit, not to exceed the actual costs associated with conducting the audit.

Sec. 51.44. ADMINISTRATION OF PERFORMANCE AUDITS. (a) The commissioner shall complete an audit required by Section 51.43(a) not later than the second anniversary of the date of the publication of the second of the two ratio studies the results of which required the audit to be conducted. The commissioner shall complete an audit requested under Section 51.43(b) or (c) as soon as practicable after

the request is made. The commissioner shall complete an audit conducted under Section 51.43(g) not later than the first anniversary of the date that it is initiated by the commissioner.

(b) The commissioner may not audit the financial condition of an appraisal district or a district's tax collections. If the request is for an audit limited to one or more particular matters, the commissioner's audit must be limited to those matters.

(c) The commissioner must approve the specific plan for the performance audit of an appraisal district. Before approving an audit plan, the commissioner must provide any interested person an opportunity to appear before the commissioner and to comment on the proposed plan. Not later than the 20th day before the date the commissioner considers the plan for an appraisal district performance audit, the commissioner must notify the presiding officer of the appraisal district's board of directors that the commissioner intends to consider the plan. The notice must include the time, date, and location of the meeting to consider the plan. Immediately after receiving the notice, the presiding officer shall deliver a copy of the notice to the other members of the appraisal district's board of directors.

(d) In conducting a general audit, the commissioner shall consider and report on:

(1) the extent to which the district complies with applicable law and generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviation from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by Subsection (b), any other matter included in the request for the audit.

(e) In conducting the audit, the commissioner is entitled to have access at all times to the books, appraisal and other records, reports, vouchers, and other information, confidential or not, of the appraisal district. The commissioner may require the assistance of appraisal district officers and employees that does not interfere significantly with the ordinary functions of the appraisal district. The commissioner may rely on any previous analysis the commissioner has made relating to the appraisal district if the previous analysis is useful or relevant to the audit.

(f) The commissioner shall report the results of the audit in writing to the governing body of each taxing unit that participates in the appraisal district, to the chief appraiser, and to the presiding officer of the appraisal district's board of directors. If the audit was requested under Section 51.43(c), the commissioner shall also provide a report to a representative of the property owners who requested the audit.

(g) If the audit is required or requested under Section 51.43(a) or (b), the appraisal district shall reimburse the commissioner for the costs incurred in conducting the audit and making the commissioner's report of the audit. The costs shall be allocated among the taxing units participating in the district in the same manner as an operating expense of the district. If the audit is requested under Section 51.43(c), the property owners who requested the audit shall reimburse the

commissioner for the costs incurred in conducting the audit and making the report of the audit and shall allocate the costs among those property owners in proportion to the appraised value of each property owner's property in the district or on any other basis agreed to by the property owners. If the audit confirms that the median level of appraisal for a class of property exceeds 1.10 or that the median level of appraisal for a class of property varies at least 10 percent from the overall median level of appraisal for all property in the district for which the commissioner determines a median level of appraisal, not later than the 90th day after the date a request is made by the property owners for reimbursement the appraisal district shall reimburse the property owners who requested the audit for the amount paid to the commissioner for the costs incurred in conducting the audit and making the report. Before conducting an audit under Section 51.43(c), the commissioner may require the requesting property owners to provide the commissioner with a bond, deposit, or other financial security sufficient to cover the projected costs of conducting the audit and making the report. For purposes of this subsection, "costs" include expenses related to salaries, professional fees, travel, reproduction or other printing services, and consumable supplies that are directly attributable to conducting the audit.

(h) At any time after the request for an audit is made, the commissioner may discontinue the audit in whole or in part if requested to do so by:

(1) the governing bodies of a majority of the taxing units participating in the district, if the audit was requested by a majority of those units;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors, if the audit was requested by a majority of those units; or

(3) if the audit was requested under Section 51.43(c), by the property owners who requested the audit.

(i) The commissioner by rule may adopt procedures, audit standards, and forms for the administration of performance audits.

Sec. 51.45. ADMINISTRATIVE PROVISIONS. (a) The commissioner may inspect the records or other materials of an appraisal district or taxing unit, including relevant records and materials in the possession or control of a consultant, advisor, or expert hired by the appraisal district or taxing unit, for the purpose of conducting an annual study, ratio study, appraisal standards review, or performance audit required or authorized by this chapter.

(b) On request of the commissioner, the appraisal district or administrative officer of the taxing unit shall produce the records or other materials in the form and manner prescribed by the commissioner.

(c) The commissioner shall prescribe a uniform record system to be used by all appraisal districts for the purpose of submitting data to be used in the annual study and ratio study. The record system shall include a compilation of information concerning sales of real property within the boundaries of the appraisal district. The sales information maintained in the uniform record system shall be submitted annually in a form prescribed by the commissioner.

SECTION 2. Section 13.051(c), Education Code, is amended to read as follows:

(c) Territory that does not have residents may be detached from a school district and annexed to another school district if:

(1) the total taxable value of the property in the territory according to the most recent certified appraisal roll for each school district is not greater than:

(A) five percent of the district's taxable value of all property in that district as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code; and

(B) \$5,000 property value per student in average daily attendance as determined under Section 42.005; and

(2) the school district from which the property will be detached does not own any real property located in the territory.

SECTION 3. Section 13.231(b), Education Code, is amended to read as follows:

(b) In this section, "taxable value" has the meaning assigned by Section 51.21, Tax [~~403.302, Government~~] Code.

SECTION 4. Section 41.001(2), Education Code, is amended to read as follows:

(2) "Wealth per student" means the taxable value of property, as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, divided by the number of students in weighted average daily attendance.

SECTION 5. Section 41.002(f), Education Code, is amended to read as follows:

(f) For purposes of Subsection (e), a school district's effective tax rate is determined by dividing the total amount of taxes collected by the district for the applicable school year less any amounts paid into a tax increment fund under Chapter 311, Tax Code, by the quotient of the district's taxable value of property, as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, divided by 100.

SECTION 6. Section 41.005, Education Code, is amended to read as follows:

Sec. 41.005. [~~COMPTROLLER AND APPRAISAL DISTRICT~~] COOPERATION. The chief appraiser of each appraisal district and the commissioner of the State Board on Property Valuation [~~comptroller~~] shall cooperate with the commissioner and school districts in implementing this chapter.

SECTION 7. Section 41.202(a), Education Code, is amended to read as follows:

(a) For purposes of this subchapter, the taxable value of an individual parcel or other item of property and the total taxable value of property in a school district resulting from the detachment of property from or annexation of property to that district is determined by applying the appraisal ratio for the appropriate category of property determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, for the preceding tax year to the taxable value of the detached or annexed property determined under Title 1, Tax Code, for the preceding tax year.

SECTION 8. Sections 42.106 and 42.2511, Education Code, are amended to read as follows:

Sec. 42.106. ADJUSTED PROPERTY VALUE FOR DISTRICTS NOT OFFERING ALL GRADE LEVELS. For purposes of this chapter, the taxable value of property of a school district that contracts for students residing in the district to be educated in another district under Section 25.039(a) is adjusted by applying the formula:

$$\text{ADPV} = \text{DPV} - (\text{TN}/.015)$$

where:

"ADPV" is the district's adjusted taxable value of property;

"DPV" is the taxable value of property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code; and

"TN" is the total amount of tuition required to be paid by the district under Section 25.039 for the school year for which the adjustment is made.

Sec. 42.2511. ADDITIONAL STATE AID FOR HOMESTEAD EXEMPTION.

(a) Notwithstanding any other provision of this chapter, a school district is entitled to additional state aid to the extent that state aid under this chapter based on the determination of the school district's taxable value of property as provided under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, does not fully compensate the district for ad valorem tax revenue lost due to the increase in the homestead exemption under Section 1-b(c), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997, and the additional limitation on tax increases under Section 1-b(d), Article VIII, Texas Constitution, as proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997.

(b) The commissioner, using information provided by the commissioner of the State Board on Property Valuation [~~comptroller~~], shall compute the amount of additional state aid to which a district is entitled under this section. A determination by the commissioner under this section is final and may not be appealed.

SECTION 9. Sections 42.252(a) and (c), Education Code, are amended to read as follows:

(a) Each school district's share of the Foundation School Program is determined by the following formula:

$$\text{LFA} = \text{TR} \times \text{DPV}$$

where:

"LFA" is the school district's local share;

"TR" is a tax rate which for each hundred dollars of valuation is an effective tax rate of \$0.86; and

"DPV" is the taxable value of property in the school district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code.

(c) Appeals of district values shall be held pursuant to Section 51.22, Tax [~~403.303, Government~~] Code.

SECTION 10. Sections 42.2522(a) and (d), Education Code, are amended to read as follows:

(a) In any school year, the commissioner may not provide funding under this chapter based on a school district's taxable value of property computed in accordance with Section 51.21(d)(2), Tax [~~403.302(d)(2), Government~~] Code, unless:

(1) funds are specifically appropriated for purposes of this section; or

(2) the commissioner determines that the total amount of state funds appropriated for purposes of the Foundation School Program for the school year exceeds the amount of state funds distributed to school districts in accordance with Section 42.253 based on the taxable values of property in school districts computed in

accordance with Section 51.21(d), Tax [403.302(d), Government] Code, without any deduction for residence homestead exemptions granted under Section 11.13(n), Tax Code.

(d) If the commissioner determines that the amount of funds available under Subsection (a)(1) or (2) does not at least equal the total amount of state funding to which districts would be entitled if state funding under this chapter were based on the taxable values of property in school districts computed in accordance with Section 51.21(d)(2), Tax [403.302(d)(2), Government] Code, the commissioner may, to the extent necessary, provide state funding based on a uniform lesser fraction of the deduction under Section 51.21(d)(2), Tax [403.302(d)(2), Government] Code.

SECTION 11. Section 42.253(h), Education Code, is amended to read as follows:

(h) If the legislature fails during the regular session to enact the transfer and appropriation proposed under Subsection (f) and there are not funds available under Subsection (j), the commissioner shall reduce the total amount of state funds allocated to each district by an amount determined by a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, results in a total levy equal to the total reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection.

SECTION 12. Section 42.254, Education Code, is amended to read as follows:

Sec. 42.254. ESTIMATES REQUIRED. (a) Not later than October 1 of each even-numbered year:

(1) the agency shall submit to the legislature an estimate of the tax rate and student enrollment of each school district for the following biennium; and

(2) the commissioner of the State Board on Property Valuation [comptroller] shall submit to the legislature an estimate of the total taxable value of all property in the state as determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, for the following biennium.

(b) The agency and the commissioner of the State Board on Property Valuation [comptroller] shall update the information provided to the legislature under Subsection (a) not later than March 1 of each odd-numbered year.

SECTION 13. Section 42.257(a), Education Code, is amended to read as follows:

(a) If the final determination of an appeal under Chapter 42, Tax Code, results in a reduction in the taxable value of property that exceeds five percent of the total taxable value of property in the school district for the same tax year determined under Subchapter B, Chapter 51, Tax [Subchapter M, Chapter 403, Government] Code, the commissioner shall request the commissioner of the State Board on Property Valuation [comptroller] to adjust the [its] taxable property value findings for that year consistent with the final determination of the appraisal appeal.

SECTION 14. Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

$$GYA = (GL \times WADA \times DTR \times 100) - LR$$

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is \$27.14 or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION 15. Section 46.003(a), Education Code, is amended to read as follows:

(a) For each year, except as provided by Sections 46.005 and 46.006, a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate, or improve an instructional facility. The amount of state support is determined by the formula:

$$FYA = (FYL \times ADA \times BTR \times 100) - (BTR \times (DPV/100))$$

where:

"FYA" is the guaranteed facilities yield amount of state funds allocated to the district for the year;

"FYL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

"ADA" is the greater of the number of students in average daily attendance, as determined under Section 42.005, in the district or 400;

"BTR" is the district's bond tax rate for the current year, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, Section 42.2521.

SECTION 16. Section 46.006(g), Education Code, is amended to read as follows:

(g) In this section, "wealth per student" means a school district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, Section 42.2521, divided by the district's average daily attendance as determined under Section 42.005.

SECTION 17. Section 46.032(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal of and interest on eligible bonds. The amount of state support, subject only to the maximum amount under Section 46.034, is determined by the formula:

$$EDA = (EDGL \times ADA \times EDTR \times 100) - (EDTR \times (DPV/100))$$

where:

"EDA" is the amount of state funds to be allocated to the district for assistance with existing debt;

"EDGL" is the dollar amount guaranteed level of state and local funds per student per cent of tax effort, which is \$35 or a greater amount for any year provided by appropriation;

"ADA" is the number of students in average daily attendance, as determined under Section 42.005, in the district;

"EDTR" is the existing debt tax rate of the district, which is determined by dividing the amount budgeted by the district for payment of eligible bonds by the quotient of the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521, divided by 100; and

"DPV" is the district's taxable value of property as determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, or, if applicable, under Section 42.2521.

SECTION 18. Sections 825.405(h) and (i), Government Code, are amended to read as follows:

(h) This section does not apply to state contributions for members employed by a school district in a school year if the district's effective tax rate for maintenance and operation revenues for the tax year that ended in the preceding school year equals or exceeds 125 percent of the statewide average effective tax rate for school district maintenance and operation revenues for that tax year. For a tax year, the statewide average effective tax rate for school district maintenance and operation revenues is the tax rate that, if applied to the statewide total appraised value of taxable property for

every school district in the state determined under Section 51.21, Tax Code [403.302], would produce an amount equal to the statewide total amount of maintenance and operation taxes imposed in the tax year for every school district in the state.

(i) Not later than the seventh day after the final date the commissioner of the State Board on Property Valuation [comptroller] certifies to the commissioner of education changes to the property value study conducted under Section 51.21, Tax Code [Subchapter M, Chapter 403], the commissioner of the State Board on Property Valuation [comptroller] shall certify to the Teacher Retirement System of Texas:

(1) the effective tax rate for school district maintenance and operation revenues for each school district in the state for the immediately preceding tax year; and

(2) the statewide average effective tax rate for school district maintenance and operation revenues for the immediately preceding tax year.

SECTION 19. Section 61.040, Health and Safety Code, is amended to read as follows:

Sec. 61.040. TAX INFORMATION. (a) The commissioner of the State Board on Property Valuation [comptroller] shall give the department information relating to ~~[-~~ (+) the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period.

(b) The comptroller shall give the department information relating to [-; and (-) the amount of sales and use tax revenue received by each county for the relevant period.

SECTION 20. Section 1152.204(c), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, and is further amended to read as follows:

(c) The executive director [commissioner] may recognize an educational program or course:

(1) related to property tax consulting services; and

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

(A) the commissioner of the State Board on Property Valuation [comptroller];

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

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

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

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

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

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

SECTION 21. Section 1.04, Tax Code, is amended by amending Subdivision (19) and adding Subdivision (20) to read as follows:

(19) "Commissioner" [~~"Comptroller"~~] means the commissioner of the State Board on Property Valuation [~~Comptroller of Public Accounts of the State of Texas~~].

(20) "Board" means the State Board on Property Valuation.

SECTION 22. Section 1.111(h), Tax Code, is amended to read as follows:

(h) The commissioner [~~comptroller~~] shall prescribe forms and adopt rules to facilitate compliance with this section. The commissioner [~~comptroller~~] shall include on any form used for designation of an agent for a single-family residential property in which the property owner resides the following statement in boldfaced type:

"In some cases, you may want to contact your appraisal district or other local taxing units for free information and/or forms concerning your case before designating an agent."

SECTION 23. Chapter 5, Tax Code, is amended by adding Sections 5.01 and 5.02 to read as follows:

Sec. 5.01. STATE BOARD ON PROPERTY VALUATION. (a) The State Board on Property Valuation is established. The board consists of five members appointed by the governor.

(b) Members of the board hold office for terms of six years, with the terms of one or two members expiring March 1 of each odd-numbered year.

(c) To be eligible to serve on the board, a person must:

(1) have been a resident of this state for at least 10 years; and

(2) possess knowledge, skill, and experience in property tax administration, property appraisal, or school finance.

(d) A person is not eligible to serve as a member of the board if the person or the person's spouse:

(1) is registered with or certified by the Board of Tax Professional Examiners;

(2) is employed by or participates in the management of a school district, an appraisal district, the office of an assessor or collector, or a business entity or other organization that is substantially and directly affected by the activities of the board or that does substantial business with the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) The governor shall designate one of the members of the board to serve as presiding officer of the board. The presiding officer serves in that capacity for a term of two years expiring on March 1 of an odd-numbered year.

(g) The board shall maintain its principal office in Austin.

(h) The board shall meet at least once in each calendar quarter and shall meet at other times at the call of the presiding officer or as provided by the rules of the board.

(i) The board is subject to the open meetings law, Chapter 551, Government Code, and the administrative procedure law, Chapter 2001, Government Code.

(j) A member of the board may not receive compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(k) It is a ground for removal from the board if a member:

(1) violates a prohibition established by Subsection (d);

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

(3) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

Sec. 5.02. BOARD PERSONNEL AND OPERATIONS. (a) The board shall employ the commissioner, who shall administer board policies and perform all duties as provided by law.

(b) The commissioner shall employ and supervise professional, clerical, and other personnel necessary to perform all duties as required by law, board policy, and direction of the board or commissioner.

(c) The commissioner shall provide to board staff, as often as necessary, information regarding their qualifications for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

SECTION 24. Section 5.03, Tax Code, is amended to read as follows:

Sec. 5.03. POWERS AND DUTIES GENERALLY. (a) The ~~board~~ ~~comptroller~~ shall adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and the kinds of property the district is responsible for appraising.

(b) The ~~board~~ ~~comptroller~~ may require from each district engaged in appraising property for taxation an annual report on a form prescribed by the commissioner ~~comptroller~~ on the administration and operation of the appraisal office.

(c) The ~~board~~ ~~comptroller~~ may contract with consultants to assist in performance of the duties imposed by this chapter.

(d) The board is responsible for ensuring that the commissioner performs the duties required by law of the commissioner.

(e) The board has the powers necessary to carry out its powers and duties under this title.

(f) The board may:

(1) adopt rules necessary to carry out the board's powers and duties under this title;

(2) sue and be sued;

(3) enter into contracts and other necessary instruments;

(4) impose administrative fees and charges for the costs of publications;

(5) purchase liability insurance covering the board and employees and agents of the board; and

(6) establish other policies, procedures, and eligibility criteria necessary to carry out the board's powers and duties under this title.

SECTION 25. Section 5.04(a), Tax Code, is amended to read as follows:

(a) The commissioner [~~comptroller~~] shall consult and cooperate with the Board of Tax Professional Examiners or any successor agency responsible for certifying tax professionals in this state in setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors, and the commissioner [~~comptroller~~] may cooperate with the board or with other public agencies, educational institutions, or private organizations in sponsoring courses of instruction and training programs.

SECTION 26. Sections 5.041(a), (c), (d), and (f), Tax Code, are amended to read as follows:

(a) The board [~~comptroller~~] shall:

(1) approve curricula and provide materials for use in training and educating members of an appraisal review board; and

(2) supervise a course for training and education of appraisal review board members and issue certificates indicating course completion.

(c) The board [~~comptroller~~] may contract with service providers to assist with the duties imposed under Subsection (a), but the course required may not be provided by an appraisal district or a taxing unit. The board [~~comptroller~~] may assess a fee to recover a portion of the costs incurred for the training course, but the fee may not exceed \$50 per person trained.

(d) The course material for the course required under Subsection (a) is the [~~comptroller's~~] Appraisal Review Board Manual prepared by the commissioner in use on the effective date of this section. The manual shall be updated regularly. It may be revised on request, in writing, to the board [~~comptroller~~]. The revision language must be approved on the unanimous agreement of a committee selected by the board [~~comptroller~~] and representing, equally, taxpayers and chief appraisers. The person requesting the revision shall pay the costs of mediation if the board [~~comptroller~~] determines that mediation is required.

(f) The commissioner [~~comptroller~~] may not advise a property owner, a property owner's agent, an appraisal district, or an appraisal review board on a matter that the commissioner [~~comptroller~~] knows is the subject of a protest to the appraisal review board.

SECTION 27. Sections 5.05(a), (b), and (c), Tax Code, are amended to read as follows:

(a) The commissioner [~~comptroller~~] shall prepare and issue:

(1) a general appraisal manual;

(2) special appraisal manuals;

(3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;

(4) news and reference bulletins;

(5) annotated digests of all laws relating to property taxation; and

(6) a handbook of all rules promulgated by the board or commissioner [~~comptroller~~] relating to the property tax and its administration.

(b) The commissioner [~~comptroller~~] shall revise or supplement all materials periodically as necessary to keep them current.

(c) The commissioner [~~comptroller~~] shall provide without charge one copy of all materials to officials of local government who are responsible for administering the property tax system. If a local government official requests more than one copy, the commissioner [~~comptroller~~] may charge a reasonable fee to offset the costs of printing and distributing the materials. The commissioner [~~comptroller~~] shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

SECTION 28. Sections 5.06, 5.07, 5.08, 5.09, 5.101, 5.14, and 5.16, Tax Code, are amended to read as follows:

Sec. 5.06. EXPLANATION OF TAXPAYER REMEDIES. (a) The commissioner [~~comptroller~~] shall prepare and publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. The commissioner [~~comptroller~~] shall include in the pamphlet advice on preparing and presenting a protest.

(b) The commissioner [~~comptroller~~] shall provide without charge a reasonable number of copies of the pamphlet to any person on request. The commissioner [~~comptroller~~] may charge a person who requests multiple copies of the pamphlet a reasonable fee to offset the costs of printing and distributing those copies. The commissioner [~~comptroller~~] at its discretion shall determine the number of copies that a person may receive without charge.

Sec. 5.07. PROPERTY TAX FORMS AND RECORDS SYSTEMS. (a) The commissioner [~~comptroller~~] shall prescribe the contents of all forms necessary for the administration of the property tax system and on request shall furnish sufficient copies of model forms of each type to the appropriate local officials. The commissioner [~~comptroller~~] may require reimbursement for the costs of printing and distributing the forms.

(b) The commissioner [~~comptroller~~] shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The commissioner [~~comptroller~~] shall also prescribe a uniform record system to be used by all offices appraising property for tax purposes.

Sec. 5.08. PROFESSIONAL AND TECHNICAL ASSISTANCE. (a) The commissioner [~~comptroller~~] may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The commissioner [~~comptroller~~] may also provide professional and technical assistance on request to an appraisal review board. The commissioner [~~comptroller~~] may require reimbursement for the costs of providing the assistance.

(b) The commissioner [~~comptroller~~] may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

Sec. 5.09. ANNUAL REPORTS. (a) The commissioner [~~comptroller~~] shall publish an annual report of the operations of the appraisal districts. The report shall include for each appraisal district, each county, and each school district and may include for other taxing units the total appraised values, assessed values, and taxable values of taxable property by class of property, the assessment ratio, and the tax rate.

(b) The commissioner [~~comptroller~~] shall deliver a copy of each annual report published under Subsection (a) of this section to the governor, the lieutenant governor, and each member of the legislature.

Sec. 5.101. TECHNICAL ADVISORY COMMITTEE. (a) The board [~~comptroller~~] shall appoint a technical advisory committee for the purpose of providing professional and practical expertise to the board [~~comptroller~~] and to review and comment on the methodology used by the commissioner [~~comptroller~~] to conduct the annual studies required by Section 51.21 and the ratio studies required by Section 51.41 [~~Section 5.10 of this code and by Section 403.302, Government Code~~]. A member of the committee serves at the will of the board [~~comptroller~~].

(b) The committee shall:

(1) review the methodology used by the commissioner [~~comptroller~~] to conduct the studies described in Subsection (a);

(2) make an annual report to the commissioner [~~comptroller~~] that includes the committee's findings and recommendations relating to the methodology used to conduct the studies; and

(3) meet as often as necessary to perform its duties, but not less often than semiannually.

(c) The board [~~comptroller~~] shall appoint the committee to provide for a balanced representation of the general public and of professionals affiliated with the entities affected by the studies.

(d) Each member of the committee must have expertise sufficient to determine the accuracy of the [~~annual~~] studies and the appropriateness of the methods used to develop the findings of the studies.

(e) The board [~~comptroller~~] shall specify the committee's purpose, powers, and duties and shall require the committee to report to the board [~~comptroller~~] in a manner specified by the board [~~comptroller~~] relating to the committee's activities and the results of its work.

(f) A member of the committee may receive compensatory per diem for serving on the committee and is entitled to reimbursement for transportation expenses and the per diem meals and lodging allowance as provided for the board [~~comptroller~~] and for commission members in the General Appropriations Act.

(g) The commissioner [~~comptroller~~] shall make the committee's annual report available to the public on request.

Sec. 5.14. PUBLIC ACCESS, INFORMATION, AND COMPLAINTS. (a) The board [~~comptroller~~] shall develop and implement policies that provide the public with a reasonable opportunity to submit information on any property tax issue under the jurisdiction of the board [~~comptroller~~].

(b) The board [~~comptroller~~] shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's [~~comptroller's~~] programs.

(c) The board [~~comptroller~~] shall prepare information of public interest describing the property tax functions of the office of the board [~~comptroller~~] and the board's [~~comptroller's~~] procedures by which complaints are filed with and resolved by the board [~~comptroller~~]. The board [~~comptroller~~] shall make the information available to the public and appropriate state agencies.

(d) If a written complaint is filed with the board [~~comptroller~~] that the board [~~comptroller~~] has authority to resolve, the board [~~comptroller~~], at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(e) The board [~~comptroller~~] shall keep an information file about each complaint filed with the board [~~comptroller~~] that the board [~~comptroller~~] has authority to resolve.

Sec. 5.16. ADMINISTRATIVE PROVISIONS. (a) The commissioner [~~comptroller~~] may inspect the records or other materials of an appraisal office or taxing unit, including the relevant records and materials in the possession or control of a consultant, advisor, or expert hired by the appraisal office or taxing unit, for the purpose of[~~]~~

[~~(1)~~] establishing, reviewing, or evaluating the value of or an appraisal of any property[~~]; or~~

[~~(2)~~] ~~conducting a study, review, or audit required by Section 5.10 or 5.102 or by Section 403.302, Government Code.~~

(b) On request of the commissioner [~~comptroller~~], the chief appraiser or administrative head of the taxing unit shall produce the materials in the form and manner prescribed by the commissioner [~~comptroller~~].

SECTION 29. Section 6.025(a), Tax Code, is amended to read as follows:

(a) The chief appraisers of two or more appraisal districts that have boundaries that include any part of the same territory shall enter into a written understanding that, with respect to the property located in the territory in which each of the districts has appraisal jurisdiction:

(1) permits each appraiser to have access to and use information appropriate to appraisals, including a record of an exemption application, rendition, or other property owner report;

(2) eliminates differences in the information in appraisal records of the districts, including information relating to ownership of property, the description of property, and the physical characteristics of property; and

(3) contains the form of a written advisory prescribed by the commissioner [~~comptroller~~] informing the owners of property that reports and other documents required of the owners must be filed with or sent to each appraisal district and that the owners should consider sending any other document relating to the property to each appraisal district.

SECTION 30. Section 6.235(a), Tax Code, is amended to read as follows:

(a) During each full term of office, a county assessor-collector of a county with a population of 1,000,000 or more shall complete 64 or more classroom hours of instruction that relate to the duties of the office and that are accredited by the Board of Tax Professional Examiners, the commissioner [~~division of the office of comptroller with responsibility for property taxes~~], the division of the Texas Department of Transportation with responsibility for motor vehicles, or the secretary of state as continuing education credits for the office of county assessor-collector.

SECTION 31. Sections 6.28(b), (d), and (e), Tax Code, are amended to read as follows:

(b) The bond for state taxes must be payable to the governor and his successors in office in an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the year ending August 31 preceding the date bond is given, except that the amount of bond may not be less than \$2,500 or more than \$100,000. To be effective, the bond must be approved by the commissioners court of the county and the commissioner [~~state comptroller of public accounts~~].

(d) The commissioner [~~state comptroller of public accounts~~] or the commissioners court of the county may require a new bond for state taxes at any time. The commissioners court may require a new bond for county taxes at any time. However, the total amount of state bonds or county bonds required of an assessor-collector may not exceed \$100,000 at one time. The commissioners court shall suspend the assessor-collector from office and begin removal proceedings if the assessor-collector [~~he~~] fails to give new bond within a reasonable time after demand.

(e) The assessor-collector's official oath and bonds for state and county taxes shall be recorded in the office of the county clerk, and the county judge shall submit the bond for state taxes to the commissioner [~~state comptroller of public accounts~~].

SECTION 32. Section 6.412(c), Tax Code, is amended to read as follows:

(c) A person is ineligible to serve on the appraisal review board if the person is a member of the board of directors, an officer, or employee of the appraisal district, an employee of the commissioner [~~comptroller~~], or a member of the governing body, officer, or employee of a taxing unit.

SECTION 33. Section 11.11(b), Tax Code, is amended to read as follows:

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by Section 25.19 of this code shall be sent to the commissioner [~~comptroller~~], and the commissioner [~~comptroller~~] shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

SECTION 34. Section 11.182(f), Tax Code, as added by Chapter 842, Acts of the 77th Legislature, Regular Session, 2001, is relettered and amended to read as follows:

(i) [(#)] If any property owned by an organization receiving an exemption under this section has been acquired or sold during the preceding year, such organization shall file by March 31 of the following year with the chief appraiser in the county in which the relevant property is located, on a form promulgated by the commissioner [~~comptroller of public accounts~~], a list of such properties acquired or sold during the preceding year.

SECTION 35. Sections 11.252(c), (d), (i), and (j), Tax Code, are amended to read as follows:

(c) The commissioner [~~comptroller~~] by rule shall establish exemption application requirements and appropriate procedures to determine whether a motor vehicle subject to a lease qualifies for an exemption under Subsection (a).

(d) In connection with the requirements and procedures under Subsection (c), the commissioner [~~comptroller~~] by rule shall adopt a form to be completed by the lessee of a motor vehicle for which the owner of the vehicle may apply for an exemption under Subsection (a). The form shall require the lessee to provide the lessee's name, address, and driver's license or personal identification certificate number and to certify under oath that the lessee does not hold the vehicle for the production of income and that the vehicle is used primarily for activities that do not involve the production of income. The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making a false statement on the form.

(i) In addition to the requirements of Subsections (c) and (d), the commissioner [~~comptroller~~] by rule shall prescribe a property report form to be completed by the lessor describing the leased motor vehicles that the lessor owns. The property report form shall require the lessor to list each leased vehicle the lessor owns on January 1, to provide the year, make, model, and vehicle identification number of each leased vehicle, and to provide the name of the lessee, the address at which the vehicle is kept, and an indication of whether the lessee has designated the vehicle as not held for the production and not used for the production of income.

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

SECTION 36. Section 11.26(e), Tax Code, is amended to read as follows:

(e) For each school district in an appraisal district, the chief appraiser shall determine the portion of the appraised value of residence homesteads of the elderly on which school district taxes are not imposed in a tax year because of the limitation on tax increases imposed by this section. That portion is calculated by determining the taxable value that, if multiplied by the tax rate adopted by the school district for the tax year, would produce an amount equal to the amount of tax that would have been imposed by the school district on residence homesteads of the elderly if the limitation on tax increases imposed by this section were not in effect, but that was not imposed because of that limitation. The chief appraiser shall determine that taxable value and certify it to the commissioner [~~comptroller~~] as soon as practicable for each tax year.

SECTION 37. Section 11.27(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~], with the assistance of the Texas Energy and Natural Resources Advisory Council, or its successor, shall develop guidelines to assist local officials in the administration of this section.

SECTION 38. Section 11.43(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~], in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The form must require an applicant to provide the applicant's name

and driver's license number, personal identification certificate number, or social security account number. The commissioner [~~comptroller~~] shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~] shall include, on application forms for exemptions that do not have to be claimed annually, a statement explaining that the application need not be made annually and that if the exemption is allowed, the applicant has a duty to notify the chief appraiser when the applicant's entitlement to the exemption ends. In this subsection:

(1) "Driver's license" has the meaning assigned that term by Section 521.001, Transportation Code.

(2) "Personal identification certificate" means a certificate issued by the Department of Public Safety under Subchapter E, Chapter 521, Transportation Code.

SECTION 39. Section 11.44(c), Tax Code, is amended to read as follows:

(c) The commissioner [~~comptroller~~] shall prescribe by rule the content of the explanation required by Subsection (a) [~~of this section~~], and shall require that each exemption application form be printed and prepared:

(1) as a separate form from any other form; or

(2) on the front of the form if the form also provides for other information.

SECTION 40. Section 21.03(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] shall adopt rules:

(1) identifying the kinds of property subject to this section; and

(2) establishing formulas for calculating the proportion of total market value to be allocated to this state.

SECTION 41. Sections 21.031(e) and (f), Tax Code, are amended to read as follows:

(e) To receive an allocation of value under this section, a property owner must apply for the allocation on a form that substantially complies with the form prescribed by the commissioner [~~comptroller~~]. The application must be filed with the chief appraiser for the district in which the property to which the application applies is taxable before the approval of the appraisal records by the appraisal review board as provided by Section 41.12 [~~of this code~~].

(f) The commissioner [~~comptroller~~] shall promulgate forms and may adopt rules consistent with the provisions of this section.

SECTION 42. Section 22.21, Tax Code, is amended to read as follows:

Sec. 22.21. PUBLICIZING REQUIREMENTS. Each year the commissioner [~~comptroller~~] and each chief appraiser shall publicize in a manner reasonably designed to notify all property owners the requirements of the law relating to filing rendition statements and property reports and of the availability of forms.

SECTION 43. Sections 22.24(a), (c), and (e), Tax Code, are amended to read as follows:

(a) A person required to render property or to file a report as provided by this chapter shall use a form that substantially complies with the appropriate form prescribed or approved by the commissioner [~~comptroller~~].

(c) The commissioner [~~comptroller~~] may prescribe or approve different forms for different kinds of property but shall ensure that each form requires a property owner to furnish the information necessary to identify the property and to determine

its ownership, taxability, and situs. A form may not require a property owner to furnish information not relevant to the appraisal of property for tax purposes or to the assessment or collection of property taxes.

(e) To be valid, a rendition or report must be sworn to before an officer authorized by law to administer an oath. The commissioner [~~comptroller~~] may not prescribe or approve a rendition or report form unless the form provides for the person filing the form to swear that the information provided in the rendition or report is true and accurate to the best of the person's knowledge and belief. This subsection does not apply to a rendition or report filed by the property owner, an employee of the property owner, or an employee of a property owner on behalf of an affiliated entity of the property owner.

SECTION 44. Sections 22.27(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the commissioner [~~comptroller~~] about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) [~~of this section~~].

(b) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;
- (3) to the commissioner [~~comptroller~~] and the commissioner's [~~comptroller's~~] employees authorized by the commissioner [~~comptroller~~] in writing to receive the information or to an assessor or a chief appraiser if requested in writing;
- (4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;
- (5) for statistical purposes if in a form that does not identify specific property or a specific property owner;
- (6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain; or
- (7) to a taxing unit or its legal representative that is engaged in the collection of delinquent taxes on the property that is the subject of the information.

(d) No person who directly or indirectly provides information to the commissioner [~~comptroller~~] or appraisal office about real or personal property sales prices, either as set forth in Subsection (a) [~~of this section~~] under a promise of confidentiality, or otherwise, shall be liable to any other person as the result of providing such information.

SECTION 45. Section 23.121(a)(6), Tax Code, is amended to read as follows:

(6) "Declaration" means the dealer's motor vehicle inventory declaration form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 46. Section 23.121(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall promulgate a form entitled Dealer's Motor Vehicle Inventory Declaration. Except as provided by Section 23.122(l) [~~of this code~~], not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. For purposes of this subsection, a dealer is presumed to have commenced business on the date of issuance to the dealer of a dealer's general distinguishing number as provided by Chapter 503, Transportation Code. Notwithstanding the presumption created by this subsection, a chief appraiser may, at the chief appraiser's [~~his or her~~] sole discretion, designate as the date on which a dealer commenced business a date other than the date of issuance to the dealer of a dealer's general distinguishing number. The declaration is sufficient to comply with this subsection if it sets forth the following information:

- (1) the name and business address of each location at which the dealer owner conducts business;
- (2) each of the dealer's general distinguishing numbers issued by the Texas Department of Transportation;
- (3) a statement that the dealer owner is the owner of a dealer's motor vehicle inventory; and
- (4) the market value of the dealer's motor vehicle inventory for the current tax year as computed under Section 23.121(b) [~~of this code~~].

SECTION 47. Section 23.122(a)(9), Tax Code, is amended to read as follows:

(9) "Statement" means the Dealer's Motor Vehicle Inventory Tax Statement filed on a form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 48. Section 23.122(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate a form entitled a Dealer's Motor Vehicle Inventory Tax Statement. A dealer shall complete the form with respect to each motor vehicle sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] deems appropriate but shall include at least the following:

- (1) a description of the motor vehicle sold;
- (2) the sales price of the motor vehicle;
- (3) the unit property tax of the motor vehicle if any; and
- (4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 49. Section 23.123(c), Tax Code, is amended to read as follows:

(c) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;
- (3) to the commissioner [~~comptroller~~] or an employee of the commissioner [~~comptroller~~] authorized by the commissioner [~~comptroller~~] to receive the information;
- (4) to a collector or chief appraiser;
- (5) to a district attorney, criminal district attorney or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.121 or Section 23.122 [~~of this code~~];
- (6) for statistical purposes if in a form that does not identify specific property or a specific property owner;
- (7) if and to the extent that the information is required for inclusion in a public document or record that the appraisal or collection office is required by law to prepare or maintain; or
- (8) to the Texas Department of Transportation for use by that department in auditing compliance of its licensees with appropriate provisions of applicable law.

SECTION 50. Section 23.124(a)(6), Tax Code, is amended to read as follows:

(6) "Declaration" means the dealer's vessel and outboard motor inventory declaration form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 51. Section 23.124(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Declaration." Except as provided by Section 23.125(l) [~~of this code~~], not later than February 1 of each year or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

- (1) the name and business address of each location at which the dealer owner conducts business;
- (2) each of the dealer's and manufacturer's numbers issued by the Parks and Wildlife Department;
- (3) a statement that the dealer owner is the owner of a dealer's vessel and outboard motor inventory; and
- (4) the market value of the dealer's vessel and outboard motor inventory for the current tax year as computed under Subsection (b) of this section.

SECTION 52. Section 23.1241(a)(4), Tax Code, is amended to read as follows:

(4) "Declaration" means a dealer's heavy equipment inventory declaration form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 53. Section 23.1241(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] by rule shall adopt a dealer's heavy equipment inventory declaration form. Except as provided by Section 23.1242(k), not later than February 1 of each year, or, in the case of a dealer who was not in business

on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth:

- (1) the name and business address of each location at which the declarant conducts business;
- (2) a statement that the declarant is the owner of a dealer's heavy equipment inventory; and
- (3) the market value of the declarant's heavy equipment inventory for the current tax year as computed under Subsection (b).

SECTION 54. Section 23.1242(a)(3), Tax Code, is amended to read as follows:

(3) "Statement" means the dealer's heavy equipment inventory tax statement filed on a form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 55. Section 23.1242(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] by rule shall adopt a dealer's heavy equipment inventory tax statement form. A dealer shall complete the form with respect to each item of heavy equipment sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] considers appropriate but shall include at least the following:

- (1) a description of the item of heavy equipment sold, including any unique identification or serial number affixed to the item by the manufacturer;
- (2) the sales price of the item of heavy equipment;
- (3) the unit property tax of the item of heavy equipment, if any; and
- (4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 56. Section 23.125(a)(9), Tax Code, is amended to read as follows:

(9) "Statement" means the dealer's vessel and outboard motor inventory tax statement filed on a form promulgated by the commissioner [~~comptroller~~] as required by this section.

SECTION 57. Section 23.125(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Tax Statement." A dealer shall complete the form with respect to each vessel and outboard motor sold. A dealer may use no other form for that purpose. The statement may include the information the commissioner [~~comptroller~~] deems appropriate but shall include at least the following:

- (1) a description of the vessel or outboard motor sold;
- (2) the sales price of the vessel or outboard motor;
- (3) the unit property tax of the vessel or outboard motor, if any; and
- (4) the reason no unit property tax is assigned if no unit property tax is assigned.

SECTION 58. Section 23.126(c), Tax Code, is amended to read as follows:

(c) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the commissioner [~~comptroller~~] or an employee of the commissioner [~~comptroller~~] authorized by the commissioner [~~comptroller~~] to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney, or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.124 or Section 23.125 [~~of this code~~];

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(7) if and to the extent that the information is required for inclusion in a document or record that the appraisal or collection office is required by law to prepare or maintain.

SECTION 59. Section 23.127(a)(3), Tax Code, is amended to read as follows:

(3) "Declaration" means a retail manufactured housing inventory declaration form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 60. Section 23.127(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Declaration." Except as provided by Section 23.128(k), not later than February 1 of each year or, in the case of a retailer who was not in business on January 1, not later than the 30th day after the date the retailer commences business, each retailer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

(1) the name and business address of each location at which the retailer conducts business;

(2) the retailer's license number issued by the department;

(3) a statement that the retailer is the owner of a retail manufactured housing inventory; and

(4) the market value of the retailer's manufactured housing inventory for the current tax year as computed under Subsection (b).

SECTION 61. Section 23.128(a)(4), Tax Code, is amended to read as follows:

(4) "Statement" means the retail manufactured housing inventory tax statement filed on a form adopted by the commissioner [~~comptroller~~] under this section.

SECTION 62. Section 23.128(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] by rule shall adopt a form entitled "Retail Manufactured Housing Inventory Tax Statement." A retailer shall complete the form with respect to each unit of manufactured housing sold. A retailer may not use another form for that purpose. The statement shall include:

(1) a description of the unit of manufactured housing sold, including any unique identification or serial number affixed to the unit by the manufacturer;

(2) the sales price of the unit of manufactured housing;

(3) any unit property tax of the unit of manufactured housing;

(4) the reason a unit property tax is not assigned if that is the case; and

(5) any other information the commissioner [~~comptroller~~] considers appropriate.

SECTION 63. Section 23.175(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] by rule shall develop and distribute to each appraisal office appraisal manuals that specify methods and procedures to discount future income from the sale of oil or gas from the interest to present value.

SECTION 64. Sections 23.41(b) and (e), Tax Code, are amended to read as follows:

(b) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use.

(e) Improvements other than appurtenances to the land, the mineral estate, and all land used for residential purposes and for processing harvested agricultural products are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshaping of or additions to the soil for agricultural purposes are appurtenances to the land, and the effect of each on the value of the land for agricultural use shall be considered in appraising the land. However, the commissioner [~~comptroller~~] shall provide that in calculating average net income from land a deduction from income be allowed for an appurtenance subject to depreciation or depletion.

SECTION 65. Section 23.43(d), Tax Code, is amended to read as follows:

(d) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim. The commissioner [~~comptroller~~] shall require that the form permit a claimant who has previously been allowed an agricultural designation to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 66. Section 23.45(b), Tax Code, is amended to read as follows:

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the application or to his representative authorized in writing to receive the information;

(3) to the commissioner [~~comptroller~~] and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

SECTION 67. Section 23.52(d), Tax Code, is amended to read as follows:

(d) The commissioner [~~comptroller~~] by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office shall use the appraisal manuals in appraising qualified open-space land. The commissioner [~~comptroller~~] by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51 [~~of this code~~]. The rules,

before taking effect, must be approved by a majority vote of a committee comprised of the following officials or their designees: the commissioner, the governor, the comptroller, the attorney general, and the agriculture commissioner~~[-and the Commissioner of the General Land Office]~~.

SECTION 68. Section 23.521(a), Tax Code, is amended to read as follows:

(a) The Parks and Wildlife Department, with the assistance of the commissioner ~~[comptroller]~~, shall develop standards for determining whether land qualifies under Section 23.51(7) for appraisal under this subchapter. The commissioner ~~[comptroller]~~ by rule shall adopt the standards developed by the Parks and Wildlife Department and distribute those rules to each appraisal district. On request of the Parks and Wildlife Department, the Texas Agricultural Extension Service shall assist the department in developing the standards.

SECTION 69. Sections 23.54(b) and (c), Tax Code, are amended to read as follows:

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner ~~[comptroller]~~; and

(2) contain the information necessary to determine the validity of the claim.

(c) The commissioner ~~[comptroller]~~ shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner ~~[comptroller]~~, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 70. Section 23.73(b), Tax Code, is amended to read as follows:

(b) The commissioner ~~[comptroller]~~ by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified timber land, and each appraisal office shall use the appraisal manuals in appraising qualified timber land. The commissioner ~~[comptroller]~~ by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Section 23.72 ~~[of this code]~~. The rules, before taking effect, must be approved by majority vote of a committee comprised of the following officials or their designees: the commissioner, the governor, the comptroller, the attorney general, and the agriculture commissioner~~[-and the Commissioner of the General Land Office]~~.

SECTION 71. Sections 23.75(b) and (c), Tax Code, are amended to read as follows:

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner ~~[comptroller]~~; and

(2) contain the information necessary to determine the validity of the claim.

(c) The commissioner ~~[comptroller]~~ shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner ~~[comptroller]~~, in prescribing the contents of the application form, shall require that the form permit a claimant who has

previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 72. Section 23.83(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising land under this subchapter.

SECTION 73. Section 23.84(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the land for which the claimant [~~he~~] claims appraisal under this subchapter will be used exclusively for recreational, park, or scenic uses in the current year.

SECTION 74. Section 23.93(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall promulgate rules specifying the methods to apply and the procedures to use in appraising property under this subchapter.

SECTION 75. Section 23.94(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the airport property for which the claimant [~~he~~] claims appraisal under this subchapter will be used exclusively as public access airport property in the current year.

SECTION 76. Sections 23.9804(b), (c), and (d), Tax Code, are amended to read as follows:

(b) To be valid, an application for appraisal under Section 23.9802(a) must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~];

(2) provide evidence that the land qualifies for designation as an aesthetic management zone, critical wildlife habitat zone, or streamside management zone;

(3) specify the location of the proposed zone and the quantity of land, in acres, in the proposed zone; and

(4) contain other information necessary to determine the validity of the claim.

(c) To be valid, an application for appraisal under Section 23.9802(b) must:

(1) be on a form provided by the appraisal office and prescribed by the commissioner [~~comptroller~~];

(2) provide evidence that the land on which the timber was harvested was appraised under Subchapter E in the year in which the timber was harvested;

(3) provide evidence that all of the land has been regenerated in compliance with Section 23.9802(b)(2); and

(4) contain other information necessary to determine the validity of the claim.

(d) The commissioner [~~comptroller~~] shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The commissioner [~~comptroller~~], in prescribing the

contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that the previously reported information has not changed and to supply only the eligibility information not previously reported.

SECTION 77. Section 24.32(c), Tax Code, is amended to read as follows:

(c) A report required by this section must be on a form prescribed by the commissioner [~~comptroller~~]. In prescribing the form, the commissioner [~~comptroller~~] shall ensure that it requires the information necessary to determine market value of rolling stock used in this state.

SECTION 78. Section 24.34(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] shall adopt rules establishing formulas for interstate allocation of the value of railroad rolling stock.

SECTION 79. Sections 24.36, 24.365, 24.37, and 24.38, Tax Code, are amended to read as follows:

Sec. 24.36. CERTIFICATION TO COMMISSIONER [~~COMPTROLLER~~]. On approval of the appraised value of the rolling stock as provided by Chapter 41 [~~of this code~~], the chief appraiser shall certify to the commissioner [~~comptroller~~] the amount of market value allocated to this state for each owner whose rolling stock is appraised in the county and the name and business address of each owner.

Sec. 24.365. CORRECTION OF CERTIFIED AMOUNT. (a) A chief appraiser who discovers that the chief appraiser's certification to the commissioner [~~comptroller~~] of the amount of the market value of rolling stock allocated to this state under Section 24.36 was incomplete or incorrect shall immediately certify the correct amount of that market value to the commissioner [~~comptroller~~].

(b) As soon as practicable after the commissioner [~~comptroller~~] receives the correct certification from the chief appraiser, the commissioner [~~comptroller~~] shall certify to the county assessor-collector for each affected county the information required by Section 24.38 as corrected.

Sec. 24.37. INTRASTATE APPORTIONMENT. The commissioner [~~comptroller~~] shall apportion the appraised value of each owner's rolling stock to each county in which the railroad using it operates according to the ratio the mileage of road owned by the railroad in the county bears to the total mileage of road the railroad owns in this state.

Sec. 24.38. CERTIFICATION OF APPORTIONED VALUE. Before August 1, the commissioner [~~comptroller~~] shall certify to the county assessor-collector for each county in which a railroad operates:

(1) the county's apportioned amount of the market value of each owner's rolling stock; and

(2) the name and business address of each owner.

SECTION 80. Section 24.40(a), Tax Code, is amended to read as follows:

(a) If a chief appraiser discovers that rolling stock used in this state and subject to appraisal by the chief appraiser [~~him~~] has not been appraised and apportioned to the counties in one of the two preceding years, he shall appraise the property as of January 1 for each year it was omitted, submit the appraisal for review and protest, and certify the approved value to the commissioner [~~comptroller~~].

SECTION 81. Section 25.011(b), Tax Code, is amended to read as follows:

(b) The record for each type of specially appraised property must be maintained in a separate document for each 12-month period beginning June 1. The document must include the name of at least one owner of the property, the acreage of the property, and other information sufficient to identify the property as required by the commissioner [~~comptroller~~]. All entries in each document must be kept in alphabetical order according to the last name of each owner whose name is part of the record.

SECTION 82. Section 25.02(a), Tax Code, is amended to read as follows:

(a) The appraisal records shall be in the form prescribed by the commissioner [~~comptroller~~] and shall include:

- (1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;
- (2) real property;
- (3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;
- (4) personal property;
- (5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, E, or H, Chapter 23, the market value of the land;
- (6) the appraised value of improvements to land;
- (7) the appraised value of a separately taxable estate or interest in land;
- (8) the appraised value of personal property;
- (9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and, in the case of an exemption authorized by Section 11.23, the amount of the exemption;
- (10) the tax year to which the appraisal applies; and
- (11) an identification of each taxing unit in which the property is taxable.

SECTION 83. Section 25.025(b), Tax Code, is amended to read as follows:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the commissioner [~~comptroller~~], and taxing units and political subdivisions of this state if:

- (1) the information identifies the home address of a named individual to whom this section applies; and
- (2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the commissioner [~~comptroller~~] under Section 5.07.

SECTION 84. Section 25.026(b), Tax Code, is amended to read as follows:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the commissioner [~~comptroller~~], and taxing units and political subdivisions of this state if the information identifies the address of a family violence shelter center or a sexual assault program.

SECTION 85. Section 25.03(b), Tax Code, is amended to read as follows:

(b) The commissioner [~~comptroller~~] may adopt rules establishing minimum standards for descriptions of property.

SECTION 86. Sections 25.19(i) and (j), Tax Code, are amended to read as follows:

(i) Delivery with a notice required by Subsection (a) or (g) of a copy of the pamphlet published by the commissioner [~~comptroller~~] under Section 5.06 or a copy of the notice published by the chief appraiser under Section 41.70 is sufficient to comply with the requirement that the notice include the information specified by Subsection (b)(7) or (g)(3), as applicable.

(j) The chief appraiser shall include with a notice required by Subsection (a) or (g):

(1) a copy of a notice of protest form as prescribed by the commissioner [~~comptroller~~] under Section 41.44(d); and

(2) instructions for completing and mailing the form to the appraisal review board and requesting a hearing on the protest.

SECTION 87. Section 25.23(b), Tax Code, is amended to read as follows:

(b) Supplemental appraisal records shall be in the form prescribed by the commissioner [~~comptroller~~] and shall include the items required by Section 25.02 [~~of this code~~].

SECTION 88. Section 26.01(b), Tax Code, is amended to read as follows:

(b) When a chief appraiser submits an appraisal roll for county taxes to a county assessor-collector, the chief appraiser also shall certify the appraisal district appraisal roll to the commissioner [~~comptroller~~]. However, the commissioner [~~comptroller~~] by rule may provide for submission of only a summary of the appraisal roll. The chief appraiser shall certify the district appraisal roll or the summary of that roll in the form and manner prescribed by the commissioner's [~~comptroller's~~] rule.

SECTION 89. Section 26.04(e), Tax Code, is amended to read as follows:

(e) By August 7 or as soon thereafter as practicable, the designated officer or employee shall submit the rates to the governing body. The designated officer or employee [~~He~~] shall deliver by mail to each property owner in the unit or publish in a newspaper in the form prescribed by the commissioner [~~comptroller~~]:

(1) the effective tax rate, the rollback tax rate, and an explanation of how they were calculated;

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation;

(3) a schedule of the unit's debt obligations showing:

(A) the amount of principal and interest that will be paid to service the unit's debts in the next year from property tax revenue, including payments of lawfully incurred contractual obligations providing security for the payment of the principal of and interest on bonds and other evidences of indebtedness issued on behalf of the unit by another political subdivision and, if the unit is created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, payments on debts that the unit anticipates to incur in the next calendar year;

(B) the amount by which taxes imposed for debt are to be increased because of the unit's anticipated collection rate; and

(C) the total of the amounts listed in Paragraphs (A)-(B), less any amount collected in excess of the previous year's anticipated collections certified as provided in Subsection (b);

(4) the amount of additional sales and use tax revenue anticipated in calculations under Section 26.041;

(5) a statement that the adoption of a tax rate equal to the effective tax rate would result in an increase or decrease, as applicable, in the amount of taxes imposed by the unit as compared to last year's levy, and the amount of the increase or decrease;

(6) in the year that a taxing unit calculates an adjustment under Subsection (i) or (j), a schedule that includes the following elements:

(A) the name of the unit discontinuing the department, function, or activity;

(B) the amount of property tax revenue spent by the unit listed under Paragraph (A) to operate the discontinued department, function, or activity in the 12 months preceding the month in which the calculations required by this chapter are made; and

(C) the name of the unit that operates a distinct department, function, or activity in all or a majority of the territory of a taxing unit that has discontinued operating the distinct department, function, or activity; and

(7) in the year following the year in which a taxing unit raised its rollback rate as required by Subsection (j), a schedule that includes the following elements:

(A) the amount of property tax revenue spent by the unit to operate the department, function, or activity for which the taxing unit raised the rollback rate as required by Subsection (j) for the 12 months preceding the month in which the calculations required by this chapter are made; and

(B) the amount published by the unit in the preceding tax year under Subdivision (6)(B).

SECTION 90. Section 26.06(f), Tax Code, is amended to read as follows:

(f) The commissioner ~~comptroller~~ by rule shall prescribe the language and format to be used in the part of the notice required by Subsection (b)(2). A notice under Subsection (b) is not valid if it does not substantially conform to the language and format prescribed by the commissioner ~~comptroller~~ under this subsection.

SECTION 91. Section 31.01(c), Tax Code, is amended to read as follows:

(c) The tax bill or a separate statement accompanying the tax bill shall:

(1) identify the property subject to the tax;

(2) state the appraised value, assessed value, and taxable value of the property;

(3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;

(4) state the assessment ratio for the unit;

(5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;

(6) state the total tax rate for the unit;

(7) state the amount of tax due, the due date, and the delinquency date;

(8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax;

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; and

(11) include any other information required by the commissioner [~~comptroller~~].

SECTION 92. Section 31.032(f), Tax Code, is amended to read as follows:

(f) The commissioner [~~comptroller~~] shall adopt rules to implement this section.

SECTION 93. Section 31.075(a), Tax Code, is amended to read as follows:

(a) At the request of a property owner or a property owner's agent, the collector for a taxing unit shall issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested, the tax rate for each of those tax years, and the amount of tax paid in each of those years. The receipt must describe the property in the manner prescribed by the commissioner [~~comptroller~~].

SECTION 94. Section 31.11(c), Tax Code, is amended to read as follows:

(c) An application for a refund must be made within three years after the date of the payment or the taxpayer waives the right to the refund. A taxpayer may apply for a refund by filing:

(1) an application on a form prescribed by the commissioner [~~comptroller~~] by rule; or

(2) a written request that includes information sufficient to enable the auditor for the taxing unit and, if applicable, the governing body of the taxing unit to determine whether the taxpayer is entitled to the refund.

SECTION 95. Section 33.43(e), Tax Code, is amended to read as follows:

(e) The commissioner [~~comptroller~~] shall prepare forms for petitions initiating suits to collect delinquent taxes. An attorney representing a taxing unit may use the forms or develop a [~~his own~~] form.

SECTION 96. Section 41.44(d), Tax Code, is amended to read as follows:

(d) A notice of protest is sufficient if it identifies the protesting property owner, including a person claiming an ownership interest in the property even if that person is not listed on the appraisal records as an owner of the property, identifies the property that is the subject of the protest, and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the commissioner [~~comptroller~~] shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The commissioner [~~comptroller~~], each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

SECTION 97. Sections 41.45(k) and (l), Tax Code, are amended to read as follows:

(k) The commissioner [~~comptroller~~] shall prescribe a standard form for an affidavit offered under Subsection (b). Each appraisal district shall make copies of the affidavit form available to property owners without charge.

(l) A property owner is not required to use the affidavit form prescribed by the commissioner [~~comptroller~~] when offering an affidavit under Subsection (b).

SECTION 98. Section 41.461(a), Tax Code, is amended to read as follows:

(a) At least 14 days before a hearing on a protest, the chief appraiser shall:

(1) deliver a copy of the pamphlet prepared by the commissioner [~~comptroller~~] under Section 5.06(a) to the property owner initiating the protest if the owner is not represented by another person [~~representing himself~~], or to an agent representing the owner if requested by the agent;

(2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and

(3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

SECTION 99. Sections 41.65 and 41.68, Tax Code, are amended to read as follows:

Sec. 41.65. REQUEST FOR STATE ASSISTANCE. The appraisal review board may request the commissioner [~~comptroller~~] to assist in determining the accuracy of appraisals by the appraisal office or to provide other professional assistance. The appraisal office shall reimburse the costs of providing assistance if the commissioner [~~comptroller~~] requests reimbursement.

Sec. 41.68. RECORD OF PROCEEDING. The appraisal review board shall keep a record of its proceedings in the form and manner prescribed by the commissioner [~~comptroller~~].

SECTION 100. Section 41.70(a), Tax Code, is amended to read as follows:

(a) On or after May 1 but not later than May 15, the chief appraiser shall publish notice of the manner in which a protest under this chapter may be brought by a property owner. The notice must describe how to initiate a protest and must describe the deadlines for filing a protest. The notice must also describe the manner in which an order of the appraisal review board may be appealed. The commissioner [~~comptroller~~] by rule shall adopt minimum standards for the form and content of the notice required by this section.

SECTION 101. Sections 42.01, 42.03, and 42.05, Tax Code, are amended to read as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41; or

(B) a determination of an appraisal review board on a motion filed under Section 25.25; or

(2) an order of the commissioner [~~comptroller~~] issued as provided by Subchapter B, Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

Sec. 42.03. RIGHT OF APPEAL BY COUNTY. A county may appeal the order of the commissioner [~~comptroller~~] issued as provided by Subchapter B, Chapter 24 of this code apportioning among the counties the appraised value of railroad rolling stock.

Sec. 42.05. COMMISSIONER [~~COMPTROLLER~~] AS PARTY. The commissioner [~~comptroller~~] is an opposing party in an appeal by:

(1) a property owner of an order of the commissioner [~~comptroller~~] determining a protest of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles; or

(2) a county or a property owner of an order of the commissioner [~~comptroller~~] apportioning among the counties the appraised value of railroad rolling stock.

SECTION 102. Sections 42.06(a), (b), and (c), Tax Code, are amended to read as follows:

(a) To exercise the party's right to appeal an order of an appraisal review board, a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 that the order appealed has been issued. To exercise the right to appeal an order of the commissioner [~~comptroller~~], a party other than a property owner must file written notice of appeal within 15 days after the date the party receives the commissioner's [~~comptroller's~~] order. A property owner is not required to file a notice of appeal under this section.

(b) A party required to file a notice of appeal under this section other than a chief appraiser who appeals an order of an appraisal review board shall file the notice with the chief appraiser of the appraisal district for which the appraisal review board is established. A chief appraiser who appeals an order of an appraisal review board shall file the notice with the appraisal review board. A party who appeals an order of the commissioner [~~comptroller~~] shall file the notice with the commissioner [~~comptroller~~].

(c) If the chief appraiser, a taxing unit, or a county appeals, the chief appraiser, if the appeal is of an order of the appraisal review board, or the commissioner [~~comptroller~~], if the appeal is of an order of the commissioner [~~comptroller~~], shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

SECTION 103. Section 42.21(b), Tax Code, is amended to read as follows:

(b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under Subdivision (2) or (3) of Section 42.01 or under Section 42.03 must be brought against the commissioner [~~comptroller~~]. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review is not required to be brought against the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate.

SECTION 104. Section 42.22, Tax Code, as amended by Chapters 667 and 1033, Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

Sec. 42.22. VENUE. (a) Except as provided by Subsections (b) and (c), and by Section 42.221, venue is in the county in which the appraisal review board that issued the order appealed is located.

(b) Venue of an action brought under Section 42.01(1) is in the county in which the property is located or in the county in which the appraisal review board that issued the order is located.

(c) Venue is in Travis County if the order appealed was issued by the commissioner [~~comptroller~~].

SECTION 105. Section 42.23(b), Tax Code, is amended to read as follows:

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or commissioner [~~comptroller~~], except to the extent necessary to establish its jurisdiction.

SECTION 106. Section 42.26(c), Tax Code, is amended to read as follows:

(c) For purposes of establishing the median level of appraisal under Subsection (a)(1), the median level of appraisal in the appraisal district as determined by the commissioner [~~comptroller~~] under Section 51.41 [~~5.10~~] is admissible as evidence of the median level of appraisal of a reasonable and representative sample of properties in the appraisal district for the year of the commissioner's [~~comptroller's~~] determination, subject to the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

SECTION 107. Sections 42.28 and 43.01, Tax Code, are amended to read as follows:

Sec. 42.28. APPEAL OF DISTRICT COURT JUDGMENT. A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the commissioner [~~comptroller~~], or the commissioners court of a county.

Sec. 43.01. AUTHORITY TO BRING SUIT. A taxing unit may sue the appraisal district that appraises property for the unit to compel the appraisal district to comply with the provisions of this title, rules of the commissioner [~~comptroller~~], or other applicable law.

SECTION 108. Section 313.022(b), Tax Code, is amended to read as follows:

(b) For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a), and the minimum amount of a limitation on appraised value under Section 313.027(b), school districts to which this subchapter applies are categorized according to the taxable value of property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, as follows:

CATEGORY	TAXABLE VALUE OF PROPERTY
I	\$10 billion or more
II	\$1 billion or more but less than \$10 billion
III	\$500 million or more but less than \$1 billion
IV	\$100 million or more but less than \$500 million
V	less than \$100 million

SECTION 109. Section 313.052, Tax Code, is amended to read as follows:

Sec. 313.052. CATEGORIZATION OF SCHOOL DISTRICTS. For purposes of determining the required minimum amount of a qualified investment under Section 313.021(2)(A)(iv)(a) and the minimum amount of a limitation on appraised value under this subchapter, school districts to which this subchapter applies are categorized according to the taxable value of industrial property in the district for the preceding tax year determined under Subchapter B, Chapter 51, Tax [~~Subchapter M, Chapter 403, Government~~] Code, as follows:

CATEGORY	TAXABLE VALUE OF INDUSTRIAL PROPERTY
I	\$200 million or more
II	\$90 million or more but less than \$200 million
III	\$1 million or more but less than \$90 million
IV	\$100,000 or more but less than \$1 million
V	less than \$100,000

SECTION 110. Sections 39.901(a), (b), (c), and (e), Utilities Code, are amended to read as follows:

(a) Not later than August 31 each year, the commissioner of the State Board on Property Valuation [~~comptroller~~] shall certify to the Texas Education Agency the statewide net loss in electric generating facility property value attributable to electric utility restructuring. In calculating the statewide net loss in electric generating facility property value, the commissioner of the State Board on Property Valuation [~~comptroller~~] shall:

(1) subtract current year electric generating facility appraisal roll values, as defined by Section 25.24, Tax Code, from 1999 electric generating facility appraised values in each school district;

(2) sum the resulting property value losses (positive differences);

(3) sum the resulting property value gains (negative differences); and

(4) subtract the absolute value of the property value gains, subject to the limitation in Section 39.9011, from the absolute value of the property value losses to calculate a statewide net loss.

(b) The Texas Education Agency shall determine the amount necessary to compensate the state for the statewide net loss certified under Subsection (a) by multiplying the statewide net loss by the average adopted property tax rate of the school districts that had losses, weighted by the value losses in each school district, and dividing the result by 100 and shall notify the commission of the amount necessary to compensate the state for the reduction. The commissioner of the State Board on Property Valuation [~~comptroller~~] shall provide the Texas Education Agency the electric generating facility value losses in each school district used in Subsection (a)(2) for use in calculating the weighted average property tax rate.

(c) The amounts determined by the commissioner of the State Board on Property Valuation [~~comptroller~~] and the Texas Education Agency under this section, for the purposes of this section, are final and may not be appealed.

(e) The commissioner of education and the commissioner of the State Board on Property Valuation [~~comptroller~~] shall adopt rules necessary to implement this section, including rules providing for public input.

SECTION 111. The following laws are repealed:

(1) Sections 5.10, 5.102, 5.12, and 5.13, Tax Code; and

(2) Subchapter M, Chapter 403, Government Code.

SECTION 112. (a) As soon as practicable on or after the effective date of this Act, the governor shall appoint the members of the State Board on Property Valuation. The initial members appointed shall draw lots so that one member's term expires March 1, 2005, two members' terms expire March 1, 2007, and two members' terms expire March 1, 2009. The board shall employ a commissioner as soon as practicable after a majority of the members of the board qualify for office.

(b) The comptroller of public accounts and the commissioner of the State Board on Property Valuation shall coordinate the transfer of all aspects and functions of the comptroller relating to state administration of the property tax system to the board or commissioner, as applicable. The transfer shall be accomplished as soon as practicable but not later than the 45th day after the date the board employs the initial commissioner.

(c) The transfer required by Subsection (b) of this section includes all assets, obligations, and liabilities of any kind relating to state administration of the property tax system, including all contracts, leases, real or personal property, personnel, furniture, computers and other equipment, files, and related materials used by the comptroller for that purpose.

(d) All appropriations made to the comptroller for the operation of the property tax division, as well as the personnel assigned to the division, are transferred to the State Board on Property Valuation, except for the appropriations for support services provided by other divisions of the comptroller's office. Until the end of the state fiscal biennium that begins September 1, 2003, the comptroller, by interagency contract, shall continue to provide support to the State Board on Property Valuation for payroll, human resources, computer maintenance and technical assistance, printing and distribution of publications created by the board, and similar administrative services currently provided.

(e) All forms, rules, and procedures relating to state administration of the property tax system adopted by the comptroller or administratively transferred to the comptroller and in effect on the effective date of this Act remain in effect on or after that date as if adopted by the State Board on Property Valuation or the commissioner of the State Board on Property Valuation, as applicable, until amended, repealed, withdrawn, or otherwise superseded by the board or commissioner.

(f) In any protest, appeal, or other administrative or judicial action in which the comptroller is a party on the effective date of this Act in connection with a duty or function transferred from the comptroller to the State Board on Property Valuation or the commissioner of the State Board on Property Valuation, as applicable, by this Act, the board or commissioner is substituted for the comptroller on the effective date of this Act.

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **SB 671** in the following way:

On page 6, line 19, delete the words "or 2003".

On page 6, line 24, delete the words "and 2004-2005".

On page 7, line 4, delete "September 30, 2005" and replace it with the words "September 30, 2004".

Floor Amendment No. 3

Amend Floor Amendment No. 1 to **SB 671** in the following way:

On page 58, line 11, after the word "commissioner" add the words "of the General Land Office".

On page 59, line 22, after the word "commissioner" add the words "of the General Land Office".

Floor Amendment No. 4

Amend Floor Amendment No. 1 by Wohlgemuth to **SB 671** at the end of the bill (floor amendment page 80, following line 18) by adding the following:

SECTION 113. 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. 5

Amend Floor Amendment No. 1 by Wohlgemuth to **SB 671** as follows:

(1) In SECTION 1 of the bill, in proposed Paragraph (A), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma (floor amendment page 1, line 23), insert "conducted for the year 2003 or a subsequent year".

(2) In SECTION 1 of the bill, in proposed Paragraph (B), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma (floor amendment page 1, line 27), insert "conducted for the year 2003 or a subsequent year".

(3) In SECTION 1 of the bill, in proposed Paragraph (C), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma (floor amendment page 1, line 29), insert "conducted for the year 2003 or a subsequent year".

(4) In SECTION 1 of the bill, in proposed Subsection (c), Section 51.21, Tax Code, at the end of the subsection (floor amendment page 3, line 16), add the following:

In determining whether the local value for a school district is valid, the commissioner shall use a margin of error that does not exceed five percent unless the commissioner determines that the size of the sample of properties necessary to make the determination makes the use of such a margin of error not feasible, in which case the commissioner may use a larger margin of error.

(5) In SECTION 1 of the bill, in proposed Section 51.21, Tax Code, between Subsections (g) and (h) (floor amendment page 6, between lines 17 and 18), insert the following subsection and renumber the subsequent subsections and cross-references to those subsections accordingly:

(h) Notwithstanding Subsection (g), if, after conducting the annual study for the two years following the second year for which the commissioner determines that a school district is an eligible school district, the commissioner determines that the local value for the school district is invalid for either of those years, the commissioner shall notify the commissioner of education that the school district's taxable value for the two years for which the commissioner determined that the district was an eligible school district was the state value rather than the local value as previously certified. The commissioner of education shall, by withholding amounts from subsequent allocations of state funds under Chapter 42, Education Code, recover from the school district an amount equal to the over allocation of state funds resulting from the certification of the local value rather than the state value for the two years for which the commissioner determined that the district was an eligible school district. If the school district does not receive a tier one allotment, the district shall remit to the comptroller for deposit to the credit of the foundation school fund an amount equal to the reduction in the district's total cost of purchasing attendance credits under Subchapter D, Chapter 41, Education Code, or educating nonresident students under Subchapter E, Chapter 41, Education Code, resulting from the certification of the local value rather than the state value for the two years for which the commissioner determined that the district was an eligible school district. This subsection does not

apply to an eligible school district if the commissioner determines in the year following the first year for which the commissioner determines that the school district is an eligible school district that the local value for the school district is valid.

Floor Amendment No. 6

Amend Floor Amendment No. 1 to **SB 671** as follows:

(1) Throughout the substitute, in each instance that "commissioner" is added, strike "commissioner" and reinstate "comptroller".

(2) Throughout the substitute, in each section in which "Commissioner of the State Board on Property Valuation" or "board" is added to replace "comptroller", strike the applicable term and reinstate "comptroller".

(3) Throughout the substitute, in each section in which "board" is added to replace "comptroller", strike "board" and reinstate "commissioner".

(4) Throughout the substitute, in each section in which "commissioner" is added to replace "division of the office of the comptroller with responsibility for property taxes", strike "commissioner" and reinstate "division of the office of the comptroller with responsibility for property taxes".

(5) Strike SECTION 6 of the substitute.

(6) In SECTION 20 of the substitute, on page 30, lines 10 and 11, strike added Subdivision (20), Section 1.04, Tax Code.

(7) Strike SECTION 23 of the substitute.

(8) Strike SECTION 112 of the substitute.

Floor Amendment No. 7

Amend Floor Amendment No. 1 by Wohlgemuth to **SB 671** (floor amendment page 2, line 2), by striking "95 percent" and substituting "90 percent".

Floor Amendment No. 8

Amend Floor Amendment No. 1 by Wohlgemuth to **SB 671** as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (g), Section 51.21, Tax Code (floor amendment page 6, line 9), strike "If" and substitute "Except as provided by Subsection (l), if".

(2) In SECTION 1 of the bill, at the end of proposed Section 51.21, Tax Code (floor amendment page 7, between lines 29 and 30), insert the following:

(l) A school district that is determined to be an eligible school district may not again be determined to be an eligible school district before the 10th year after the year of the determination that the school district is an eligible school district.

Floor Amendment No. 1 on Third Reading

Amend **SB 671** on third reading as follows:

(1) In SECTION 1 of the bill, in proposed Paragraph (A), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma, strike "conducted for the year 2003 or a subsequent year".

(2) In SECTION 1 of the bill, in proposed Paragraph (B), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma, strike "conducted for the year 2003 or a subsequent year".

(3) In SECTION 1 of the bill, in proposed Paragraph (C), Subdivision (2), Section 51.02, Tax Code, between "study" and the comma, strike "conducted for the year 2003 or a subsequent year".

(4) In SECTION 1 of the bill, in proposed Subsection (g), Section 51.21, Tax Code, strike "Except as provided by Subsection (l), if" and substitute "If".

(5) In SECTION 1 of the bill, in proposed Section 51.21, Tax Code, strike Subsection (h) as added by Floor Amendment No. 5 by Smith and reletter the subsequent subsections and cross-references to those subsections accordingly.

(6) In SECTION 1 of the bill, in proposed Subsection 51.21, Tax Code, strike Subsection (l) as added by Floor Amendment No. 8 by Smith.

Floor Amendment No. 2 on Third Reading

Amend **SB 671** on third reading as follows:

(1) Strike Floor Amendment No. 6 on second reading.

(2) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (b) of the section, strike the second sentence of the subsection and substitute the following:

The transfer shall occur on September 1, 2004. Until the transfer occurs, the functions of the State Board on Property Valuation or the commissioner of that board under this Act shall be performed by the comptroller.

(3) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (d) of the section, between "All appropriations made" and "to the comptroller", insert "for the state fiscal year beginning September 1, 2004,".

(4) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (d) of the section, strike "Until the end of the state fiscal biennium that begins September 1, 2003" and substitute "Until the end of the state fiscal year that begins September 1, 2004".

(5) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (e) of the section, strike "the effective date of this Act" and substitute "September 1, 2004".

(6) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (f) of the section, strike "is a party on the effective date of this Act" and substitute "is a party on September 1, 2004,".

(7) In SECTION 112 of the bill as added by Floor Amendment No. 1 on second reading, in Subsection (f) of the section, strike "comptroller on the effective date of this Act" and substitute "comptroller on September 1, 2004".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 671** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Staples, Chair; Ogden, Averitt, Van de Putte, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 471

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 471** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 471** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Ogden, Madla, Lindsay, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 1129

Senator Gallegos called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1129** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1129** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Gallegos, Chair; Deuell, Madla, Lindsay, and Brimer.

CONFERENCE COMMITTEE ON HOUSE BILL 1541

Senator Lindsay called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1541** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1541** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lindsay, Chair; Armbrister, Averitt, Barrientos, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 1576

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1576** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1576** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Shapleigh, Chair; Fraser, Ellis, Nelson, and Ratliff.

CONFERENCE COMMITTEE ON HOUSE JOINT RESOLUTION 28

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HJR 28** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HJR 28** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Ogden, Madla, Shapiro, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 3622

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3622** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3622** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Deuell, Chair; Armbrister, Duncan, Carona, and Lindsay.

(Senator Carona in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 1566

Senator Armbrister, on behalf of Senator Ratliff, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1566** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1566** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ratliff, Chair; Van de Putte, Janek, Williams, and Averitt.

SENATE BILL 127 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Fraser, called **SB 127** 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 127** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the handling, settling, and use of certain claims in the insurance business; providing penalties.

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

ARTICLE 1. WATER DAMAGE CLAIMS

SECTION 1.01. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.35-4 to read as follows:

Art. 5.35-4. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE; PERMISSIBLE SURCHARGES

Sec. 1. PURPOSE. The purpose of this article is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy.

Sec. 2. DEFINITIONS. In this article:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Section 2, Article 21.49-1, of this code or Section 823.003(a) of this code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association created and operated under Article 21.49 of this code or the FAIR Plan created and operated under Article 21.49A of this code.

(2) "Residential property insurance" means insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, which includes a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(3) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to decide whether to accept or reject an application for a residential property insurance policy or to determine how to classify the risks that are accepted for the purpose of determining a rate.

Sec. 3. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE. (a) Underwriting guidelines relating to a water damage claim or claims used by an insurer shall be governed by rules adopted by the commissioner in accordance with the purpose of this article. An insurer may not use an underwriting guideline relating to a water damage claim or claims that is not in accordance with the rules adopted by the commissioner under this article.

(b) An insurer shall file with the department its underwriting guidelines relating to a water damage claim or claims in accordance with the rules adopted by the commissioner.

Sec. 4. PREMIUM SURCHARGES FOR WATER DAMAGE CLAIMS. (a) An insurer may assess a premium surcharge for water damage claims at the time a residential property insurance policy is issued in accordance with rules adopted by the commissioner. This surcharge shall be in addition to the premium that would be charged for the policy had the claim or claims not occurred. The commissioner shall determine by rule the amount of any surcharge that may be assessed under this subsection, except that the amount of the surcharge may not exceed 15 percent of the total premium that would be charged for the policy had the claim or claims not occurred. The insurer may continue to assess this premium surcharge for such period as the commissioner determines by rule.

(b) The insurer may at the time of renewal of the policy assess an additional premium surcharge for water damage claims made in the preceding policy year as determined by the commissioner by rule. This surcharge shall be in addition to the premium that would be charged for the policy had the claim or claims not occurred and shall be in addition to the surcharge adopted by the commissioner under Subsection (a) of this section. The commissioner shall determine by rule the amount of any surcharge that may be assessed under this subsection, except that the amount of the surcharge may not exceed 15 percent of the total premium that would be charged for the policy had the claim or claims not occurred, excluding the amount of the surcharge provided in Subsection (a) of this section. The insurer may continue to assess this premium surcharge for a period determined by rule of the commissioner.

(c) The commissioner may authorize a surcharge as provided by Subsection (a) or (b) of this section that is greater than 15 percent for risks with three or more water damage claims in accordance with rules adopted by the commissioner.

(d) In determining the surcharges under this section, the commissioner may consider the number of water damage claims, the type of water damage claims, and the total amount paid for water damage claims.

Sec. 5. RULEMAKING AUTHORITY. The commissioner shall adopt rules to accomplish the purposes of this article, including rules with regard to the definition of a water damage claim.

SECTION 1.02. Article 5.35-4, Insurance Code, as added by this article, applies only to a residential property insurance policy that is delivered or issued for delivery based on an application that is submitted on or after the effective date of this Act.

ARTICLE 2. CLAIMS HANDLING PROCEDURES AND TIME FRAMES

SECTION 2.01. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.55A to read as follows:

Art. 21.55A. WATER DAMAGE CLAIMS

Sec. 1. PURPOSES. The purposes of this article are to:

(1) provide for the prompt, efficient, and effective handling and processing of water damage claims filed under residential property insurance policies, including claims involving losses due to mold;

(2) reduce the confusion and inconvenience policyholders experience in filing and resolving water damage claims filed under residential property insurance policies, including claims involving losses due to mold; and

(3) reduce claim costs and premiums for residential property insurance issued in this state.

Sec. 2. APPLICABILITY. This article applies to any insurer that handles or processes water damage claims filed under residential property insurance policies.

Sec. 3. RULES. (a) The commissioner may adopt rules that identify the types of water damage claims that require more prompt, efficient, and effective processing and handling than the processing and handling required under Article 21.55 of this code.

(b) The commissioner by rule may regulate the following aspects of water damage claims:

(1) required notice;

(2) acceptance and rejection of a claim;

(3) claim handling and processing procedures and time frames;

(4) claim investigation requirements, procedures, and time frames;

(5) settlement of claims; and

(6) any other area of claim processing, handling, and response determined to be relevant and necessary by the commissioner.

(c) A rule adopted under this section supersedes the minimum standards described by Article 21.55 of this code.

ARTICLE 3. LICENSING OF PUBLIC INSURANCE ADJUSTERS

SECTION 3.01. Subsection (b), Section 1, Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), is amended to read as follows:

(b) "Adjuster" shall not include:

(1) an attorney at law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster;

(2) a salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(3) persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers, estimators, private detectives, engineers, handwriting experts, and attorneys at law;

(4) a licensed agent or general agent of an authorized insurer who processes undisputed and/or uncontested losses for such insurer under policies issued by said agent or general agent;

(5) a person who performs clerical duties with no negotiations with the parties on disputed and/or contested claims;

(6) any person who handles claims arising under life, accident and health insurance policies;

(7) a person who is employed principally as a right-of-way agent or right-of-way and claims agent and whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights and whose claims handling arises out of operations under those easements, leases, permits, or other contracts or contractual obligations; [✱]

(8) an individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments; or

(9) a public insurance adjuster who is licensed under Article 21.07-5, Insurance Code.

SECTION 3.02. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.07-5 to read as follows:

Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

Sec. 1. DEFINITIONS. In this article:

(1) "Licensee" means an individual licensed under this article as a public insurance adjuster.

(2) "Person" includes an individual, firm, company, association, organization, partnership, limited liability company, or corporation.

(3)(A) "Public insurance adjuster" means:

(i) an individual who, for compensation:

(a) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(b) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(ii) an individual who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

(B) "Public insurance adjuster" does not include:

(i) an officer or employee of the federal or state government or of a political subdivision of the state government while the officer or employee is engaged in the performance of official duties;

(ii) an attorney engaged in the performance of the attorney's professional duties;

(iii) insurers admitted to do business in the state, and agents licensed by this state, engaged in the performance of their duties in connection with insurance transactions;

(iv) the legal owner of personal property that has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage;

(v) any salaried office employee who performs exclusively clerical or administrative duties attendant to the disposition of the business regulated by this article;

(vi) photographers, estimators, appraisers, engineers, and arbitrators who are employed by a public insurance adjuster exclusively for the purpose of furnishing technical assistance to the licensed public insurance adjuster; or

(vii) a private investigator licensed under Chapter 1702, Occupations Code, while acting within the scope of that license.

Sec. 2. NOT LAW LICENSE. Nothing in this article shall be construed as entitling any person who is not licensed by the Supreme Court of Texas to practice law in this state.

Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state, unless the person holds a license or certificate issued by the commissioner under Section 5, 15, or 16 of this article.

(b) A license is not required for:

(1) an attorney licensed to practice law in this state who has complied with Section 5(a)(6) of this article; or

(2) a person licensed as a general property and casualty agent under Article 21.14 of this code while acting for an insured concerning a loss under a policy issued by that agent.

(c) Any contract for services regulated by this article that is entered into by an insured with a person who is in violation of Subsection (a) of this section may be voided at the option of the insured, and if a contract is so voided, the insured shall not be liable for the payment of any past services rendered, or future services to be rendered, by that person under that contract or otherwise.

(d) If the commissioner believes that a person is engaging in acts or practices in violation of Subsection (a) of this section, the commissioner ex parte may issue an emergency cease and desist order, in accordance with Subchapter B, Chapter 83, of this code requiring the person to immediately cease and desist from engaging further in the acts or practices.

Sec. 4. APPLICATION FOR LICENSE. (a) An application for a license under this article must be on a form prescribed by the commissioner.

(b) The completed application must be notarized and be accompanied by a license application fee, as provided by Section 11 of this article, for each application submitted. The application fee is nonrefundable.

Sec. 5. QUALIFICATIONS FOR LICENSE; ISSUANCE. (a) The commissioner shall issue a public insurance adjuster license to an applicant on determining that the application meets the requirements of this article, that the license application fee has been paid, and that the applicant is an individual who:

(1) is at least 18 years of age;

(2) is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;

(3) is a resident of this state;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public;

(5) has not been convicted of a felony in the 10 years immediately preceding filing an application under this article or, if convicted of a felony in the 10 years immediately preceding filing an application under this article, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) has successfully passed the license examination prescribed under Section 8 of this article or is exempt from the examination requirement under this article;

(10) has complied with the financial responsibility requirements imposed under Section 6 of this article; and

(11) has complied with any other requirements under applicable state law, including providing a complete set of fingerprints on request as provided by Article 1.10C of this code.

(b) The commissioner may issue a resident public adjuster license to an applicant who has been convicted of a felony 11 or more years before filing an application under this article if the commissioner determines that the applicant is qualified to act as a public adjuster and that the circumstances surrounding the applicant's conviction do not warrant the denial of a license issued under this chapter.

Sec. 6. FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) As a continuing condition of licensure, a public insurance adjuster must file proof of financial responsibility with respect to transactions with insureds under this article in an amount determined by the commissioner by rule. The financial responsibility shall include the ability to pay sums the public insurance adjuster is obligated to pay under any judgment against the public insurance adjuster by an insured, based on an error, omission, fraud, negligent act, or unfair practice of the public insurance adjuster or any person for whose acts the public insurance adjuster is legally liable in the transaction of the public insurance adjuster's business under this code. In determining the amount of the financial responsibility requirement, the commissioner shall consider the nature of the obligation, other financial security requirements under this code, and financial security requirements adopted for public insurance adjusters in

other states. In determining the types of financial responsibility required, the commissioner may consider a surety bond or a professional liability policy or similar policy or contract of professional liability coverage acceptable to the commissioner.

(b) In addition to any other remedy available under this code, if the commissioner believes that a person is committing a violation by failing to maintain the financial responsibility requirements of this section, the commissioner ex parte may issue an emergency cease and desist order and suspend the person's license, in accordance with Subchapter B, Chapter 83, of this code, requiring the person to immediately cease and desist from engaging in the activities of a public insurance adjuster.

(c) A license suspended under Subsection (b) of this section may be reinstated on the approval of an application for reinstatement filed with the commissioner, in the form prescribed by the commissioner, with proof that the financial responsibility requirements of this section have been met. The commissioner may deny the application for reinstatement:

(1) for any reason that would justify a refusal to issue, or a suspension or revocation of, a license; or

(2) for the performance by the applicant of any practice for which a license under this article is required while the applicant is under suspension for failure to keep the financial responsibility requirements in force.

Sec. 7. LICENSE AUTHORIZATION. A license issued under Section 5 or 15 of this article authorizes the adjusting of claims on behalf of insureds for fire and allied coverages, burglary, flood, and all other property claims, both real and personal, including loss of income, but only when the client is an insured under the insurance policy.

Sec. 8. EXAMINATION FOR LICENSE; ADVISORY COMMITTEE.

(a) Each applicant for a license as a public insurance adjuster must, before the issuance of the license, take and pass an examination to the satisfaction of the commissioner.

(b) The examination required by this section must be prescribed by the commissioner and must be of sufficient scope to reasonably test the applicant's:

(1) knowledge of basic insurance theory, essential elements of contracts, and claims ethics;

(2) technical competence in the handling of the types of claims for which the applicant is being tested; and

(3) knowledge of:

(A) Article 21.21 of this code;

(B) the Unauthorized Insurers False Advertising Process Act (Article 21.21-1, Vernon's Texas Insurance Code);

(C) Article 21.21-2 of this code;

(D) Article 21.55 of this code;

(E) the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(F) analogous laws as specified by the commissioner;

(G) statutory provisions related to the unauthorized practice of law contained in Subchapter G, Chapter 81, Government Code; and

(H) the duties and responsibilities of public insurance adjusters under the law.

(c) The commissioner may appoint a public insurance adjusters examination advisory committee composed of at least five members to assist in developing the examination required by this section. At least three members must be eligible for licensure as public insurance adjusters. At least one member must be a person from the insurance industry who is not a public insurance adjuster, and at least one member must represent consumer interests. A member of the advisory committee is not entitled to compensation for service on the committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing services for the committee, subject to any limitation in the General Appropriations Act.

(d) The commissioner shall, within a reasonable period not to exceed 30 days after the date of the examination, transmit the results of the examination and the action taken on the application to the applicant.

(e) An examination is not required for the renewal of a license issued under Section 5 or 15 of this article.

Sec. 9. EXAMINATION; FORM; TIME. (a) The answers of the applicant to an examination required under this article shall be made by the applicant in writing. A written examination may be supplemented by oral examination.

(b) The examination shall be given at such times and places within the state as the commissioner deems necessary to reasonably serve the convenience of both the commissioner and applicants.

(c) The commissioner may require a waiting period of reasonable duration before an applicant who fails the examination, but who is otherwise qualified, may be reexamined.

(d) The scheduling and administration of examinations required under Section 8 of this article shall be effected by persons approved by the commissioner.

Sec. 10. FORM OF LICENSE. The commissioner shall prescribe the form of the licenses issued under Section 5 or 15 of this article, which must contain:

(1) the name of the public insurance adjuster and the address of the public insurance adjuster's place of business;

(2) the date of issuance and the date of expiration of the license; and

(3) the name of the firm, if any, with whom the public insurance adjuster is employed at the time the license is issued.

Sec. 11. FEE FOR LICENSE, RENEWAL, AND EXAMINATION. (a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(2) for a nonresident public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(3) for each public insurance adjuster examination, a fee in an amount to be determined by rule by the commissioner; and

(4) for a public insurance adjuster trainee certificate under Section 16 of this article, a registration fee in an amount to be determined by rule by the commissioner.

(b) The amount of the fee for the renewal of a license or a certificate issued under this article shall be determined by rule by the commissioner.

Sec. 12. USE OF FEES COLLECTED. (a) When collected, the fees authorized by this article shall be deposited with the comptroller to the credit of the Texas Department of Insurance operating account.

(b) The department may use any portion of the fees collected to enforce this article, to employ persons as it considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of public insurance adjusters, and to pay the salaries and expenses of persons and office employees and other expenses necessary to enforce this article. A person employed by the department under this section may examine under oath any person for the purpose of gathering information and evidence and may have the information and evidence reduced to writing. All expenses incurred under this section shall be paid from the fees collected under this article.

(c) The commissioner shall set the fees in amounts reasonable and necessary to implement this article.

Sec. 13. PLACE OF BUSINESS; AGENT FOR SERVICE OF PROCESS.

(a) Each licensee who is a resident of this state shall maintain a place of business in this state that is accessible to the general public and maintain in the place of business the records required by this article. The address of the place of business must appear on the face of the license. The licensee shall promptly notify the commissioner of any change in the address of the licensee's place of business.

(b) Each nonresident licensee shall maintain an agent in this state for service of process. The name and address of the nonresident licensee's out-of-state business address and the name and address of the agent must appear on the face of the license. The licensee shall promptly notify the department of any change in the address of the licensee's place of business or in the agent for service of process.

(c) A license issued under this article must at all times be posted in a conspicuous place in the principal place of business of the licensee.

Sec. 14. LICENSE NOT ASSIGNABLE. A license issued under this article is not assignable.

Sec. 15. NONRESIDENT LICENSE. (a) The commissioner may issue a nonresident license to an applicant for a public insurance adjuster license who is not a permanent resident of this state on determining that the application meets the requirements of this article, that the nonresident license application fee has been paid, and that the applicant is an individual who:

(1) is at least 18 years of age;

(2) has passed, to the satisfaction of the commissioner, an examination approved by the commissioner and of sufficient scope as prescribed by Section 8 of this article, provided, however, that the requirement for such an examination does not apply to:

(A) an applicant who is licensed as a resident public insurance adjuster in the applicant's state of residence, if the state requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of that state has been entered into by the department; or

(B) an applicant who is licensed as a nonresident public insurance adjuster in a state other than the applicant's state of residence, if the state of licensure requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of the state of licensure has been entered into by the department;

(3) is self-employed as a public insurance adjuster or associated with or employed by a public insurance adjusting firm or other public insurance adjuster;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public;

(5) has never been convicted of a felony or, if convicted of a felony, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) if currently licensed as a resident public insurance adjuster in the applicant's state of residence, provides with the application a certificate or letter of authorization from the licensing authority of the applicant's state of residence, stating that the applicant holds a current or comparable license to act as a public insurance adjuster; the certificate or letter must be signed by the appropriate licensing official of the applicant's state of residence and must disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action;

(10) if the applicant's state of residence does not require licensure as a resident public insurance adjuster and the applicant has been licensed as an adjuster, agent, broker, or other insurance representative in the applicant's state of residence or any other state within the past three years, provides with the application a certificate or letter of authorization from the licensing authority stating that the applicant holds or has held a license to act as an adjuster, agent, broker, or other insurance representative; the certificate or letter must be signed by the appropriate licensing official and must disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action;

(11) files proof of financial responsibility in accordance with Section 6 of this article;

(12) pays the application fee required by Section 11 of this article; and
(13) complies with any other requirements under applicable state law,
including providing a complete set of fingerprints on request as provided by Article
1.10C of this code.

(b) A nonresident licensee shall comply with all of the requirements of this
article in performing any of the activities of a public insurance adjuster in this state,
including the requirements on record maintenance in Section 24 of this article. The
failure of a nonresident licensee, as determined by the commissioner after notice and
an opportunity for a hearing, to properly maintain records in accordance with this
article and make them available to the department on request constitutes grounds for
the suspension of the nonresident license issued under this article, in accordance with
Section 30 of this article.

(c) Each individual who holds a nonresident license shall comply with all other
laws and rules of this state applicable to public insurance adjusters, including the law
governing the collection of state sales tax as appropriate for services performed under
this article.

(d) After licensure as a nonresident public insurance adjuster, as a condition of
doing business in this state, the licensee must annually, not later than January 1 and on
a form prescribed by the commissioner, submit an affidavit certifying that the licensee
is familiar with and understands the laws specified in Section 8 of this article, the
applicable rules adopted under those laws, and the terms and conditions of the types
of insurance contracts that provide coverage on real and personal property. Compliance
with the filing requirement provided by this subsection is necessary for
the issuance, continuation, reinstatement, or renewal of a nonresident public insurance
adjuster license.

(e) A nonresident licensee is subject to Section 6(b) of this article, relating to
failure to maintain the financial responsibility requirements.

Sec. 16. REGISTRATION PROGRAM FOR TRAINEES. (a) A public
insurance adjuster trainee must register with the department for a temporary certificate
under this section. An applicant for a temporary certificate as a trainee must apply to
the commissioner on a form prescribed by the commissioner. The form must be
accompanied by a nonrefundable registration fee as prescribed by Section 11(a)(4) of
this article.

(b) A temporary certificate may be issued under this section only for educational
and training purposes. The holder of a temporary certificate may practice only under
the direction and sponsorship of a licensee of this state.

(c) The sponsor of a public insurance adjuster trainee shall attest, on a form
prescribed by the commissioner, that the trainee is under the supervision and control
of the sponsor and that the sponsor has met the financial responsibility requirements
of Section 6 of this article.

(d) A temporary certificate expires on the 180th day after the date of issuance
and may be renewed once on application to the commissioner. An individual is not
entitled to hold more than two consecutive temporary certificates.

(e) Each individual who holds a temporary certificate under this section must
comply with the financial responsibility requirements imposed under Section 6 of this
article.

Sec. 17. CONDUCT TO COMPLY WITH CONTRACT. A licensee shall prepare each claim for an insured represented by the licensee in accordance with the terms and conditions of the contract of insurance under which recovery is sought.

Sec. 18. CODE OF ETHICS. The commissioner, with guidance from the public insurance adjusters examination advisory committee, by rule shall adopt:

(1) a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct;

(2) recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and

(3) any other principles of conduct or procedures that the commissioner deems necessary and reasonable.

Sec. 19. PUBLIC INSURANCE ADJUSTER AUTHORITY. This article does not limit or diminish the authority of a licensee to investigate or adjust a loss to less than the authority for that purpose that may be exercised by an adjuster licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

Sec. 20. LICENSE RENEWAL. (a) A license issued under this article expires on the second anniversary of the date of issuance unless suspended or revoked by the commissioner. A licensee may renew a license that has not expired and has not been suspended or revoked by filing with the department a properly completed renewal application, in the form prescribed by the commissioner, that demonstrates continued compliance with the license requirements imposed under this article or adopted by rule by the commissioner. The completed renewal application must be accompanied by:

(1) a renewal fee in the amount determined by the commissioner under Section 11(b) of this article; and

(2) evidence of compliance with the continuing education requirements imposed under Section 21 of this article.

(b) A licensee must submit the completed renewal application, evidence of compliance with the continuing education requirements, and the renewal fee to the commissioner not later than the 30th day before the second anniversary date of the license. The original license continues in force until:

(1) the department issues the renewal license; or

(2) the commissioner issues an order revoking the license.

(c) A person whose license has been expired for 90 days or less may renew the license by filing a completed renewal application in the form prescribed by the commissioner and evidence of compliance with the continuing education requirements and by paying to the department the required renewal fee and an additional fee that is equal to one-half of the renewal fee for the license.

(d) A person whose license has been expired for more than 90 days but less than one year may not renew the license but is entitled to a new license without taking the applicable examination if the person submits to the department a new application, evidence of compliance with the continuing education requirements, the license fee, and an additional fee equal to one-half of the license fee.

(e) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination, if examination is required for original issuance of the license, and by complying with the requirements and procedures for obtaining an original license.

(f) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in continual practice in the other state up to and including the date of the application. The person must pay to the department a fee that is equal to the license fee.

(g) At least 30 days before the expiration of a license, the department shall send written notice of the impending license expiration to the licensee at the licensee's last known mailing address according to the records of the department.

Sec. 21. CONTINUING EDUCATION REQUIREMENT. (a) Each licensee must annually complete at least 15 hours of continuing education courses. The commissioner by rule shall prescribe the requirements for continuing education courses under this section.

(b) Notwithstanding Subsection (a) of this section, the commissioner may waive any continuing education requirement for a nonresident public insurance adjuster with a valid license from another state having continuing education requirements substantially equivalent to those of this state.

Sec. 22. COMMISSION. (a) Except as provided by Subsection (b) of this section, a licensee may receive a commission for service provided under this article consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. The total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim.

(b) A licensee may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with Article 6.13 or Section 862.053 of this code. The licensee is entitled to reasonable compensation from the insured for services provided by the licensee on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the licensee, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) Except for the payment of a commission by the insured, all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance must:

(1) include the insured as a payee on the payment draft or check; and

(2) require the written signature and endorsement of the insured on the payment draft or check.

(d) A public insurance adjuster may not accept any payment that violates Subsection (c) of this section.

(e) Notwithstanding any authorization the insured may have given to a public insurance adjuster, a public insurance adjuster may not sign and endorse any payment draft or check on behalf of an insured.

Sec. 23. PROHIBITED CONDUCT. (a) A licensee may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the licensee and the insured or the insured's duly authorized representative. One copy of the contract shall be kept on file in this state by the licensee and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative.

(b) A licensee may not solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence.

(c) A licensee may not solicit or attempt to solicit business on a loss or a claim in person, by telephone, or in any other manner at any time except between the hours of 9 a.m. and 9 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a Sunday. This subsection does not prohibit a licensee from accepting phone calls or personal visits during the prohibited hours from an insured upon the insured's initiation.

(d) A licensee may not use any form of contract that is not approved by the commissioner. The contract must contain a provision allowing the client to rescind the contract by written notice to the licensee within 72 hours of signature and must include a notice in 12-point boldface type, prominently displayed, the statement: "WE REPRESENT THE INSURED ONLY." The commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner deems necessary.

(e) A licensee may not knowingly make any false report to the licensee's employer or client and may not divulge to any other person, except as the law may require, any information obtained except at the direction of the employer or the client for whom the information is obtained.

(f) A licensee may not use a badge in connection with the official activities of the licensee's business.

(g) A licensee may not permit an employee or agent, in the employee's or agent's own name, to advertise, solicit or engage clients, furnish reports or present bills to clients, or in any manner conduct business for which a license is required under this article.

(h) A licensee may not render services or perform acts that constitute the practice of law, including the giving of legal advice to any person in the licensee's capacity as a public insurance adjuster.

(i) A licensee may not represent an insured on a claim or charge a fee to an insured while representing the insurance carrier against which the claim is made.

(j) A licensee may not solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy.

(k) A licensee may not, without the knowledge and consent of the insured in writing, acquire an interest in salvaged property that is the subject of a claim adjusted by the licensee.

(l) A licensee may not participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the licensee or engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, or having a financial interest in, any salvage firm, repair firm, or other firm that obtains business in connection with any claim the licensee has a contract or agreement to adjust.

(m) A licensee may not:

(1) use any misrepresentation to solicit a contract or agreement to adjust a claim;

(2) advance money to any potential client or insured;

(3) pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster based on the insured entering into a contract with that public insurance adjuster; a licensee may not otherwise offer to pay a fee, commission, or other valuable consideration exceeding \$100 to a person not licensed as a public insurance adjuster for referring an insured to the licensee;

(4) use any letterhead, advertisement, or other printed matter, or use any other means, to represent that the licensee is an instrumentality of the federal government, of a state, or of a political subdivision of a state; or

(5) use a name different from that under which the licensee is currently licensed in an advertisement, solicitation, or contract for business.

Sec. 24. RECORD MAINTENANCE. (a) A licensee shall keep a complete record in this state of each of the licensee's transactions as a public insurance adjuster. The records shall include all of the following:

(1) the name of the insured;

(2) the date, location, and amount of the loss;

(3) a copy of the contract between the licensee and the insured;

(4) the name of the insurer and the amount, expiration date, and number of each policy under which the loss is covered;

(5) an itemized statement of the recoveries by the insured from the sources known to the licensee;

(6) the total compensation received for the adjustment; and

(7) an itemized statement of disbursements made by the licensee from recoveries received on behalf of the insured.

(b) Records required to be kept under this section shall be maintained in this state for at least five years after the termination of a transaction with the insured and must be open to examination by the commissioner.

Sec. 25. FIDUCIARY CAPACITY. (a) All funds received as claim proceeds by a licensee acting as a public insurance adjuster are received and held by the licensee in a fiduciary capacity. A licensee who diverts or appropriates any fiduciary funds for the licensee's personal use is guilty of theft and is punishable for theft as provided by law.

(b) An applicant for a license to act as a public insurance adjuster must, as part of the application, endorse an authorization for disclosure to the commissioner of all financial records of any funds the public insurance adjuster holds as a fiduciary. The authorization shall continue in force and effect for as long as the licensee continues to be licensed under this article.

Sec. 26. NOTICE TO LAST ADDRESS. Notice by registered mail, return receipt requested, sent to the last known address of an applicant for a license, licensee, or other person to whom notice is required to be sent under this article, as reflected by the records of the department, constitutes sufficient notice under this article.

Sec. 27. RELOCATION TO ANOTHER STATE. (a) Not later than the 30th day after moving from one state to another state, a nonresident or resident public insurance adjuster licensed in this state shall file with the department:

(1) the licensee's new address; and

(2) proof of authorization to engage in the business of public insurance adjuster in the new state of residence if that state requires licensure of public insurance adjusters.

(b) The department may not charge a fee or require a license application under Subsection (a) of this section.

Sec. 28. ADVERTISEMENTS. Every advertisement by a licensee soliciting or advertising business must display the licensee's name, address, and license number as they appear in the records of the commissioner.

Sec. 29. RULES. The commissioner may adopt reasonable and necessary rules to implement this article, including rules regarding the:

(1) qualifications of licensees, in addition to those prescribed by this article, that are necessary to promote and protect the public interest;

(2) regulation of the conduct of licensees;

(3) prescription of fees required by Section 11 of this article; and

(4) advertisements under Section 28 of this article and the definition of "advertisement" as the term is used in that section.

Sec. 30. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The commissioner may deny an application for a license under this article or suspend or revoke a license issued under this article on the basis of:

(1) a violation of this article or of any rule adopted by the commissioner under this article;

(2) a cause that constitutes grounds for denial of an original license;

(3) wilful misrepresentation or fraud in obtaining a license;

(4) failure to pass a required license examination;

(5) the misappropriation or conversion of money required to be held in a fiduciary capacity;

(6) material misrepresentation, with intent to deceive, of the terms of an insurance contract;

(7) engaging in a fraudulent transaction;

(8) demonstrated incompetence or untrustworthiness in the conduct of the licensee's affairs under the license, as determined by the commissioner;

(9) conviction of a felony by a final judgment in a court of competent jurisdiction; or

(10) material misrepresentation, with intent to deceive, of the person's status as a public insurance adjuster.

(b) If the department proposes to refuse to issue an original license under this article or to suspend, revoke, or refuse to renew a license under this article, the person affected is entitled to notice and hearing as provided by Section 3A(b), Article 21.01-2 of this code.

(c) A final order entered as a result of a hearing under this section may be appealed to a court of competent jurisdiction as provided by Subchapter D, Chapter 36, of this code.

(d) An order suspending a license issued under this article must specify the period of the suspension not to exceed 12 months.

(e) The holder of a license that is revoked or suspended for cause shall surrender the license to the commissioner on demand.

(f) The commissioner may issue a license or reinstate a suspended or revoked license on a finding that the cause for suspension, revocation, or refusal no longer exists.

(g) A person whose license is suspended under this article may apply for a new license only after the expiration of the period of suspension. A person whose license is revoked or whose application for a license is denied, except for a failure to submit a completed application, may not apply for a new license until the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) if the applicant or licensee seeks judicial review of the department's action, the date of the final court order or decree affirming that action.

(h) The commissioner may deny a timely application filed under Subsection (g) of this section if the applicant does not show good cause why the denial of the previous license application or the revocation of the license should not be considered a bar to the issuance of the new license. This subsection does not apply to an applicant whose license application was denied for failure to:

(1) pass the required written examination; or

(2) submit a properly completed license application.

(i) The commissioner, in lieu of suspending or revoking a license for a violation of this article or a rule adopted under this article, may impose on a licensee an administrative penalty in an amount not to exceed \$2,000 per violation if the commissioner determines that such action better serves the purposes of this article.

(j) The department may institute a disciplinary proceeding against a licensee for conduct that the licensee committed before the effective date of a voluntary surrender or automatic forfeiture of the license. In the proceeding, the fact that the licensee has surrendered or forfeited the license does not affect the licensee's culpability for the conduct.

Sec. 31. AUTOMATIC FINES. Section 5A, Article 21.01-2, of this code applies to violations of this article.

Sec. 32. CRIMINAL PENALTY; SANCTIONS. (a) A person commits an offense if the person violates this article. Except as provided by Section 25(a) of this article, an offense under this subsection is a Class B misdemeanor.

(b) In addition to the criminal penalties imposed under Subsection (a) of this section, a person in violation of this article is subject to the sanctions provided by Section 7, Article 21.21, of this code as if the person had violated an order under that section.

SECTION 3.03. Section 3, Article 21.01, Insurance Code, is amended to read as follows:

Sec. 3. APPLICATION. Except as otherwise provided by this code, this subchapter applies to each person licensed in accordance with:

- (1) Section 4, Article 1.14-2, of this code;
- (2) Section 7, Article 3.75, of this code;
- (3) Subsection (c), Article 5.13-1, of this code;
- (4) Article 10.37-3 of this code;
- (5) Article 16.24A of this code;
- (6) Section 9, Article 17.25, of this code;
- (7) Article 21.07 of this code;
- (8) Article 21.07-1 of this code;
- (9) Chapter 29, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);
- (10) the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code);
- (11) Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code);
- (12) Article 21.07-5 of this code;
- (13) Article 21.07-6 of this code;
- (14) ~~[(13)]~~ Article 21.07-7 of this code;
- (15) ~~[(14)]~~ Article 21.09 of this code;
- (16) ~~[(15)]~~ Article 21.11 of this code;
- (17) ~~[(16)]~~ Article 21.14 of this code;
- (18) ~~[(17)]~~ Article 21.14-1 of this code;
- (19) ~~[(18)]~~ Article 21.14-2 of this code; or
- (20) ~~[(19)]~~ Article 23.23A of this code.

SECTION 3.04. (a) If the commissioner of insurance elects to appoint a public insurance adjusters examination advisory committee under Subsection (c), Section 8, Article 21.07-5, Insurance Code, as added by this article, the commissioner shall appoint the members of the committee not later than the 60th day after the effective date of this Act. If, on the effective date of this Act, the commissioner has a contract with a testing service for the examination of adjuster applicants under Article 21.07-5, Insurance Code, as added by this article, the commissioner may add the public insurance adjusters examination to the scope of that contract, without seeking additional bids, at a fee not greater than the highest adjuster examination fee charged.

(b) The commissioner of insurance shall adopt the examination required by Section 8, Article 21.07-5, Insurance Code, as added by this article, not later than January 1, 2004. Pending the adoption of the examination, the commissioner may issue a temporary license to practice as a public insurance adjuster to an individual

who satisfies all the requirements for issuance of the license except the examination requirement. A temporary license issued under this subsection expires June 1, 2004, and may not be renewed except as determined by the commissioner.

(c) The commissioner of insurance shall adopt the code of ethics prescribed under Section 18, Article 21.07-5, Insurance Code, as added by this article, not later than September 1, 2004.

(d) Subject to the provisions of Subsections (a), (b), and (c) of this section, the commissioner of insurance shall adopt rules as necessary to implement Article 21.07-5, Insurance Code, as added by this article, not later than January 1, 2004.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. 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 127** (House committee printing) as follows:

(1) In SECTION 3.02 of the bill, in added Subdivision (1), Section 1, Article 21.07-5, Insurance Code (page 7, line 4), strike "an individual" and substitute "a person".

(2) In SECTION 3.02 of the bill, in added Subparagraph (i), Paragraph (A), Subdivision (3), Section 1, Article 21.07-5, Insurance Code (page 7, line 10), strike "an individual who, for compensation" and substitute "a person who, for direct, indirect, or any other compensation".

(3) In SECTION 3.02 of the bill, in added Subparagraph (ii), Paragraph (A), Subdivision (3), Section 1, Article 21.07-5, Insurance Code (page 7, line 19), strike "an individual" and substitute "a person".

(4) In SECTION 3.02 of the bill, in added Subparagraph (vi), Paragraph (B), Subdivision (3), Section 1, Article 21.07-5, Insurance Code (page 8, line 17), strike "or".

(5) In SECTION 3.02 of the bill, in added Subparagraph (vii), Paragraph (B), Subdivision (3), Section 1, Article 21.07-5, Insurance Code (page 8, line 20), strike the period and substitute "; or".

(6) In SECTION 3.02 of the bill, in added Paragraph (B), Subdivision (3), Section 1, Article 21.07-5, Insurance Code, following Subparagraph (vii) (page 8, between lines 20 and 21), insert the following:

(viii) a full-time salaried employee of a property owner or a property management company retained by a property owner who:

(a) does not hold the employee out as a public insurance adjuster or a building, roofing, or other restoration contractor;

(b) has not been hired for the purpose of handling a specific claim resulting from a fire or casualty loss; and

(c) acts at the sole discretion of the property owner or management company regarding a claim related to the owner's property.

(7) In SECTION 3.02 of the bill, in added Article 21.07-5, Insurance Code, following added Section 5 (page 11, between lines 22 and 23), insert the following:

Sec. 5A. ISSUANCE OF LICENSE TO BUSINESS ENTITY. (a) The department shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of this state.

(b) Rules adopted by the department under Subsection (a) must:

(1) be analogous to rules adopted by the department under Section 2, Article 21.07 of this code; and

(2) contain qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 5 of this article.

(c) The department may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state are individually licensed by the department separately from the business entity by the department under Section 5 of this article.

(8) In SECTION 3.02 of the bill, in added Section 7, Article 21.07-5, Insurance Code (page 13, line 10), strike "5 or 15" and substitute "5, 5A, 15, or 15A".

(9) In SECTION 3.02 of the bill, in added Subsection (e), Section 8, Article 21.07-5, Insurance Code (page 15, line 5), strike "5 or 15" and substitute "5, 5A, 15, or 15A".

(10) In SECTION 3.02 of the bill, in added Subsection (a), Section 9, Article 21.07-5, Insurance Code (page 15, lines 6 and 7), strike "the applicant" in the first place the phrase appears in the subsection and substitute "an examinee".

(11) In SECTION 3.02 of the bill, in added Subsection (a), Section 9, Article 21.07-5, Insurance Code (page 15, line 8), strike "applicant" in the second place the word appears in the subsection and substitute "examinee".

(12) In SECTION 3.02 of the bill, in added Subsection (b), Section 9, Article 21.07-5, Insurance Code (page 15, line 12), strike "applicants" and substitute "examinees".

(13) In SECTION 3.02 of the bill, in added Subsection (c), Section 9, Article 21.07-5, Insurance Code (page 15, line 14), strike "applicant" and substitute "examinee".

(14) In SECTION 3.02 of the bill, in added Section 10, Article 21.07-5, Insurance Code (page 15, line 20), strike "5 or 15" and substitute "5, 5A, 15, or 15A".

(15) In SECTION 3.02 of the bill, in added Subdivision (3), Section 10, Article 21.07-5, Insurance Code (page 15, line 26), strike "the name of the firm, if any," and substitute "if applicable, the name of the firm".

(16) In SECTION 3.02 of the bill, in added Subsection (a), Section 13, Article 21.07-5, Insurance Code, between "state" and "shall" (page 17, line 9), insert "or a business entity organized under the laws of this state".

(17) In SECTION 3.02 of the bill, in added Article 21.07-5, Insurance Code, following added Section 15 (page 22, between lines 4 and 5), insert the following:

Sec. 15A. LICENSE FOR NONRESIDENT BUSINESS ENTITY. (a) The department shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of another state or the United States.

(b) Rules adopted by the department under Subsection (a) must:

(1) be analogous to rules adopted by the department under Section 2, Article 21.07 of this code; and

(2) contain:

(A) qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 15 of this article; and

(B) requirements for the performance of the duties and powers of a public insurance adjuster analogous to the requirements described by Section 15 of this article.

(c) The department may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state are individually licensed by the department separately from the business entity under Section 15 of this article.

(18) In SECTION 3.02 of the bill, in added Subsection (b), Section 20, Article 21.07-5, Insurance Code (page 24, line 12), strike "The" and substitute "On the filing of a completed renewal application, renewal fee, and, if applicable, evidence of compliance with the continuing education requirements, the".

(19) In SECTION 3.02 of the bill, in added Subsection (a), Section 25, Article 21.07-5, Insurance Code (page 31, lines 2 through 5), strike the final sentence of the subsection, and substitute "A licensee may not divert or appropriate fiduciary funds received or held."

(20) In SECTION 3.02 of the bill, in added Subdivision (3), Subsection (a), Section 30, Article 21.07-5, Insurance Code (page 32, line 25), strike "wilful".

(21) In SECTION 3.02 of the bill, in added Subsection (a), Section 32, Article 21.07-5, Insurance Code (page 35, lines 7 and 8), strike "Except as provided by Section 25(a) of this article, an" and substitute "An".

(22) In SECTION 3.02 of the bill, in added Section 32, Article 21.07-5, Insurance Code, following added Subsection (a) (page 35, between lines 9 and 10), insert the following new subsection and renumber subsequent subsections accordingly:

(b) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under any other law, the person committing the offense may be prosecuted under this section or the other law.

Floor Amendment No. 2

Amend **CSSB 127** as follows:

In Section 3, page 2 line 23 after "commissioner." add subsection (c) An insurer may not make an underwriting decision regarding a residential property insurance policy based on previous mold or water damage, including appliances, if:

(1) the applicant for insurance has made a previous claim under any residential property policy for damage caused by mold or water damage if the claim does not arise out of the negligence of the insured.

(2) mold remediation has been performed on the property that is the subject of the claim; and

(3) the property was:

(A) remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.153, Occupations Code, that establishes that the underlying cause of the mold at the property has been remediated;
or

(B) inspected by an independent assessor or adjustor who determined, based on the inspection, that the property does not contain evidence of mold damage.

Floor Amendment No. 3

Amend Floor Amendment No. 2 by Taylor to **CSSB 127**, in added Subsection (c)(1) (page 1, lines 8-9), by striking "if the claim does not arise out of the negligence of the insured." and substituting ";2".

Floor Amendment No. 4

Amend **CSSB 127** (House committee printing) as follows:

(1) In SECTION 1.01 of the bill, in the heading to added Article 5.35-4, Insurance Code (page 1, line 9), strike "; PERMISSIBLE SURCHARGES".

(2) In SECTION 1.01 of the bill, following added Section 3(b), Article 5.35-4, Insurance Code (page 2, between lines 23 and 24), add the following new subsections:

(c) 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.

(d) 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.

(e) An insurer may require the inspection and certification of a remediation described by Subsection (c) or (d) 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 (c) or (d) 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.

(3) In SECTION 1.01 of the bill, strike added Section 4, Article 5.35-4, Insurance Code (page 2, line 24, through page 4, line 3).

(4) In SECTION 1.01 of the bill, in added Section 5, Article 5.35-4, Insurance Code (page 4, line 4), strike "Sec. 5" and substitute "Sec. 4".

Floor Amendment No. 6

Amend **CSSB 127** on page 4, after line 6, by adding a new Section 6 to added Article 5.35-4, Insurance Code, to read as follows:

Sec. 6. 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. 1 on Third Reading

Amend **CSSB 127** on third reading as follows:

(1) In Section 5A(b)(1), Article 21.07-5, Insurance Code, as added by item (7) of Amendment No. 1 by Seaman, strike "rules adopted by the department under" and substitute "the provisions of".

(2) In Section 15A(b)(1), Article 21.07-5, Insurance Code, as added by item (17) of Amendment No. 1 by Seaman, strike "rules adopted by the department under" and substitute "the provisions of".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 127**, on third reading, in added Subsection (c), Section 23, Article 21.07-5, Insurance Code, following the last sentence of the subsection, by inserting: A licensee shall comply with Chapter 43, Business & Commerce Code, as added by Chapter 1429, Acts of the 77th Legislature, Regular Session, 2001, when soliciting or attempting to solicit business.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 127** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Jackson, Armbrister, Averitt, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 2075

Senator Armbrister, on behalf of Senator Fraser, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2075** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2075** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Fraser, Chair; Deuell, Lindsay, Madla, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 1119

Senator Armbrister, on behalf of Senator Brimer, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1119** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1119** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Brimer, Chair; Armbrister, Averitt, Deuell, and Janek.

CONFERENCE COMMITTEE ON HOUSE BILL 1865

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1865** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1865** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Williams, Chair; Staples, Armbrister, Fraser, and Ellis.

SENATE BILL 1054 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 1054** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1054** (House committee report) as follows:

(1) In SECTION 6 of the bill (page 4, line 3), strike "The" and substitute "Except as provided by Section ____ of this Act, the".

(2) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION _____. Subsection (a), Section 13B, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) If a judge grants community supervision to a defendant described by Subsection (b) and the judge determines that a child as defined by Section 22.011(c), Penal Code, was the victim of the offense, the judge shall establish a child safety zone applicable to the defendant by requiring as a condition of community supervision that the defendant:

(1) not:

(A) supervise or participate in any program that includes as participants or recipients persons who are 17 years of age or younger and that regularly provides athletic, civic, or cultural activities; or

(B) go in, on, or within 1,000 feet [~~a distance specified by the judge~~] of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility; and

(2) attend psychological counseling sessions for sex offenders with an individual or organization which provides sex offender treatment or counseling as specified by or approved by the judge or the community supervision and corrections department officer supervising the defendant.

SECTION _____. Section 13B, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a)(1)(B), a requirement that a defendant not go in, on, or within 1,000 feet of certain premises does not apply to a defendant while the defendant is in or going immediately to or from a:

(1) community supervision and corrections department office;

(2) premises at which the defendant is participating in a program or activity required as a condition of community supervision;

(3) residential facility in which the defendant is required to reside as a condition of community supervision, if the facility was in operation as a residence for defendants on community supervision on June 1, 2003; or

(4) private residence at which the defendant is required to reside as a condition of community supervision.

SECTION _____. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act in amending Section 13B, Article 42.12, Code of Criminal Procedure, applies only to a person placed on community supervision on or after the effective date of this Act.

(b) On or after the effective date of this Act, a court may modify a condition of community supervision to require that a person who before that date was placed on community supervision maintain a distance of 1,000 feet from a premises where children commonly gather.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 1054**.

The motion prevailed by a viva voce vote.

SENATE BILL 1463 WITH HOUSE AMENDMENT

Senator Lindsay called **SB 1463** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1463** as follows:

On page 1, line 7, between "COUNTY" and ":" insert the following: "OR TOLL ROAD AUTHORITY"

On page 1, lines 8 through 11, delete the current subsection (a) and substitute the following new subsection (a) to read as follows:

(a) The commission may convey a nontoll state highway or a segment of a nontoll state highway, including real property acquired to construct or operate the highway to:

(A) a county or a toll road authority in the county in which the state highway or segment is located; or

(B) a county or toll road authority in a county adjacent to the county in which the highway or a segment is located if the county or toll road authority in the county in which the segment or highway is located approves the conveyance; for operation and maintenance as a project under this chapter if:

On page 1, line 19 between "county" and "agrees" insert the following: "or toll road authority"

On page 1, line 20 between "county" and "that" insert the following: "or toll road authority"

On page 2, line 19 between "county" and "may" insert the following: "or toll road authority"

On page 2, line 19 between "county" and "or" insert the following: ", toll road authority"

On page 2, lines 19 and 20 between "county" and "determines" insert: "or toll road authority"

On page 3, line 6 between "county" and "or" insert the following: ", toll road authority"

On page 3, line 19 between "county" and "; and" insert the following: "or area served by the toll road authority"

On page 3, line 9 between "county" and "determines" insert the following: "or toll road authority"

On page 3, line 10 between "county" and ":" insert the following: "or area served by the toll road authority"

On page 3, line 13 between "loop" and "located" insert the following: "or connecting to an outer loop"

On page 3, line 19 between "million" and ":" insert the following: "or an adjacent county"

The amendment was read.

Senator Lindsay moved to concur in the House amendment to **SB 1463**.

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

SENATE BILL 1904 WITH HOUSE AMENDMENT

Senator Barrientos called **SB 1904** 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 1904** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to driver's licenses, the operation of certain motor vehicles, including commercial motor vehicles, in this state, and to the disposition of certain Class C misdemeanors.

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

SECTION 1. Subsection (f), Section 472.022, Transportation Code, is amended to read as follows:

(f) Articles 45.051 and 45.0511 [Article 45.54], Code of Criminal Procedure, do [~~does~~] not apply to an offense under this section committed in a construction or maintenance work zone when workers are present.

SECTION 2. Subchapter C, Chapter 521, Transportation Code, is amended by adding Section 521.0475 to read as follows:

Sec. 521.0475. DISCLOSURE OF ABSTRACT RECORD. (a) Except as provided by Subsection (b) or (c), the department shall provide a certified abstract of a complete driving record of a license holder, for a fee of \$20, to the license holder or a person eligible to receive the information under Sections 730.007(a)(2)(A), (D), and (I).

(b) If an abstract of a complete driving record does not exist for a license holder, the department shall provide a person making a request under Subsection (a) a certified statement to that effect.

(c) If the department provides information under Subsection (a) or (b) through the system described by Section 521.055, the information may not be marked as certified.

SECTION 3. Section 521.052, Transportation Code, is amended to read as follows:

Sec. 521.052. DISCLOSURE OF INDIVIDUAL INFORMATION PROHIBITED. Except as provided by Sections 521.045, 521.046, 521.0475, 521.049(c), and 521.050[~~and 601.022~~], and by Chapter 730, the department may not disclose information from the department's files that relates to personal information, as that term is defined by Section 730.003.

SECTION 4. Section 521.053, Transportation Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The department may provide to any person the information specified by Section 521.045, 521.046, 521.0475, or 521.047 [~~and by Section 601.022~~], for the fee required by those sections, that relate to the holder of or applicant for a commercial driver's license under Chapter 522 if the person is eligible to receive the information under Chapter 730.

(c) The department may provide information under Subsection (a) through the system described by Section 521.055.

(d) The department may provide information maintained under Section 643.064 that relates to a holder of a commercial driver's license under Chapter 522 to the holder, the holder's current employer, or a person acting on behalf of the employer if the department receives the holder's specific written consent to the release of information.

SECTION 5. Subsections (b) and (c), Section 521.055, Transportation Code, are amended to read as follows:

(b) The system may provide for the release of driving records described in [the following information]:

- (1) [the status check described in] Section 521.045; [and]
- (2) [the three year driving record under] Section 521.046;
- (3) Section 521.047; and
- (4) Section 521.0475.

(c) The fee for a driving record [status check] under Subsection (b)(1) is \$2.50. The fee for a [three year] driving record under Subsection (b)(2) is \$4.50. The fee for a driving record under Subsection (b)(3) is \$5.50. The fee for a driving record under Subsection (b)(4) is \$20.

SECTION 6. Subdivision (25), Section 522.003, Transportation Code, is amended to read as follows:

(25) "Serious traffic violation" means:

(A) a conviction arising from the driving of a [commercial] motor vehicle, other than a parking, vehicle weight, or vehicle defect violation, for:

(i) [(A)] excessive speeding, involving a single charge of driving 15 miles per hour or more above the posted speed limit;

(ii) [(B)] reckless driving, as defined by state or local law;

(iii) [(C)] a violation of a state or local law related to motor vehicle traffic control, including a law regulating the operation of vehicles on highways, arising in connection with a fatal accident;

(iv) [(D)] improper or erratic traffic lane change;

(v) [(E)] following the vehicle ahead too closely; or

(vi) [(F) operating] a [commercial motor vehicle in] violation of Section 522.011; or

(B) a violation of Section [or] 522.015.

SECTION 7. Section 522.081, Transportation Code, is amended to read as follows:

Sec. 522.081. DISQUALIFICATION. (a) This subsection applies [only] to a violation committed while operating any motor vehicle, including a commercial motor vehicle. A person who holds a commercial driver's license is disqualified from driving a commercial motor vehicle for:

(1) 60 days if convicted of:

(A) two serious traffic violations that occur within a three-year period;

or

(B) one violation of a law that regulates the operation of a motor vehicle at a railroad grade crossing; or

(2) 120 days if convicted of:

(A) three serious traffic violations arising from separate incidents occurring within a three-year period; or

(B) two violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period; ~~or~~

~~[(3) one year if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period].~~

(b) This subsection applies to a violation committed while operating any motor vehicle, including a commercial motor vehicle, except as provided by this subsection. A person who holds a commercial driver's license is disqualified from driving a commercial motor vehicle for one year:

(1) if convicted of three violations of a law that regulates the operation of a motor vehicle at a railroad grade crossing that occur within a three-year period;

(2) on first conviction of:

(A) [(1)] driving a [commercial] motor vehicle under the influence of alcohol or a controlled substance, including a violation of Section 49.04 or 49.07, Penal Code;

(B) [(2) driving a commercial motor vehicle while the person's alcohol concentration was 0.04 or more;

[(3) intentionally] leaving the scene of an accident involving a [commercial] motor vehicle driven by the person;

(C) [(4)] using a [commercial] motor vehicle in the commission of a felony, other than a felony described by Subsection (d)(2);

(D) [(5) refusing to submit to a test to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while driving a commercial motor vehicle;

[(6)] causing the death of another person through the negligent or criminal operation of a [commercial] motor vehicle; or

(E) [(7)] driving a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled, or while the person is disqualified from driving a commercial motor vehicle, for an action or conduct that occurred while operating a commercial motor vehicle;

(3) for refusing to submit to a test under Chapter 724 to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while operating a motor vehicle in a public place; or

(4) if an analysis of the person's blood, breath, or urine under Chapter 522, 524, or 724 determines that the person:

(A) had an alcohol concentration of 0.04 or more, or that a controlled substance or drug was present in the person's body, while operating a commercial motor vehicle in a public place; or

(B) had an alcohol concentration of 0.08 or more while operating a motor vehicle, other than a commercial motor vehicle, in a public place.

(c) A person who holds a commercial driver's license is disqualified from operating a commercial motor vehicle for three years if:

(1) the person:

(A) is convicted of an offense [~~if a violation~~] listed in Subsection (b)(2) and the vehicle being operated by the person was transporting a hazardous material required to be placarded; or

(B) refuses to submit to a test under Chapter 724 to determine the person's alcohol concentration or the presence in the person's body of a controlled substance or drug while operating a motor vehicle in a public place and the vehicle being operated by the person was transporting a hazardous material required to be placarded; or

(2) an analysis of the person's blood, breath, or urine under Chapter 522, 524, or 724 determines that while transporting a hazardous material required to be placarded the person:

(A) while operating a commercial motor vehicle in a public place had an alcohol concentration of 0.04 or more, or a controlled substance or drug present in the person's body; or

(B) while operating a motor vehicle, other than a commercial motor vehicle, in a public place had an alcohol concentration of 0.08 or more [~~(b) occurred while the person was transporting a hazardous material required to be placarded, the person is disqualified for three years~~].

(d) A person is disqualified from driving a commercial motor vehicle for life:

(1) if the person [:

[(+) is convicted [of] two or more times [violations] of an offense specified by Subsection (b)(2) [(b)], or a combination of those offenses, arising from two or more separate incidents; [e#]

(2) if the person uses a [commercial] motor vehicle in the commission of a felony involving:

(A) the manufacture, distribution, or dispensing of a controlled substance; or

(B) possession with intent to manufacture, distribute, or dispense a controlled substance; or

(3) for any combination of two or more of the following, arising from two or more separate incidents:

(A) a conviction of the person for an offense described by Subsection (b)(2);

(B) a refusal by the person described by Subsection (b)(3); and

(C) an analysis of the person's blood, breath, or urine described by Subsection (b)(4).

(e) A person may not be issued a commercial driver's license if, in connection with the person's operation of a commercial motor vehicle, the person commits an offense or engages in conduct that would disqualify the holder of a commercial driver's license from operating a commercial motor vehicle, or is determined to have had an alcohol concentration of 0.04 or more or to have had a controlled substance or drug present in the person's body. The period of prohibition under this subsection is equal to the appropriate period of disqualification required by Subsections (a)-(d).

(f) In this section, "felony" means an offense under state or federal law that is punishable by death or imprisonment for a term of more than one year.

SECTION 8. Section 522.087, Transportation Code, is amended to read as follows:

Sec. 522.087. PROCEDURES APPLICABLE TO DISQUALIFICATION. (a) A person is automatically disqualified under Section 522.081(a)(1)(B), Section 522.081(b)(2) [~~522.081(b)(1), (3), (4), (6), or (7)~~], or Section 522.081(d)(2). An appeal may not be taken from the disqualification.

(b) Disqualifying a person under Section 522.081(a), other than under Subdivision (1)(B) of that subsection, Section 522.081(b)(1), or Section 522.081(d)(1) or (3) is subject to the notice and hearing procedures of Sections 521.295-521.303. An appeal of the disqualification is subject to Section 521.308.

SECTION 9. Section 643.052, Transportation Code, is amended to read as follows:

Sec. 643.052. APPLICATION. To register under this subchapter a motor carrier must submit to the department an application on a form prescribed by the department. The application must include:

- (1) the name of the owner and the principal business address of the motor carrier;
- (2) the name and address of the legal agent for service of process on the carrier in this state, if different;
- (3) a description of each vehicle requiring registration the carrier proposes to operate, including the motor vehicle identification number, make, and unit number;
- (4) a statement as to whether the carrier proposes to transport household goods or a hazardous material;
- (5) a declaration that the applicant has knowledge of all laws and rules relating to motor carrier safety, including this chapter, Chapter 644, and Subtitle C; ~~and~~
- (6) a certification that the carrier is in compliance with the drug testing requirements of 49 C.F.R. Part 382, and if the carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the names of the persons operating the consortium; and
- (7) any other information the department by rule determines is necessary for the safe operation of a motor carrier under this chapter.

SECTION 10. Section 643.056(a), Transportation Code, is amended to read as follows:

(a) A motor carrier required to register under this subchapter shall supplement the carrier's application for registration before:

- (1) the carrier transports a hazardous material or household goods if the carrier has not provided notice of the transportation to the department in the carrier's initial or a supplemental application for registration;
- (2) the carrier operates a vehicle requiring registration that is not described on the carrier's initial or a supplemental application for registration; or
- (3) the carrier changes the carrier's principal business address, legal agent, ownership, consortium, as defined by 49 C.F.R. Part 382, or name.

SECTION 11. Subchapter B, Chapter 643, Transportation Code, is amended by adding Section 643.064 to read as follows:

Sec. 643.064. REPORT OF POSITIVE RESULT. (a) A motor carrier required to register under this chapter shall report to the Department of Public Safety a valid positive result on a controlled substances test performed as part of the carrier's drug testing program or consortium, as defined by 49 C.F.R. Part 382, on an employee of the carrier who holds a commercial driver's license under Chapter 522.

(b) The Department of Public Safety shall maintain the information provided under this section.

(c) Information maintained under this section is confidential and only subject to release as provided by Section 521.053.

SECTION 12. Article 45.051, Code of Criminal Procedure, is amended to read as follows:

Art. 45.051. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge [justice] may, at the judge's discretion, defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. An order of deferral under this subsection terminates any liability under a bail bond or an appearance bond given for the charge.

(b) During the deferral period, the judge [justice] may, at the judge's discretion, require the defendant to:

(1) post a bond in the amount of the fine assessed to secure payment of the fine;

(2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; ~~and~~

(8) complete a driving safety course approved under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(c) On determining that ~~[At the conclusion of the deferral period, if]~~ the defendant ~~[presents satisfactory evidence that he]~~ has complied with the requirements imposed by the judge under this article, the judge [justice] shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. ~~[Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid.]~~ If the complaint is dismissed, a special expense not to exceed the

amount of the fine assessed may be imposed. 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.

(c-1) This subsection applies only to an offense involving the operation of a motor vehicle, other than an offense under Section 545.413, Transportation Code. At the conclusion of the deferral period, if the defendant presents satisfactory evidence that the defendant has complied with the requirements imposed, the justice shall proceed with an adjudication of guilt but may not impose the fine assessed or a reduced fine.

(d) If by ~~the~~ the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the ~~judge~~ justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 ~~[of this code]~~. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

(f) This article does not apply to:

(1) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies; or

(2) a traffic offense committed by a person who holds a commercial driver's license.

SECTION 13. Article 45.0511, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0511. DRIVING SAFETY COURSE OR MOTORCYCLE OPERATOR COURSE DISMISSAL [DEFERRED DISPOSITION] PROCEDURES [APPLICABLE TO TRAFFIC OFFENSES]. (a) This article applies only to an alleged offense that:

(1) is within the jurisdiction of a justice court or a municipal court;

(2) involves [involving] the operation of a motor vehicle; and

(3) is [other than a commercial motor vehicle, as] defined by:

(A) Section 472.022 [522.003], Transportation Code;

(B) Subtitle C, Title 7, Transportation Code; or

(C) Section 729.001(a)(3), Transportation Code[~~, and supplements Article 45.051]~~.

(b) The judge [During the deferral period under Article 45.051, the justice:

(4)] shall require the defendant to successfully complete a driving safety course approved by the Texas Education Agency or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, Transportation Code, if:

(1) the defendant elects driving safety course or motorcycle operator training course dismissal under this article;

(2) [deferred disposition and] the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the [preceding] 12 months preceding the date of the offense; [and]

~~(3) [(2) may require the defendant to successfully complete a driving safety course approved by the Texas Education Agency if the defendant has completed an approved driving safety course within the preceding 12 months.~~

~~[(c) Subsection (b)(1) applies only if:~~

~~[(1) the defendant [person] enters a plea under Article 45.021 in person or in writing of no contest or guilty on or [and,] before the answer date on the notice to appear and:~~

~~(A) presents in person or by counsel to the court a [an oral or written] request to take a course; or~~

~~(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;~~

~~(4) [(2) the court enters judgment on the person's plea of no contest or guilty at the time the plea is made but defers imposition of the judgment for 180 days;~~

~~[(3) the defendant [person] has a valid Texas driver's license or permit;~~

~~(5) [(4) the defendant [person] is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit; and~~

~~(6) [(5) the defendant [person] provides evidence of financial responsibility as required by Chapter 601, Transportation Code];~~

~~[(6) the defendant's driving record as maintained by the Texas Department of Public Safety shows the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense; and~~

~~[(7) the defendant files an affidavit with the court stating that the person is not taking a course under this section and has not completed a course that is not shown on the person's driving record within the 12 months preceding the date of the offense].~~

(c) The court shall enter judgment on the defendant's plea of no contest or guilty at the time the plea is made, defer imposition of the judgment, and allow the defendant 90 days to successfully complete the approved driving safety course or motorcycle operator training course and present to the court:

(1) a uniform certificate of completion of the driving safety course or a verification of completion of the motorcycle operator training course;

(2) the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; and

(3) an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course, as applicable, under this article on the date the request to take the course was made and had not completed such a course that is not shown on the defendant's driving record within the 12 months preceding the date of the offense.

(d) Notwithstanding Subsections (b)(2) and (3), ~~[Subsection (c)(1), on a written motion submitted to the court]~~ before the final disposition of the case, the court may grant a request to take a driving safety course or a motorcycle operator training course under this article.

(e) A request to take a driving safety course or motorcycle operator training course made at or before the time and at the place at which a defendant [person] is required to appear in court is an appearance in compliance with the defendant's [person's] promise to appear.

(f) In addition to court costs and fees authorized or imposed by a law of this state and applicable to the offense, the [The] court may:

(1) require a defendant [person] requesting a [driving safety] course under Subsection (b) to pay an administrative [a] fee set by the court to cover the cost of administering this article at an amount of not more than \$10; or

(2) require a defendant requesting a course under Subsection (d) to pay a fee set by the court at an amount not to exceed the maximum amount of the fine for the offense committed by the defendant[~~, including any other fee authorized by statute or municipal ordinance, to cover the cost of administering this article].~~

(g) A defendant [person] who requests but does not take a course is not entitled to a refund of the fee.

(h) Fees collected by a municipal court shall be deposited in the municipal treasury. Fees collected by another court shall be deposited in the county treasury of the county in which the court is located.

(i) If a defendant [person] requesting a [driving safety] course under this article fails to comply with Subsection (c) [furnish evidence of the successful completion of the course to the court], the court shall:

(1) notify the defendant [person] in writing, mailed to the address on file with the court or appearing on the notice to appear, of that failure; and

(2) require the defendant [person] to appear at the time and place stated in the notice to show cause why the evidence was not timely submitted to the court.

(j) If the defendant [A person who] fails to appear at the time and place stated in the notice under Subsection (i), or appears at the time and place stated in the notice but does not show good cause for the defendant's failure to comply with Subsection (c), the court shall enter an adjudication of guilt and impose sentence [commits a misdemeanor punishable as provided by Section 543.009, Transportation Code].

(k) On a defendant's [person's] showing of good cause for failure to furnish evidence to the court, the court may allow an extension of time during which the defendant [person] may present:

(1) a uniform certificate of course completion as evidence that the defendant [person] successfully completed the driving safety course; or

(2) a verification of course completion as evidence that the defendant successfully completed the motorcycle operator training course.

(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) proceed with an adjudication of guilt, but may not impose the fine assessed or a reduced fine [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

(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).

(m) If the defendant is charged with more than one offense, the defendant may complete a driving safety course in connection with only one of the charges [The court may dismiss only one charge for each completion of a course].

(n) ~~[A charge that is dismissed under this article may not be part of a person's driving record or used for any purpose.~~

~~[(e)]~~ An insurer delivering or issuing for delivery a motor vehicle insurance policy in this state may not cancel or increase the premium charged an insured under the policy because the court proceeded with an adjudication of guilt under Subsection (l)(1) or because the insured completed a driving safety course or a motorcycle operator training course [or had a charge dismissed] under this article.

~~(o) [(p)]~~ The court shall advise a defendant [person] charged with a misdemeanor under Section 472.022, Transportation Code, Subtitle C, Title 7, Transportation Code, or Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's [person's] right under this article to successfully complete a driving safety course or, if the offense was committed while operating a motorcycle, a motorcycle operator training course. The right to complete a course does not apply to a defendant [person] charged with:

(1) a violation of Section 545.066, [545.401, 545.421,] 550.022, or 550.023, Transportation Code;[;] or

(2) an offense to which [serious traffic violation as defined by] Section 542.404 or 729.004(b) [522.003], Transportation Code, applies.

(p) A notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.022, Transportation Code, an offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.001(a)(3), Transportation Code, committed while operating a motor vehicle of the defendant's right to complete a driving safety course or, if the offense was committed while operating a motorcycle, of the defendant's right to complete a motorcycle operator training course. The notice required by this subsection must read substantially as follows:

"You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course."

(q) If the notice required by Subsection (p) is not provided to the defendant charged with the offense, the defendant may continue to exercise the defendant's right to take a driving safety course or a motorcycle operator training course until the notice required by Subsection (p) is provided to the defendant or there is a final disposition of the case.

(r) This article does not apply to an offense committed by a person who holds a commercial driver's license.

(s) An order of deferral under Subsection (c) terminates any liability under a bail bond or appearance bond given for the charge. [~~(q) Nothing in this article shall prevent a court from assessing a special expense for deferred disposition in the same manner as provided by Article 45.051. For a deferred disposition under Subsection (b)(1), the court may only collect a fee of not more than \$10 in addition to any applicable court cost.~~]

SECTION 14. The following laws are repealed:

- (1) Section 543.101, Transportation Code;
- (2) Section 543.117, Transportation Code; and
- (3) Section 601.022, Transportation Code.

SECTION 15. (a) Except as provided by Subsection (c) of this section, this Act takes effect September 1, 2003.

(b) Articles 45.051 and 45.0511, Code of Criminal Procedure, as amended by this Act, apply only to an offense committed on or after September 1, 2003. An offense committed before September 1, 2003, is covered by Articles 45.051 and 45.0511 of that code as those laws existed on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) Sections 6-8 of this Act take effect June 1, 2005. Sections 522.081 and 522.087, Transportation Code, as amended by those sections, apply only to conduct that is engaged in or to an offense that is committed on or after June 1, 2005. Conduct that is engaged in or an offense committed before June 1, 2005, is governed by Sections 522.081 and 522.087, Transportation Code, as those sections existed immediately before that date, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Barrientos moved to concur in the House amendment to **SB 1904**.

The motion prevailed by a viva voce vote.

SENATE BILL 1803 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1803** 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 1803** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain licensing requirements and violations under the Texas Food, Drug, and Cosmetic Act; providing penalties.

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

SECTION 1. Subdivision (23), Section 431.002, Health and Safety Code, is amended to read as follows:

- (23) "Manufacture" means:

(A) the process of combining or purifying food or packaging food for sale to a person at wholesale or retail, and includes repackaging, ~~or~~ labeling, or relabeling of any food;

(B) the process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription from a practitioner for a patient;

(C) the process of preparing, fabricating, assembling, processing, packing, repacking, labeling, or relabeling a device; or

(D) the making of any cosmetic product by chemical, physical, biological, or other procedures, including manipulation, sampling, testing, or control procedures applied to the product.

SECTION 2. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the

person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without filing a licensing statement with the commissioner as required by Section 431.202 or having a license as required by Section 431.272, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator [~~food wholesaler~~] in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate; [✖]

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition; or

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with the board, the commissioner, or the department under this chapter.

SECTION 3. Subsection (a), Section 431.059, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first [~~An~~] offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Section 431.021 to establish criminal responsibility for the violation.

SECTION 4. The heading to Subchapter J, Chapter 431, Health and Safety Code, is amended to read as follows:

SUBCHAPTER J. FOOD MANUFACTURERS, ~~[AND]~~ FOOD
WHOLESALEERS, AND WAREHOUSE OPERATORS

SECTION 5. Section 431.221, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivision (6) to read as follows:

(1) "Place of business" means:

(A) each location where:

(i) a person manufactures food; or

(ii) [~~where~~] food for wholesale is distributed; or

(B) a warehouse where food is stored.

(6) "Warehouse operator" means a person that operates a warehouse where food is stored.

SECTION 6. Section 431.2211, Health and Safety Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A food wholesaler is not required to obtain a license under this subchapter for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this subchapter.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The department shall adopt rules for the registration of food wholesalers under this section.

SECTION 7. Section 431.222, Health and Safety Code, is amended to read as follows:

Sec. 431.222. LICENSE REQUIRED; LICENSING FEES. (a) Except as provided by Section 431.2211, a [A] food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department each year a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

(b) ~~The [A food wholesaler in this state must apply for and obtain from the department each year a license for each place of business that the wholesaler operates in this state. The food wholesaler must pay a licensing fee for each place of business.~~

~~[(e) For the purpose of collecting licensing fees under this section, the]~~ department shall require a food manufacturer that distributes only food manufactured by that firm to obtain only a license as a food manufacturer. A person that does not manufacture food and serves only as a food wholesaler [wholesale distributor] must obtain only a food wholesaler's [wholesale distributor's] license. A person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license. A warehouse operator who also distributes food is required to obtain only a warehouse operator license.

SECTION 8. Subsection (a), Section 431.223, Health and Safety Code, is amended to read as follows:

(a) The person applying for a license under this subchapter must provide, at a minimum, the following information in a license application:

(1) the name under which the food manufacturer, [or] wholesale distributor, or warehouse operator conducts business;

(2) the address of each place of business in this state that is licensed;

(3) if the food manufacturer, [or] wholesale distributor, or warehouse operator is an individual, a partnership, or an association, the name or names of:

(A) the proprietor, if the business is a sole proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) if the food manufacturer, [or] wholesale distributor, or wholesale operator is a corporation, the date and place of incorporation and the name and address of its registered agent in this state;

(5) the name and residences of the individuals in an administrative capacity, showing:

(A) the managing proprietor, if the business is a sole proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of a person in charge of each place of business.

SECTION 9. (a) This Act applies only to a food manufacturer license, food wholesaler license, or warehouse operator license issued on or after that date. A food manufacturer license, food wholesaler license, or warehouse operator license issued before the effective date of this Act is covered by the law in effect on the date the license was issued, and the former law is continued in effect for that purpose.

(b) A food wholesaler that obtains or renews a license before the effective date of this Act is not entitled to a refund for any fee paid to the Texas Department of Health for the license issuance or renewal, regardless of the food wholesaler's eligibility for an exemption under Subsection (d), Section 431.2211, Health and Safety Code, as added by this Act.

SECTION 10. (a) The change in law made by this Act to Sections 431.002, 431.021, and 431.059, Health and Safety Code, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) 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.

SECTION 11. This Act takes effect September 1, 2003.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1803**.

The motion prevailed by a viva voce vote.

SENATE BILL 1369 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 1369** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Carona in Chair, laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1369** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain group benefits for retired school employees.

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

SECTION 1. Section 1575.002, Insurance Code, as effective June 1, 2003, is amended by repealing Subdivision (2), amending Subdivisions (1), (3), (4), and (7) and adding Subdivision (6-a) to conform to Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived, and further amended to read as follows:

(1) "Active employee" means a contributing member of the Teacher Retirement System of Texas [~~an employee as defined by Section 821.001, Government Code,~~] who:

(A) is employed by a public school [~~a member of the system~~]; and

(B) is not entitled to coverage under a plan provided under Chapter 1551 or 1601.

(3) "Carrier" means an insurance company or hospital service corporation authorized by the department under this code or another insurance law of this state to provide any of the insurance coverages, benefits, or services provided by this chapter.

(4) "Fund" means the retired ~~[Texas public]~~ school employees group insurance fund.

(6-a) "Public school" means:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center established under Chapter 8, Education Code; or

(D) an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(7) "Trustee" ~~["System"]~~ means the Teacher Retirement System of Texas.

SECTION 2. Section 1575.004, Insurance Code, as effective June 1, 2003, is amended to read as follows:

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

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

(A) is at least 65 years of age and has taken a service retirement under the Teacher Retirement System of Texas [system] with at least 10 years of service credit in the system for actual service in public schools in this state or with at least five years of service credit for actual public service in the public schools in this state and with five years of military service credited in the Teacher Retirement System of Texas;
or

(B) has taken a service retirement under the Teacher Retirement System of Texas, and who has at least 10 years of service credit for actual public service in the public schools in this state or has at least five years of service credit for actual public service in the public schools in this state and has five years of military service credited in the Teacher Retirement System of Texas, and the sum of the individual's age and amount of service credit described by this paragraph equals or exceeds the number 80
~~and~~

~~[(B) is not eligible for coverage under a plan provided under Chapter 1551 or 1601];~~ or

(2) an individual who:

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

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

SECTION 3. (a) Section 1575.153, Insurance Code, as effective June 1, 2003, is amended to conform to Section 3.10, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and further amended to read as follows:

Sec. 1575.153. ~~[AUTOMATIC] BASIC COVERAGE. A retiree [or active employee of a participating school district]~~ who applies for coverage during an enrollment period may not be denied coverage in a basic plan provided under this chapter unless the trustee ~~[board of trustees]~~ finds under Subchapter K that the retiree [individual] defrauded or attempted to defraud the group program.

(b) Section 3.10, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 4. Subchapter D, Chapter 1575, Insurance Code, as effective June 1, 2003, is amended by adding Sections 1575.161 and 1575.162 to read as follows:

Sec. 1575.161. OPEN ENROLLMENT; ADDITIONAL ENROLLMENT PERIODS. (a) A retiree eligible for coverage under the group program may select any coverage provided under this chapter for which the person is otherwise eligible:

(1) on the date that the person retires; and

(2) during any open enrollment periods for retirees set by the trustee by rule.

(b) In addition to the enrollment periods authorized under Subsection (a), a retiree who:

(1) is enrolled in the group program as of August 31, 2004, and who is 65 years of age or older on that date may select coverage as described by Subsections (c) and (d) on September 1, 2004; or

(2) enrolls in the group program on or after September 1, 2004, and who is 65 years of age or older on or after that date may select coverage as described in Subsections (c) and (d) on the date that the retiree is 65 years of age.

(c) If a retiree described by Subsection (b) is not covered by the Medicare program, the retiree may enroll in the next-higher coverage tier under the group program and may add dependent coverage in that same coverage tier.

(d) If a retiree described by Subsection (b) is covered by the Medicare program, the retiree may enroll in any coverage tier under the group program and may add dependent coverage in that same coverage tier.

(e) This section does not affect the right of a retiree enrolled in a coverage tier under the group program to select a lower level of coverage at any time.

Sec. 1575.162. SPECIAL ENROLLMENTS. This chapter does not limit the ability of an individual to enroll in the group program if the individual:

(1) experiences a special enrollment event as provided by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), as amended; and

(2) is otherwise eligible to enroll in the group program.

SECTION 5. Section 1575.201, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.201. ADDITIONAL STATE CONTRIBUTIONS; CERTAIN CONTRIBUTIONS. (a) The state through the trustee [~~system~~] shall contribute from money in the fund;

(1) the total cost of the basic plan covering each participating retiree; and

(2) for each participating dependent, surviving spouse, and surviving dependent child, the amount prescribed by the General Appropriations Act to cover part of the cost of the basic plan covering the dependent, surviving spouse, and surviving dependent child.

(b) The trustee shall collect the amount of premium required for basic coverage under the group program that exceeds the amount contributed by the state for those individuals described by Subsection (a)(2).

SECTION 6. Section 1575.202(a), Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Each state fiscal year, the state shall contribute to the fund an amount equal to one [~~0.5~~] percent of the salary of each active employee.

SECTION 7. Subsection (a), Section 1575.203, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.5 [~~0.25~~] percent of the employee's salary.

SECTION 8. Section 1575.204, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.204. PUBLIC SCHOOL CONTRIBUTION [RATIO OF STATE AND ACTIVE EMPLOYEE CONTRIBUTIONS]. Each state fiscal year, each public school shall contribute to the fund the amount prescribed by the General Appropriations Act, which may not be less than 0.25 percent or greater than 0.75 percent of the salary of each active employee of the public school. The public school shall make the contributions on a monthly basis and as otherwise prescribed by the trustee [~~If the amount of state and active employee contributions to the fund is raised by the legislature above the percentages provided by Sections 1575.202 and 1575.203 to provide adequate funding for the group program, the ratio between the state's contribution and the active employees' contributions must be maintained at two to one~~].

SECTION 9. Subchapter E, Chapter 1575, Insurance Code, as effective June 1, 2003, is amended by adding Sections 1575.211 and 1575.212 to read as follows:

Sec. 1575.211. COST SHARING. (a) The total costs for the operation of the group program shall be shared among the state, the public schools, the active employees, and the retirees in the manner prescribed by the General Appropriations Act.

(b) In determining the allocation of total costs under this section, the state shall pay not more than 55 percent of the total costs, retirees shall pay at least 30 percent of the total costs, and the balance shall be paid by active employees and public schools.

Sec. 1575.212. PAYMENT BY RETIREES; RANGES. (a) The trustee by rule shall establish ranges for payment of the share of total costs allocated under Section 1575.211 to retirees, with different levels for:

(1) retirees who are not eligible to participate in Part A of the Medicare program;

(2) retirees who are eligible for participation but are not participating in Part A of the Medicare program; and

(3) retirees who are eligible for participation in the Medicare program and are participating in Part A of the Medicare program.

(b) In establishing ranges for payment of the share of total costs allocated under Section 1575.211 to retirees, the trustee may consider the years of service credit accrued by a retiree and may reward those retirees with more years of service credit.

SECTION 10. The following laws are repealed:

(1) Section 1575.154, Insurance Code, as effective June 1, 2003; and

(2) Subsection (h), Section 823.401, Government Code.

SECTION 11. Effective September 1, 2003, the comptroller of public accounts shall transfer \$42 million from the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, Insurance Code, to the retired school employees group insurance fund described by Subchapter G, Chapter 1575,

Insurance Code, to compensate the retired school employees group insurance fund for money transferred from that fund under Section 4.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 12. The change in law made by this Act to Subsection (a), Section 1575.202, Subsection (a), Section 1575.203, and Sections 1575.204 and 1575.211, Insurance Code, takes effect September 1, 2003.

SECTION 13. 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 14. Except as otherwise provided by this Act, this Act takes effect September 1, 2004.

Floor Amendment No. 1

Amend **CSSB 1369** as follows:

(1) Strike SECTION 8 of the bill (page 6, lines 8-22, House committee printing) and renumber the SECTIONS of the bill accordingly.

(2) In the recital to SECTION 9 of the bill (page 6, lines 24-25, House committee printing), strike "Sections 1575.211 and 1575.212" and substitute "Section 1575.211".

(3) In SECTION 9 of the bill, strike added Section 1575.211, Insurance Code (page 6, line 26, through page 7, line 7, House committee printing).

(4) In SECTION 9 of the bill, renumber added Section 1575.212, Insurance Code (page 7, lines 8-22, House committee printing), as Section 1575.211, Insurance Code.

(5) In SECTION 9 of the bill, in renumbered added Section 1575.211(a), Insurance Code (page 7, line 10, House committee printing), strike "under Section 1575.211".

(6) In SECTION 9 of the bill, in renumbered added Section 1575.211(b), Insurance Code (page 7, line 20, House committee printing), strike "under Section 1575.211".

(7) In SECTION 10 of the bill, strike Subdivision (1) of that SECTION (page 7, lines 24-25, House committee printing), and substitute the following:

"(1) Sections 1575.154 and 1575.204, Insurance Code, as effective June 1, 2003; and".

(8) Strike SECTION 12 of the bill (page 8, lines 9-12) and substitute the following:

SECTION 12. The changes in law made by this Act to Subsection (a), Section 1575.202 and Subsection (a), Section 1575.203, Insurance Code, take effect September 1, 2003.

Floor Amendment No. 2

Amend **CSSB 1369** by inserting the following new SECTIONS, appropriately numbered, and renumbering SECTIONS of the bill accordingly:

SECTION _____. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.131 to read as follows:

Sec. 2054.131. ELECTRONIC BENEFITS ENROLLMENT AND ADMINISTRATION SYSTEM. (a) In this section, "work site benefits plan" means a plan or other arrangement to provide to officers, employees, or former officers or employees:

(1) insurance, including health, life, and disability insurance and health benefits plans;

(2) flexible spending accounts; or

(3) savings or retirement benefits.

(b) If the comptroller determines that a cost savings may be realized, the comptroller, through a private vendor selected under this section, may implement a project that establishes a common electronic infrastructure through which each state agency, including any retirement system created by statute or by the constitution, shall:

(1) require its work site benefits plan participants to electronically:

(A) enroll in any work site benefits plans provided to the person by the state or a state agency;

(B) add, change, or delete benefits;

(C) sign any payroll deduction agreements to implement a contribution made to a plan in which the participant enrolls;

(D) terminate participation in a voluntary plan;

(E) initiate account investment changes and withdrawals in a retirement plan;

(F) obtain information regarding plan benefits; and

(G) communicate with the plan administrator; and

(2) administer its work site benefits plans electronically by using the project to:

(A) enroll new plan participants and, when appropriate, terminate plan participation;

(B) generate eligibility and enrollment reports for plan participants;

(C) link plan administration with payroll administration to facilitate payroll deductions for a plan;

(D) facilitate single-source billing arrangements between the agency and a plan provider; and

(E) transmit and receive information regarding the plan.

(c) The electronic infrastructure established under Subsection (a) may include TexasOnline, the Internet, intranets, extranets, and wide area networks.

(d) If the comptroller implements an electronic infrastructure project under this section, the comptroller shall select and contract with a single private vendor to implement the project. The contract must require the application of the project to all state agencies without cost to the state until the project is initially implemented.

(e) The private vendor selected under Subsection (d) must offer existing information resources technology for use in the project that:

(1) will be available to all state agencies, including retirement systems;

(2) includes each agency's work site benefits plan participants;

(3) will use, to the extent possible, the department's information technology standards, including information security, privacy and disaster recovery, and Internet-based technology standards;

(4) includes applications and a supporting platform that are already developed and used in connection with the electronic enrollment of work site benefits plans offered by other multiple plan providers;

(5) is available for use with a wide variety of plan and benefit providers;

(6) can be easily modified to permit changes in benefits offered by the state or a state agency;

(7) provides a solution to overcome limitations caused by the incompatibility of different legacy systems used by different state agencies and plan providers;

(8) is available for use over the Internet through existing or new websites or portals; and

(9) is supported, to the extent necessary, by:

(A) laptop and desktop enrollment and administration capabilities; and

(B) a telephone call center.

SECTION _____. If the electronic infrastructure under Section 2054.131, Government Code, as added by this Act, is established, the comptroller as soon as reasonably possible shall develop a timetable and procedures under which each state agency shall implement the electronic infrastructure project for use by all work site benefits plan participants, including officers and employees and former officers and employees.

Floor Amendment No. 3

Amend **CSSB 1369** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 825.405, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) For members entitled to the minimum salary for certain school personnel under Section 21.402, Education Code, and for members who would have been entitled to the minimum salary for certain school personnel under former Section 16.056, Education Code, as that section existed on January 1, 1995, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum salary [or former statutory minimum, as applicable].

(b) For purposes of this section:

(1) [?] the statutory minimum salary for certain school personnel under Section 21.402, Education Code, is the salary provided by that section [Section 21.402 or the former Sections 16.056 and 16.058, Education Code,] multiplied by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed; and

(2) the statutory minimum salary for members who would have been entitled to the minimum salary for certain school personnel under former Section 16.056, Education Code, as that section existed on January 1, 1995, is a minimum salary computed in the same manner as the minimum salary for certain school personnel under Section 21.402, Education Code, multiplied by the percentage

amount computed under Subsection (b-1)(2) and by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed.

(b-1) The retirement system shall:

(1) estimate:

(A) the aggregate annual minimum salary for members described by Subsection (b)(2), computed in the same manner as the minimum salary for certain school personnel under Section 21.402, Education Code; and

(B) the aggregate annual minimum salary for those members computed under former Section 16.056, Education Code, as that section existed on January 1, 1995; and

(2) compute the percentage amount by which the amount in Subsection (b-1)(1)(A) must be multiplied to equal the amount in Subsection (b-1)(1)(B).

SECTION _____. Section 825.405(h) and (i), Government Code, are repealed.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1369** on third reading as follows:

(1) In added Section 2054.131, Government Code, as added by Amendment No. 2 by Delisi, in Subsection (b), between "electronic infrastructure through which each state agency" and the comma, insert "that elects to participate."

(2) In added Section 2054.131, Government Code, as added by Amendment No. 2 by Delisi, in Subsection (d), between "to all state agencies" and the "without cost", insert "that elect to participate".

(3) In SECTION __.02, as added by Amendment No. 2 by Delisi, strike "each state agency shall" and substitute "each state agency may".

(4) In Section 2054.131(b), Government Code, as amended by Amendment No. 3 by Delisi, by inserting "state-financed", between "any" and "retirement".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1369** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Bivins, Zaffirini, Ogden, and Williams.

CONFERENCE COMMITTEE ON HOUSE BILL 2020

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2020** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2020** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Armbrister, Estes, Bivins, and Barrientos.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 30, 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 CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 236 (non-record vote)

HB 341 (non-record vote)

HB 705 (non-record vote)

HB 820 (non-record vote)

HB 849 (non-record vote)

HB 897 (non-record vote)

HB 942 (non-record vote)

HB 944 (non-record vote)

HB 1326 (non-record vote)

HB 1363 (non-record vote)

HB 1378 (House concurs by a vote of 144 yeas, 0 nays, 2 pnv)

HB 1406 (House concurs by a vote of 139 yeas, 1 nay, 2 pnv)

HB 1420 (House concurs by a vote of 135 yeas, 0 nays, 2 pnv)

HB 1440 (House concurs by a vote of 139 yeas, 0 nays, 2 pnv)

HB 1483 (non-record vote)

HB 1634 (House concurs by a vote of 138 yeas, 0 nays, 2 pnv)

HB 1649 (House concurs by a vote of 140 yeas, 0 nays, 2 pnv)

HB 1773 (non-record vote)

HB 1833 (non-record vote)

HB 1979 (non-record vote)

HB 1997 (non-record vote)

HB 2019 (non-record vote)

HB 2053 (non-record vote)

HB 2073 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)

HB 2153 (non-record vote)

HB 2188 (non-record vote)
HB 2189 (non-record vote)
HB 2212 (House concurs by a vote of 136 yeas, 0 nays, 2 pnv)
HB 2249 (House concurs by a vote of 145 yeas, 0 nays, 2 pnv)
HB 2308 (non-record vote)
HB 2350 (non-record vote)
HB 2379 (House concurs by a vote of 141 yeas, 0 nays, 2 pnv)
HB 2453 (non-record vote)
HB 2457 (House concurs by a vote of 139 yeas, 0 nays, 2 pnv)
HB 2485 (House concurs by a vote of 146 yeas, 0 nays, 2 pnv)
HB 2881 (non-record vote)
HB 2947 (House concurs by a vote of 145 yeas, 0 nays, 2 pnv)
HB 2964 (non-record vote)
HB 3034 (House concurs by a vote of 142 yeas, 0 nays, 2 pnv)
HB 3109 (House concurs by a vote of 144 yeas, 0 nays, 2 pnv)
HB 3318 (House concurs by a vote of 141 yeas, 0 nays, 2 pnv)
HB 3324 (House concurs by a vote of 143 yeas, 0 nays, 1 pnv)
HB 3378 (House concurs by a vote of 142 yeas, 0 nays, 4 pnv)
HB 3503 (non-record vote)
HB 3526 (House concurs by a vote of 140 yeas, 0 nays, 2 pnv)
HB 3565 (non-record vote)
HB 3592 (House concurs by a vote of 141 yeas, 0 nays, 2 pnv)

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

HB 2533

House Conferees: Brown, Betty - Chair/Casteel/Flynn/Lewis/Smith, Wayne/

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1370 WITH HOUSE AMENDMENTS

Senator Duncan called **SB 1370** 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 1370** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain group benefit plans provided to certain governmental officers, employees, and retirees and their dependents.

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

ARTICLE 1. TEXAS SCHOOL EMPLOYEES UNIFORM
GROUP HEALTH COVERAGE ACT AND
BENEFITS FOR SCHOOL EMPLOYEES

SECTION 1.01. Section 2, Article 3.50-8, Insurance Code, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) A member of the professional staff of a district, charter school, or service center described by Subsection (a) of this section is not eligible to receive state funds under Subsection (a) of this section.

(f) For purposes of this section, a member of the professional staff of a district, charter school, or service center described by Subsection (a) of this section has the meaning defined by rule by the trustee.

(g) An employee is not eligible to receive a state contribution under this article until the 90th day after the date the employee is employed by an entity described by Section 1(2)(A) of this article.

SECTION 1.02. Notwithstanding Article 3.50-8, Insurance Code, the state shall pay the state contribution for active employee health coverage or supplemental compensation authorized under Section 2, Article 3.50-8, Insurance Code, for the last month of state fiscal year 2005 not earlier than the first day of the first month of state fiscal year 2006.

SECTION 1.03. Effective September 1, 2003, the comptroller of public accounts shall transfer \$42 million from the Texas school employees uniform group coverage trust fund established under Section 8, Article 3.50-7, Insurance Code, to the retired school employees group insurance fund described by Subchapter G, Chapter 1575, Insurance Code, to compensate the retired school employees group insurance fund for money transferred from that fund under Section 4.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 2. TEXAS EMPLOYEES GROUP BENEFITS ACT

SECTION 2.01. Subdivisions (3), (9), and (11), Section 1551.003, Insurance Code, as effective June 1, 2003, are amended to read as follows:

(3) "Basic coverage" means the group coverage plans determined by the board of trustees in which each eligible full-time employee and annuitant participates automatically unless participation is specifically waived.

(9) "Full-time employee" means an employee designated as a full-time employee under Section 1551.319(c) or an employee designated by the employer as working 40 [20] or more hours a week.

(11) "Part-time employee" means an employee designated by the employer as working less than 40 [20] hours a week. For purposes of this chapter, an individual described by Section 1551.101(e)(2) is considered a part-time employee.

SECTION 2.02. Subsection (a), Section 1551.101, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) An elected or appointed officer or employee who performs service, other than as an independent contractor, for this state, including an institution of higher education, and who is described by this section is eligible to participate in the group benefits program as an employee on the date specified by Section 1551.1055.

SECTION 2.03. Subsection (a), Section 1551.102, Insurance Code, as effective June 1, 2003, is amended to conform to Section 27, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further amended to read as follows:

(a) An individual who has at least a number of [three] years of service credit, except as provided by Subsection (b)(2)(C) or Subsection (f), for which the individual was eligible to participate in the group benefits program under Section 1551.101 or who has at least five years of membership and five years of military service credited in the Employees Retirement System of Texas and who retires in a manner described by this section is eligible, subject to Section 1551.1055, to participate as an annuitant in the group benefits program.

SECTION 2.04. Section 1551.102, Insurance Code, as effective June 1, 2003, is amended by amending Subsections (b), (c), (d), (f), and (g) and adding Subsection (h) to read as follows:

(b) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if [~~the individual~~]:

(1) the individual retires under the jurisdiction of the Employees Retirement System of Texas; and

(2) the individual:

(A) receives or is eligible to receive an annuity under Section 814.104(a)(2), [Subtitle B, D, or E, Title 8, Government Code, or Chapter 803,] Government Code, and has [that is based on] at least 10 years of eligible service credit;

(B) receives or is eligible to receive an annuity under Chapter 803 or Section 814.104(a)(1), Government Code, has at least 10 years of eligible service credit, and is at least 65 years of age; or

(C) receives or is eligible to receive an annuity that is based on [or] eligibility under Section 814.002, [or] 814.102, 814.104(b), 814.107(a), 834.101, or 839.101, Government Code.

(c) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if [~~the individual~~]:

(1) the individual retires under the jurisdiction of the Teacher Retirement System of Texas and has at least 10 years of eligible service credit, including not more than five years of military service credited in the Employees Retirement System of Texas, or has five years of eligible service credit and is the sole surviving spouse of military personnel who was killed in action;

(2) the individual:

(A) has accumulated eligible service credit in an amount so that the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80; or

(B) is at least 65 years of age [receives or is eligible to receive an annuity under Subtitle C, Title 8, Government Code, or Chapter 803, Government Code, that is based on at least 10 years of service credit]; and

(3) the individual was employed, as the last state employment before retirement, including employment by a public junior college, by a state agency whose employees are authorized to participate in the group benefits program.

(d) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual:

(1) retires under the optional retirement program established by Chapter 830, Government Code, with at least 10 years of eligible service credit; and

(2) receives or is eligible to receive an annuity under that program and the individual:

(A) is at least 65 years of age, or would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas in an amount such that the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80 or would have been eligible to retire and receive a disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas, [based on at least 10 years of service credit] if the individual had not elected to participate in the optional retirement program; or

(B) is disabled as determined by the Employees Retirement System of Texas based on at least 10 years of eligible service credit.

(f) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual is certified and qualified as disabled and receives or is eligible to receive an annuity under Section 814.202, 814.207, 834.201, or 839.201, Government Code [a retired officer or employee of a retirement system described by Section 1551.111].

(g) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual is at least 65 years of age and retires under a federal or state statutory retirement program not described by another provision of this section, to which an institution of higher education has made employer contributions, and the individual has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit.

(h) A person eligible to participate and participating in the group benefits program as an annuitant on September 1, 2003, may continue to participate in the program as an annuitant if a lapse in coverage has not occurred.

SECTION 2.05. Subsection (a), Section 1551.104, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Subject to Sections 1551.101 and 1551.102, each [Each] full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless:

(1) participation is specifically waived; ~~or~~

(2) the employee or annuitant is expelled from the program under Section 1551.351; or

(3) eligibility is otherwise limited by this chapter.

SECTION 2.06. Subchapter C, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.1055 to read as follows:

Sec. 1551.1055. DATE ELIGIBILITY BEGINS; WAITING PERIOD.

(a) Except as provided by Subsections (c) and (d), eligibility under Section 1551.101 begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.

(b) Except as provided by Subsection (c), eligibility under Section 1551.102, for an individual who does not retire at the end of the last month for which the individual is on the payroll of a state agency before retirement, begins on the first day of the calendar month that begins after the 90th day after the date the individual retires.

(c) The waiting period established by Subsections (a) and (b) applies only to the determination of initial eligibility to participate in the group benefits program and does not apply to the determination of initial eligibility to participate in optional and voluntary insurance coverages under the group benefits program.

(d) This subsection applies only to an employee of an institution of higher education or a dependent of the employee. Notwithstanding Subsection (a), eligibility under Section 1551.101 may not begin earlier than the first day that an employee performs services for an institution of higher education if any amount paid for premium incurred before the date specified under Subsection (a) for the employee and any dependents of the employee is paid from money not appropriated from the general revenue fund, in accordance with policies and procedures established by the governing body of the institution of higher education.

SECTION 2.07. Subsection (a), Section 1551.109, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Subject to Section 1551.351, on application to the board of trustees and arrangement for payment of contributions, an individual participating in the group benefits program on August 31, 2003, as a current or [a] former member of a governing body with administrative responsibility over a state agency created under a statute of this state that has statewide jurisdiction and whose employees are covered by this chapter or as a current or former member of the State Board of Education or [described by Section 1551.101(e) or a former member of] the governing body of an institution of higher education remains eligible for participation in a health benefit plan offered under this chapter if a lapse in coverage ~~[after the end of the former member's term]~~ has not occurred.

SECTION 2.08. Subsection (b), Section 1551.111, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(b) Participation is limited to:

(1) an officer or employee of either system who has been an officer or employee of either system following completion of the waiting period described by Section 1551.1055;

(2) an eligible dependent of an officer or employee of either system described by Subdivision (1);

(3) an individual who:

(A) was an officer or employee of either system;

(B) has retired from either system, subject to Section 1551.1055;

(C) receives or is eligible to receive an annuity from either system or under Chapter 803, Government Code, based on at least 10 years of service credit and is at least 65 years of age; and

(D) has at least 10 [~~three~~] years of service credit with a state agency whose employees are authorized to participate in the group benefits program; and

(4) an eligible dependent of a retired officer or employee described by Subdivision (3).

SECTION 2.09. Subsection (a), Section 1551.112, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) An individual may participate in the group benefits program as an annuitant, subject to Section 1551.1055, and may obtain coverage for the individual's dependents as any other participating annuitant if the individual:

(1) began employment with, or became an officer of, the Texas Turnpike Authority within the three-year period preceding August 31, 1997;

(2) was an officer or employee of the Texas Turnpike Authority on August 31, 1997;

(3) became an officer or employee of the North Texas Tollway Authority on September 1, 1997; and

(4) retires or is eligible to retire with at least 10 years of service credit under the proportionate retirement program established by Chapter 803, Government Code, or under a public retirement system to which Chapter 803 applies and is at least 65 years of age.

SECTION 2.10. Section 1551.319, Insurance Code, as effective June 1, 2003, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) The superintendent of the Texas School for the Deaf and the superintendent of the Texas School for the Blind and Visually Impaired shall determine whether an educational professional employee under contract with the school under Section 30.024 or 30.055, Education Code, as applicable, is a full-time employee for purposes of this chapter.

(d) The executive head of the Windham School District shall determine whether an educational professional employee of the school is a full-time employee for purposes of this chapter.

(e) This section does not prohibit an institution of higher education from contributing, from money not appropriated from the general revenue fund, amounts in excess of the state contribution for a part-time employee described by Section 1551.101(e)(2).

SECTION 2.11. Section 27, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 2.12. Subsections (c) and (d), Section 1551.101, Insurance Code, as effective June 1, 2003, are repealed.

ARTICLE 3. TEXAS RETIRED SCHOOL EMPLOYEES GROUP BENEFITS ACT

SECTION 3.01. Section 1575.002, Insurance Code, as effective June 1, 2003, is amended to conform to Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived, and further amended to read as follows:

Sec. 1575.002. GENERAL DEFINITIONS. In this chapter:

(1) "Active employee" means a contributing member of the Teacher Retirement System of Texas [~~an employee as defined by Section 821.001, Government Code,~~] who:

(A) is employed by a public school [~~a member of the system~~]; and

(B) is not entitled to coverage under a plan provided under Chapter 1551 or 1601.

(2) [~~"Board of trustees" means the board of trustees of the Teacher Retirement System of Texas.~~

[(3)] "Carrier" means an insurance company or hospital service corporation authorized by the department under this code or another insurance law of this state to provide any of the insurance coverages, benefits, or services provided by this chapter.

(3) [(4)] "Fund" means the retired [~~Texas public~~] school employees group insurance fund.

(4) [(5)] "Group program" means the Texas Public School Employees Group Insurance Program authorized by this chapter.

(5) [(6)] "Health benefit plan" means a group insurance policy, contract, or certificate, medical or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement to provide health care services or to pay or reimburse expenses of health care services.

(6) "Public school" means:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center established under Chapter 8, Education Code; or

(D) an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(7) "Trustee" [~~"System"~~] means the Teacher Retirement System of Texas.

SECTION 3.02. Subsection (a), Section 1575.202, Insurance Code, is amended to read as follows:

(a) Each state fiscal year, the state shall contribute to the fund an amount equal to one [~~0.5~~] percent of the salary of each active employee.

SECTION 3.03. Subsection (a), Section 1575.203, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.5 [~~0.25~~] percent of the employee's salary.

SECTION 3.04. Section 1575.204, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1575.204. PUBLIC SCHOOL CONTRIBUTION [~~RATIO OF STATE AND ACTIVE EMPLOYEE CONTRIBUTIONS~~]. Each state fiscal year, each public school shall contribute to the fund the amount prescribed by the General Appropriations Act, which may not be less than 0.25 percent or greater than 0.75 percent of the salary of each active employee of the public school. The public school shall make the contributions on a monthly basis and as otherwise prescribed by the

~~trustee [If the amount of state and active employee contributions to the fund is raised by the legislature above the percentages provided by Sections 1575.202 and 1575.203 to provide adequate funding for the group program, the ratio between the state's contribution and the active employees' contributions must be maintained at two to one].~~

ARTICLE 4. UNIFORM INSURANCE BENEFITS ACT
FOR EMPLOYEES OF
THE UNIVERSITY OF TEXAS SYSTEM AND
THE TEXAS A&M UNIVERSITY SYSTEM

SECTION 4.01. Subsection (a), Section 1601.101, Insurance Code, as effective June 1, 2003, is amended to read as follows:

(a) An individual who is employed by the governing board of a system, who performs service, other than as an independent contractor, for the system, and who is described by this section is eligible to participate as an employee in the uniform program on the date specified by Section 1601.1045.

SECTION 4.02. Section 1601.102, Insurance Code, as effective June 1, 2003, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) An individual who retires in a manner described by this section and who meets the requirements of Subsection (f) is eligible to participate, subject to Section 1601.1045, as a retired employee in the uniform program.

(f) Notwithstanding Subsections (b)-(d), an individual is eligible to participate in the uniform program only if the individual:

(1) has at least 10 years of service credit and the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80; or

(2) is at least 65 years old and has at least 10 years of service credit.

(g) A person eligible to participate and participating in the uniform program as an annuitant on September 1, 2003, may continue to participate in the program as an annuitant if a lapse in coverage has not occurred.

SECTION 4.03. Subchapter C, Chapter 1601, Insurance Code, as effective June 1, 2003, is amended by adding Section 1601.1045 to read as follows:

Sec. 1601.1045. DATE ELIGIBILITY BEGINS; WAITING PERIOD. (a) Except as provided by Subsection (c) or (d), eligibility under Section 1601.101 begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a system.

(b) Except as provided by Subsection (c), eligibility under Section 1601.102, for an individual who does not retire at the end of the last month for which the individual is on the payroll of a system before retirement, begins on the first day of the calendar month that begins after the 90th day after the date the individual retires.

(c) The waiting period established by Subsections (a) and (b) applies only to the determination of initial eligibility to participate in the group health benefits program and does not apply to the determination of initial eligibility to participate in optional coverages under the uniform program.

(d) Notwithstanding Subsection (a), eligibility under Section 1601.101 may not begin earlier than the first day that an employee performs services for a system if any amount paid for premium incurred before the date specified under Subsection (a) for the employee and any dependents of the employee is paid from money not appropriated from the general revenue fund, in accordance with policies and procedures established by the system.

SECTION 4.04. Section 1601.201, Insurance Code, as effective June 1, 2003, is amended to read as follows:

Sec. 1601.201. PAYMENT FOR ~~[OPTIONAL OR BASIC]~~ COVERAGE.

(a) A system may not contribute more than the amounts specified by this section for coverages provided under the uniform program.

(b) For an employee designated by the system as working 40 or more hours a week, the system may contribute:

(1) the full cost of basic coverage for the employee; and

(2) not more than 50 percent of the cost of dependent coverage.

(c) For an employee designated by the system as working less than 40 hours a week, including an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate-level courses, the system, from money appropriated from the general revenue fund, may contribute:

(1) not more than 50 percent of the cost of basic coverage for the employee;

and

(2) not more than 25 percent of the cost of dependent coverage.

(d) Subsection (c) does not prohibit a system from contributing, from money not appropriated from the general revenue fund, amounts in excess of the amount specified by that subsection for an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate level courses ~~[shall provide optional coverage at no cost to an employee or retired employee if the cost of the employee's or retired employee's basic coverage exceeds the amount appropriated by the legislature for an employee or retired employee. For a participant who chooses the basic coverage rather than optional coverages, a system may:~~

~~[(1) for an individual eligible to participate in the uniform program under Section 1601.101, deduct from or reduce the monthly compensation of the participant; or~~

~~[(2) for an individual eligible to participate in the uniform program under Section 1601.102, require appropriate payment].~~

~~[(b) The deduction or reduction under Subsection (a) may not exceed one half of the amount that exceeds the state's contribution, and the system shall pay any difference.]~~

ARTICLE 5. EFFECTIVE DATE; GENERAL TRANSITION

SECTION 5.01. To the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive codifications of law or nonsubstantive additions to and corrections in enacted codes.

SECTION 5.02. This Act takes effect September 1, 2003.

Floor Amendment No. 1

Amend **CSSB 1370** (House committee printing) as follows:

(1) Strike SECTION 1.01 of the bill (page 1, lines 8-21) and renumber subsequent SECTIONS of ARTICLE 1 of the bill accordingly.

(2) Strike SECTION 3.04 of the bill (page 12, line 24 through page 13, line 11) and substitute the following:

SECTION 3.04. Section 1575.204, Insurance Code, as effective June 1, 2003, is repealed.

Floor Amendment No. 2

Amend **CSSB 1370** as follows:

(1) In SECTION 2.01 of the bill, in amended Subdivision (9), Section 1551.003, Insurance Code, on page 2, line 22, between "1551.319(c)" and "or", insert "or (d)".

(2) In SECTION 2.03 of the bill, in amended Subsection (a), Section 1551.102, Insurance Code, on page 3, line 12, strike "a number of [three]" and substitute "10".

Floor Amendment No. 3

Amend **CSSB 1370** by inserting the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. ON-LINE STATE BENEFITS SYSTEM

SECTION __.01. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.131 to read as follows:

Sec. 2054.131. ELECTRONIC BENEFITS ENROLLMENT AND ADMINISTRATION SYSTEM. (a) In this section, "work site benefits plan" means a plan or other arrangement to provide to officers, employees, or former officers or employees:

(1) insurance, including health, life, and disability insurance and health benefits plans;

(2) flexible spending accounts; or

(3) savings or retirement benefits.

(b) If the comptroller determines that a cost savings may be realized, the comptroller, through a private vendor selected under this section, may implement a project that establishes a common electronic infrastructure through which each state agency, including any retirement system created by statute or by the constitution, shall:

(1) require its work site benefits plan participants to electronically:

(A) enroll in any work site benefits plans provided to the person by the state or a state agency;

(B) add, change, or delete benefits;

(C) sign any payroll deduction agreements to implement a contribution made to a plan in which the participant enrolls;

(D) terminate participation in a voluntary plan;

(E) initiate account investment changes and withdrawals in a retirement plan;

(F) obtain information regarding plan benefits; and
(G) communicate with the plan administrator; and
(2) administer its work site benefits plans electronically by using the project
to:

(A) enroll new plan participants and, when appropriate, terminate plan participation;

(B) generate eligibility and enrollment reports for plan participants;

(C) link plan administration with payroll administration to facilitate payroll deductions for a plan;

(D) facilitate single-source billing arrangements between the agency and a plan provider; and

(E) transmit and receive information regarding the plan.

(c) The electronic infrastructure established under Subsection (a) may include TexasOnline, the Internet, intranets, extranets, and wide area networks.

(d) If the comptroller implements an electronic infrastructure project under this section, the comptroller shall select and contract with a single private vendor to implement the project. The contract must require the application of the project to all state agencies without cost to the state until the project is initially implemented.

(e) The private vendor selected under Subsection (d) must offer existing information resources technology for use in the project that:

(1) will be available to all state agencies, including retirement systems;

(2) includes each agency's work site benefits plan participants;

(3) will use, to the extent possible, the department's information technology standards, including information security, privacy and disaster recovery, and Internet-based technology standards;

(4) includes applications and a supporting platform that are already developed and used in connection with the electronic enrollment of work site benefits plans offered by other multiple plan providers;

(5) is available for use with a wide variety of plan and benefit providers;

(6) can be easily modified to permit changes in benefits offered by the state or a state agency;

(7) provides a solution to overcome limitations caused by the incompatibility of different legacy systems used by different state agencies and plan providers;

(8) is available for use over the Internet through existing or new websites or portals; and

(9) is supported, to the extent necessary, by:

(A) laptop and desktop enrollment and administration capabilities; and

(B) a telephone call center.

SECTION __.02. If the electronic infrastructure under Section 2054.131, Government Code, as added by this article, is established, the comptroller as soon as reasonably possible shall develop a timetable and procedures under which each state agency shall implement the electronic infrastructure project for use by all work site benefits plan participants, including officers and employees and former officers and employees.

Floor Amendment No. 4

Amend **CSSB 1370** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Subchapter C, Chapter 1551, Insurance Code, as effective June 1, 2003, is amended by adding Section 1551.1021 to read as follows:

Sec. 1551.1021. PARTICIPATION ELIGIBILITY: CERTAIN FACULTY OF INSTITUTIONS OF HIGHER EDUCATION. (a) An adjunct faculty member at a public institution of higher education is eligible to participate in the group benefits program as an employee if the faculty member:

(1) receives compensation for services rendered to a public institution of higher education as an adjunct faculty member;

(2) has been employed as a faculty member by the same public institution of higher education and has taught at least one course in each regular fall and spring semester at the public institution of higher education in each of the preceding three academic years; and

(3) is under contract or is scheduled to teach at least 12 semester credit hours in the academic year of coverage or, if the person is also employed by the public institution of higher education to perform nonteaching duties, is under contract or is scheduled to teach at least six semester credit hours in the academic year of coverage and has been approved by the public institution of higher education to participate in the group benefits program.

(b) From money appropriated from a fund other than the general revenue fund or from money available from local sources, a public institution of higher education may, for an adjunct faculty member eligible to receive benefits under this section, contribute:

(1) not more than 50 percent of the cost of basic coverage for the employee;
and

(2) not more than 25 percent of the cost of dependent coverage.

(c) Subsection (b) does not prohibit a public institution of higher education from contributing, from money other than money appropriated from the general revenue fund, amounts that exceed the amount specified in Subsection (b) to provide coverage for a person employed by a public institution of higher education who meets the criteria for eligibility under Subsection (a).

(b) The board of trustees of the Employees Retirement System of Texas shall include coverage under Section 1551.114, Insurance Code, as added by this section, in an insurance policy or contract or in an evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 2004. The board of trustees may include coverage under Section 1551.114, Insurance Code, as added by this section, in an insurance policy or contract or in an evidence of coverage delivered, issued for delivery, or renewed before January 1, 2004, if the board of trustees determines that coverage may be reasonably included.

Floor Amendment No. 5

Amend **CSSB 1370** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 825.405, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) For members entitled to the minimum salary for certain school personnel under Section 21.402, Education Code, and for members who would have been entitled to the minimum salary for certain school personnel under former Section 16.056, Education Code, as that section existed on January 1, 1995, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum salary ~~[or former statutory minimum, as applicable]~~.

(b) For purposes of this section:

(1) [r] the statutory minimum salary for certain school personnel under Section 21.402, Education Code, is the salary provided by that section [Section 21.402 or the former Sections 16.056 and 16.058, Education Code,] multiplied by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed; and

(2) the statutory minimum salary for members who would have been entitled to the minimum salary for certain school personnel under former Section 16.056, Education Code, as that section existed on January 1, 1995, is a minimum salary computed in the same manner as the minimum salary for certain school personnel under Section 21.402, Education Code, multiplied by the percentage amount computed under Subsection (b-1)(2) and by the cost of education adjustment applicable under Section 42.102, Education Code, to the district in which the member is employed.

(b-1) The retirement system shall:

(1) estimate:

(A) the aggregate annual minimum salary for members described by Subsection (b)(2), computed in the same manner as the minimum salary for certain school personnel under Section 21.402, Education Code; and

(B) the aggregate annual minimum salary for those members computed under former Section 16.056, Education Code, as that section existed on January 1, 1995; and

(2) compute the percentage amount by which the amount in Subsection (b-1)(1)(A) must be multiplied to equal the amount in Subsection (b-1)(1)(B).

SECTION _____. Sections 825.405(h) and (i), Government Code, are repealed.

Floor Amendment No. 6

Amend **CSSB 1370** (House 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 and 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.

Floor Amendment No. 7

Amend **CSSB 1370** as follows:

(1) In ARTICLE 2 of the bill, insert the following new SECTION, appropriately numbered:

SECTION 2. __. Section 1551.006, Insurance Code, as effective June 1, 2003, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (b), The Texas A&M University System, including the Texas Veterinary Medical Laboratory, participates in the group benefits program if, not later than November 1, 2004, the system notifies the board of trustees of the system's election to participate. If notice is provided as required by this subsection, the employees and annuitants of the system, including the veterinary medical laboratory, and the dependents of those employees and annuitants, participate in the group benefits program effective not later than September 1, 2005. Notwithstanding any other provision of this subsection, the Texas A&M University System may elect to participate in the group benefits program under this subsection only if the Employees Retirement System determines pursuant to the actuarial study required by H.B. No. 1, Acts of the 78th Legislature, 2003, that participation under this subsection will not result in additional cost to the state.

(2) In ARTICLE 4 of the bill, insert the following new SECTION, appropriately numbered:

SECTION 4. __. Subchapter A, Chapter 1601, Insurance Code, as effective June 1, 2003, is amended by adding Section 1601.011, Insurance Code, to read as follows:

Sec. 1601.011. PARTICIPATION OF THE TEXAS A&M UNIVERSITY SYSTEM. Notwithstanding any other provision of this chapter, if The Texas A&M University System elects to participate in the group benefits program under Section 1551.006(c), that system, including the Texas Veterinary Medical Laboratory, does not participate in a uniform program established under this chapter, effective on the date participation in the group benefits program under Chapter 1551 begins.

(3) Renumber SECTIONS of the bill appropriately.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1370** on third reading as follows:

(1) In added Section 2054.131, Government Code, as added by Amendment No. 2 by Delisi, in Subsection (b), between "electronic infrastructure through which each state agency" and the comma, insert "that elects to participate."

(2) In added Section 2054.131, Government Code, as added by Amendment No. 2 by Delisi, in Subsection (d), between "to all state agencies" and the "without cost", insert "that elect to participate".

(3) In SECTION __.02, as added by Amendment No. 2 by Delisi, strike "each state agency shall" and substitute "each state agency may".

(4) In Section 2054.131(b), Government Code, as amended by Amendment No. 3 by Delisi, by inserting "state-financed", between "any" and "retirement".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1370** on third reading as follows:

In Section 2.04 of the bill, amended Section 1551.102(f), Insurance Code, by inserting "824.302", between "814.207", and "834.201".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1370** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Duncan, Chair; Bivins, Zaffirini, Ogden, and Williams.

**CONFERENCE COMMITTEE ON
SENATE BILL 1252 DISCHARGED**

On motion of Senator Armbrister and by unanimous consent, the Senate conferees on **SB 1252** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 1252**?

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendments to **SB 1252** by a viva voce vote.

(Senator Wentworth in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 2455

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2455** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2455** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Ellis, Jackson, Ogden, and Armbrister.

CONFERENCE COMMITTEE ON HOUSE BILL 1082

Senator Staples called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1082** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1082** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Staples, Chair; Brimer, Hinojosa, Harris, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 411

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 411** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 411** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Shapiro, Shapleigh, Ogden, and Staples.

CONFERENCE COMMITTEE ON HOUSE BILL 3042

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3042** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3042** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ellis, Chair; Armbrister, Bivins, Wentworth, and Brimer.

CONFERENCE COMMITTEE ON HOUSE BILL 2424

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2424** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2424** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Armbrister, Chair; Brimer, Staples, Ellis, and Bivins.

SENATE BILL 270 WITH HOUSE AMENDMENTS

Senator Jackson called **SB 270** 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 270** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Lottery Commission.

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

SECTION 1. Section 466.014, Government Code, is amended by adding Subsection (d) to read as follows:

(d) A contract between the division and a lottery operator under Subsection (b) must contain a provision allowing the contract to be terminated without penalty if the division is abolished.

SECTION 2. Section 466.022(b), Government Code, is amended to read as follows:

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and is exempt from disclosure:

(1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;

(2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers; ~~and~~

(3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information; ~~and~~

(4) personal information identifying an individual collected as part of a player informational database.

SECTION 3. Subchapter B, Chapter 466, Government Code, is amended by adding Section 466.026 to read as follows:

Sec. 466.026. COMPREHENSIVE BUSINESS PLAN. (a) The commission shall develop a comprehensive business plan to guide the commission's major initiatives. The plan must at a minimum include:

- (1) a description of each commission program and project;
- (2) key management information;
- (3) accurate financial data; and
- (4) a detailed financial management plan.

(b) The commission shall at least annually review the comprehensive business plan to assess the overall performance and value of each program and project.

SECTION 4. Subchapter B, Chapter 466, Government Code, is amended by adding Section 466.0245 to read as follows:

Sec. 466.0245. PROHIBITED GAMING MACHINES; DUTIES OF COMPTROLLER. (a) In this section, "prohibited gaming machine" means a machine that is:

(1) prohibited under this chapter; or
(2) a gambling device, as defined by Section 47.01, Penal Code, that is possessed, used, exhibited, or displayed in a manner that violates Chapter 47, Penal Code.

(b) The comptroller or an authorized representative of the comptroller may seal a prohibited gaming machine in a manner that prevents the full operation of the machine.

(c) The comptroller may assess a penalty of not less than \$500 and not more than \$10,000 against a person who exhibits, displays, or provides to another a prohibited gaming machine.

(d) Notwithstanding the penalty provided by other law, an offense under Section 2153.355(a)(5), (6), or (7), Occupations Code, or under Section 2153.361, Occupations Code, is a Class A misdemeanor if the offense involves a prohibited gaming machine.

(e) In addition to the amounts allocated under Section 466.355(b), \$5 million is allocated from the state lottery account in each fiscal biennium to the comptroller to enforce this section.

SECTION 5. Subchapter C, Chapter 466, Government Code, is amended by adding Section 466.1005 to read as follows:

Sec. 466.1005. PROCUREMENTS. (a) The commission may purchase or lease facilities, goods, and services and make any purchases, leases, or contracts necessary for carrying out the purposes of this chapter.

(b) The commission shall review and must approve all major procurements as provided by commission rule. The commission by rule shall establish a procedure to determine what constitutes a major procurement based on the cumulative value of a contract and other relevant factors.

(c) The commission may delegate to the executive director the authority to approve procurements other than major procurements.

SECTION 6. Sections 466.101(a) and (b), Government Code, are amended to read as follows:

(a) The commission and executive director may establish procedures for the purchase or lease of facilities, goods, and services and make any purchases, leases, or contracts that are necessary for carrying out the purposes of this chapter. The procedures must, as determined feasible and appropriate by the commission and executive director, promote competition to the maximum extent possible.

(b) In all procurement decisions, the commission and executive director shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery and the objective of producing revenues for the state treasury.

SECTION 7. Subchapter C, Chapter 466, Government Code, is amended by adding Section 466.111 to read as follows:

Sec. 466.111. SALE OF LOTTERY PROMOTIONAL MERCHANDISE. (a) The commission may make available for sale to the public lottery promotional merchandise to market and promote ticket sales.

(b) The executive director shall propose rules to be adopted by the commission regarding sales of lottery promotional merchandise, including the method for pricing, advertising, purchasing, and selling lottery promotional merchandise.

(c) Proceeds from the sale of lottery promotional merchandise, less the cost of advertising the sale and any related expenses, shall be deposited to the credit of the general revenue fund.

SECTION 8. Section 466.151, Government Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) The director may license as a sales agent each person the director believes will best serve the public convenience. The director may not issue a license to a person to engage in business exclusively as a sales agent. A license may not be transferred or assigned to any other person ~~[or location]~~.

(f) On application by a sales agent the director may amend the sales agent's license to change the location of the sales agency, if the proposed location complies with this chapter. The application must be on a form prescribed by the director and be accompanied by a fee in an amount determined by the director to be at least sufficient to cover the costs incurred by the division for processing the license amendment. The sales agent must certify to the director that the proposed location complies with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 9. Section 466.155(a), Government Code, is amended to read as follows:

(a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

(1) is an individual who:

(A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(B) is or has been a professional gambler;

(C) is married to an individual:

- (i) described in Paragraph (A) or (B); or
- (ii) who is currently delinquent in the payment of any state tax;
- (D) is an officer or employee of the commission or a lottery operator; or
- (E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Paragraph (D);
- (2) is not an individual, and an individual described in Subdivision (1):
 - (A) is an officer or director of the applicant or sales agent;
 - (B) holds more than 10 percent of the stock in the applicant or sales agent;
 - (C) holds an equitable interest greater than 10 percent in the applicant or sales agent;
 - (D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;
 - (E) is the owner or lessee of a business that the applicant or sales agent conducts or through which the applicant will conduct a ticket sales agency;
 - (F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent; or
 - (G) participates in managing the affairs of the applicant or sales agent;
- (3) has been finally determined to be:
 - (A) delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;
 - (B) in default on a loan made under Chapter 52, Education Code; or
 - (C) in default on a loan guaranteed under Chapter 57, Education Code;
- (4) is a person whose location for the sales agency is:
 - (A) a location licensed for games of bingo under Chapter 2001, Occupations Code;
 - (B) on land that is owned by:
 - (i) this state; or
 - (ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or
 - (C) a location:
 - (i) in a facility that shares a common roof or common foundation with a location at which a gambling device, as defined by Section 47.01, Penal Code, is operated or located; or
 - (ii) within 150 feet of the common roof or common foundation described by Subparagraph (i) [a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code]; or
- (5) has violated this chapter or a rule adopted under this chapter.

SECTION 10. Section 466.158, Government Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) In making a determination whether to renew a license, the commission shall consider the compliance history of a license holder. The commission shall adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(e) After an opportunity for a hearing, the commission may deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas considered by the commission in accordance with the rules adopted under Subsection (d).

(f) The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the commission shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 11. Section 466.160(a), Government Code, is amended to read as follows:

(a) The commission may suspend a sales agent's license summarily without notice or hearing if the commission finds that the action is necessary to maintain the integrity, security, honesty, or fairness of the operation or administration of the lottery or to prevent financial loss to the state and:

(1) the sales agent fails to deposit money received from ticket sales under Section 466.351;

(2) an event occurs that would render the sales agent ineligible for a license under Section 466.155;

(3) the sales agent refuses to permit the executive director, the director, the commission, or the state auditor to examine the agent's books, records, papers, or other objects under Section 466.017(b); ~~or~~

(4) the executive director learns the sales agent has failed to disclose information that would, if disclosed, render the sales agent ineligible for a license under Section 466.155; or

(5) the sales agent fails on request to provide a complete legible set of fingerprints of a person required to be named in a license application.

SECTION 12. Section 466.202(b), Government Code, is amended to read as follows:

(b) The ~~[executive]~~ director may deny an application for a license or the commission may summarily suspend, suspend, or revoke a license if the applicant or sales agent fails on request to provide a complete legible set of fingerprints of a person required to be named in a license application.

SECTION 13. Section 466.353, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The failure of a sales agent to notify the director that an individual has ceased to be an officer, director, or owner of a sales agent if that notification is required by Section 466.153 does not relieve the former officer, director, or owner from liability under Subsection (b), and the individual is liable under Subsection (b) as if the

individual were an officer, director, or owner of the sales agent for any liability that accrues before the sales agent notifies the director that the individual is no longer an officer, director, or owner of the sales agent.

SECTION 14. Section 466.355, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In addition to the amounts allocated by Subsection (b), \$5 million is allocated from the state lottery account in each fiscal biennium to the criminal justice division of the governor's office to provide grants to assist local governments in the prosecution of offenses involving gambling devices as defined by Section 47.01, Penal Code.

(e) In addition to the amounts allocated by Subsection (b), \$500,000 is allocated from the state lottery account in each fiscal biennium to the comptroller to provide grants to residents of this state to pay the costs of attending a public junior college, public technical institute, or public state college, as those terms are defined by Section 61.003, Education Code. The comptroller by rule shall provide for the administration of the grants as the comptroller determines appropriate to effectively support deserving students pursuing a post-secondary education. The rules must provide for:

(1) eligibility of a person for a grant;

(2) academic performance requirements for continued eligibility for a grant;

and

(3) the amount of a grant.

SECTION 15. Section 466.402, Government Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A person claiming a lottery prize shall disclose to the commission the person's name and social security number or employer identification number. If the person claiming the prize is a legal entity, the person shall disclose all legal and beneficial interests in the entity to the commission by sworn statement in accordance with commission rules. The name of any person who claims a prize or who is identified as having a legal or beneficial interest in a legal entity that claims a prize is public information. A person's name is confidential until a ticket is validated.

(e) The state is discharged of all further liability on the payment of a prize under Section 466.403, 466.404, 466.406, 466.407, or 466.410 or this section or under any additional procedures established by rule.

SECTION 16. Section 466.405(e), Government Code, is amended to read as follows:

(e) In this section:

(1) "Custodian" and["adult," "bank," "custodian,"] "guardian[^s]" [~~"member of a minor's family," and "minor"~~] have the meanings assigned by Section 141.002, Property Code.

(2) "Member of a minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of whole or half blood or by adoption.

(3) "Minor" means an individual who is younger than 18 years of age.

SECTION 17. Chapter 466, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PARTICIPATION IN MULTIJURISDICTION
LOTTERY GAME

Sec. 466.451. MULTIJURISDICTION AGREEMENT AUTHORIZED. The commission may enter into a written agreement with the appropriate officials of one or more other states or other jurisdictions, including foreign countries, to participate in the operation, marketing, and promotion of a multijurisdiction lottery game or games. The commission may adopt rules relating to a multijurisdiction lottery game or games.

Sec. 466.452. REVENUE FROM MULTIJURISDICTION LOTTERY. (a) Except as provided by this section, revenue received from the sale of tickets in this state for a multijurisdiction lottery game is subject to Subchapter H.

(b) The commission may deposit a portion of the revenue received from the sale of multijurisdiction lottery game tickets in this state into a fund shared with other parties to an agreement under this subchapter for the payment of prizes awarded in multijurisdiction lottery games in which the commission participates. The commission may retain that revenue in the fund for as long as necessary to pay prizes claimed during the period designated for claiming a prize in the multijurisdiction lottery game.

Sec. 466.453. PAYMENT OF COSTS AUTHORIZED. The commission may share in the payment of costs associated with participating in multijurisdiction lottery games.

SECTION 18. Section 467.002, Government Code, is amended to read as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 466, and Chapter 2001, Occupations Code, expire ~~[Act expires]~~ September 1, ~~2015~~ 2003.

SECTION 19. Section 467.021(b), Government Code, is amended to read as follows:

(b) Appointments ~~[In making appointments]~~ to the commission shall be made without~~[, the governor shall strive to achieve representation by all the population groups of the state with]~~ regard to the ~~[economic status, sex,]~~ race, color, disability, sex, religion, age, or national origin of the appointees ~~[and ethnicity]~~.

SECTION 20. Section 467.024, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A person may not be a commission 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 bingo or lottery; or

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

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

SECTION 21. Subchapter B, Chapter 467, Government Code, is amended by adding Section 467.0255 to read as follows:

Sec. 467.0255. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

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

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

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

(5) the current budget for the commission;

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

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

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

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

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

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

SECTION 22. Sections 467.026(a) and (c), Government Code, are amended to read as follows:

(a) It is a ground for removal from the [The governor may remove a] commission that a member [if the member]:

(1) does not have at the time of taking office [appointment] the qualifications required by Sections 467.023 and 467.024 [for appointment to the commission];

(2) does not maintain during service on the commission the qualifications required by Sections 467.023 and 467.024 [for appointment to the commission];

(3) is ineligible for membership under [violates a prohibition established by] Section 467.023, 467.024, or 467.025;

(4) cannot discharge the member's duties for a substantial part of the member's term [for which the member is appointed] because of illness or disability; or

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

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

SECTION 23. Section 467.032, Government Code, is amended to read as follows:

Sec. 467.032. EXECUTIVE DIRECTOR AND BINGO OPERATIONS DIRECTOR. (a) The commission shall employ:

(1) an executive director to administer this chapter and Chapter 466; and
(2) a director of bingo operations to administer this chapter with regard to the bingo division and Chapter 2001, Occupations Code.

(b) The executive director and the bingo operations director serve [~~holds office~~] at the will of the commission and are [~~is~~] specifically exempted from Chapter 654.

(c) The bingo operations director has broad authority and shall exercise strict control and close supervision over all bingo games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the administration and regulation of bingo [~~executive director or an acting executive director shall be appointed by the commission no later than November 1, 1993~~].

(d) The bingo operations director may contract with or employ a person to perform a function, activity, or service in connection with the administration and regulation of bingo.

SECTION 24. Section 467.033, Government Code, is amended to read as follows:

Sec. 467.033. DIVISION DIRECTORS. The executive director shall employ a director to oversee each division other than the bingo division. A division director employed under this section serves at the will of the executive director and is specifically exempted from Chapter 654.

SECTION 25. Section 467.034, Government Code, is amended to read as follows:

Sec. 467.034. EMPLOYEES. (a) The executive director shall employ other personnel, other than the bingo division personnel, necessary to administer the laws under the commission's jurisdiction. Commission personnel employed under this subsection [~~employees~~] serve at the will of the executive director.

(b) The bingo operations director shall employ personnel to administer Chapter 2001, Occupations Code. The personnel serve at the will of the bingo operations director.

(c) The executive director shall employ the personnel that perform services for both the lottery and bingo divisions. The personnel serve at the will of the executive director.

SECTION 26. Section 467.035(a), Government Code, is amended to read as follows:

(a) The commission may not employ or continue to employ a person who:

- (1) owns a financial interest in:
- (A) [~~(A)~~] a bingo commercial lessor, bingo distributor, or bingo manufacturer; or
 - (B) [~~(B)~~] a lottery sales agency or a lottery operator; or
- (2) would be denied a license as a sales agent under Section 466.155.

SECTION 27. Subchapter B, Chapter 467, Government Code, is amended by adding Sections 467.037-467.040 to read as follows:

Sec. 467.037. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Sec. 467.038. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(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 commission 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 commission'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. 467.039. REQUIREMENTS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the commission and to commission 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. 467.040. STATE EMPLOYEE INCENTIVE PROGRAM INFORMATION. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program.

SECTION 28. Subchapter C, Chapter 467, Government Code, is amended by adding Section 467.1015 to read as follows:

Sec. 467.1015. COMMISSION EMPLOYEES. The commission may employ other personnel as necessary, including executive assistants, to perform the duties of the commission. A commission employee is exempt from Chapter 654. The commission shall set the salaries of personnel employed under this section.

SECTION 29. The heading to Section 467.103, Government Code, is amended to read as follows:

Sec. 467.103. DUTIES OF EXECUTIVE DIRECTOR AND BINGO OPERATIONS DIRECTOR.

SECTION 30. Section 467.103(a), Government Code, is amended to read as follows:

(a) The executive director and bingo operations director shall perform all duties required by the commission to administer this chapter and the laws under the commission's jurisdiction. The executive director and bingo operations director may not hold other employment.

SECTION 31. Section 467.104(b), Government Code, is amended to read as follows:

(b) The executive director shall keep the records of the commission, except that the bingo operations director shall keep the records of the bingo division.

SECTION 32. Subchapter C, Chapter 467, Government Code, is amended by adding Section 467.109 to read as follows:

Sec. 467.109. INTELLECTUAL PROPERTY. (a) The commission may:

(1) acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States or any nation:

(A) a patent for the invention or discovery of:

(i) any new use of a known process, art, method, machine, manufacture, composition of matter, or material; or

(ii) any new and useful improvement on a known process, art, method, machine, manufacture, composition of matter, or material;

(B) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the commission uses to identify and distinguish the commission's goods and services from other goods and services; and

(D) other evidence of protection or exclusivity issued for intellectual property;

(2) contract with a person for the reproduction, distribution, public performance, display, advertising, marketing, lease, licensing, sale, use, or other distribution of the commission's intellectual property;

(3) obtain under a contract described by Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the exercise of rights with respect to the commission's intellectual property; and

(4) waive, increase, or reduce the amount of compensation secured by contract under Subdivision (3) if the commission determines that the waiver or reduction will:

(A) further a goal or mission of the commission; and

(B) result in a net benefit to this state.

(b) Intellectual property of the commission is excepted from required disclosure under Chapter 552:

(1) beginning on the date the commission decides to seek a patent, copyright, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the intellectual property; and

(2) ending on the date the commission receives a decision about the commission's application for a patent, copyright, trademark, service mark, collective mark, certification mark, or other evidence of protection of exclusivity concerning the intellectual property.

(c) The commission may not be required to disclose a trade secret from the time of inception or creation of the trade secret rights until the trade secret is publicly disclosed by the commission with the intention of publicly disclosing the trade secret.

(d) Except as provided by Section 2054.115(c), money paid to the commission under this section shall be deposited to the credit of the general revenue fund.

SECTION 33. Subchapter C, Chapter 467, Government Code, is amended by adding Sections 467.110-467.113 to read as follows:

Sec. 467.110. TECHNOLOGY POLICY. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

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

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

(A) interact with the commission 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 commission's planning processes.

Sec. 467.111. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of commission rules; and

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

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

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

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

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

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

Sec. 467.112. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Sec. 467.113. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission or a division of the commission. The file must include:

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

(2) the date the complaint is received by the commission or a division of the commission;

(3) the subject matter of the complaint;

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

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

and

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

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

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) The commission shall publish procedures covering the entire complaint process from submission to disposition.

(e) The commission by rule shall require an investigation related to a complaint filed with the commission or a division of the commission to be completed within a reasonable time.

(f) The commission shall analyze the complaints filed with the board to identify any trends or issues related to certain violations.

SECTION 34. Sections 2001.002(5) and (6), Occupations Code, are amended to read as follows:

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card; ~~and~~

(v) a bingo ball; and

(vi) [↔] any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo equipment such as a light bulb~~[;]~~ or fuse~~[; or bingo ball]~~.

(6) "Bingo occasion" means ~~[all activities incident to the conduct of a series of bingo games by a licensed authorized organization, including]~~ the organization's licensed times ~~[and any preparatory or concluding activities incident to the conduct of bingo]~~.

SECTION 35. Section 2001.055, Occupations Code, is amended to read as follows:

Sec. 2001.055. REGULATION OF GAMES. (a) The commission by rule may establish the number and type of bingo games that may be played during a bingo occasion.

(b) The commission, to the extent consistent with this chapter, shall reasonably support the efforts of licensed authorized organizations to develop and offer new types of bingo games and to apply new technology to bingo games.

SECTION 36. Subchapter B, Chapter 2001, Occupations Code, is amended by adding Section 2001.0555 to read as follows:

Sec. 2001.0555. COMPLIANCE MONITORING. The commission shall adopt rules to govern the commission's monitoring of a license holder to determine if the license holder is in compliance with this chapter or rules adopted under this chapter. The rules must at a minimum address audits and inspections and other compliance and enforcement activities.

SECTION 37. Section 2001.057, Occupations Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) The committee shall annually develop a work plan detailing the committee's objectives and the issues to be addressed by the committee during the year. The plan must:

(1) assess trends in the charitable bingo industry;

(2) review bingo rules to determine whether changes, additions, or deletions are needed; and

(3) address other issues as determined by the commission.

(i) The committee shall perform a review at the end of each year to:

(1) assess the committee's accomplishments during the year;

(2) identify opportunities for improving the commission's regulation of bingo; and

(3) develop specific recommendations for commission action.

SECTION 38. Subchapter B, Chapter 2001, Occupations Code, is amended by adding Section 2001.059 to read as follows:

Sec. 2001.059. ADVISORY OPINIONS. (a) A person may request from the director of bingo operations an advisory opinion regarding compliance with this chapter and the rules of the commission relating to the enforcement or administration of this chapter. An advisory opinion is not subject to the rulemaking provisions of Chapter 2001, Government Code.

(b) The director of bingo operations shall respond to a request under Subsection (a) not later than the 30th day after the date a request is received, unless the director requests an opinion on the matter from the attorney general or determines the request does not contain sufficient facts to provide an answer on which the requestor may rely. In that event, the director shall request additional information from the requestor not later than the 10th day after the date the request is received. If the director requests additional information, the director shall respond to the request not later than the 30th day after the date additional information is received pursuant to the request for additional information.

(c) A person who requests an advisory opinion under Subsection (a) may act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

SECTION 39. Section 2001.101, Occupations Code, is amended to read as follows:

Sec. 2001.101. AUTHORIZED ORGANIZATION. (a) The commission may license a person who is an authorized organization eligible for a license to conduct bingo if the person has been in existence for the time required by commission rule to ensure the continuity and bona fide nature of the organization and is:

(1) a religious society [~~that has existed in this state for at least eight years~~];

(2) a nonprofit organization:

(A) whose predominant activities are for the support of medical research or treatment programs; and

(B) that [~~for at least three years~~]:

(i) has [~~must have had~~] a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or

(ii) is [~~must have been~~] affiliated with a state or national organization organized to perform the same purposes as the nonprofit organization;

(3) a fraternal organization;

(4) a veterans organization; or

(5) a volunteer fire department.

(b) A fraternal organization:

(1) [~~must have been organized in this state for at least three years~~;

[~~2~~] must have [~~had during the three year period~~] a bona fide membership actively and continuously engaged as an organization in furthering its authorized purposes; and

(2) [~~3~~] may not have authorized a person on behalf of its membership, governing body, or officers to support or oppose a particular candidate for public office by:

(A) making political speeches;

(B) passing out cards or other political literature;

(C) writing letters;

(D) signing or circulating petitions;

(E) making campaign contributions; or

(F) soliciting votes.

SECTION 40. Section 2001.102(b), Occupations Code, is amended to read as follows:

(b) The application must include:

- (1) the name and address of the applicant;
- (2) the names and addresses of the applicant's officers and directors;
- (3) the address of the premises where and the time when the applicant intends to conduct bingo under the license sought;
- (4) the name and address of the licensed commercial lessor of the premises, if the applicant intends to lease premises to conduct bingo from a person other than an authorized organization;
- (5) the capacity or potential capacity for public assembly in any premises owned or occupied by the applicant;
- (6) the amount of rent to be paid or other consideration to be given, directly or indirectly, for use of the premises of another licensed authorized organization or for use of the premises of a licensed commercial lessor;
- (7) all other items of expense intended to be incurred or paid in connection with conducting, promoting, and administering bingo and the names and addresses of the persons to whom, and the purposes for which, the expenses are to be paid;
- (8) the specific purposes to and the manner in which the net proceeds of bingo are to be devoted;
- (9) a statement that the net proceeds of bingo will go to one or more of the authorized charitable purposes under this chapter;
- (10) a designation of one or more active members of the applicant organization under whom bingo will be conducted accompanied by a statement signed by each designated member stating that the member will be responsible for the conduct of bingo under the terms of the license and this chapter;
- (11) ~~a statement that a copy of the application has been sent to the appropriate governing body;~~
- ~~(12)~~ the name and address of each person who will work at the proposed bingo occasion, the nature of the work to be performed, and a statement as to whether the person has been convicted of a felony, a gambling offense, criminal fraud, or a crime of moral turpitude; and
- (12) ~~(13)~~ sufficient facts relating to the applicant's incorporation and organization to enable the commission to determine whether the applicant is an authorized organization.

SECTION 41. Section 2001.103(d), Occupations Code, is amended to read as follows:

(d) An organization operating under a temporary license is subject to:

- (1) the taxes and fees authorized or imposed by this chapter; ~~and~~
- (2) the standard licensing oversight of the commission, including audits and inspections; and
- (3) the other provisions of this chapter to the extent they can be made applicable.

SECTION 42. Section 2001.104, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 43. Section 2001.105, Occupations Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The commission may not issue a license to an authorized organization to conduct bingo if an officer or director of the organization has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.

(c) The commission may not issue a license to an authorized organization to conduct bingo if the location of the premises at which the authorized organization would conduct bingo is:

(1) in a facility that shares a common roof or common foundation with a location at which a gambling device, as defined by Section 47.01, Penal Code, is operated or located; or

(2) within 150 feet of the common roof or common foundation described by Subdivision (1).

(d) Except as provided by Section 2001.104(d), a license issued under this subchapter is effective for one year.

SECTION 44. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.108 to read as follows:

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) A licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo may file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo, if the other organization has ceased, or will cease, conducting bingo at that time and premises. The application must state whether the other organization has ceased or will cease conducting bingo at that time and premises because:

(1) the organization has abandoned or will abandon its licensed time or premises; or

(2) the organization's lease has been or will be terminated.

(b) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission.

(c) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 10th day after the date the application is filed with the commission or the date on which the termination takes effect, whichever is later.

(d) If the commission fails to act within the time provided by Subsection (b) or (c), the licensed authorized organization may act as if the change in premises or bingo occasions has been approved by the commission and may conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Notwithstanding Subsection (d), the commission may issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. The commission is not required to act on a joint application under Subsection (a) within the time provided by this section for the additional temporary licenses if the number of additional temporary licenses is sufficient to allow the other organization to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

SECTION 45. Chapter 2001, Occupations Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. AUTHORIZED ORGANIZATION
EMPLOYEE LICENSE

Sec. 2001.121. LICENSE REQUIRED. An individual may not in any capacity participate or assist in the conduct, promotion, or administration of bingo unless the individual holds an authorized organization employee license issued by the commission.

Sec. 2001.122. APPLICATION; ISSUANCE OF LICENSE. The commission shall issue an authorized organization employee license to an eligible individual who applies using an application form prescribed by the commission and pays the applicable license fee.

Sec. 2001.123. FEES. The commission by rule shall prescribe a fee schedule for licenses issued under this subchapter. In setting fees under the fee schedule, the commission shall include the cost of a criminal background check.

Sec. 2001.124. RENEWAL OF LICENSE. (a) A license issued under this subchapter is valid for a period set by the commission not to exceed 36 months following the date of issuance.

(b) A license is renewable on application and payment of the fee in accordance with commission rules.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 2001.125. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. After a hearing, the director of bingo operations shall deny an application for a license under this subchapter or the commission shall revoke or suspend the license if the director or commission, as applicable, determines that the applicant or license holder:

- (1) has violated this chapter or a rule adopted by the commission;
- (2) has been convicted of a felony or of a crime involving moral turpitude;

(3) failed to answer or has falsely or incorrectly answered a question in an application for a license under this chapter;

(4) is indebted to this state for any fees or for the payment of a penalty imposed by this chapter or commission rule;

(5) is not of good moral character;

(6) resides in the same household with a person whose license has been revoked for cause within the 12 months immediately preceding the date of submission of the applicant's or license holder's most recent license application;

(7) has failed or refused to furnish a true copy of the application to the commission; or

(8) is engaged or has engaged in activities or practices that are detrimental to the best interests of the public.

Sec. 2001.126. LICENSE NUMBER AND IDENTIFICATION CARD. (a) The commission shall issue to each individual who holds an authorized organization employee license a license number and identification card that includes the individual's photograph.

(b) Each license holder must wear the identification card provided by the commission at all times while participating or assisting in the conduct, promotion, or administration of bingo.

(c) A license issued under this subchapter is valid at any licensed bingo occasion conducted in this state.

Sec. 2001.127. TEMPORARY LICENSE. (a) Pending an investigation of an applicant's eligibility for a license, including renewal of a license, the commission may issue a temporary authorized organization employee license to an applicant whose application appears to comply with this chapter and commission rules and who has paid the necessary fee.

(b) A temporary license issued under this section is valid for a period not to exceed 120 days from the date of issuance.

Sec. 2001.128. LICENSED AUTHORIZED ORGANIZATION: RECORDS AND PENALTY. (a) A licensed authorized organization shall maintain a record, for each bingo occasion of each individual who participated or assisted in the conduct, promotion, or administration of bingo, that includes:

(1) the individual's license number; and

(2) the fees or other compensation paid to the individual for services related to the occasion.

(b) A licensed authorized organization annually shall submit to the commission, on a form prescribed by the commission, a compensation report that details for the year reported:

(1) each job category related to the conduct of bingo for which the organization pays compensation;

(2) each compensation rate paid in each job category; and

(3) the number of employees paid each compensation rate.

(c) The commission shall revoke the license to conduct bingo of a licensed authorized organization that employs or otherwise uses an unlicensed individual in an activity for which a license is required by this subchapter.

SECTION 46. Section 2001.152, Occupations Code, is amended to read as follows:

Sec. 2001.152. ELIGIBILITY. ~~[(a)]~~ The commission may issue a commercial lessor license ~~[only]~~ to:

~~[(1) a licensed authorized organization that owns or leases a premises where bingo is or will be conducted or an association of licensed authorized organizations that jointly own or lease premises where bingo is or will be conducted and that the organization or association leases or offers for lease to one or more other authorized organizations for the conduct of bingo;~~

~~[(2)] a person who leases premises on which bingo is conducted to not more than seven [a single] licensed authorized organizations [organization that subleases or will sublease the premises to one or more other licensed authorized organizations for the conduct of bingo; or~~

~~[(3) a person who leases premises for the total control and exclusive use of only one licensed authorized organization as that organization's primary business office].~~

~~[(b) Notwithstanding Subsection (a), a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date, and who is otherwise eligible for the license may renew the license.]~~

SECTION 47. Section 2001.154(a), Occupations Code, is amended to read as follows:

(a) The commission may not issue a commercial lessor license to or renew a commercial lessor license of:

(1) a person convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since termination of a sentence, parole, mandatory supervision, or community supervision served for the offense;

(2) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for conducting bingo;

(3) a person who extends credit to, loans money to, or pays or provides for the payment of license fees for an authorized organization;

(4) a distributor or manufacturer;

(5) a person in which a person covered by Subdivision (1), (2), (3), or (4) or a person married or related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed; or

(6) a person whose location for a bingo premises is:

(A) in a facility that shares a common roof or common foundation with a location at which a gambling device, as defined by Section 47.01, Penal Code, is operated or located; or

(B) within 150 feet of the common roof or common foundation described by Paragraph (A) [a foreign corporation or other foreign legal entity;

~~[(7) an individual who is not a resident of this state;~~

~~[(8) a corporation or other legal entity owned or controlled by:~~

~~[(A) a foreign corporation; or~~

~~[(B) an individual who is not a resident of this state; or
[(9) a corporation or other legal entity;
[(A) whose shares are publicly traded; or
[(B) owned or controlled by a corporation whose shares are publicly
traded].~~

SECTION 48. Section 2001.158, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) An applicant for a commercial lessor license shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$25.

SECTION 49. Section 2001.159(c), Occupations Code, is amended to read as follows:

(c) Except as provided by Section 2001.158(d), the ~~[The]~~ period may not exceed one year.

SECTION 50. Section 2001.161, Occupations Code, is amended to read as follows:

Sec. 2001.161. LICENSED AUTHORIZED ORGANIZATION AS COMMERCIAL LESSOR. (a) An authorized organization that holds a commercial lessor license to lease a premises on which bingo is conducted may also ~~[must]~~ hold a license to conduct bingo at the same premises.

(b) A licensed authorized organization may obtain only one commercial lessor license. The commercial lessor license may be issued only for the same premises where the organization is licensed to conduct bingo.

~~[(c) The commission may issue a commercial lessor license to a licensed authorized organization only for the same premises where the organization is licensed to conduct bingo.]~~

SECTION 51. Section 2001.214, Occupations Code, is amended to read as follows:

Sec. 2001.214. LICENSE TERM. (a) Except as provided by Subsection (b), a ~~[A]~~ manufacturer's or distributor's license is effective for one year unless revoked or suspended by the commission.

(b) A manufacturer or distributor may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee plus \$1,000.

SECTION 52. Section 2001.218(a), Occupations Code, is amended to read as follows:

(a) Each sale or lease of bingo supplies or equipment to a license holder under this chapter must be on terms of immediate payment or on terms requiring payment not later than the 30th day after the date of actual delivery.

SECTION 53. Subchapter G, Chapter 2001, Occupations Code, is amended by adding Section 2001.3015 to read as follows:

Sec. 2001.3015. LICENSING RULES. The commission by rule shall:

(1) establish comprehensive qualifications for a person to be licensed or the person's license to be renewed under this chapter;

(2) develop a standard license renewal process, from submission to completion, for each license issued under this chapter to ensure that a license holder continues to meet the eligibility requirements provided by this chapter and commission rule; and

(3) establish standards of conduct for a person licensed under this chapter.

SECTION 54. Section 2001.307, Occupations Code, is amended to read as follows:

Sec. 2001.307. MAXIMUM LICENSE TERM. Except as otherwise provided by this chapter, a [A] license issued under this chapter may not be effective for more than one year.

SECTION 55. Section 2001.351, Occupations Code, is amended to read as follows:

Sec. 2001.351. DENIAL OF LICENSE. (a) The commission may deny an application for a license or renewal of a license issued under this chapter for a cause that would permit or require the suspension or revocation of a license issued under this chapter.

(b) In making a determination whether to renew a license, the commission shall consider the compliance history of a license holder. The commission shall adopt rules to govern the specific areas of compliance history that may be considered in the renewal determination.

(c) After an opportunity for a hearing, the commission may deny an application for renewal of a license if the applicant's compliance history reveals conduct that is inconsistent with this chapter or the commission's rules adopted under this chapter in the specific areas considered by the commission in accordance with the rules adopted under Subsection (b).

SECTION 56. Subchapter H, Chapter 2001, Occupations Code, is amended by adding Section 2001.358 to read as follows:

Sec. 2001.358. SUMMARY SUSPENSION. (a) The commission, through the director of bingo operations, may summarily suspend, without notice or a hearing, a license issued under this chapter if the director finds the action is necessary to prevent financial loss to the state and the license holder has failed to file a report or return or to make a fee or tax payment required by this chapter.

(b) To summarily suspend a license under this section, the commission through the director of bingo operations must institute proceedings for a preliminary hearing before the commission or the commission's representative simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the license holder must show cause why the license should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to summarily suspend a license, the commission, through the director of bingo operations, must serve notice to the license holder informing the license holder of the right to a preliminary hearing and of the time and place of the preliminary hearing. The notice must:

(1) be personally served on the license holder or an officer, employee, or agent of the license holder or be sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears in the commission's records; and

(2) state the alleged violations that constitute grounds for summary suspension.

(f) If notice required under Subsection (e) is served in person, the license holder shall immediately surrender the license to the commission. If notice is served by mail, the license holder shall immediately return the license to the commission.

(g) A suspension under this section takes effect on the third day after the date the notice of suspension is given.

(h) The commission shall terminate a suspension made under this section when the license holder files all required reports and returns and makes all required tax and fee payments, including payments of interest and penalties that are due.

SECTION 57. Section 2001.406(a), Occupations Code, is amended to read as follows:

(a) The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion conducted on the lessor's premises [~~unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed \$600 for each day~~].

SECTION 58. Section 2001.411, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may not prohibit an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. This subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

SECTION 59. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4115 to read as follows:

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Two or more licensed authorized organizations conducting bingo at the same premises may jointly hire bingo employees. One organization may act as the employee's employer and the other organization may reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. A reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

SECTION 60. Section 2001.415, Occupations Code, is amended to read as follows:

Sec. 2001.415. ADVERTISEMENTS. (a) A person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo.

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

SECTION 61. Sections 2001.416(c) and (d), Occupations Code, are amended to read as follows:

(c) The commission has oversight, including the authority to conduct audits, inspections, and investigations, of a game of chance that is conducted, or a machine or device for conducting a game of chance that is located:

(1) on a bingo premises;

(2) at a location that shares a common roof or common foundation with a bingo premises; or

(3) within 150 feet of the common roof or common foundation described by Subdivision (2).

(d) The commission may [shall] adopt rules for the implementation of this section.

~~[(d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.]~~

SECTION 62. Section 2001.419, Occupations Code, is amended to read as follows:

Sec. 2001.419. BINGO OCCASIONS. (a) ~~[A bingo occasion begins when the premises are opened to the public.~~

~~[(b)]~~ A licensed authorized organization may not conduct more than three [a] bingo occasions ~~[occasion more often than three days]~~ during a calendar week and each occasion may not ~~[to]~~ exceed ~~[more than]~~ four hours ~~[during a 24-hour period]~~.

~~[(b)]~~ ~~[(c)]~~ A licensed authorized organization may conduct two bingo occasions during a 24-hour period under the organization's annual license. No more than two bingo occasions may be conducted at the same premises during one day except that a third bingo occasion may be conducted under a temporary license held by a licensed authorized organization that also conducts licensed occasions under the organization's annual license at that premises.

~~[(c)]~~ ~~[(d)]~~ ~~No more than two licensed authorized organizations may conduct bingo at the same premises during a 24-hour period. If two organizations conduct bingo at the same premises during a 24-hour period, the bingo occasions must be announced separately, and an intermission of at least 10 minutes must occur between the bingo occasions.~~

~~[(c)]~~ If two licensed authorized organizations are authorized to conduct bingo at the same premises on the same day, the end time of the bingo occasion of one organization may not overlap with the start time of the bingo occasion of the other organization~~], but their games must be separated by the intermission required under Subsection (d). In that event, the intermission is considered part of each organization's bingo occasion].~~

SECTION 63. Chapter 2001, Occupations Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. UNIT ACCOUNTING

Sec. 2001.431. DEFINITIONS. In this subchapter:

(1) "Unit" means two or more licensed authorized organizations that conduct bingo at the same location and that join together to share revenues, authorized expenses, and inventory related to bingo operations.

(2) "Unit accounting" means a method by which licensed authorized organizations that are members of a unit account for the sharing of revenues, authorized expenses, and inventory related to bingo operations.

(3) "Unit accounting agreement" means a written agreement by all the licensed authorized organizations that are members of a unit that contains, at a minimum:

(A) the taxpayer name and number of each licensed authorized organization that is a member of the unit;

(B) the method by which the net proceeds of the bingo operations of the unit will be apportioned among the members of the unit;

(C) the name of the unit manager or designated agent of the unit; and

(D) the methods by which the unit may be dissolved and by which one or more members of the unit may withdraw from participation in the unit, including the distribution of funds, records, and inventory and the allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(4) "Unit manager" means an individual licensed under this subchapter to be responsible for the revenues, authorized expenses, and inventory of a unit.

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Two or more licensed authorized organizations may form and operate a unit as provided by this subchapter by:

(1) executing a unit accounting agreement; and

(2) stating in the unit accounting agreement whether the unit will use:

(A) a unit manager; or

(B) a designated agent.

(b) More than one unit may be formed at a single location. A licensed authorized organization may not be a member of more than one unit.

(c) This subchapter does not require a licensed authorized organization to join a unit. Except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) The members of a unit may determine whether to allow another licensed authorized organization to join the unit. The terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Sec. 2001.433. APPLICABILITY OF CHAPTER. A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Sec. 2001.434. CONDUCT OF BINGO. (a) Each licensed authorized organization that is a member of a unit shall conduct its bingo games separately from the bingo games of the other members of the unit.

(b) A unit may purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) A licensed distributor may sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Sec. 2001.435. UNIT ACCOUNTING. (a) A unit:

(1) shall establish and maintain one checking account designated as the unit's bingo account;

(2) shall maintain one inventory of bingo supplies and equipment for use in the bingo operations of members of the unit; and

(3) may maintain an interest-bearing savings account designated as the unit's bingo savings account.

(b) Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). The deposit shall be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(c) All authorized expenses and distributions of the unit and its members shall be paid from the unit's bingo checking account.

Sec. 2001.436. DISBURSEMENT OF FUNDS BY DISSOLVED UNIT. (a) Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. For purposes of this subchapter, the requirements of Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization shall be applied to a unit.

(b) A unit that has dissolved for any reason and has unexpended bingo funds shall disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) For purposes of the application of Sections 2001.457(a) and (b) to a unit under this section:

(1) "adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by a unit and prizes paid in the preceding quarter; and

(2) "cost of goods purchased by a unit" means the cost of bingo paper and pull-tab bingo tickets purchased by the unit and payments to distributors for electronic card-minding devices.

Sec. 2001.437. UNIT MANAGER; LICENSE. (a) If a unit accounting agreement for a unit states a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1) filing with the commission a quarterly report for the unit on a form prescribed by the commission; and

(2) paying taxes and fees and maintaining the bingo inventory and financial records for the unit.

(b) A unit with a unit manager shall notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) A person may not provide services as a unit manager to licensed authorized organizations that form a unit unless the person holds a unit manager license under this subchapter. A person designated as an agent under Section 2001.438(b) is not a unit manager by that designation for purposes of this section.

(d) An applicant for a unit manager license must file with the commission a written application on a form prescribed by the commission that includes:

- (1) the name and address of the applicant;
- (2) information regarding whether the applicant, or any officer, director, or employee of the applicant, has been convicted of a felony, criminal fraud, gambling or gambling-related offense, or crime of moral turpitude; and
- (3) any other information required by commission rule.

(e) The commission by rule shall establish an annual license fee for a unit manager license in an amount reasonable to defray administrative costs plus any costs incurred to conduct a criminal background check.

(f) A person who holds a unit manager license shall post a bond or other security pursuant to Section 2001.514.

(g) A person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person:

(1) has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or crime of moral turpitude, if less than 10 years has elapsed since the termination of a sentence, parole, or community supervision served for the offense;

(2) is an owner, officer, or director of a licensed commercial lessor, is employed by a licensed commercial lessor, or is related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(3) holds or is listed on another license under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(h) A unit manager must complete the training required by Section 2001.107.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) This section applies to a unit if the unit accounting agreement for the unit:

(1) does not state that a unit manager will be responsible for compliance with the rules of the commission and this chapter; or

(2) states that the unit will use a designated agent.

(b) The unit shall:

(1) designate an individual as its agent, who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the commission; and

(2) notify the commission of the name of the individual designated under Subdivision (1).

(c) The agent designated under Subsection (b) may not:

(1) hold or be listed on another license issued under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(2) be an owner, officer, or director of a licensed commercial lessor, be employed by a licensed commercial lessor, or be related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(d) The unit shall immediately notify the commission of any change in the agent designated under Subsection (b).

(e) The designated agent must complete the training required by Section 2001.107.

(f) Each licensed authorized organization that is a member of the unit shall be jointly and severally liable for:

(1) compliance with the requirements of this subchapter and the rules of the commission relating to the filing of required reports;

(2) the maintenance of bingo inventory and financial records; and

(3) the payment of taxes, fees, and any penalties imposed for a violation of this subchapter or commission rules related to the operations of the unit.

(g) Each licensed authorized organization that is a member of the unit may be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules of the commission pertaining to the operation of the unit.

Sec. 2001.439. TRUST AGREEMENT. (a) Notwithstanding any other provision of this subchapter, a unit may be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. The agreement must:

(1) designate one of the organizations as the trustee;

(2) designate a person who will carry out the duties described by Section 2001.438(b);

(3) specify the method by which the unit will comply with the requirements of Section 2001.436(a); and

(4) state that the trustee is responsible for compliance with the rules of the commission and this chapter.

(b) The commission by rule may prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) The commission may prohibit a person who serves as a designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

SECTION 64. Section 2001.451, Occupations Code, is amended by amending Subsection (b) and adding Subsections (b-1), (g), and (h) to read as follows:

(b) A licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes under Sections 2001.420(a) and (b). Except as provided by Subsection (b-1), a [A] deposit must be made not later than the next business day after the day of the bingo occasion on which the receipts were obtained.

(b-1) A licensed authorized organization must deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

(g) The commission shall adopt rules to allow a licensed authorized organization to retain a maximum amount of net proceeds as operating capital in the organization's bingo account. The net proceeds retained may not exceed an amount established by commission rule.

(h) The commission by rule shall require a licensed authorized organization to maintain a positive cash flow in the organization's bingo account. The commission shall sanction an organization that fails to comply with the rule.

SECTION 65. Section 2001.454, Occupations Code, is amended to read as follows:

Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES.

(a) A licensed authorized organization shall devote to the [a] charitable purposes of the organization [purpose] its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the [The] net proceeds derived from bingo and any rental of premises are dedicated to the [a] charitable purposes of the organization [purpose] only if directed to a cause, deed, or activity that is consistent with the federal tax exemption provided by Section 501(c), Internal Revenue Code of 1986, under which the organization qualifies as a nonprofit organization as defined by Section 2001.002 or, for a licensed authorized organization other than a nonprofit organization, is consistent with the federal tax exemption provided by Section 501, Internal Revenue Code of 1986, under which the organization is exempt from federal income taxes and with the purposes and objectives for which the organization qualifies as an authorized organization[-

(1) benefits an indefinite number of needy or deserving persons in this state by:

[(A) enhancing their opportunity for religious or educational advancement;

[(B) relieving them from disease, suffering, or distress;

[(C) contributing to their physical well being;

[(D) assisting them in establishing themselves in life as worthy and useful citizens; or

[(E) increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government; or

[(2) initiates, performs, or fosters worthy public works in this state or enables or furthers the erection or maintenance of public structures in this state].

SECTION 66. Sections 2001.457(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) Before the end of each quarter, a licensed authorized organization shall disburse for charitable purposes all ~~[an amount not less than 35 percent]~~ of the organization's adjusted gross receipts from the preceding quarter, except for the amount that may be retained as provided by Section 2001.451(g) [less the amount of authorized expenses not to exceed six percent of the gross receipts].

(b) The commission shall sanction ~~[If]~~ a licensed authorized organization that fails to make ~~[meet]~~ the disbursement required by Subsection (a) or to make any disbursement for charitable purposes ~~[requirements of this section]~~ for a quarter. The ~~[, the]~~ commission in applying appropriate sanctions may consider whether, taking into account the amount required to be distributed during that quarter and the three preceding quarters and the charitable distributions for each of those quarters, the organization has distributed a total amount sufficient to have met the disbursement requirements ~~[35 percent requirement]~~ for that quarter and the three preceding quarters combined.

(d) In this section, "adjusted [+

~~(1) "Adjusted]~~ gross receipts" means gross receipts less the total ~~[amount of cost of goods purchased by an organization and]~~ prizes paid in the preceding quarter ~~];~~ and the licensed authorized organization's reasonable and necessary expenses as provided by Sections 2001.458 and 2001.459 and by commission rule.

~~(2) "Cost of goods purchased by an organization" means the cost of bingo paper or pull tab bingo tickets purchased by the organization.]~~

SECTION 67. Section 2001.458, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is ~~[those expenses that are]~~ reasonable or necessary to conduct bingo, including an expense ~~[and necessarily expended]~~ for:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security;
- (3) repair or maintenance of ~~[repairs to]~~ premises and equipment;
- (4) bingo supplies and equipment;
- (5) prizes;
- (6) stated rental or mortgage and insurance expenses;
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) fees ~~[in amounts authorized by the commission]~~ for licensed callers, licensed cashiers, licensed ushers, sales personnel, janitorial services, and utility supplies and services; ~~[and]~~
- (9) license fees;
- (10) attending a bingo seminar or convention required under Section 2001.107;
- (11) debit card transaction fees; and
- (12) a salary for a manager to act as the operator responsible for conducting, promoting, or administering bingo.

(c) In accordance with this section and Section 2001.459, the commission by rule shall define a licensed authorized organization's reasonable and necessary expenses under this chapter.

SECTION 68. Section 2001.459(a), Occupations Code, is amended to read as follows:

(a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security during a bingo occasion;
- (3) the purchase or repair of bingo supplies and equipment;
- (4) prizes, other than authorized cash prizes;
- (5) stated rental expenses;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for licensed callers, licensed cashiers, and licensed ushers;
- (8) janitorial services;
- (9) license fees; and
- (10) payment for services provided by a system service provider.

SECTION 69. Section 2001.504(a), Occupations Code, is amended to read as follows:

(a) A tax or fee authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission quarterly on or before the 25th [~~15th~~] day of the month succeeding each calendar quarter.

SECTION 70. Section 2001.551, Occupations Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A person conducting, promoting, or administering bingo commits an offense if the person conducts, promotes, or administers bingo other than:

- (1) under a license issued under this chapter;
- (2) within the confines of a home for purposes of amusement or recreation

when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate;

(B) participation in the game does not exceed 15 players; and

(C) the prizes awarded or to be awarded are nominal;

(3) on behalf of an organization of individuals 60 years of age or over, a senior citizens' association, a senior citizens' community center program operated or funded by a governmental entity, the patients in a hospital or nursing home, residents of a retirement home, or the patients in a Veteran's Administration medical center or a military hospital, solely for the purpose of amusement and recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal; [~~or~~]

(4) on behalf of a business conducting the game for promotional or advertising purposes if:

(A) the game is conducted by or through a newspaper or a radio or television station;

(B) participation in the game is open to the general public and is not limited to customers of the business;

(C) playing materials are furnished without charge to a person on request; and

(D) no player is required to furnish anything of value for the opportunity to participate; or

(5) for business entity employee picnics, organizational quarterly or annual meetings, family reunions, or other defined group occasional gatherings if:

(A) participation is not open to the public;

(B) prizes are of nominal value;

(C) there is no cost to participate;

(D) the purpose of the game is for amusement, recreation, employee morale, or safety awareness;

(E) the game is not used to raise money for any purpose other than to award nominal prizes; and

(F) a person is not paid solely to administer the game.

(g) The commission by rule may set the nominal value of the prizes that may be awarded in a bingo game described by Subsection (b)(2), (3), or (5).

SECTION 71. Sections 2001.554(a) and (b), Occupations Code, are amended to read as follows:

(a) A person commits an offense and the person's license is subject to revocation under this chapter if the person:

(1) makes a false statement or material omission in an application for a license under this chapter;

(2) fails to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment;

(3) falsifies or makes a false entry in a book or record if the entry relates to bingo, the disposition of bingo proceeds, the application of rent received by a licensed authorized organization, or the gross receipts from the manufacture, sale, or distribution of bingo supplies or equipment;

(4) diverts or pays a portion of the net proceeds of bingo to a person except in furtherance of one or more of the lawful purposes provided by this chapter; ~~or~~

(5) knowingly participates or assists in the conduct, promotion, or administration of bingo without holding a license required under this chapter; or

(6) violates this chapter or a term of a license issued under this chapter.

(b) An offense under Subsection (a)(1), ~~(a)~~(2), (3), or (6) ~~[(5)]~~ is a Class A ~~[C]~~ misdemeanor ~~[, unless it is shown on the trial of the offense that the person has been convicted previously under this section, in which event the offense is a Class B misdemeanor]~~. An offense under Subsection (a)(4) or (5) ~~[(a)(1) or (4)]~~ is a felony of the third degree ~~[Class A misdemeanor]~~. This subsection does not apply to an offense committed under Section 2001.551(b) or Section 2001.552.

SECTION 72. Subchapter L, Chapter 2001, Occupations Code, is amended by adding Section 2001.562 to read as follows:

Sec. 2001.562. VENUE. The following offenses may be prosecuted in Travis County in addition to any county in which the offense may be prosecuted under Chapter 13, Code of Criminal Procedure, or other law:

(1) an offense under this chapter;

(2) an offense under the Penal Code, if the accused:

(A) is an individual licensed under Subchapter C-1; and

(B) is alleged to have committed the offense while participating or assisting in the conduct, promotion, or administration of bingo; and

(3) an offense under Title 7 or 11, Penal Code, that involves property consisting of bingo equipment.

SECTION 73. Subchapter M, Chapter 2001, Occupations Code, is amended by adding Section 2001.6015 to read as follows:

Sec. 2001.6015. ADMINISTRATIVE PENALTY SCHEDULE; TIMELINE.

(a) The commission by rule shall adopt an administrative penalty schedule to define and summarize violations of this chapter or commission rules adopted under this chapter to ensure the amounts of penalties imposed are appropriate to the violation.

(b) The administrative penalty schedule must:

(1) allow deviations from the schedule for mitigating circumstances clearly established by the commission;

(2) include a list of the most common violations and the penalty amounts assessed for those violations; and

(3) provide the penalty amount in accordance with the seriousness or frequency of each type of violation.

(c) The commission by rule shall establish a timeline for the resolution of a violation of this chapter or a commission rule adopted under this chapter. The rules must include:

(1) a designated period for a person licensed under this chapter to provide proof of corrective measures taken as required by the commission for a violation of this chapter or a commission rule; and

(2) an approach and a designated period for the commission to subsequently monitor a person determined to have committed a significant violation of this chapter or a commission rule.

SECTION 74. Chapter 2001, Occupations Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. SUBPOENAS AND RELATED PROCEDURES

Sec. 2001.701. SUBPOENA. (a) In an investigation of any matter under this chapter, the commission may issue a subpoena to compel the attendance and testimony of a relevant witness or the production of relevant evidence located in this state for inspection or copying by the commission.

(b) A subpoena may be served personally or by certified mail.

(c) A subpoena may require a person to appear as a witness or to produce evidence at the commission's offices in Austin, Texas, or at another place designated by the commission.

(d) The commission may issue a subpoena that requires an immediate production of evidence only if:

(1) the subpoena states that the evidence is necessary and must be produced immediately due to exigent and extraordinary circumstances; and

(2) the subpoena is signed and issued by a member of the commission and an agent of the commission.

(e) The commission shall adopt rules to avoid imposing an undue burden or expense on a person for whom a subpoena is issued.

(f) The commission by rule may delegate the authority granted under Subsection (a) to an agent of the commission.

(g) The fee charged by a sheriff or constable for serving a commission subpoena may not exceed the fee for serving similar subpoenas.

(h) In the issuance of a subpoena under this section for the records of a religious society, the commission may subpoena only the portion of the records related to bingo.

Sec. 2001.702. FAILURE TO COMPLY WITH SUBPOENA. (a) If a person fails to comply with a subpoena issued by the commission, the commission, acting through the attorney general, may file suit against the person to enforce the subpoena in a district court in Travis County.

(b) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena and pay reasonable attorney's fees. The court may punish a person who fails to obey the court order for contempt of court.

Sec. 2001.703. REIMBURSEMENT FOR SUBPOENA COMPLIANCE. A person required by a subpoena to attend a proceeding before the commission or its agent is entitled to:

(1) reimbursement for mileage in the same amount for each mile as the mileage travel allowance for a state employee for the person's travel to or from the place where the person's attendance is required, if the place is more than 25 miles from the person's place of residence; and

(2) a fee for each day or part of a day the person is required to be present as a witness that is equal to the greater of:

(A) \$10; or

(B) the general per diem travel allowance for a state employee traveling within this state.

Sec. 2001.704. OUT-OF-STATE EVIDENCE. (a) A person in possession or control of evidence located outside this state on request of the commission may make the evidence available for examination at the place where the evidence is located. The commission may designate a representative, including an official of the state in which the evidence is located, to examine the evidence for the commission.

(b) The commission on request of an official of another state or of the United States may examine evidence located in this state for that official in circumstances similar to those described by Subsection (a).

Sec. 2001.705. ACCESS TO EVIDENCE. (a) Evidence acquired under a commission subpoena is not a public record for the period the commission or its agent determines is reasonably necessary to:

(1) complete an investigation;

(2) protect the person being investigated from unwarranted injury; or

(3) serve the public interest.

(b) The evidence is not subject to a subpoena, other than a grand jury subpoena, until:

(1) the evidence is released by the commission for public inspection; or

(2) after notice and a hearing, a district court determines that complying with the subpoena would not jeopardize the public interest or any investigation by the commission.

(c) Except for good cause, a district court order under Subsection (b)(2) does not apply to:

(1) any communication received by the commission from a law enforcement agency or another regulatory agency; or

(2) any internal commission communication made in connection with a matter that the commission has the authority to consider.

Sec. 2001.706. PRIVILEGED AND CONFIDENTIAL INFORMATION. (a) Any information or evidence produced under a commission subpoena that is otherwise privileged or confidential by law remains privileged or confidential until admitted into evidence in an administrative hearing or a court.

(b) The commission may issue a protective order relating to the confidentiality or privilege of information or evidence described by Subsection (a) to restrict the use or distribution of the information or evidence:

(1) by any person; or

(2) in a proceeding other than a proceeding before the commission.

Sec. 2001.707. COOPERATION WITH LAW ENFORCEMENT. On request, the commission may furnish evidence obtained under a commission subpoena to:

(1) a law enforcement agency of this state, another state, or the United States; or

(2) a prosecuting attorney of a municipality, county, or judicial district of this state, another state, or the United States.

Sec. 2001.708. SUBPOENAS ISSUED TO FINANCIAL INSTITUTIONS. A subpoena issued to a financial institution as part of a criminal investigation is not subject to Section 30.007, Civil Practice and Remedies Code.

Sec. 2001.709. EFFECT ON CONTESTED CASE. Sections 2001.701, 2001.704, 2001.705, 2001.707, and 2001.708 do not affect the conduct of a contested case under Chapter 2001, Government Code.

SECTION 75. Section 466.003, Government Code, and Sections 2001.057(b), 2001.305, 2001.355, 2001.356, 2001.409(b), and 2001.416(d), Occupations Code, are repealed.

SECTION 76. (a) Not later than September 1, 2004, the Texas Lottery Commission shall:

(1) adopt the rules and procedures required by Section 466.1005, Government Code, and Subchapters C-1 and I-1, Chapter 2001, Occupations Code, as added by this Act; and

(2) adopt the rules required by:

(A) Section 466.158(d), Government Code, as added by this Act;

(B) Section 2001.3015, Occupations Code, as added by this Act; and

(C) Sections 2001.101, 2001.451, and 2001.458, Occupations Code, as amended by this Act.

(b) Not later than September 1, 2004, the Texas Lottery Commission shall:

(1) adopt the comprehensive business plan required by Section 466.026, Government Code, as added by this Act;

(2) adopt the rules required by Section 2001.0555, Occupations Code, as added by this Act; and

(3) adopt the administrative penalty schedule and timeline required by Section 2001.6015, Occupations Code, as added by this Act.

SECTION 77. (a) The changes in law made by this Act in the prohibitions or qualifications applying to a member of the Texas Lottery Commission do not affect the entitlement of a member serving on the Texas Lottery Commission immediately before September 1, 2003, to continue to serve and function as a member of the Texas Lottery Commission for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(b) The change in law made by this Act to Chapter 467, Government Code, relating to the investigation of a complaint applies only to a complaint filed with the Texas Lottery Commission on or after September 1, 2003. A complaint filed with the commission or a division of the commission before September 1, 2003, is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act requiring the Texas Lottery Commission to approve a procurement applies only to a procurement or contract made on or after the effective date of this Act. A procurement or contract made before the effective date of this Act is governed by the law in effect when the procurement or contract was made, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act governing eligibility of a person for a license apply only to the issuance or renewal of a license by the Texas Lottery Commission under Chapter 466, Government Code, as amended by this Act, or Chapter 2001, Occupations Code, as amended by this Act, on or after the effective date of this Act. A license issued by the Texas Lottery Commission under either of those laws before the effective date of this Act is governed by the applicable licensing requirements in effect when the license was last issued or renewed until the license expires or is renewed as provided by Chapter 466, Government Code, as amended by this Act, or Chapter 2001, Occupations Code, as amended by this Act.

(e) The change in law made by this Act to Section 2001.457, Occupations Code, applies to the charitable disbursements made by a licensed authorized organization beginning with disbursements for the second quarter of 2004. A charitable disbursement made by a licensed authorized organization for a quarter before the second quarter of 2004 is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 78. (a) As soon as practicable after the effective date of this Act, the Texas Lottery Commission shall adopt the rules necessary to implement multijurisdiction lottery games in accordance with Subchapter J, Chapter 466, Government Code, as added by this Act.

(b) The Texas Lottery Commission may adopt an emergency rule under Subsection (a) of this section without prior notice or hearing, or with any abbreviated notice and hearing as the commission finds practicable, for the implementation of the change in law made by Subchapter J, for multijurisdiction lottery games, Chapter 466, Government Code. Section 2001.034, Government Code, does not apply to an emergency rule adopted under this section.

(c) Notwithstanding any law to the contrary, including any law enacted during the 78th Legislature, Regular Session, 2003, to promptly implement Subchapter J, Chapter 466, Government Code, as added by this Act, a contract for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the initial operation of multijurisdiction lottery games under these subchapters is not subject to:

- (1) Subtitle D, Title 10, Government Code;
- (2) Section 466.101, Government Code;
- (3) Chapter 2161, Government Code; or
- (4) any competitive bidding requirements or contract requirements provided by any other law or by rules of the Texas Lottery Commission.

SECTION 79. 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. 4

Amend **CSSB 270** (House committee printing) by striking lines 6 through 10 on page 20.

Floor Amendment No. 5

Amend **CSSB 270** (House committee report) in SECTION 9 of the bill by striking Subdivision (4), Subsection (a), Section 466.155, Government Code (page 7, line 11, through page 8, line 1), and substituting the following:

- (4) is a person whose location for the sales agency is:
 - (A) a location licensed for games of bingo under Chapter 2001, Occupations Code;
 - (B) on land that is owned by:
 - (i) this state; or
 - (ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; ~~or~~
 - (C) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code; or
 - (D) a location:
 - (i) in a facility that shares a common roof or common foundation with a location at which a gambling device, as defined by Section 47.01, Penal Code, is operated or located; or
 - (ii) within 150 feet of the facility that shares the common roof or common foundation described by Subparagraph (i); or

Floor Amendment No. 8

Amend **CSSB 270** (House committee report) as follows:

(1) In SECTION 34 of the bill, amending Section 2001.002, Occupations Code (page 25, lines 24 and 25), strike the introductory language and substitute "Section 2001.002, Occupations Code, is amended by amending Subdivisions (5) and (6) and adding Subdivision (9-a) to read as follows:".

(2) In SECTION 34 of the bill, immediately following amended Subdivision (6), Section 2001.002, Occupations Code (page 26, between lines 23 and 24), insert the following:

(9-a) "Electronic pull-tab bingo" means an electronic version of pull-tab bingo that is displayed on a card-minding device in which a person purchases from a point of sale station an electronic ticket face, instead of a ticket made of paper or paper products, that is issued from a finite deal of tickets in which some of the tickets have been designated in advance as winning tickets.

(3) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2001.054, Occupations Code, is amended to read as follows:

Sec. 2001.054. RULEMAKING AUTHORITY. (a) The commission may adopt rules to enforce and administer this chapter.

(b) The commission has broad authority to adopt rules to administer Sections 2001.409(b) and 2001.4095.

SECTION _____. Section 2001.408, Occupations Code, is amended to read as follows:

Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. Subject to the commission's rules, bingo may be played using a pull-tab bingo ticket or an electronic pull-tab bingo ticket.

SECTION _____. Section 2001.409, Occupations Code, is amended to read as follows:

Sec. 2001.409. CARD-MINDING DEVICES. (a) A person may not use a card-minding device:

(1) to generate [~~or determine~~] the random letters, numbers, or other symbols used in playing the bingo card played with the device's assistance;

(2) as a receptacle for the deposit of tokens or money in payment for playing the bingo card played with the device's assistance; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the bingo card played with the device's assistance.

(b) A person may use a card-minding device to:

(1) account for and track electronic credits purchased at a point of sale station or won by playing bingo or electronic pull-tab bingo; and

(2) exchange electronic credits described by Subdivision (1) through an electronic communication with a point of sale station for electronic bingo card faces or electronic pull-tab bingo tickets that may be played by the person during a bingo occasion. [~~Not more than 40 percent of the individuals attending a bingo occasion,~~

~~based on the average of two previously submitted quarterly reports, may use electronic or mechanical card minding devices. This subsection does not apply to pull tab bingo.]~~

SECTION _____. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.4095 to read as follows:

Sec. 2001.4095. CARD-MINDING DEVICE FOR DISPLAY OF ELECTRONIC PULL-TAB BINGO TICKET FACE. (a) A card-minding device used to display an electronic pull-tab bingo ticket face must be manufactured in accordance with the specifications provided by commission rule and is subject to testing by the commission.

(b) The commission may audit sales records relating to the sale of electronic pull-tab bingo ticket faces. The commission may investigate a violation or alleged violation of this section.

(c) The commission at any time may inspect a card-minding device used to display an electronic pull-tab bingo ticket face.

(d) The manufacturer of a card-minding device used to display an electronic pull-tab bingo ticket face shall maintain a central communications system or facility to provide the commission with the ability to review and audit electronic pull-tab bingo sales records.

SECTION _____. Section 2001.420(b), Occupations Code, is amended to read as follows:

(b) For bingo games other than pull-tab bingo and electronic pull-tab bingo, a person may not offer or award on a single bingo occasion prizes with an aggregate value of more than \$2,500.

SECTION _____. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.421 to read as follows:

Sec. 2001.421. PRIZE PAYOUT PERCENTAGE. The prize payout percentage for an electronic pull-tab bingo game may not be less than the prize payout percentage established for a paper pull-tab bingo game.

SECTION _____. Subchapter K, Chapter 2001, Occupations Code, is amended by adding Section 2001.5015 to read as follows:

Sec. 2001.5015. ELECTRONIC PULL-TAB BINGO TAX. (a) A tax is imposed on a manufacturer for each electronic pull-tab bingo ticket provided by the manufacturer to a distributor.

(b) The tax rate is one-quarter of one cent for each electronic pull-tab bingo ticket provided.

SECTION _____. Section 2001.510(a), Occupations Code, is amended to read as follows:

(a) If a license holder fails to make a required return, or if a person conducts bingo without a license, the commission shall make an estimate of the prizes awarded at a bingo occasion, ~~or of~~ the gross rentals received by a license holder for the rental of premises, or the number of electronic pull-tab bingo tickets sold. The commission shall make the estimate for the period in respect to which the license holder or other person failed to make a return.

SECTION _____. Section 2001.511(a), Occupations Code, is amended to read as follows:

(a) If the commission believes that the collection of a gross rental tax, tax on electronic pull-tab bingo tickets, or fee on prizes, an amount of the tax or fee on prizes required to be remitted to the state, or the amount of a determination will be jeopardized by delay, the commission shall make a determination of the tax or fee on prizes or amount of the tax or fee required to be collected, noting the finding of jeopardy on the determination. The determined amount is due and payable immediately.

SECTION _____. Section 2001.512, Occupations Code, is amended to read as follows:

Sec. 2001.512. APPLICATION OF TAX LAWS. (a) Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of the gross rentals tax imposed under Section 2001.501, the tax on electronic pull-tab bingo tickets imposed under Section 2001.5015, and the fee on prizes imposed under Section 2001.502 except as modified by this chapter.

(b) In applying the provisions of Subtitle B, Title 2, Tax Code, to the gross rentals tax imposed under Section 2001.501, the tax on electronic pull-tab bingo tickets imposed under Section 2001.5015, and the fee on prizes imposed under Section 2001.502 only, the fee on prizes is treated as if it were a tax and the powers and duties assigned to the comptroller under that subtitle are assigned to the commission.

SECTION _____. Section 2001.513(a), Occupations Code, is amended to read as follows:

(a) At any time within three years after a person is delinquent in the payment of an amount of gross rentals tax, tax on electronic pull-tab bingo tickets, or fee on prizes, the commission may collect the amount under this section.

SECTION _____. Section 2001.514(a), Occupations Code, is amended to read as follows:

(a) To secure payment of the tax on gross rentals, the tax on electronic pull-tab bingo tickets, or the fee on prizes imposed under this subchapter, each license holder shall furnish to the commission:

- (1) a cash bond;
- (2) a bond from a surety company chartered or authorized to do business in this state;
- (3) certificates of deposit;
- (4) certificates of savings;
- (5) United States treasury bonds;
- (6) subject to the approval of the commission, an assignment of negotiable stocks or bonds; or
- (7) other security as the commission considers sufficient.

SECTION _____. The Texas Lottery Commission shall adopt rules to administer electronic pull-tab bingo and regulate electronic pull-tab minding devices under Chapter 2001, Occupations Code, as amended by this Act, not later than October 1, 2003, and may adopt the initial rules in the manner provided by law for emergency rules.

Floor Amendment No. 9

Amend Floor Amendment No. 8 by Hilderbran to **CSSB 270** as follows:

(1) In Paragraph (2), at the end of the definition of "electronic pull-tab bingo" (page 1, at the end of the line 15) add the following: "The display on the card-minding device may not include images or sounds that resemble spinning wheels or otherwise resemble the display of a slot machine."

(2) In Paragraph (3), in added Subsection (b), Section 2001.054, Occupations Code (page 1, lines 22 and 23), strike "to administer" and substitute "and shall exercise strict control to administer and ensure compliance with".

Floor Amendment No. 10

Amend **CSSB 270** (House committee printing) by striking SECTION 35 of the bill, amending Section 2001.055, Occupations Code (page 26, line 24, through page 27, line 5).

Floor Amendment No. 11

Amend Floor Amendment No. 10 by Howard to **CSSB 270** by striking the text of the amendment and substituting the following:

(1) In SECTION 35 of the bill, in added Subsection (b), Section 2001.055, Occupations Code (page 27, line 5), strike "and to apply new technology to bingo games".

Floor Amendment No. 12

Amend **CSSB 270** (House committee printing) as follows:

(1) In SECTION 65 of the bill, amending Section 2001.454, Occupations Code (page 57, line 3), in the introductory language, strike "2001.454" and substitute "2001.454(a)".

(2) In SECTION 65 of the bill (page 57, line 5), strike "Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES."

(3) In SECTION 65 of the bill, strike amended Subsection (b), Section 2001.454, Occupations Code (page 57, line 9, through page 58, line 9).

(4) In SECTION 67 of the bill, amending Section 2001.458, Occupations Code (page 59, line 13), in the introductory language, strike "amending Subsection (a) and".

(5) In SECTION 67 of the bill, strike amended Subsection (a), Section 2001.458, Occupations Code (page 59, line 15, through page 60, line 11).

Floor Amendment No. 14

Amend **CSSB 270** (House committee printing) as follows:

(1) In SECTION 78 of the bill, in Subsection (a) of that SECTION (page 72, line 18), strike "(a)".

(2) In SECTION 78 of the bill, strike Subsections (b) and (c) of that SECTION (page 72, line 23, through page 73, line 15).

Floor Amendment No. 16

Amend **CSSB 270** by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 466.024(c)(2), Government Code, is amended to read as follows:

(2) "Video lottery machine" or "machine" means:

(A) any electronic video game machine that, on ~~upon~~ insertion of cash or credit or for any other consideration, is available to play or simulate the play of a video facsimile of ~~[game, including video]~~ poker, keno, ~~[and]~~ blackjack, or slots; or

(B) a video device that uses ~~[using]~~ a video display and microprocessors and is designed, constructed, adapted, or maintained to afford a person who pays consideration to play or use the machine an opportunity to obtain a thing of value based solely or in substantial part on chance, including ~~[in which the player may receive free games or credits that can be redeemed for]~~ cash, coins, merchandise, gift certificates, ~~[or]~~ tokens, and free games or credits that can be redeemed for ~~[or that directly dispenses]~~ cash, coins, merchandise, gift certificates, or tokens.

SECTION _____. The heading to Subchapter G, Chapter 466, Government Code, is amended to read as follows:

SUBCHAPTER G. OFFENSES, PENALTIES, AND ENFORCEMENT

SECTION _____. Subchapter G, Chapter 466, Government Code, is amended by adding Section 466.318 to read as follows:

Sec. 466.318. PROHIBITED VIDEO GAMES. (a) A person commits an offense if the person violates a rule adopted by the commission under Section 466.024(b).

(b) An offense under Subsection (a) is a Class B misdemeanor.

(c) Venue for prosecution of an offense under Subsection (a), in addition to venue under other law, is in Travis County.

(d) A person who violates a rule adopted by the commission under Section 466.024(b) is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. Each act of violation and each day a violation continues is a separate violation for purposes of this subsection.

(e) A penalty imposed under Subsection (d) may be recovered by:

(1) the county attorney of the county in which the violation occurred; or

(2) the attorney general in a suit filed in Travis County.

(f) A person who resides or owns real property located within two miles of a place where a violation or threatened violation of a rule adopted by the commission under Section 466.024(b) occurs may bring an action to enjoin a person from continuing the violation or threatened violation.

(g) Any person may bring a complaint to the commission, the attorney general, or a prosecuting attorney of an alleged or suspected violation of a rule adopted by the commission under Section 466.024(b).

Floor Amendment No. 17

Amend **CSSB 270** as follows:

(1) In SECTION 14 of the bill, in the introductory language (House committee report, page 10, line 11), strike "Subsections (d) and (e)" and substitute "Subsection (d)".

(2) In SECTION 14 of the bill, strike proposed Subsection (e), Section 466.355, Government Code (House committee report, page 10, line 18, through page 11, line 4)

Floor Amendment No. 18

Amend **CSSB 270** by adding the following appropriately numbered section to the bill and renumbering subsequent sections as appropriate:

SECTION _____. (a) Section 466.156, Government Code, is amended to read as follows:

Sec. 466.156. BOND; INSURANCE. (a) Each sales agent shall post a cash bond, surety bond, letter of credit, certificate of deposit, and/or other security approved by the executive director, including the contribution of cash to a pooled bond fund established by the executive director to protect the state from possible losses, including losses of a sales agent due to bankruptcy, theft, or loss of lottery tickets, supplies, or equipment. The amount of the security shall be determined by the executive director and must reflect the possible losses to the state from the operation of the sales agent. The total amount retained in a pooled bond fund established under this subsection may not exceed \$5 million. All losses to the state resulting from a sales agent's loss must be paid from the bond fund. The executive director may not charge a sales agent for a loss reimbursed from the bond fund.

(b) The executive director may ~~also~~ require a sales agent to maintain insurance ~~if necessary~~ to protect the interests of the state if the sales agent has not complied with the requirements of Subsection (a).

(b) This section takes effect September 1, 2003.

Floor Amendment No. 19

Amend **CSSB 270** by adding the following SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 466.101, Government Code, is amended by adding Subsections (f) through (i) to read as follows:

(f) In awarding a contract under this chapter or evaluating a bid or proposal relating to a contract, the executive director may consider a vendor's economic impact to the state or a political subdivision of the state.

(g) For contracts for which the executive director will consider a vendor's economic impact under Subsection (f), the commission by rule shall prescribe:

(1) the type of documentation a vendor must submit to demonstrate the vendor's potential economic impact; and

(2) the manner and methodology by which the executive director will evaluate a vendor's economic impact.

(h) The methodology developed under Subsection (g) to determine a vendor's economic impact to this state or a political subdivision of this state is subject to audit by the state auditor based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval for inclusion of the work in the audit plan under Section 321.013(c).

(i) In this section, "economic impact" means the number of:

(1) current employees in this state and the amount of wages being paid to those employees, including any subcontractors' employees and wages; and

(2) full-time equivalent positions to be created in this state and the additional amount of wages to be paid to employees in this state as a result of awarding a contract, including a proposed subcontractor's employees and wages.

Floor Amendment No. 20

Amend **CSSB 270** by adding the following subsection as follows:

SECTION _____. The TexasOnline Authority and the Texas Lottery Commission shall study the fiscal and administrative impact of offering lottery retail sales via Internet based PIN debit transaction. The study findings shall be reported to the Legislature no later than September 15, 2003.

Floor Amendment No. 23

Substitute Floor Amendment No. 19 to **CSSB 270** as follows:

Amend **CSSB 270** by adding the following SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 466.101, Government Code, is amended by adding Subsections (f) through (i) to read as follows:

(f) In awarding a contract under this chapter or evaluating a bid or proposal relating to a contract, the executive director may consider a vendor's economic impact to the state or a political subdivision of the state.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 270** on third reading by adding the following SECTION and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter C, Chapter 467, Government Code, is amended by adding Section 467.1015 to read as follows:

Sec. 467.1015. COMMISSION EMPLOYEES. The commission or an individual commissioner may employ other personnel as necessary, including executive assistants, to perform the duties of the commission or the duties of the individual commissioner, subject to Chapter 654.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 270** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Jackson, Chair; Armbrister, Ratliff, Lucio, and Bivins.

CONFERENCE COMMITTEE ON HOUSE BILL 3588

Senator Armbrister, on behalf of Senator Ogden, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3588** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3588** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Ogden, Chair; Barrientos, Deuell, Shapleigh, and Lindsay.

CONFERENCE COMMITTEE ON HOUSE BILL 3442

Senator Averitt called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3442** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3442** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Averitt, Chair; Bivins, Duncan, Barrientos, and Staples.

CONFERENCE COMMITTEE ON HOUSE BILL 2292

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2292** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2292** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate on the bill: Senators Nelson, Chair; Janek, Zaffirini, Barrientos, and Bivins.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 11

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 11** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
 ELLIS
 DEUELL
 ARMBRISTER
 NELSON

On the part of the Senate

KEEL
 E. JONES
 BERMAN
 GALLEGO

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate on Thursday, May 29, 2003.

**CONFERENCE COMMITTEE REPORT ON
 SENATE BILL 283**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas
 May 27, 2003

Honorable David Dewhurst
 President of the Senate

Honorable Tom Craddick
 Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 283** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

JACKSON
 ELLIS
 WHITMIRE
 NELSON
 BRIMER

On the part of the Senate

CHISUM
 HAMILTON
 GUILLEN
 EISSLER

On the part of the House

**A BILL TO BE ENTITLED
 AN ACT**

relating to the continuation and functions of the Texas Board of Architectural Examiners, including functions affecting architects, landscape architects, and interior designers; providing a criminal penalty.

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

**ARTICLE 1. PROVISIONS AFFECTING THE TEXAS BOARD OF
 ARCHITECTURAL EXAMINERS AND RELATED
 ADMINISTRATIVE MATTERS**

SECTION 1.01. The heading to Chapter 1051, Occupations Code, is amended to read as follows:

CHAPTER 1051. TEXAS BOARD OF ARCHITECTURAL EXAMINERS;
GENERAL PROVISIONS AFFECTING ARCHITECTS, LANDSCAPE
ARCHITECTS, AND INTERIOR DESIGNERS; PROVISIONS
AFFECTING ONLY ARCHITECTS

SECTION 1.02. Chapter 1051, Occupations Code, is amended by adding a heading for a new Part 1 of that chapter to read as follows:

PART 1. GENERAL PROVISIONS; BOARD OF
ARCHITECTURAL EXAMINERS

SECTION 1.03. Existing Subchapters A, C, D, and E, Chapter 1051, Occupations Code, are designated as part of the new Part 1 of Chapter 1051.

SECTION 1.04. Sections 1051.001, 1051.002, and 1051.004, Occupations Code, are amended to read as follows:

Sec. 1051.001. DEFINITIONS. In this subtitle [~~chapter~~]:

(1) "Architect" means a person registered under this chapter to engage in the practice of architecture.

(2) "Board" means the Texas Board of Architectural Examiners.

(3) "Interior design" means the:

(A) identification, research, or development of a creative solution to a problem relating to the function or quality of an interior environment;

(B) performance of a service relating to an interior space, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or

(C) preparation of an interior design plan, specification, or related document about the design of a non-load-bearing interior space.

(4) "Interior designer" means a person registered under this subtitle to practice interior design.

(5) "Landscape architect" means a person registered under this subtitle to practice landscape architecture.

(6) "Landscape architecture":

(A) means the art and science of landscape analysis, landscape planning, and landscape design;

(B) includes the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(i) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(ii) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(iii) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(a) the preparation, review, and analysis of master and site plans for landscape use and development;

(b) the analysis of environmental and physical considerations related to land use;

(c) the preparation of drawings, construction documents, and specifications; and

(d) construction observation;

(iv) design coordination and review of technical submissions, plans, and construction documents prepared by persons working under the direction of the landscape architect;

(v) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(vi) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(vii) the analysis and design of:

(a) site landscape grading and drainage;

(b) systems for landscape erosion and sediment control; and

(c) pedestrian walkway systems;

(viii) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(ix) the collaboration of landscape architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(x) field observation of landscape site construction, revegetation, and maintenance; and

(C) does not include:

(i) traffic, roadway, or pavement engineering;

(ii) the design of utilities;

(iii) the engineering or study of hydrologic management of stormwater systems or floodplains;

(iv) the making of final plats; or

(v) a service or function within the practice of architecture, engineering, or public surveying as defined by this chapter or Chapter 1001 or 1071.

(7) "Practice of architecture" means a service or creative work that involves the application of the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs, the proper application of which requires education, training, and experience in those matters.

Sec. 1051.002. EFFECT ON MUNICIPALITY. This subtitle [~~chapter~~] does not:

- (1) preempt a municipal ordinance; or
- (2) restrict or expand the authority of a municipality.

Sec. 1051.003 [~~1051.004~~]. APPLICATION OF SUNSET ACT. The Texas Board of Architectural 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 subtitle [~~chapter~~] expires September 1, 2015 [~~2003~~].

SECTION 1.05. The heading to existing Subchapter C, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER B [€]. TEXAS BOARD OF
ARCHITECTURAL EXAMINERS

SECTION 1.06. Subsection (a), Section 1051.101, Occupations Code, is amended to read as follows:

(a) The Texas Board of Architectural Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) four architect members registered under this chapter;
- (2) one interior designer member registered under Chapter 1053;
- (3) one landscape architect member registered under Chapter 1052; and
- (4) three members who represent the public, at least one of whom is a person with a physical disability.

SECTION 1.07. Section 1051.103, Occupations Code, is amended to read as follows:

Sec. 1051.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] 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 [~~An officer, employee, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture~~] may not be a member of the board and may not be a board [~~an~~] 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 [of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for salary group B9 of the position classification salary schedule.~~

[(c) ~~A~~] person [~~who~~] is [~~the spouse of~~] an officer, employee [~~manager~~], or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture [may not be a member of the board and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for salary group B9 of the position classification salary schedule].

(c) ~~(d)~~ A person may not be a [serve as a board] member of the board or act as the general counsel to the board 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 [board's] operation of the board.

SECTION 1.08. Subsections (a) and (c), Section 1051.105, Occupations Code, are amended to read as follows:

(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 1051.101 [~~or 1051.102~~];

(2) does not maintain during service on the board the qualifications required by Section 1051.101 [~~or 1051.102~~];

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 1051.102 or 1051.103;

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

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

(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 1.09. Existing Subchapter C, Chapter 1051, Occupations Code, is amended by adding Section 1051.112 to read as follows:

Sec. 1051.112. 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 subtitle;

(2) the programs operated by the board;

(3) the role and functions of the board;

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

(5) the current budget for the board;

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

(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 board 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 1.10. The heading to existing Subchapter D, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER C ~~D~~. EXECUTIVE DIRECTOR AND PERSONNEL

SECTION 1.11. Sections 1051.153, 1051.154, and 1051.156, Occupations Code, are amended to read as follows:

Sec. 1051.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking [define the respective] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 1051.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee [board] shall provide[, as often as necessary,] to [its] members of the board and to agency employees, as often as necessary, information regarding the requirements [their-

[(1) qualifications] for office or employment under this chapter, including information regarding a person's[; and

[(2)] responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 1051.156. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

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

(b) The policy statement must include:

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

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

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

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

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

(1) ~~[cover an annual period;~~

~~[(2)]~~ be updated ~~[at least]~~ annually;

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

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

~~[(e) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.]~~

SECTION 1.12. Existing Subchapter D, Chapter 1051, Occupations Code, is amended by adding Section 1051.157 to read as follows:

Sec. 1051.157. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to board employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 1.13. The heading to existing Subchapter E, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER D [E]. BOARD POWERS AND DUTIES

SECTION 1.14. Section 1051.202, Occupations Code, is amended to read as follows:

Sec. 1051.202. GENERAL RULEMAKING AUTHORITY. The board shall adopt reasonable rules and bylaws and prescribe forms as necessary to administer or enforce this subtitle ~~[chapter]~~, including rules regulating the practices ~~[practice]~~ of architecture, landscape architecture, and interior design.

SECTION 1.15. Subsections (a) and (b), Section 1051.203, Occupations Code, are amended to read as follows:

(a) The ~~[Except as provided by Subsection (b) or (e), the]~~ board may not adopt rules ~~[a rule]~~ restricting advertising or competitive bidding by a certificate holder ~~except [person regulated by the board].~~

~~[(b) The board may adopt rules restricting advertising or competitive bidding] to prohibit [a] false, misleading, or deceptive practices [practice].~~

(b) In its rules to prohibit false, misleading, or deceptive practices, the board ~~[A rule adopted under this subsection]~~ may not include a rule that:

(1) restricts ~~[restrict]~~ the [person's] ~~[person's]~~ use of any advertising medium;

(2) restricts the use of a certificate holder's ~~[restrict the person's]~~ personal appearance or ~~[the use of the person's]~~ voice in an advertisement;

(3) relates ~~[relate]~~ to the size or duration of an advertisement by the certificate holder ~~[person];~~ or

(4) restricts ~~[restrict]~~ the certificate holder's ~~[person's]~~ advertisement under a trade name.

SECTION 1.16. The heading to existing Section 1051.207, Occupations Code, is amended to read as follows:

Sec. 1051.204 [~~1051.207~~]. SUBPOENA.

SECTION 1.17. Subsection (a), existing Section 1051.207, Occupations Code, is amended to read as follows:

(a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this subtitle [~~chapter~~].

SECTION 1.18. The heading to existing Section 1051.208, Occupations Code, is amended to read as follows:

Sec. 1051.205 [~~1051.208~~]. PUBLIC RECORDS.

SECTION 1.19. Existing Section 1051.208, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The records must include[~~±~~

[~~(+)~~] a record of:

(1) [~~(A)~~] each issuance or renewal of a certificate of registration; and

(2) [~~(B)~~] each refusal to issue or renew a certificate of registration[~~±~~

[~~(2) the name and, if known, the place of residence of each architect; and~~

[~~(3) the date and serial number of the architect's certificate of registration~~].

(d) The board shall maintain records or an official roster showing:

(1) the name and, if known, the address of each person registered under this subtitle; and

(2) the date and registration number of each certificate of registration issued under this subtitle.

SECTION 1.20. The heading to existing Section 1051.209, Occupations Code, is amended to read as follows:

Sec. 1051.206 [~~1051.209~~]. BOARD SEAL.

SECTION 1.21. Existing Subchapter E, Chapter 1051, Occupations Code, is amended by adding Sections 1051.207 through 1051.213 to read as follows:

Sec. 1051.207. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules as necessary to comply with Chapter 53.

Sec. 1051.208. STANDARDS OF CONDUCT. The board by rule shall establish standards of conduct for persons regulated under this subtitle.

Sec. 1051.209. ATTORNEY GENERAL AS LEGAL ADVISOR. The attorney general shall act as legal advisor to the board and shall provide legal assistance to enforce this subtitle. This section does not relieve a local prosecuting attorney of any duty under the law.

Sec. 1051.210. TECHNOLOGY POLICY. The board shall develop and implement a policy that requires the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

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

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

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

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

Internet; and

(3) be cost-effective and be developed through the board's planning process.

Sec. 1051.211. 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 board 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 board's jurisdiction.

(b) The board'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 board.

Sec. 1051.212. JOINT ADVISORY COMMITTEE ON THE PRACTICES OF ENGINEERING, ARCHITECTURE, AND LANDSCAPE ARCHITECTURE.

(a) The Joint Advisory Committee on the Practices of Engineering, Architecture, and Landscape Architecture is an advisory committee to the board and to the Texas Board of Professional Engineers. The advisory committee consists of:

(1) three members of the board and one practicing accredited architect appointed by the board; and

(2) three members of the Texas Board of Professional Engineers and one practicing accredited architectural engineer appointed by that board.

(b) Members of the advisory committee serve staggered six-year terms, with the terms of one or two members appointed by the board and one or two members appointed by the Texas Board of Professional Engineers expiring each odd-numbered year.

(c) The advisory committee shall meet at least twice a year.

(d) The advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practices of engineering and architecture and those that constitute the practices of engineering and landscape architecture. The advisory committee shall assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.

(e) The advisory committee shall issue advisory opinions to the board and to the Texas Board of Professional Engineers on matters relating to the practice of engineering and the practice of architecture or landscape architecture, including:

(1) opinions on whether certain activities constitute the practice of engineering or the practice of architecture or landscape architecture;

(2) specific disciplinary proceedings initiated by either agency; and
(3) the need for persons working on particular projects to be registered by the board or licensed by the Texas Board of Professional Engineers.

(f) If the advisory committee issues an advisory opinion to the board or the Texas Board of Professional Engineers on a matter, that agency shall notify the committee of the final action taken with regard to the matter. The advisory committee shall consider the action taken by the agency on the matter in any advisory opinion subsequently issued by the committee on a related matter.

(g) The board and the Texas Board of Professional Engineers shall enter into a memorandum of understanding regarding the advisory committee that includes the composition and purpose of the committee.

Sec. 1051.213. RECOMMENDATION OF REHABILITATION CODES AND PROVISIONS. The board may recommend to municipalities a rehabilitation code and prescriptive provisions for rehabilitation for adoption under Section 214.215, Local Government Code. In making its recommendations, the board may consider rehabilitation codes published by developers of national model codes or the American National Standards Institute and prescriptive provisions for rehabilitation included in a code published by developers of national model codes or the American National Standards Institute.

ARTICLE 2. PROVISIONS AFFECTING ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS

SECTION 2.01. Chapter 1051, Occupations Code, is amended by adding a heading for a new Part 2 of that chapter to read as follows:

PART 2. GENERAL PROVISIONS APPLYING TO ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS

SECTION 2.02. Existing Subchapters F, H, J, and K, Chapter 1051, Occupations Code, are designated as part of the new Part 2 of Chapter 1051.

SECTION 2.03. The heading to existing Subchapter F, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER ~~E~~ [F]. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

SECTION 2.04. The heading to Section 1051.251, Occupations Code, is amended to read as follows:

Sec. 1051.251. PUBLIC INTEREST INFORMATION; ~~DISPLAY OF CERTIFICATE.~~

SECTION 2.05. Section 1051.251, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The information must include information for prospective applicants regarding the qualifications and requirements for registration under this subtitle ~~chapter~~.

(c) In each written contract in which a person registered under this subtitle agrees to practice the person's profession in this state, the person shall include the name, mailing address, and telephone number of the board and a statement that the board has jurisdiction over a person registered under this subtitle.

(d) A person registered under this subtitle shall prominently display the person's certificate of registration in the person's place of business.

SECTION 2.06. Sections 1051.252 and 1051.253, Occupations Code, are amended to read as follows:

Sec. 1051.252. COMPLAINTS. (a) The board by rule shall establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients. The rules must address each phase of the complaint process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure.

(b) The board [by rule] shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this subtitle [chapter];

(2) on a sign prominently displayed in the place of business of each person regulated under this subtitle [chapter]; or

(3) in a bill for service provided by a person regulated under this subtitle [chapter].

Sec. 1051.253. COMPLAINT INFORMATION. (a) The board shall maintain a [keep an information] file on [about] each complaint filed with the board that the board has authority to resolve. The file must include:

(1) the name of the person who filed the complaint unless the complaint is filed anonymously;

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

(3) the subject matter of the complaint;

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

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

and

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

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

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

SECTION 2.07. Subsection (a), Section 1051.254, Occupations Code, is amended to read as follows:

(a) 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 board.

SECTION 2.08. Chapter 1051, Occupations Code, is amended by adding a new Subchapter F to the new Part 2 of that chapter to read as follows:

SUBCHAPTER F. GENERAL REGISTRATION REQUIREMENTS

Sec. 1051.301. ADMINISTRATION OF EXAMINATION TO DISABLED APPLICANTS. The board by rule shall ensure that an examination under this subtitle is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and its subsequent amendments.

Sec. 1051.302. EXAMINATION FEE. Notwithstanding Section 2113.203, Government Code, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Sec. 1051.303. REFUND POLICY. The board by rule shall adopt a comprehensive refund policy for applicants who are not able to take an examination under this subtitle after paying the examination fee. The comprehensive refund policy must include:

- (1) a list of the circumstances under which the board will refund the examination fee to an applicant who does not take the examination;
- (2) the required documentation to support a refund request;
- (3) the deadline for applying for a refund; and
- (4) the amount of the examination fee the board may retain to cover administrative costs.

Sec. 1051.304. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination under this subtitle, the board shall notify the person of the results of the examination.

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

- (1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and
- (2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

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

(d) If requested in writing by a person who fails an examination administered under this subtitle, the board shall provide the person with an analysis of the person's performance on the examination.

Sec. 1051.305. RECIPROCITY. (a) The board may waive any prerequisite to obtaining a certificate of registration under this subtitle for an applicant who holds a license or certificate of registration issued by another jurisdiction:

- (1) that has licensing or registration requirements substantially equivalent to those of this state; or
- (2) with which this state has a reciprocity agreement.

(b) The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

(c) An applicant under this section must:

(1) apply in the same manner and form as any other applicant under this subtitle, except that the application must be accompanied by a fee in an amount set by the board as reasonable and necessary to cover the cost of processing and investigating the application and issuing the certificate of registration; and

(2) provide the board with documents and other evidence that substantiates the applicant's qualifications.

Sec. 1051.306. FIRM REGISTRATION. The board by rule may require a firm, partnership, corporation, or association that engages in the practice of architecture, landscape architecture, or interior design to register with the board under this subtitle.

Sec. 1051.307. ROSTER OF APPLICANTS. The board shall maintain a roster of all persons who apply for a certificate of registration under this subtitle. The roster must include the following information about each applicant:

(1) the applicant's name, address, and age;

(2) the date the applicant filed the application;

(3) the applicant's place of business;

(4) the applicant's educational and other qualifications;

(5) whether the applicant took the examination;

(6) whether the board issued a certificate of registration to the applicant or rejected the application;

(7) the date of the board's action on the application; and

(8) any other information the board considers necessary.

SECTION 2.09. The heading to existing Subchapter H, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER G ~~H~~. RENEWAL OF CERTIFICATE OF REGISTRATION

SECTION 2.10. Sections 1051.351 through 1051.354, Occupations Code, are amended to read as follows:

Sec. 1051.351. ANNUAL RENEWAL REQUIRED. (a) A person who is otherwise eligible to renew a certificate of registration under this subtitle may renew an unexpired certificate by paying the required renewal fee to the board before the expiration date of the certificate. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed ~~[An original certificate of registration is valid for the balance of the current registration year and may be renewed annually. A certificate of registration that has been renewed expires on the first anniversary of the renewal date].~~

(b) The board by rule may adopt a system under which certificates of registration expire on various dates during the year. ~~[The board shall adjust the date for mailing notice of expiration and the period for renewal according to the system adopted by the board under this subsection.]~~

(c) For the ~~[a]~~ year in which the certificate of registration expiration date is changed, the board shall prorate renewal fees ~~[shall be prorated]~~ on a monthly basis so that each certificate holder pays only that portion of the registration fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

Sec. 1051.352. NOTICE OF EXPIRATION. Not later than the 30th ~~31st~~ day before the ~~[expiration]~~ date ~~[of]~~ a person's certificate of registration is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board ~~[records]~~.

Sec. 1051.353. PROCEDURE FOR RENEWAL. (a) A person may renew an unexpired certificate of registration by:

~~[(1) paying the required renewal fee to the board before the expiration date; and~~

~~[(2) submitting proof satisfactory to the board of compliance with the board's continuing education requirement.~~

(b) A person whose certificate of registration has been expired for 90 days or less ~~[than one year]~~ may renew the ~~[person's]~~ certificate ~~[of registration]~~ by:

~~[(1) paying to the board a]~~

~~[(A) any unpaid] renewal fee that is equal to 1-1/2 times the normally required renewal fee; and~~

~~[(B) a penalty fee in an amount determined by the board; and~~

~~[(2) submitting proof satisfactory to the board of compliance with the board's continuing education requirement].~~

(c) A ~~[The board may set a penalty fee for a]~~ person whose certificate of registration has been expired for more ~~[less]~~ than 90 days ~~[in an amount that is different from the penalty fee for a person whose certificate of registration has been expired for longer than 90 days]~~ but less than one year may renew the certificate by paying to the board a renewal fee equal to two times the normally required renewal fee.

(d) A person whose ~~[The board shall issue a certificate of renewal of a person's]~~ certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate ~~[on receipt of:~~

~~[(1) the required fees, as provided by this section; and~~

~~[(2) the required proof of compliance with the board's continuing education requirement].~~

(e) A person who was registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of the application may obtain a new certificate of registration without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the certificate of registration ~~[If a person's certificate of registration has been expired for one year or more, the board may revoke the certificate of registration and enter the revocation in its official records. The board may require an applicant for reinstatement of a certificate of registration revoked under this subsection to pass an examination prescribed by the board. If the person passes the examination, the person's certificate of registration may be reinstated on receipt of a fee in an amount determined by the board].~~

Sec. 1051.354. FEE EXEMPTION FOR MILITARY PERSONNEL. (a) A person required to register under this subtitle [~~An architect~~] who is on active duty as a member of the United States military is exempt from the payment of any fee during the person's term of service if the person:

(1) is in good standing as an architect, landscape architect, or interior designer in this state; or

(2) was in good standing as an architect, landscape architect, or interior designer in this state at the time the person entered into military service.

(b) A person who is exempt from payment of a fee under Subsection (a):

(1) is exempt for the remainder of the fiscal year during which the person's active duty status expires; and

(2) is entitled to have the person's name continued on the list of architects, landscape architects, or interior designers.

SECTION 2.11. Section 1051.355, Occupations Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) The board by rule shall establish a procedure by which a person who is registered under this subtitle [~~an architect~~] may place the person's certificate of registration on inactive status. The person must apply for inactive status, on a form prescribed by the board, before the person's certificate of registration expires.

(b) A person whose certificate of registration is on inactive status must pay an annual renewal fee on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount equal to the sum of:

(1) the amount determined by the board as reasonable and necessary to cover the costs of administering this section; and

(2) except as provided by Subsection (e), the additional amount required under Section 1051.651(b)(1)(B) [~~+1051.204(b)(1)(B)~~] for the examination fee scholarship program.

(c) A person whose certificate of registration is on inactive status may not perform any activity regulated under this subtitle [~~chapter~~].

(e) The additional amount of the renewal fee described by Subsection (b)(2) does not apply to a person registered under Chapter 1052 or 1053.

SECTION 2.12. Subsections (a) and (d), Section 1051.356, Occupations Code, are amended to read as follows:

(a) The board shall recognize, prepare, or administer [~~require~~] continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the board to keep the person's [~~as a condition for renewal of a~~] certificate of registration.

(d) A person is exempt from the continuing education requirements of this section if the person is, as of September 1, 1999, engaged in teaching the subject matter for which the person is registered under this subtitle [~~architecture~~] as a full-time faculty member or other permanent employee of an institution of higher education, as defined by Section 61.003, Education Code.

SECTION 2.13. Chapter 1051, Occupations Code, is amended by adding a new Subchapter H to the new Part 2 of that chapter to read as follows:

SUBCHAPTER H. GENERAL DISCIPLINARY PROCEDURES

Sec. 1051.401. RIGHT TO HEARING; APPEAL. (a) If the board proposes to suspend, revoke, or refuse to renew a person's certificate of registration, the person is entitled to a hearing. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings.

(b) The board shall prescribe procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by or is appealable to the board.

(c) A hearing under this section is a contested case subject to Chapter 2001, Government Code, and must be conducted under rules enacted by the State Office of Administrative Hearings under Chapter 2003, Government Code.

Sec. 1051.402. PUBLICATION OF DISCIPLINARY ORDERS AND SANCTIONS. The board by rule shall provide for the publication of all disciplinary orders and sanctions imposed by the board under this subtitle. A certificate holder may not negotiate with the board to keep the board from publishing the settlement of a disciplinary action.

Sec. 1051.403. REINSTATEMENT. The board may issue or reinstate a certificate of registration under this section to an applicant who:

(1) pays all fees and costs incurred by the board as a result of any proceeding that led to the denial, revocation, or suspension; and

(2) presents evidence to support the issuance or reinstatement of the certificate.

SECTION 2.14. The heading to existing Subchapter J, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER I ~~[J]~~. ADMINISTRATIVE PENALTY

SECTION 2.15. Section 1051.451, Occupations Code, is amended to read as follows:

Sec. 1051.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under this subtitle [~~Subchapter J~~], regardless of whether the person holds a certificate of registration issued under this subtitle [~~chapter~~].

SECTION 2.16. Section 1051.452, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The amount of an administrative penalty may not exceed \$5,000 [~~\$1,000~~].

(c) The board by rule shall adopt an administrative penalty schedule for violations of this subtitle or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board must provide the administrative penalty schedule to the public on request.

SECTION 2.17. The heading to existing Subchapter K, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER J ~~[K]~~. OTHER PENALTIES AND
ENFORCEMENT PROVISIONS

SECTION 2.18. Section 1051.501, Occupations Code, is amended to read as follows:

Sec. 1051.501. GENERAL ENFORCEMENT AUTHORITY. (a) A violation of this subtitle [~~chapter~~] shall be reported to the board.

(b) The board shall ensure that enforcement action is taken against a person who violates this subtitle [~~chapter~~].

SECTION 2.19. Subsection (a), Section 1051.502, Occupations Code, is amended to read as follows:

(a) The board may bring an action in its name to enjoin or restrain a person from violating this subtitle [~~chapter~~], a rule adopted under this subtitle [~~chapter~~], or another state statute or rule relating to the professions regulated under this subtitle [practice of architecture].

SECTION 2.20. Section 1051.504, Occupations Code, is amended to read as follows:

Sec. 1051.503 [~~1051.504~~]. CUMULATIVE EFFECT OF PROVISIONS. An action or penalty authorized by this subtitle [~~subchapter~~] is in addition to any other action or penalty provided by law.

SECTION 2.21. Existing Subchapter K, Chapter 1051, Occupations Code, is amended by adding Sections 1051.504 and 1051.505 to read as follows:

Sec. 1051.504. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not registered under this subtitle is violating or has violated this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of architecture, landscape architecture, or interior design, the board after providing to the person notice and the opportunity for a hearing may issue a cease and desist order prohibiting the conduct described in the notice.

(b) If the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board may:

(1) issue a cease and desist order; and

(2) refer the violation to the attorney general for further action.

(c) If the person requests a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) A hearing under this section is subject to Chapter 2001, Government Code.

(e) The board shall adopt rules necessary to implement this section.

Sec. 1051.505. RESTITUTION. (a) The board may order a person registered under this subtitle to pay restitution to a consumer instead of or in addition to assessing an administrative penalty under this chapter.

(b) The amount of restitution ordered by the board may not exceed the amount the consumer paid the person for a service regulated under this subtitle. The board may not include an estimation of other damages or harm in a restitution order.

ARTICLE 3. PROVISIONS AFFECTING ONLY ARCHITECTS

SECTION 3.01. Chapter 1051, Occupations Code, is amended by adding a heading for a new Part 3 of that chapter to read as follows:

PART 3. PROVISIONS APPLYING ONLY TO ARCHITECTS

SECTION 3.02. Existing Subchapters B, G, and I, Chapter 1051, Occupations Code, are designated as a part of the new Part 3 of Chapter 1051.

SECTION 3.03. Chapter 1051, Occupations Code, is amended by adding a new Subchapter K to the new Part 3 of that chapter to read as follows:

SUBCHAPTER K. GENERAL PROVISIONS: ARCHITECTS

Sec. 1051.551. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. (a) A public official of this state or of a political subdivision of this state who is responsible for enforcing laws that affect the practice of architecture may accept an architectural plan, specification, or other related document only if the plan, specification, or document is prepared by an architect or by a person acting under the supervision of an architect, as evidenced by the architect's seal.

(b) Subsection (a) does not apply to a plan, specification, or document that is subject to an exemption from this chapter.

SECTION 3.04. The heading to existing Subchapter B, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER L [B]. EXEMPTIONS

SECTION 3.05. The heading to Section 1051.051, Occupations Code, is amended to read as follows:

Sec. 1051.601 [~~1051.051~~]. ACTIVITIES OF LICENSED ENGINEER.

SECTION 3.06. The heading to Section 1051.052, Occupations Code, is amended to read as follows:

Sec. 1051.602 [~~1051.052~~]. ACTIVITIES OF ARCHITECT OR ENGINEER EMPLOYEE.

SECTION 3.07. Section 1051.053, Occupations Code, is amended to read as follows:

Sec. 1051.603 [~~1051.053~~]. LANDSCAPE ARCHITECTURE. This part [~~chapter~~] does not:

- (1) limit the practice of landscape architecture; or
- (2) prohibit the use of the title "Landscape Architect" by a qualified person.

SECTION 3.08. Section 1051.054, Occupations Code, is amended to read as follows:

Sec. 1051.604 [~~1051.054~~]. INTERIOR DESIGN. This part [~~chapter~~] does not:

- (1) limit the practice of interior design; or
- (2) prohibit the use of the title "Interior Designer" by a qualified person.

SECTION 3.09. The heading to Section 1051.055, Occupations Code, is amended to read as follows:

Sec. 1051.605 [~~1051.055~~]. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES.

SECTION 3.10. Subsection (b), existing Section 1051.055, Occupations Code, is amended to read as follows:

(b) This chapter does not limit the use of a job title or personnel classification by an employee described by Subsection (a) if the employee does not use:

- (1) the title or classification in connection with an offer to the public to perform architectural services; and
- (2) a name, title, or other word that tends to convey the impression that a person not registered as an architect under this chapter is offering to the public to perform architectural services.

SECTION 3.11. The heading to Section 1051.056, Occupations Code, is amended to read as follows:

Sec. ~~1051.606~~ [4051.056]. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE ARCHITECTS.

SECTION 3.12. Subsection (a), existing Section 1051.056, Occupations Code, is amended to read as follows:

(a) This chapter does not apply to a person who does not represent that the person is an architect or architectural designer, or use another business or professional title that uses a form of the word "architect," and who:

(1) engages in or is employed in the practice of architecture solely as an officer or employee of the United States;

(2) is a legally qualified architect residing in another state or country who:

(A) does not open or maintain an office in this state; and

(B) complies with the requirements of Subsection (b);

(3) prepares architectural plans and specifications for or observes or supervises the alteration of a building, unless the alteration involves a substantial structural or exitway change to the building; or

(4) prepares the architectural plans and specifications for or observes or supervises the construction, enlargement, or alteration of a privately owned building that is:

(A) a building used primarily for:

(i) farm, ranch, or agricultural purposes; or

(ii) storage of raw agricultural commodities;

(B) a single-family or dual-family dwelling or a building or appurtenance associated with the dwelling;

(C) a multifamily dwelling not exceeding a height of two stories and not exceeding 16 units per building; ~~or~~

(D) a commercial building that does not exceed ~~[exceeding]~~ a height of two stories or [and not exceeding] a square footage of 20,000 square feet; or

(E) a warehouse that has limited public access.

SECTION 3.13. Chapter 1051, Occupations Code, is amended by adding a new Subchapter M to the new Part 3 of that chapter to read as follows:

SUBCHAPTER M. BOARD POWERS AND DUTIES: ARCHITECTS

Sec. 1051.651. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by this chapter or by the General Appropriations Act.

(b) The board shall set the required renewal fee for:

(1) a resident of this state in an amount that is equal to the sum of:

(A) the amount determined by the board as reasonable and necessary to cover administrative costs; and

(B) an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section 1051.653; and

(2) nonresidents in an amount determined by the board.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Sec. 1051.652. FEE INCREASE. (a) The fee for the issuance of a certificate to an applicant possessing a license or certificate to practice architecture in another state and the fee for the renewal of a certificate under this chapter are increased by \$200.

(b) Of each fee increase collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

Sec. 1051.653. EXAMINATION FEE SCHOLARSHIPS. (a) The board shall administer scholarships to applicants for examination under this part in a manner the board determines best serves the public purpose of:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated architects available to serve the residents of the state;

(3) improving the state's business environment and encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(b) In determining what best serves the public purpose of the scholarships as described by Subsection (a), the board shall consider at least the financial need of each person who applies for a scholarship under this section.

(c) The amount of the scholarship is the lesser of:

(1) \$500; or

(2) the amount of the required examination fee.

(d) Scholarships under this section are funded by the amount added to each renewal fee under Section 1051.651(b). The board may not use more than 15 percent of the amount appropriated to the board for scholarships under this section to pay the costs of administering the scholarships.

Sec. 1051.654. DESIGN AND APPROVAL OF ARCHITECT'S SEAL.

(a) The board shall prescribe and approve the seal to be used by an architect.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Architect, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

SECTION 3.14. The heading to existing Subchapter G, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER N ~~[G]~~. REGISTRATION OF ARCHITECTS ~~[REQUIREMENTS]~~

SECTION 3.15. Existing Section 1051.301, Occupations Code, is amended to read as follows:

Sec. ~~1051.301~~ ~~[1051.301]~~. REGISTRATION REQUIRED. (a) A person may not engage in the practice of architecture or offer or attempt to engage in the practice of architecture unless the person is registered as an architect under this chapter.

(b) A firm, partnership, corporation, or association, including a firm, partnership, corporation, or joint stock association engaged in the practice of engineering under Section 1001.405, may engage in the practice of architecture, represent to the public that the entity is engaged in the practice of architecture or is offering architectural services, or use the word "architect" or "architecture" in any manner in its name only if any practice of architecture or architectural service performed on behalf of the entity is performed by or through a person registered as an architect under this chapter.

SECTION 3.16. The heading to existing Section 1051.302, Occupations Code, is amended to read as follows:

Sec. 1051.702 [~~1051.302~~]. USE OF ARCHITECT'S SEAL.

SECTION 3.17. Existing Section 1051.302, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A person may not present or attempt to use as the person's own the seal of another person.

SECTION 3.18. The heading to existing Section 1051.303, Occupations Code, is amended to read as follows:

Sec. 1051.703 [~~1051.303~~]. CERTAIN PLANS OR SPECIFICATIONS TO BE PREPARED ONLY BY ARCHITECT.

SECTION 3.19. The heading to existing Section 1051.304, Occupations Code, is amended to read as follows:

Sec. 1051.704 [~~1051.304~~]. EXAMINATION; ISSUANCE OF CERTIFICATE.

SECTION 3.20. The heading to existing Section 1051.305, Occupations Code, is amended to read as follows:

Sec. 1051.705 [~~1051.305~~]. ELIGIBILITY AND APPLICATION FOR EXAMINATION.

SECTION 3.21. Existing Section 1051.305, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The applicant must[+]

[~~(+)~~] present to the board:

(1) [~~(A)~~] a diploma showing that the applicant meets the education requirement established by Subsection (a)(1); and

(2) [~~(B)~~] evidence acceptable to the board that the applicant meets the experience requirement established by Subsection (a)(2);

(c) The[+and

[~~(2) pay to the~~] board shall set an examination [a] fee [~~not to exceed \$300~~] in an amount [~~set by the board as~~] reasonable and necessary to cover the cost of [~~administering~~] the examination.

SECTION 3.22. The heading to existing Subchapter I, Chapter 1051, Occupations Code, is amended to read as follows:

SUBCHAPTER Q [~~H~~]. DISCIPLINARY PROCEDURES
FOR ARCHITECTS

SECTION 3.23. Existing Sections 1051.401 and 1051.402, Occupations Code, are amended to read as follows:

Sec. 1051.751 [~~1051.401~~]. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1051.752 [~~1051.402~~], the board shall ~~may~~:

- (1) revoke, ~~or~~ suspend, or refuse to renew a certificate of registration;
- (2) ~~place on probation a person whose certificate of registration is suspended;~~
- ~~(3)~~ reprimand a certificate ~~the~~ holder ~~of a certificate of registration~~; or
- ~~(4)~~ impose an administrative penalty on a person under Subchapter I ~~of~~.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension ~~of a person's certificate of registration~~ is probated, the board may require the person to:

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or
- (3) continue or review ~~renew~~ professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Sec. 1051.752 [~~1051.402~~]. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1051.751 [~~1051.401~~] for:

- (1) a violation of this subtitle ~~chapter~~ or a board rule adopted under this subtitle that applies to architects ~~chapter~~;
- (2) a failure to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Article 9102, Revised Statutes, as a document the person is required to provide to the department;
- (3) a cause for which the board may refuse to issue a certificate of registration;
- (4) gross incompetency in the practice of architecture;
- (5) recklessness in the practice of architecture, including recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration; ~~or~~
- (6) dishonest practice in the practice of architecture by the holder of a certificate of registration;
- (7) giving false or forged evidence to the board or a board member in obtaining or assisting another person to obtain a certificate of registration;
- (8) aiding or abetting a person not registered under this subtitle in violating this subtitle; or
- (9) using or attempting to use as the person's own the certificate of registration of another person.

SECTION 3.24. Chapter 1051, Occupations Code, is amended by adding a new Subchapter P to the new Part 3 of that chapter to read as follows:

SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT
PROVISIONS: ARCHITECTS

Sec. 1051.801. CRIMINAL PENALTY. (a) A person, whether acting independently or on behalf of the person's firm, commits an offense if, in violation of this chapter, the person:

(1) engages in the practice of architecture, or offers or attempts to engage in the practice of architecture;

(2) prepares architectural plans or specifications for and observes or supervises the construction, enlargement, or alteration of a building for another person; or

(3) advertises or puts out a sign, card, or drawing designating the person as an architect or architectural designer or uses another business or professional title that uses a form of the word "architect."

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$250 and not more than \$1,000. Each day of violation is a separate offense.

(c) In an action brought under this section, the board may be represented by a district or county attorney or by other counsel as necessary.

ARTICLE 4. PROVISIONS AFFECTING ONLY LANDSCAPE ARCHITECTS

SECTION 4.01. Subchapter A, Chapter 1052, Occupations Code, is amended by adding Sections 1052.004 and 1052.005 to read as follows:

Sec. 1052.004. ACTIVITIES OF LANDSCAPE ARCHITECT EMPLOYEE. This chapter does not limit the ability of an employee of a landscape architect to act under the landscape architect's instructions, control, or supervision.

Sec. 1052.005. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE LANDSCAPE ARCHITECTS. (a) This chapter does not apply to a person:

(1) who does not represent that the person is a landscape architect or use a business or professional title that uses a form of the phrase "landscape architect"; and

(2) who is a landscape architect licensed or registered in another state or country who:

(A) does not open or maintain a business in this state; and

(B) complies with the requirements of Subsection (b).

(b) A person described by Subsection (a) who agrees to perform or represents that the person is able to perform a professional service involved in the practice of landscape architecture may perform a landscape architectural service in this state only if, in performing the service, the person:

(1) employs a landscape architect registered under this chapter as a consultant; or

(2) acts as a consultant of a landscape architect registered in this state.

SECTION 4.02. Section 1052.054, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set ~~[by this chapter or]~~ by the General Appropriations Act.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

SECTION 4.03. The heading to Section 1052.056, Occupations Code, is amended to read as follows:

Sec. 1052.056. ~~[FORM AND]~~ DESIGN AND APPROVAL OF LANDSCAPE ARCHITECT'S SEAL.

SECTION 4.04. Subsection (a), Section 1052.056, Occupations Code, is amended to read as follows:

(a) The board shall prescribe and approve ~~[the form of]~~ the seal to be used by a landscape architect.

SECTION 4.05. Sections 1052.251 and 1052.252, Occupations Code, are amended to read as follows:

Sec. 1052.251. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1052.252, the board shall ~~[may]~~:

(1) revoke, ~~[or]~~ suspend, or refuse to renew a certificate of registration;

(2) ~~[place on probation a person whose certificate of registration is suspended;~~

~~[(3)]~~ reprimand a certificate ~~[the]~~ holder ~~[of a certificate of registration]~~; or

(3) ~~[(4)]~~ impose an administrative penalty on a person under Subchapter I, Chapter 1051 ~~[G]~~.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension ~~[of a person's certificate of registration]~~ is probated, the board may require the person to:

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

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

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

Sec. 1052.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1052.251 for:

(1) violating this subtitle ~~[chapter]~~ or a board rule adopted under this subtitle that applies to landscape architects ~~[chapter]~~;

(2) using fraud or deceit in obtaining a certificate of registration;

(3) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(4) using or attempting to use as the person's own the certificate of registration of another person;

(5) holding the person out to the public as an engineer or using the term "engineer," "engineered," "professional engineer," or "P.E." or any other term tending to create the impression that the person is authorized to practice engineering or another profession unless the person is licensed under Chapter 1001 or another licensing law of this state, as applicable;

(6) holding the person out to the public as a surveyor or using the term "surveyor," "surveyed," or "registered professional land surveyor" or any other term tending to create the impression that the person is authorized to practice surveying or another profession unless the person is licensed under Chapter 1071 or another licensing law of this state, as applicable;

(7) committing an act of recklessness ~~[gross negligence]~~, gross incompetency, or misconduct in the practice of landscape architecture; ~~[or]~~

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Article 9102, Revised Statutes, as a document the person is required to provide to the department;

(9) acting dishonestly in the practice of landscape architecture; or

(10) aiding or abetting a person not registered under this subtitle in violating this subtitle.

ARTICLE 5. PROVISIONS AFFECTING ONLY INTERIOR DESIGNERS

SECTION 5.01. Section 1053.002, Occupations Code, is amended to read as follows:

Sec. 1053.002. APPLICATION. (a) This chapter does not apply to:

(1) a person who:

(A) ~~[(1)]~~ does not use the title "interior designer" and does not use the term "interior design" to describe a service the person offers or performs; and

(B) is an interior designer licensed or registered in another state or country who:

(i) does not open or maintain a business in this state; and

(ii) complies with the requirements of Subsection (b); or

(2) a person who is registered to practice architecture in this state.

(b) A person described by Subsection (a)(1) who agrees to perform or represents that the person is able to perform ~~[This chapter does not:~~

~~[(1) prohibit an employee of an interior designer or architect from performing]~~ an interior design service may perform an interior design service in this state if, in performing the service, the person:

(1) employs an ~~[under the control, instruction, or supervision of the]~~ interior designer registered under this chapter as a consultant ~~[or architect]; or~~

(2) acts as a consultant of an interior designer ~~[restrict the practice or activities of or the provision of a service by a person engaged in a profession or occupation for which the person is licensed or]~~ registered in this state ~~[under any other law].~~

SECTION 5.02. Section 1053.052, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

SECTION 5.03. Subchapter B, Chapter 1053, Occupations Code, is amended by adding Section 1053.058 to read as follows:

Sec. 1053.058. DESIGN AND APPROVAL OF INTERIOR DESIGNER'S SEAL. (a) The board shall prescribe and approve the seal to be used by an interior designer.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Interior Designer, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

SECTION 5.04. Section 1053.160, Occupations Code, is amended to read as follows:

Sec. 1053.160. USE OF INTERIOR DESIGNER'S SEAL. (a) An interior designer shall maintain a [is entitled to use any] seal described by Section 1053.058 and shall stamp or impress the seal on each drawing or specification issued from the interior designer's office for use in this state [adopted by the board].

(b) A person may not use or attempt to use an interior designer's seal, a similar seal, or a replica of the seal unless the use is by or through an interior designer.

(c) An interior designer may not permit a person who is not an interior designer to use the interior designer's seal without the interior designer's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

SECTION 5.05. Subsections (a) and (b), Section 1053.251, Occupations Code, are amended to read as follows:

(a) On a determination that a ground for disciplinary action exists under Section 1053.252, the board shall ~~[may]~~:

(1) revoke, ~~[or]~~ suspend, or refuse to renew a certification of registration;

(2) ~~[place on probation a person whose certificate of registration has been suspended;~~

~~[(3)]~~ reprimand a certificate ~~[the]~~ holder ~~[of a certificate of registration]~~; or

(3) ~~[(4)]~~ impose an administrative penalty on a person under Subchapter I, Chapter 1051 ~~[G]~~.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension ~~[of a person's certificate of registration]~~ is probated, the board may require the person to:

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

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

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

SECTION 5.06. Section 1053.252, Occupations Code, is amended to read as follows:

Sec. 1053.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1053.251 for:

(1) violating this subtitle ~~[chapter]~~ or a board rule adopted under this subtitle that applies to interior designers ~~[chapter]~~;

(2) being convicted of a felony or of a misdemeanor involving moral turpitude;

(3) using fraud or deceit in obtaining or attempting to obtain a certificate of registration;

(4) committing an act of recklessness, gross incompetency, or misconduct in the practice of interior design ~~[performing professional duties in a grossly negligent manner]~~;

(5) practicing in a manner detrimental to the public health, safety, or welfare;

(6) advertising in a manner that tends to deceive or defraud the public;

(7) aiding or abetting any person not registered under this subtitle [~~chapter~~] in violating this subtitle [~~chapter~~]; [~~or~~]

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Article 9102, Revised Statutes, as a document the person is required to provide to the department;

(9) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(10) using or attempting to use as the person's own the certificate of registration of another person; or

(11) acting dishonestly in the practice of interior design.

SECTION 5.07. The heading to Subchapter H, Chapter 1053, Occupations Code, is amended to read as follows:

SUBCHAPTER H. [~~OTHER~~] PENALTIES

ARTICLE 6. REHABILITATION CODES

SECTION 6.01. The heading to Subchapter G, Chapter 214, Local Government Code, is amended to read as follows:

SUBCHAPTER G. BUILDING AND REHABILITATION CODES

SECTION 6.02. Subchapter G, Chapter 214, Local Government Code, is amended by adding Section 214.215 to read as follows:

Sec. 214.215. ADOPTION OF REHABILITATION CODES OR PROVISIONS. (a) In this section, "rehabilitation" means the alteration, remodeling, enlargement, or repair of an existing structure.

(b) A municipality that adopts a building code, other than the International Residential Code adopted under Section 214.212, shall adopt one of the following:

(1) prescriptive provisions for rehabilitation as part of the municipality's building code; or

(2) the rehabilitation code that accompanies the building code adopted by the municipality.

(c) The rehabilitation code or prescriptive provisions do not apply to the rehabilitation of a structure to which the International Residential Code applies or to the construction of a new structure.

(d) A municipality may:

(1) adopt the rehabilitation code or prescriptive provisions for rehabilitation recommended by the Texas Board of Architectural Examiners; or

(2) amend its rehabilitation code or prescriptive provisions for rehabilitation.

(e) A municipality shall enforce the prescriptive provisions for rehabilitation or the rehabilitation code in a manner consistent with the enforcement of the municipality's building code.

ARTICLE 7. REPEALER; TRANSITION PROVISIONS;

EFFECTIVE DATE

SECTION 7.01. (a) Subchapters C, E, and G, Chapter 1052, and Subchapters C, E, and G, Chapter 1053, Occupations Code, are repealed.

(b) Existing Sections 1051.003, 1051.204, 1051.205, 1051.206, 1051.210, 1051.306, 1051.307, 1051.403, 1051.503, 1052.001, 1052.051, 1052.052, 1052.053, 1052.055, 1052.057, 1052.058, 1052.155, 1052.156, 1052.253, 1053.001, 1053.051, 1053.054, 1053.055, 1053.056, 1053.057, 1053.156, 1053.157, 1053.161, 1053.253, and 1053.254, Occupations Code, are repealed.

SECTION 7.02. Not later than March 1, 2004, the Texas Board of Architectural Examiners shall:

- (1) adopt rules as required by this Act; and
- (2) set the fees required by this Act.

SECTION 7.03. (a) In accordance with Subsection (c), Section 311.031, Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of Subsection (b), Section 1051.355, Occupations Code, as set out in this Act, gives effect to changes made by Section 3, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001.

(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 1051.402, Occupations Code, set out in this Act as new Section 1051.752, Occupations Code, gives effect to changes made by Section 2, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001.

(c) 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 1052.252, Occupations Code, as set out in this Act, gives effect to changes made by Section 6, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001.

(d) 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 1053.252, Occupations Code, as set out in this Act, gives effect to changes made by Section 9, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001.

(e) 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 7.04. (a) The changes in law made by this Act by the amendment of Section 1051.103, Occupations Code, and the addition of Section 1051.112, Occupations Code, in the prohibitions on or qualifications of members of the Texas Board of Architectural Examiners do not affect the entitlement of a member serving on the Texas Board of Architectural Examiners immediately before September 1, 2003, to continue to serve and function as a member of the Texas Board of Architectural 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.

(b) Before adopting an administrative penalty schedule under Subsection (c), Section 1051.452, Occupations Code, as added by this Act, the Texas Board of Architectural Examiners shall hold a public hearing that addresses the proposed administrative penalty schedule. The board must allow members of the public to present oral testimony or written documentation at the hearing.

SECTION 7.05. A municipality shall adopt prescriptive provisions for rehabilitation or a rehabilitation code, as required by Section 214.215, Local Government Code, as added by this Act, on or before January 1, 2004.

SECTION 7.06. This Act does not affect the application of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 7.07. This Act takes effect September 1, 2003.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 9**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas
May 29, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 9** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO
HINOJOSA
LINDSAY
GALLEGOS

WENTWORTH
On the part of the Senate

FLORES
ALLEN
MARCHANT
CORTE

BERMAN
On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 277**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 277** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS
WENTWORTH
SHAPLEIGH
NELSON

CHISUM
W. SMITH
DRIVER
HAMILTON
EDWARDS

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering.

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

SECTION 1. Subsection (e), Section 1001.004, Occupations Code, is amended to read as follows:

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;

(3) repeal or amend a law affecting or regulating a licensed state land surveyor; or

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

SECTION 2. Sections 1001.005 and 1001.051, Occupations Code, are amended to read as follows:

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers 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~~].

Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under this subchapter applies only to a person who does not offer [~~is not directly or indirectly represented~~] to the public to perform [~~be legally qualified to engage in the practice of~~] engineering services.

SECTION 3. Section 1001.057, Occupations Code, is amended to read as follows:

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with [~~A regular full time employee of a private business entity is exempt from the licensing requirements of this chapter if~~]:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity [the employee performs services exclusively for the business entity or an affiliate of that entity]; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity [the employee's services:

~~[(A) are on or in connection with property:~~

~~[(i) owned or leased by the business entity or affiliate; or~~

~~[(ii) in which the business entity or affiliate has an interest, estate, or possessory right; or~~

~~[(B) affect exclusively the property, products, or interests of the business entity or affiliate; and~~

~~[(3) the employee does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications relating to the property or products that are to be:~~

~~[(A) incorporated into a fixed work, system, or facility on the property of another; or~~

~~[(B) made available to the public].~~

(b) ~~[This exemption includes the use of a job title or personnel classification by the employee if the employee does not use:~~

~~[(1) the title or classification in connection with an offer to the public to perform engineering services; and~~

~~[(2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.~~

~~[(e)]~~ A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

(c) This exemption does not prohibit:

(1) a licensed professional engineer who intends to incorporate manufactured products into a fixed work, system, or facility that is being designed by the licensee on public property or the property of others from requiring the manufacturer to have plans or specifications signed and sealed by a licensed professional engineer; or

(2) the board from requiring, by rule, that certain manufactured products delivered to or used by the public must be designed and sealed by a licensed professional engineer, if necessary to protect the public health, safety, and welfare.

(d) For purposes of this section, "products manufactured by the entity" also includes computer software, firmware, hardware, semiconductor devices, and the production, exploration, and transportation of oil and gas and related products.

SECTION 4. Subsections (b) and (c), Section 1001.058, Occupations Code, are amended to read as follows:

(b) ~~[This exemption includes the use of a job title or personnel classification by the employee if the employee does not use:~~

~~(1) the title or classification in connection with an offer to the public to perform engineering services; and~~

~~(2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.~~

~~[(e)]~~ A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

SECTION 5. Subchapter B, Chapter 1001, Occupations Code, is amended by adding Section 1001.066 to read as follows:

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee described by Subdivision (1) to the extent that the use of the title or classification is related to activities described by that subdivision.

SECTION 6. Subsection (b), Section 1001.101, Occupations Code, is amended to read as follows:

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

SECTION 7. Subsection (a), Section 1001.102, Occupations Code, is amended to read as follows:

(a) A person may not be ~~[is not eligible for appointment as]~~ a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a ~~[an occupational]~~ regulatory agency in the field of engineering;

(2) is employed by or participates in the management of a ~~[an agency or]~~ business entity or other organization regulated by or receiving money from the board ~~[related to the field of engineering];~~ ~~[or]~~

(3) owns or controls, directly or indirectly, more than a 10 percent ~~[has a financial]~~ interest ~~[other than as a consumer]~~ in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses [related to the field of engineering].

SECTION 8. Section 1001.103, Occupations Code, is amended to read as follows:

Sec. 1001.103. 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.

(a-1) A person may not be a [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 engineering [industry]; or

(2) the person's spouse [related within the second degree by affinity or consanguinity, 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 engineering [industry].

(b) A person may not ~~be~~ [serve as] a member of the board or act as the general counsel to the board 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 board.

SECTION 9. Section 1001.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(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 Sections 1001.101 and [Section] 1001.102;

(2) does not maintain during service on the board the qualifications required by Sections 1001.101 and [Section] 1001.102;

(3) is ineligible for membership under Section 1001.102 or [violates a prohibition established by Section] 1001.103; [or]

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during [held in] a calendar year without an excuse approved by a majority vote of the board[; excluding meetings held while the person was not a member].

(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 10. Section 1001.108, Occupations Code, is amended to read as follows:

Sec. 1001.108. OFFICERS. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board shall elect annually from its members [~~a presiding officer,~~] an assistant presiding officer[;] and a secretary.

SECTION 11. Subchapter C, Chapter 1001, Occupations Code, is amended by adding Section 1001.112 to read as follows:

Sec. 1001.112. 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 board;

(3) the role and functions of the board;

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

(5) the current budget for the board;

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

(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 board 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 12. Subchapter D, Chapter 1001, Occupations Code, is amended by adding Sections 1001.153 through 1001.156 to read as follows:

Sec. 1001.153. DIVISION 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 board.

Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board 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. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(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 board 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 board'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 Commission on Human Rights for compliance with

Subsection (b)(1); and

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

Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to board employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 13. Section 1001.203, Occupations Code, is amended to read as follows:

Sec. 1001.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code ~~[may restrict competitive bidding]~~.

(b) Except as provided by Subsection (a), the ~~[The]~~ board may not adopt rules ~~[a rule]~~ restricting advertising or competitive bidding by a license holder ~~[person licensed under this chapter]~~ ~~[by the person]~~ except to prohibit false, misleading, or deceptive practices

(c) In its rules to prohibit false, misleading, or deceptive practices, the ~~[The]~~ board may not include ~~[in its rules to prohibit false, misleading, or deceptive practices]~~ a rule that:

(1) restricts the ~~[person's]~~ use of any medium for advertising;

(2) restricts the use of a license holder's ~~[person's]~~ personal appearance or ~~[use of the person's]~~ voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder ~~[person]~~; or

(4) restricts the license holder's ~~[person's]~~ advertisement under a trade name.

SECTION 14. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Section 1001.2035 to read as follows:

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 15. Subsection (a), Section 1001.204, Occupations Code, is amended to read as follows:

(a) The board shall establish the following ~~reasonable and necessary~~ fees in amounts reasonable and necessary to cover the costs of administering ~~for the administration of~~ this chapter ~~[in amounts not to exceed]:~~

- (1) license fee; [.....] \$50
- (2) annual renewal fee; [.....] \$75
- (3) reciprocal license fee; [.....] \$50
- (4) duplicate license fee; [.....] \$5
- (5) engineer-in-training certificate fee; [.....] \$15
- (6) roster of engineers fee; [.....] \$10
- (7) examination fee; [.....] \$200
- (8) registration fee for engineering firm; and
- (9) inactive status fee. [.....] \$100

SECTION 16. Subsection (c), Section 1001.206, Occupations Code, is amended to read as follows:

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

- (1) meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption; ~~[or]~~
- (2) is disabled as described by Section 1001.205; or
- (3) is on inactive status as provided by Section 1001.355.

SECTION 17. Section 1001.210, Occupations Code, is amended to read as follows:

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The board shall ~~may~~ recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to keep the person's license.

(b) The board may not require a license holder to obtain more than 15 hours of continuing education annually. The board shall permit a license holder to certify at the time the license is renewed that the license holder has complied with the board's continuing education requirements.

(c) The board shall permit a license holder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of engineering, including:

- (1) successfully completing or auditing a course sponsored by an institution of higher education;
- (2) successfully completing a course certified by a professional or trade organization;
- (3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course;
- (4) participating in an in-house course sponsored by a corporation or other business entity;

- (5) teaching a course described by Subdivisions (1)-(4);
- (6) publishing an article, paper, or book on the practice of engineering;
- (7) making or attending a presentation at a meeting of a technical or engineering management society or organization or writing a paper presented at such a meeting;
- (8) participating in the activities of a professional society or association, including serving on a committee of the organization; and
- (9) engaging in self-directed study.

(d) A license holder may not receive more than five continuing education credit hours annually for engaging in self-directed study [~~persons regulated by the board under this chapter. Participation in the programs is voluntary~~].

SECTION 18. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Sections 1001.214, 1001.215, and 1001.216 to read as follows:

Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to find information about the board on the Internet;
- (2) ensure that persons who want to use the board's services are able to:
 - (A) interact with the board 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 board's planning processes.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (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 board 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 board's jurisdiction.

(b) The board'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 board.

Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on the Practice of Engineering and Architecture is an advisory committee to the board and to the Texas Board of Architectural Examiners. The advisory committee consists of:

(1) three members of the board and one practicing architectural engineer appointed by the board; and

(2) three members of the Texas Board of Architectural Examiners and one practicing architect appointed by that board.

(b) Members of the advisory committee serve staggered six-year terms with the terms of one or two members appointed by the board and one or two members appointed by the Texas Board of Architectural Examiners expiring each odd-numbered year.

(c) The advisory committee shall meet at least twice a year.

(d) The advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practice of engineering and those that constitute the practice of architecture. The advisory committee shall assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.

(e) The advisory committee shall issue advisory opinions to the board and to the Texas Board of Architectural Examiners on matters relating to the practice of engineering and the practice of architecture, including:

(1) opinions on whether certain activities constitute the practice of engineering or the practice of architecture;

(2) specific disciplinary proceedings initiated by either agency; and

(3) the need for persons working on particular projects to be licensed by the board or registered by the Texas Board of Architectural Examiners.

(f) If the advisory committee issues an advisory opinion to the board or the Texas Board of Architectural Examiners on a matter, that agency shall notify the committee of the final action taken with regard to the matter. The advisory committee shall consider the action taken by the agency on the matter in any advisory opinion subsequently issued by the committee on a related matter.

(g) The board and the Texas Board of Architectural Examiners shall enter into a memorandum of understanding regarding the advisory committee that includes the composition and purpose of the committee.

SECTION 19. Section 1001.251, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall maintain on the board's Internet website:

(1) information regarding the procedure for filing a complaint with the board; and

(2) a form that a person may use to file a complaint with the board.

SECTION 20. Sections 1001.252 and 1001.253, Occupations Code, are amended to read as follows:

Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION [~~COMPLAINTS~~].

(a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a license holder or other person who may have violated this chapter. The board shall maintain the confidentiality of the complaint during the investigation.

(b) The board by rule shall specify:

(1) the manner by which a person may contact the board for assistance in filing a complaint;

- (2) the place at which a complaint must be filed;
- (3) the proper form of a complaint; and
- (4) the information that must be included in a complaint.

(c) The board's procedures must permit a member of the public who desires to file a complaint to:

(1) speak to an investigator on the staff of the board if the person desires to do so; or

(2) easily and conveniently access the board's complaint process without being required to speak to an investigator on the staff of the board if the person does not desire to speak to an investigator.

(d) The board shall consider any written grievance against a license holder or other person filed with the board as a complaint.

(e) A complaint must include information sufficient for the board to determine whether it has the authority to resolve the complaint. A complaint that contains sufficient information for the board to commence an investigation is not required to include all of the information necessary for the board to determine the validity of the complaint.

(f) On receipt of a complaint, the board shall determine whether the board has the authority to resolve the complaint. If the board does not have the authority to resolve the complaint, the board shall dismiss the complaint. If the board has the authority to resolve the complaint, the board shall initiate a disciplinary proceeding against the person who is the subject of the complaint.

(g) The board by rule shall prescribe a method for prioritizing complaints for purposes of complaint investigation. In establishing priorities:

(1) a complaint that alleges an action that could potentially harm the public takes precedence over a complaint that does not allege an action that could potentially harm the public; and

(2) with regard to complaints that do not allege an action that could potentially harm the public, a complaint filed by a member of the public takes precedence over a complaint filed by the staff of the board.

(h) The board's staff is responsible for conducting all phases of complaint investigation, including gathering evidence necessary to determine the validity of the complaint.

(i) The board may employ or contract with advisors, consultants, engineers, or other persons to provide technical assistance in investigations and disciplinary proceedings. Except for an action involving fraud, conspiracy, or malice, a person whose services are obtained by the board under this subsection is immune from civil liability and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken in the course of performing the person's official duties.

(j) The board's staff shall regularly report to the board on each complaint dismissed by board staff, including:

- (1) the name of the complainant;
- (2) the name of the person who is the subject of the complaint;
- (3) the basis of the complaint; and
- (4) the reason for the dismissal of the complaint.

(k) Except as provided by Subsection (l), a complaint filed with the board is public information.

(l) For any frivolous complaint, the license holder's name and other personal information on the complaint is not public information and must be redacted.

(m) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval, determined:

(1) was made for the purpose of harassment; and

(2) does not demonstrate harm to any person.

Sec. 1001.253. COMPLAINT INFORMATION. (a) The board shall:

(1) assign a number to each complaint filed with the board; and

(2) ensure that each phase of the processing of a complaint is appropriately documented.

(b) The board shall maintain a ~~[keep an information]~~ file on ~~[about]~~ each written complaint ~~[relating to a license holder]~~ 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 board;

(3) the subject matter of the complaint;

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

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

and

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

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

(d) ~~The [(b) If a written complaint relating to a license holder is filed with the board, the]~~ board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 21. Subchapter F, Chapter 1001, Occupations Code, is amended by adding Sections 1001.254 and 1001.255 to read as follows:

Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The board shall develop and maintain a complaint tracking system to monitor the processing of complaints filed with the board.

(b) The board shall include with the board's annual financial report under Section 2101.011, Government Code, a statistical analysis of the complaints filed with the board during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by board staff;

(4) the number of complaints filed by persons other than board staff;

(5) the average length of time required to resolve a complaint;

(6) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal;
and

(B) the number of complaints resulting in disciplinary action, the disciplinary action taken, and whether the disciplinary action taken was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing; and

(7) the number of complaints filed that are unresolved, the number of those complaints filed by board staff, the number of those complaints filed by persons other than board staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1001.255. 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 board.

SECTION 22. Section 1001.301, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsections (f) and (g) to read as follows:

(b) Except as provided by Subsection (f), a [A] person may not, unless the person holds a license issued under this chapter, directly or indirectly use or cause to be used as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit any of, or a variation or abbreviation of, the following terms:

- (1) "engineer";
- (2) "professional engineer";
- (3) "licensed engineer";
- (4) "registered engineer";
- (5) "registered professional engineer";
- (6) "licensed professional engineer"; or
- (7) "engineered."

(c) Except as provided by Subsection (f), a [A] person may not directly or indirectly use or cause to be used an abbreviation, word, symbol, slogan, or sign that tends or is likely to create an impression with the public that the person is qualified or authorized to engage in the practice of engineering unless the person holds a license and is practicing under this chapter.

(f) Notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not:

- (1) offer to the public to perform engineering services; or
- (2) use the title in any context outside the scope of the exemption in a manner that represents an ability or willingness to perform engineering services or make an engineering judgment requiring a licensed professional engineer.

(g) Subsection (f) does not authorize a person to use a term listed in Subsections (b)(2)-(6) or a variation or abbreviation of one of those terms.

SECTION 23. Section 1001.303, Occupations Code, is amended to read as follows:

Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant for a license under this chapter must submit an [a-sworn] application on a form prescribed and provided by the board.

(b) The application must contain:

- (1) personal information about the applicant, as required by board rule;
- (2) a description of the applicant's education;
- (3) a detailed summary of the applicant's actual engineering work;
- (4) a description of any engineering license or registration previously issued to the applicant and any denial, revocation, or suspension of an engineering license or registration held by the applicant;

(5) a description of any criminal offense of which the applicant has been convicted; and

(6) at least three [five] references from engineers [individuals] having personal knowledge of the applicant's character, reputation, [and] general suitability for a license, and [of whom at least three must be engineers having personal knowledge of the applicant's] engineering experience.

SECTION 24. Section 1001.304, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

SECTION 25. Sections 1001.306, 1001.310, and 1001.311, Occupations Code, are amended to read as follows:

Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the [The] board shall notify the person [each examinee] of the results of the [an] examination [not later than the 30th day after the date the examination is administered].

(a-1) If the [an] examination is graded or reviewed by a [national] testing service:

(1)[7] the board shall notify the person [each examinee] of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if:-

[(b) If the] notice of the examination results [of an examination] will be delayed for longer than 90 days after the examination date, the board shall notify the person [each examinee] of the reason for the delay before the 90th day.

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

(c) If requested in writing by a person who fails a licensing [the] examination administered under this chapter, the board shall furnish [provide to] the person with an analysis of the person's performance on the examination.

Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The board by rule may adopt standards and procedures for issuing a temporary or provisional license under this chapter.

(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 an engineer 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 engineering; 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 subsection 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 Section 1001.311(b); or

(2) the provisional license holder meets the following requirements:

(A) the provisional license holder passes an examination that tests the provisional license holder's knowledge and understanding of the laws and rules relating to the practice of engineering in this state;

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

(C) 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.

Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person who holds a license or certificate of registration issued by another state or a foreign country may apply for a license in this state.

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

SECTION 26. Subsection (b), Section 1001.351, Occupations Code, is amended to read as follows:

(b) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is changed, the board shall prorate license or registration fees on a monthly basis so that each license or registration holder pays only that portion of the license or registration fee that is allocable to the number of months

during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable [and shall adjust renewal dates accordingly].

SECTION 27. Sections 1001.352 and 1001.353, Occupations Code, are amended to read as follows:

Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day ~~[one month]~~ before the ~~[expiration]~~ date ~~[of]~~ a person's license is scheduled to expire, the board shall send [mail to the person at the last address the person provided to the board] written notice of the impending [license] expiration to the person at the person's last known address according to the records of the board [date and the amount of the annual renewal fee for the license].

Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally [the] required renewal fee and any applicable increase in fees as required by Section 1001.206 [a penalty fee set by the board].

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee and any applicable increase in fees as required by Section 1001.206 for each delinquent year or part of a year [all unpaid renewal fees and a penalty fee set by the board].

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license [that are in effect at the time the person applies].

SECTION 28. Subchapter H, Chapter 1001, Occupations Code, is amended by adding Sections 1001.354 and 1001.355 to read as follows:

Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Sec. 1001.355. INACTIVE STATUS. (a) An engineer may request inactive status at any time before the expiration date of the person's license. A license holder on inactive status may not practice engineering.

(b) A license holder on inactive status must pay an annual fee set by the board.

(c) A license holder on inactive status is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder on inactive status must:

(1) file with the board a written notice requesting reinstatement to active status;

(2) pay the fee for the annual renewal of the license and the fee increase required by Section 1001.206; and

(3) provide evidence satisfactory to the board that the person has complied with the continuing education requirements adopted by the board.

SECTION 29. Section 1001.405, Occupations Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding the other provisions of this section, the board by rule may provide that a business entity that has not previously registered with the board and that is engaged in the practice of engineering in violation of Subsection (b) is not subject to disciplinary action for the violation if the business entity registers with the board not later than the 30th day after the date the board gives written notice to the business entity of the registration requirement. This subsection does not apply to a business entity whose registration has expired.

SECTION 30. Section 1001.406, Occupations Code, is amended to read as follows:

Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a [public] university recognized by the American Association of Colleges and Universities who has a degree from an engineering program accredited by the Accreditation Board for Engineering and Technology (ABET) has the right to:

(1) disclose any college degree received by the person; and

(2) use the term "graduate engineer" on the person's stationery or business cards or in personal communications of any character.

(b) A graduate engineer who is employed in a firm registered under this chapter and who is working under the direct supervision of a licensed professional engineer may use the term "engineer" on the person's stationery or business cards or in personal communications of any character.

SECTION 31. Subchapter J, Chapter 1001, Occupations Code, is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527 to read as follows:

Sec. 1001.4525. PROBATION. (a) If a person's license suspension is probated, the board may require the person to:

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

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

(3) 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.

(b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection (b), the board may order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

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

Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not participate in the discussion of or vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from participating in the discussion of or voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

SECTION 32. Chapter 1001, Occupations Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. ADVISORY OPINIONS

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about an interpretation of this chapter or the application of this chapter to a person in regard to a specified existing or hypothetical factual situation. The board shall respond to requests for opinions within 180 days or affirmatively state its reason for not responding to the request.

Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single reference document that is available on the Internet.

Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

SECTION 33. (a) Not later than January 1, 2004, the Texas Board of Professional Engineers shall adopt the rules required by Section 1001.2035, Occupations Code, as added by this Act.

(b) Not later than September 1, 2005, the Texas Board of Professional Engineers shall adopt the written guidelines required by Section 1001.4525, Occupations Code, as added by this Act.

(c) The Texas Board of Professional Engineers is not required to issue an advisory opinion under Subchapter M, Chapter 1001, Occupations Code, as added by this Act, before January 1, 2004.

SECTION 34. (a) This Act takes effect September 1, 2003.

(b) The changes in law made by Sections 1001.102 and 1001.103, Occupations Code, as amended by this Act, and Section 1001.112, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the Texas Board of Professional Engineers do not affect the entitlement of a member serving on the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function as a member of the Texas Board of Professional Engineers for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(c) The change in law made by Section 1001.108, Occupations Code, as amended by this Act, does not affect the entitlement of a person who was serving as presiding officer of the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function in that capacity for the remainder of the person's term as presiding officer. That change in law applies only to the designation of a presiding officer of the board after that person's term as presiding officer expires.

(d) The changes in law made by this Act to Chapter 1001, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Professional Engineers 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.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 340

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 340** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
WEST
AVERITT
JANEK

On the part of the Senate

HILL
LAUBENBERG
PUENTE
MOWERY
HEGAR

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the rendition and appraisal of property for ad valorem tax purposes and to the use of electronic means for certain interactions between property owners and appraisal districts, taxing units, or other tax officials; providing civil penalties.

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

SECTION 1. Section 1.085, Tax Code, is amended by amending Subsection (b) and adding Subsections (e)-(g) to read as follows:

(b) An agreement between a chief appraiser and a property owner must:

- (1) be in writing;
- (2) be signed by the chief appraiser and the property owner; and
- (3) specify:
 - (A) the medium of communication;
 - (B) the type of communication covered; ~~and~~
 - (C) the means for protecting the security of a communication;
 - (D) the means for confirming delivery of a communication; and
 - (E) the electronic mail address of the property owner or person

designated to represent the property owner under Section 1.111, as applicable.

(e) The comptroller by rule:

(1) shall prescribe acceptable media, formats, content, and methods for the electronic transmission of notices required by Section 25.19; and

(2) may prescribe acceptable media, formats, content, and methods for the electronic transmission of other notices, renditions, and applications.

(f) In an agreement entered into under this section, a chief appraiser may select the medium, format, content, and method to be used by the appraisal district from among those prescribed by the comptroller under Subsection (e).

(g) Notwithstanding Subsection (a), if a property owner whose property is included in 25 or more accounts in the appraisal records of the appraisal district requests the chief appraiser to enter into an agreement for the delivery of the notice required by Section 25.19 in an electronic format, the chief appraiser must enter into an agreement under this section for that purpose and shall deliver the notice in accordance with an electronic medium, format, content, and method prescribed by the comptroller under Subsection (e).

SECTION 2. Section 1.09, Tax Code, is amended to read as follows:

Sec. 1.09. AVAILABILITY OF FORMS. When a property owner is required by this title to use a form, the office or agency with which the form is filed shall make printed and electronic versions of the forms readily and timely available and shall furnish a property owner a form without charge.

SECTION 3. Section 22.01, Tax Code, is amended by amending Subsection (a) and adding Subsections (f) through (j) to read as follows:

(a) Except as provided by Chapter 24 ~~[of this code]~~, a person shall render for taxation all tangible personal property used for the production of income that the person [he] owns or that the person [he] manages and controls as a fiduciary on January 1. A rendition statement shall contain:

- (1) the name and address of the property owner;
- (2) a description of the property by type or category;

(3) if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory;

(4) the physical location or taxable situs of the property; and

(5) the property owner's good faith estimate of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property.

(f) Notwithstanding Subsections (a) and (b), a rendition statement of a person who owns tangible personal property used for the production of income located in the appraisal district that, in the owner's opinion, has an aggregate value of less than \$20,000 is required to contain only:

(1) the name and address of the property owner;

(2) a general description of the property by type or category; and

(3) the physical location or taxable situs of the property.

(g) A person's good faith estimate of the market value of the property under Subsection (a)(5) is solely for the purpose of compliance with the requirement to render tangible personal property and is inadmissible in any subsequent protest, hearing, appeal, suit, or other proceeding under this title involving the property, except for:

(1) a proceeding to determine whether the person complied with this section;

(2) a proceeding under Section 22.29(b); or

(3) a protest under Section 41.41.

(h) If the property that is the subject of the rendition is regulated by the Public Utility Commission of Texas, the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission, the owner of the property is considered to have complied with the requirements of this section if the owner provides to the chief appraiser, on written request of the chief appraiser, a copy of the annual regulatory report covering the property and sufficient information to enable the chief appraiser to allocate the value of the property among the appropriate taxing units for which the appraisal district appraises property.

(i) Subsection (a) does not apply to a property owner whose property is subject to appraisal by a third party retained by the appraisal district if the property owner provides information substantially equivalent to that required by Subsection (a) regarding the property directly to the third party appraiser.

(j) Subsection (a) does not apply to property that is exempt from taxation.

SECTION 4. Section 22.02, Tax Code, is amended to read as follows:

Sec. 22.02. RENDITION OF PROPERTY LOSING EXEMPTION DURING TAX YEAR OR FOR WHICH EXEMPTION APPLICATION IS DENIED. (a) If an exemption applicable to a property on January 1 terminates during the tax year, the person who owns or acquires the property on the date applicability of the exemption terminates shall render the property for taxation within 30 days after the date of termination.

(b) If the chief appraiser denies an application for an exemption for property described by Section 22.01(a), the person who owns the property on the date the application is denied shall render the property for taxation in the manner provided by Section 22.01 within 30 days after the date of denial.

SECTION 5. Section 22.07, Tax Code, is amended by adding Subsections (c) through (f) to read as follows:

(c) The chief appraiser may request, either in writing or by electronic means, that the property owner provide a statement containing supporting information indicating how the value rendered under Section 22.01(a)(5) was determined. The statement must:

(1) summarize information sufficient to identify the property, including:

(A) the physical and economic characteristics relevant to the opinion of value, if appropriate; and

(B) the source of the information used;

(2) state the effective date of the opinion of value; and

(3) explain the basis of the value rendered. If the property owner is a business with 50 employees or less, the property owner may base the estimate of value on the depreciation schedules used for federal income tax purposes.

(d) The property owner shall deliver the statement to the chief appraiser, either in writing or by electronic means, not later than the 21st day after the date the chief appraiser's request is received. The owner's statement is solely for informational purposes and is not admissible in evidence in any subsequent protest, suit, appeal, or other proceeding under this title involving the property other than:

(1) a proceeding to determine whether the property owner has complied with this section;

(2) a proceeding under Section 22.29(b); or

(3) a protest under Section 41.41.

(e) A statement provided under this section is confidential information and may not be disclosed, except as provided by Section 22.27.

(f) Failure to comply with this section in a timely manner is considered to be a failure to timely render under Section 22.01 and penalties as described in Section 22.28 shall be applied by the chief appraiser.

SECTION 6. Section 22.23, Tax Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) On written request [~~For good cause shown in writing~~] by the property owner, the chief appraiser shall [~~may~~] extend a deadline for filing a rendition statement or property report [~~by written order~~] to May 15 [~~a date not later than April 30~~]. The chief appraiser [~~However, if the property that is the subject of the rendition is regulated by the Public Utility Commission of Texas or the Railroad Commission of Texas, the chief appraiser, upon written request by the property owner, shall extend the filing deadline until April 30, and~~] may further extend the deadline an additional 15 days upon good cause shown in writing by the property owner.

(c) If before December 1, 2003, a person files a rendition statement for the 2003 tax year that provides the information required by Section 22.01 as that section exists on January 1, 2004, and, as a result of that information, the chief appraiser discovers that some or all of that person's tangible personal property used for the production of income was omitted from the appraisal roll in one of the two preceding years, the chief appraiser may not add the value of the omitted property to the 2001 or 2002 appraisal roll. This subsection expires January 1, 2005.

SECTION 7. Subsections (b), (c), and (d), Section 22.24, Tax Code, are amended to read as follows:

(b) A person filing a rendition or report shall include all information required by Section 22.01 ~~[the form]~~.

(c) The comptroller may prescribe or approve different forms for different kinds of property but shall ensure that each form requires a property owner to furnish the information necessary to identify the property and to determine its ownership, taxability, and situs. A form may not require but may permit a property owner to furnish information not specifically required by this chapter to be reported. In addition, a form prescribed or approved under this subsection must contain the following statement in bold type: "If you make a false statement on this form, you could be found guilty of a Class A misdemeanor or a state jail felony under Section 37.10, Penal Code." ~~[relevant to the appraisal of property for tax purposes or to the assessment or collection of property taxes.]~~

(d) Except as required by Section 22.01(a), a [A] rendition or report form shall permit but [may] not require a property owner to state the owner's good faith estimate of [his opinion about] the market value of the [his] property.

SECTION 8. Subchapter B, Chapter 22, Tax Code, is amended by adding Sections 22.28, 22.29, and 22.30 to read as follows:

Sec. 22.28. PENALTY FOR DELINQUENT REPORT. (a) Except as otherwise provided by Section 22.30, the chief appraiser shall impose a penalty on a person who fails to timely file a rendition statement or property report required by this chapter in an amount equal to 10 percent of the total amount of taxes imposed on the property for that year by taxing units participating in the appraisal district.

(b) The chief appraiser may retain a portion of a penalty collected under this section, not to exceed 20 percent of the amount of the penalty, to cover the chief appraiser's costs of collecting the penalty. The chief appraiser shall distribute the remainder of the penalty to each taxing unit participating in the appraisal district that imposes taxes on the property in proportion to the taxing unit's share of the total amount of taxes imposed on the property by all taxing units participating in the district.

Sec. 22.29. PENALTY FOR FRAUD OR INTENT TO EVADE TAX. (a) The chief appraiser shall impose an additional penalty on the person equal to 50 percent of the total amount of taxes imposed on the property for the tax year of the statement or report by the taxing units participating in the appraisal district if it is finally determined by a court that:

(1) the person filed a false statement or report with the intent to commit fraud or to evade the tax; or

(2) the person alters, destroys, or conceals any record, document, or thing, or presents to the chief appraiser any altered or fraudulent record, document, or thing, or otherwise engages in fraudulent conduct, for the purpose of affecting the course or outcome of an inspection, investigation, determination, or other proceeding before the appraisal district.

(b) Enforcement of this section shall be by a proceeding initiated by the district or county attorney of the county in which the appraisal is established, on behalf of the appraisal district.

(c) In making a determination of liability under this section, the court shall consider:

(1) the person's compliance history with respect to paying taxes and filing statements or reports;

(2) the type, nature, and taxability of the specific property involved;

(3) the type, nature, size, and sophistication of the person's business or other entity for which property is rendered;

(4) the completeness of the person's records;

(5) the person's reliance on advice provided by the appraisal district that may have contributed to the violation;

(6) any change in appraisal district policy during the current or preceding tax year that may affect how property is rendered; and

(7) any other factor the court considers relevant.

(d) The chief appraiser may retain a portion of a penalty collected under this section, not to exceed 20 percent of the amount of the penalty, to cover the chief appraiser's costs of collecting the penalty. The chief appraiser shall distribute the remainder of the penalty to each taxing unit participating in the appraisal district that imposes taxes on the property in proportion to the taxing unit's share of the total amount of taxes imposed on the property by all taxing units participating in the district.

Sec. 22.30. WAIVER OF PENALTY. (a) The chief appraiser may waive the penalty imposed by Section 22.28 or 22.29 if the chief appraiser determines that the person exercised reasonable diligence to comply with or has substantially complied with the requirements of this chapter. A written request, accompanied by supporting documentation, stating the grounds on which penalties should be waived must be sent to the chief appraiser not later than the 30th day after the date the person received notification of the imposition of the penalty. The chief appraiser shall make a determination of the penalty waiver request based on the information submitted.

(b) The chief appraiser shall notify the person of the chief appraiser's determination regarding the penalty waiver request after considering:

(1) the person's compliance history with respect to paying taxes and filing statements or reports;

(2) the type, nature, and taxability of the specific property involved;

(3) the type, nature, size, and sophistication of the person's business or other entity for which property is rendered;

(4) the completeness of the person's records;

(5) the person's reliance on advice provided by the appraisal district that may have contributed to the person's failure to comply and the imposition of the penalty;

(6) any change in appraisal district policy during the current or preceding tax year that may affect how property is rendered; and

(7) any other factors that may have caused the person to fail to timely file a statement or report.

(c) A property owner is entitled to protest before the appraisal review board the failure or refusal of a chief appraiser to waive a penalty under Subsection (a).

SECTION 9. Section 23.23, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding Subsections (a) and (e) and except as provided by Subdivision (2), an improvement to property that would otherwise constitute a new improvement is not treated as a new improvement if the improvement is a replacement structure for a structure that was rendered uninhabitable or unusable by a casualty or by mold or water damage. For purposes of appraising the property in the tax year in which the structure would have constituted a new improvement:

(1) the last year in which the property was appraised for taxation before the casualty or damage occurred is considered to be the last year in which the property was appraised for taxation for purposes of Subsection (a)(2)(A); and

(2) the replacement structure is considered to be a new improvement only to the extent it is a significant improvement over the replaced structure as that structure existed before the casualty or damage occurred.

SECTION 10. Section 25.19, Tax Code, is amended by adding Subsection (k) to read as follows:

(k) Notwithstanding any other provision of this section, the chief appraiser may not deliver a written notice concerning property that is required to be rendered or reported under Chapter 22 until after the applicable deadline for filing the rendition statement or property report.

SECTION 11. Section 41.43, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), in [H] a protest authorized by Section 41.41(a)(1) [41.41(1)] or (2), the appraisal district has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the appraisal district fails to meet that standard, the protest shall be determined in favor of the property owner.

(d) If the property owner fails to deliver, before the date of the hearing, a rendition statement or property report required by Chapter 22 or a response to the chief appraiser's request for information under Section 22.07(c), the property owner has the burden of establishing the value of the property by a preponderance of the evidence presented at the hearing. If the property owner fails to meet that standard, the protest shall be determined in favor of the appraisal district.

SECTION 12. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect January 1, 2004, and applies only to the rendition of property for ad valorem tax purposes for a tax year that begins on or after that date.

(b) Sections 1.085 and 1.09, Tax Code, as amended by this Act, take effect January 1, 2005.

(c) Subsection (c), Section 22.23, Tax Code, as added by this Act, takes effect September 1, 2003, and applies to the rendition of property for ad valorem tax purposes for the 2003 tax year.

(d) Subsection (f), Section 23.23, Tax Code, as added by this Act, applies to the appraisal of property for a tax year beginning on or after the effective date of this Act regardless of whether the casualty or mold or water damage occurred before, on, or after the effective date of this Act.

(e) Except as provided by Subsection (f) of this section, the changes in law made by this Act to Section 1.085, Tax Code, apply only to an agreement between a chief appraiser and a property owner entered into on or after January 1, 2005. An agreement between a chief appraiser and a property owner entered into before January 1, 2005, is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(f) Notwithstanding Subsection (b) of this section, in the case of an appraisal district established for a county with a population of 500,000 or less, the changes in law made by this Act to Section 1.085, Tax Code, apply only to an agreement between the chief appraiser and a property owner entered into on or after January 1, 2006. An agreement between the chief appraiser of such an appraisal district and a property owner entered into before January 1, 2006, is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(g) Notwithstanding Subsection (b) of this section, an appraisal district established in a county with a population of 500,000 or less or a taxing unit located in a county with a population of 500,000 or less is not required to comply with Section 1.09, Tax Code, as amended by this Act, until January 1, 2006.

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 3420**

Senator Madla submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3420** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

MADLA
LUCIO
HARRIS

On the part of the Senate

GARZA
GUILLEN
GRIGGS

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1015**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1015** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH
ELLIS
WHITMIRE
WILLIAMS

ELKINS
KEEL
WISE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the confidentiality of certain information regarding, and to the compensation of, a crime victim.

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

SECTION 1. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.1325 to read as follows:

Sec. 552.1325. CRIME VICTIM IMPACT STATEMENT: CERTAIN INFORMATION CONFIDENTIAL. (a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

SECTION 2. Article 56.32(a)(9), Code of Criminal Procedure, is amended to read as follows:

(9) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

(A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:

- (i) a disability resulting from the personal injury;
- (ii) the receipt of medically indicated services related to the disability resulting from the personal injury; or
- (iii) participation in or attendance at investigative, prosecutorial, or judicial processes related to the criminally injurious conduct and participation in or attendance at any postconviction or postadjudication proceeding relating to criminally injurious conduct;
 - (C) care of a child or dependent;
 - (D) funeral and burial expenses;
 - (E) loss of support to a dependent, consistent with Article 56.41(b)(5);
 - (F) reasonable and necessary costs of cleaning the crime scene;
 - (G) reasonable replacement costs for clothing, bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation; ~~and~~
 - (H) reasonable and necessary costs, as provided by Article 56.42(d), incurred by a victim of family violence or a victim of sexual assault who is assaulted in the victim's place of residence for relocation and housing rental assistance payments; and
 - (I) reasonable and necessary costs of traveling to and from a place of execution for the purpose of witnessing the execution, including one night's lodging near the place at which the execution is conducted.

SECTION 3. The change in law made by this Act in amending Article 56.32(a)(9), Code of Criminal Procedure, applies only to compensation for costs incurred on or after the effective date of this Act. Compensation for costs incurred before the effective date of this Act is covered by the law in effect on the date the costs were incurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1865

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1865** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS
STAPLES
ARMBRISTER
FRASER

On the part of the Senate

BONNEN
B. KEFFER
THOMPSON
WILSON

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 117**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 117** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
JANEK
GALLEGOS

On the part of the Senate

HUPP
BERMAN
ELLIS
HOPSON

On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the authority of certain retired peace officers and federal criminal investigators to carry certain weapons.

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

SECTION 1. Subchapter H, Chapter 1701, Occupations Code, is amended by adding Section 1701.357 to read as follows:

Sec. 1701.357. WEAPONS PROFICIENCY FOR CERTAIN RETIRED PEACE OFFICERS AND FEDERAL CRIMINAL INVESTIGATORS. (a) This section applies only to:

(1) a peace officer designated as a peace officer under Article 2.12(1), (2), (3), or (10), Code of Criminal Procedure; and

(2) a federal criminal investigator designated as a special investigator under Article 2.122(a)(1) or (5), Code of Criminal Procedure.

(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer of the agency to whom this section applies an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:

(1) the officer honorably retired after not less than 20 years of service as a commissioned officer;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b) and satisfies the written procedures established by the agency. The agency shall maintain records of any retired officer who holds a certificate issued under this section.

(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued.

(e) The head of a state or local law enforcement agency may set and collect fees to recover the expenses the agency incurs in performing duties under this section.

(f) The amount of a fee set by a county law enforcement agency under Subsection (e) is subject to the approval of the commissioners court of the county. A county law enforcement agency that collects a fee under Subsection (e) shall deposit the amounts collected to the credit of the general fund of the county.

(g) A county law enforcement agency must obtain approval of the program authorized by this section from the commissioners court of the county before issuing a certificate of proficiency under this section.

(h) The head of a state law enforcement agency may allow an honorably retired federal criminal investigator to whom this section applies an opportunity to demonstrate weapons proficiency in the same manner as, and subject to the same requirements applicable to, an honorably retired peace officer as described by this section. The agency shall issue a certificate of proficiency to an honorably retired federal criminal investigator who otherwise meets the requirements of this section and shall maintain records regarding the issuance of that certificate.

SECTION 2. Section 46.15(a), Penal Code, is amended to read as follows:

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

(1) peace officers and neither section prohibits a peace officer from carrying a weapon in this state, regardless of whether the officer is engaged in the actual discharge of the officer's duties while carrying the weapon;

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

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

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

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

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

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

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

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 20 years of service as a commissioned officer; and

(B) is issued by the agency from which the peace officer retired or, for a federal criminal investigator, by a state law enforcement agency.

SECTION 3. This Act takes effect September 1, 2003.

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2588

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2588** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
MADLA
LUCIO
BRIMER

GOODMAN
MORRISON
REYNA
BAXTER

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1163

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1163** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
ARMBRISTER
RATLIFF

THOMPSON
ELLIS
LAUBENBERG
Y. DAVIS

On the part of the Senate On the part of the House
The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE JOINT RESOLUTION 30**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SJR 30** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

LINDSAY
BARRIENTOS
LUCIO
ARMBRISTER

CALLEGARI
T. SMITH
OLIVO
HILDERBRAN
HEGAR

On the part of the Senate On the part of the House

A JOINT RESOLUTION

proposing a constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts.

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

SECTION 1. Section 59, Article XVI, Texas Constitution, is amended by amending Subsection (a) and adding Subsection (c-1) to read as follows:

(a) The conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation

and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(c-1) In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or Montgomery County, or for the Tarrant Regional Water District, a Water Control and Improvement District located in whole or in part in Tarrant County. All the indebtedness may be evidenced by bonds of the conservation and reclamation district, to be issued under regulations as may be prescribed by law. The Legislature may also authorize the levy and collection within such district of all taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of the bonds and for maintenance of and improvements to such parks and recreational facilities. The indebtedness shall be a lien on the property assessed for the payment of the bonds. The Legislature may not authorize the issuance of bonds or provide for indebtedness under this subsection against a conservation and reclamation district unless a proposition is first submitted to the qualified voters of the district and the proposition is adopted. This subsection expands the authority of the Legislature with respect to certain conservation and reclamation districts and is not a limitation on the authority of the Legislature with respect to conservation and reclamation districts and parks and recreational facilities pursuant to this section as that authority existed before September 13, 2003.

SECTION 2. The legislature intends by the amendment proposed by Section 1 of this resolution to expand the authority of the legislature with regard to certain conservation and reclamation districts. The proposed amendment should not be construed as a limitation on the powers of the legislature or of a district with respect to parks and recreational facilities as those powers exist immediately before the amendment takes effect.

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 relating to the provision of parks and recreational facilities by certain conservation and reclamation districts."

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 111**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 111** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
SHAPLEIGH
CARONA
GALLEGOS
HARRIS

CHAVEZ
MOWERY
WOHLGEMUTH
URESTI
CASTRO

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 547**

Senator Averitt submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate
Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 547** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

AVERITT
HINOJOSA
LINDSAY
WENTWORTH

WOHLGEMUTH
B. BROWN
DENNY
HOCHBERG
STICK

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1493**

Senator Harris submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1493** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS
STAPLES
LUCIO

SOLOMONS
MARCHANT
HUGHES
GIDDINGS

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1129**

Senator Gallegos submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1129** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

GALLEGOS
MADLA
BRIMER
DEUELL

FARRAR
CALLEGARI
THOMPSON
BOHAC

On the part of the Senate

On the part of the House

The Conference Committee Report was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1639**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas
May 30, 2003

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1639** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

STAPLES
ARMBRISTER
HINOJOSA

HOPE
R. COOK
PUENTE
GEREN

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to regulating the waters of the state, including the spacing and production of groundwater and the control of instream flows.

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

SECTION 1. Section 36.116, Water Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

(e) In regulating the production of groundwater under Subsection (a)(2), a district:

(1) shall select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and

(2) may limit the amount of water produced based on contiguous surface acreage.

SECTION 2. Subchapter B, Chapter 11, Water Code, is amended by adding Sections 11.0235, 11.0236, and 11.0237 to read as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) The legislature has expressly required the commission while balancing all other interests to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in the commission's regular granting of permits for the use of state waters.

(d) The legislature has not expressly authorized granting water rights exclusively for:

(1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or

(2) other similar beneficial uses.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to reexamine the process for ensuring that these important priorities are effectively addressed in clear delegations of authority to the commission.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL FLOWS. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the Study Commission on Water for Environmental Flows.

(b) The study commission is composed of 15 members as follows:

(1) two members appointed by the governor;

(2) five members appointed by the lieutenant governor;

(3) five members appointed by the speaker of the house of representatives;

(4) the presiding officer of the commission or the presiding officer's designee;

(5) the chairman of the board or the chairman's designee; and

(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee.

(c) Of the members appointed under Subsection (b)(2):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the senate.

(d) Of the members appointed under Subsection (b)(3):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the house of representatives.

(e) Each appointed member of the study commission serves at the will of the person who appointed the member.

(f) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the study commission.

(g) A member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) The study commission may accept gifts and grants from any source to be used to carry out a function of the study commission.

(i) The commission shall provide staff support for the study commission.

(j) The study commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the study commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the study commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our parks, game preserves, and bay and estuary systems and are high priorities in the permitting process. The study commission shall specifically address ways that the ecological soundness of these systems will be ensured in the water allocation process.

(k) The study commission:

(1) shall appoint an advisory scientific committee that will:

(A) serve as impartial scientific advisors and reviewers for the study commission; and

(B) have a membership of no fewer than five and no more than nine total members chosen by the study commission to represent a variety of areas of relevant technical expertise;

(2) may appoint additional advisory committees to assist the study commission; and

(3) may draft proposed legislation to modify existing water-rights permitting statutes.

(l) Not later than December 1, 2004, the study commission shall issue a report summarizing:

(1) any hearings conducted by the study commission;

(2) any studies conducted by the study commission;

(3) any legislation proposed by the study commission; and

(4) any other findings and recommendations of the study commission.

(m) The study commission shall promptly deliver copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(n) The study commission shall adopt rules to administer this section.

(o) The study commission is abolished and this section expires September 1, 2005.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. This section does not prohibit the commission from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

(c) This section expires September 1, 2005.

SECTION 3. Subsections (d) and (e), Section 11.147, Water Code, are amended to read as follows:

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain [~~consider the effect, if any, of the issuance of the permit on~~] existing instream uses and water quality of the stream or river to which the application applies.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain [~~also consider the effect, if any, of the issuance of the permit on~~] fish and wildlife habitats.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SCR 61 by Duncan, In memory of Susan Wilkes of Lubbock.

SR 1007 by Barrientos, In memory of Charles Miller Babb of Austin.

SR 1017 by Hinojosa, In memory of Clotilde Perez "Cleo" Garcia of Corpus Christi.

SR 1018 by Wentworth, In memory of Herbert William Vilim of San Antonio.

SR 1019 by Wentworth, In memory of John M. Smith, Jr., of San Antonio.

SR 1027 by Hinojosa, In memory of Xicotencatl "Xico" P. Garcia.

HCR 7 (Madla), In memory of Jose Ricardo Nevarez of Uvalde.

HCR 274 (Deuell), In memory of Quentin Miller of Cooper.

Congratulatory Resolutions

SR 1009 by Madla, Congratulating Luis A. Garcia of Eagle Pass for winning a scholarship in the Texas Tomorrow Funds Poster Contest.

SR 1012 by Barrientos, Congratulating O. H. "Ike" Harris of Austin on his 70th birthday.

SR 1020 by Zaffirini, Commending Joaquin G. Cigarroa for his career in the field of medicine.

SR 1022 by West, Commending Chante' B. Prox for her contributions to the office of Senator Royce West.

SR 1023 by West, Commending Delta Sigma Theta Sorority, Incorporated, for its accomplishments.

SR 1024 by Lucio, Commending Heriberto F. Longoria, Jr., for his service to the Lone Star State.

SR 1025 by Lucio, Congratulating Leslea Danielle and Cian Kerry Smith on the birth of their son, Xander Cieran Smith.

Official Designation Resolution

HCR 86 (Madla), Recognizing March 31, 2003, as Texas Civilian Conservation Corps Day at the State Capitol.

ADJOURNMENT

On motion of Senator Armbrister, the Senate at 8:30 p.m. adjourned, in memory of Searcy Bracewell of Houston, until 10:00 a.m. tomorrow.

APPENDIX

SENT TO GOVERNOR

May 30, 2003

SB 5, SB 6, SB 18, SB 24, SB 25, SB 51, SB 92, SB 113, SB 115, SB 258, SB 325, SB 356, SB 439, SB 487, SB 494, SB 599, SB 613, SB 637, SB 681, SB 721, SB 739, SB 741, SB 757, SB 791, SB 805, SB 810, SB 837, SB 861, SB 891, SB 902, SB 905, SB 968, SB 972, SB 1019, SB 1022, SB 1109, SB 1127, SB 1128, SB 1159, SB 1180, SB 1211, SB 1215, SB 1230, SB 1315, SB 1362, SB 1388, SB 1459, SB 1461, SB 1484, SB 1546, SB 1559, SB 1581, SB 1614, SB 1665, SB 1700, SB 1794, SB 1805, SB 1826, SB 1899, SB 1925, SB 1928, SB 1930, SB 1933, SB 1935, SB 1940, SB 1948, SB 1955, SCR 46, SCR 49, SCR 58

In Memory
of
Searcy Bracewell
Senate Resolution 883

WHEREAS, The Senate of the State of Texas joins the citizens of Houston and Texans across the state in mourning the loss of the Honorable Searcy Bracewell, who died on May 13, 2003, at the age of 85; and

WHEREAS, Searcy Bracewell was born in Houston on January 19, 1918, to J. S. and Lola Blount Bracewell; and

WHEREAS, As a student at Texas A&M University, Mr. Bracewell was a member of the Corps of Cadets and was drum major of the Fightin' Texas Aggie Band; he graduated in 1938 and remained a lifelong and deeply committed supporter of his alma mater; he was chairman of the Sul Ross Group of the Texas A&M Former Students Association; and

WHEREAS, Searcy Bracewell attended Houston Law School and was admitted to the Texas State Bar in 1940; he was on the staff of General George Patton's Third Army during World War II; he was awarded the European Theater Medal with five battle stars for his service; and

WHEREAS, In 1945, he and his father and brother founded the law firm of Bracewell & Patterson, which is headquartered in Houston and now has offices in 11 cities in three countries; in addition to practicing law, he helped operate a family business, Broadway Plan, and he served as a managing director of Shearson Lehman Brothers; and

WHEREAS, Mr. Bracewell served in the Texas House of Representatives from 1947 to 1949 and in the Texas Senate from 1949 to 1959; he served as President Pro-Tem of the Texas Senate in 1957; during his tenure, his major legislative accomplishments included authoring bills establishing institutions that have since become The University of Texas M.D. Anderson Cancer Center and The University of Texas Health Science Center Dental School; and

WHEREAS, A highly respected leader in his community and state, Mr. Bracewell was involved in numerous civic and educational activities; notably, he served as president and chairman of the board of the Houston Grand Opera, a board member and interim president of the South Texas College of Law, a board member of the Houston Chamber of Commerce, and a trustee of the Houston Foundation; and

WHEREAS, In honor of his exceptional accomplishments, Mr. Bracewell was named a Texas A&M University Distinguished Alumnus in 1978; he received the Texas Aggie Lawyer of the Year Award, and was honored with the Corps of Cadets Hall of Honor Award in 2002; and

WHEREAS, Searcy Bracewell lived his life to the fullest and was a devoted husband, father, and grandfather, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby extend sincere condolences to the bereaved family of Searcy Bracewell: his wife of 63 years, Elizabeth Weaver Bracewell; his son and daughter-in-law, Joe and Peggy Bracewell; his daughter and son-in-law, Betsy and David Machac; his brother, Fentress Bracewell; and his seven grandchildren and two great-grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of the Honorable Searcy Bracewell.

WHITMIRE

