

SIXTY-SIXTH DAY

TUESDAY, MAY 10, 2005

PROCEEDINGS

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

The roll was called and the following Senators were present: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, West, Williams, Zaffirini.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

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

The Reverend Dr. Jim Haskell, First Baptist Church, Georgetown, offered the invocation as follows:

O Lord, we come before You today as the finite looking to the infinite, as the limited looking to the limitless, as the influenced looking to the influencer, as the fallible looking to the infallible, as the lobbied looking to the unaltered, as mere mortals looking to the most divine. We come before You today not because we have the right but because we have the need. Speak to us, impassion us, connect us, humble us, mold us, guide us, and use us not for our own benefit but for You and those who have given us our reason for being here. For we are reminded that You have encouraged us by teaching that one day we will hear You say, "Whatever you did for one of the least of these brothers of mine, you did for me." (Matthew 25:40) Father, I implore You today to help these dedicated servants of Yours to make decisions that are not just politically expedient but that are perceptively right. Help them to make decisions that are not simply the easiest way out but the most effective way up. Give them, O Lord, Your spirit of discernment so that when they act it is not with power that they can humanly garner but with the power of Your omnipotence. Amen.

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

The motion prevailed without objection.

LEAVES OF ABSENCE

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

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

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

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

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

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

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

CO-AUTHOR OF SENATE BILL 892

On motion of Senator Carona, Senator Van de Putte will be shown as Co-author of **SB 892**.

CO-AUTHOR OF SENATE BILL 1548

On motion of Senator Van de Putte, Senator Madla will be shown as Co-author of **SB 1548**.

CO-AUTHOR OF SENATE BILL 1704

On motion of Senator Ellis, Senator Wentworth will be shown as Co-author of **SB 1704**.

CO-AUTHOR OF SENATE BILL 1765

On motion of Senator Harris, Senator Madla will be shown as Co-author of **SB 1765**.

CO-SPONSOR OF HOUSE BILL 2231

On motion of Senator Deuell, Senator Zaffirini will be shown as Co-sponsor of **HB 2231**.

GUESTS PRESENTED

Senator Deuell was recognized and introduced to the Senate representatives of the Leadership Class from Sulphur Springs.

The Senate welcomed its guests.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 182, SB 262, SB 321, SB 359, SB 376, SB 441, SB 446, SB 449, SB 550, SB 580, SB 644, SB 718, SB 895, SB 896, SB 1005, SB 1011, SB 1126, SB 1217, SB 1563, SB 1680, SCR 25, SJR 7, SJR 17, SJR 21, SJR 40.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 10, 2005

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:

HB 192, Relating to the determination of the validity of certain Montgomery County Hospital District election petitions.

HB 281, Relating to the authority of certain counties to apply a county fire code to certain buildings.

HB 813, Relating to the creation of the Union Valley Ranch Municipal Utility District of Hunt County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

HB 833, Relating to hours of sale for certain alcoholic beverages in certain areas.

HB 863, Relating to an employment preference for veterans at state agencies.

HB 1054, Relating to the creation of the Montgomery County Municipal Utility District No. 100; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

HB 1079, Relating to the eligibility of certain judges to retire with full benefits.

HB 1140, Relating to the specifications and fees for legal papers filed with a county clerk.

HB 1141, Relating to the conversion of the Verandah Fresh Water Supply District of Hunt County to a municipal utility district; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

HB 1181, Relating to access to criminal history record information by a domestic relations office.

HB 1687, Relating to fees charged by a juvenile justice alternative education program.

HB 1773, Relating to the authority of certain counties to impose a hotel occupancy tax.

HB 1812, Relating to annexation and incorporation procedures for certain unincorporated areas in certain counties.

- HB 1918**, Relating to the interagency exchange of information regarding certain offenders with special needs.
- HB 1925**, Relating to removal or covering of certain signs in a construction or maintenance work zone.
- HB 2041**, Relating to a TEXAS grant pilot project to provide incentives for students to attend certain underutilized public institutions of higher education.
- HB 2344**, Relating to the Council on Cardiovascular Disease and Stroke.
- HB 2451**, Relating to the sale, service, and delivery of alcoholic beverages; providing penalties.
- HB 2509**, Relating to jurisdiction of a municipal court over an action to enforce certain vehicle dealer and manufacturer license plate laws.
- HB 2531**, Relating to the local administrative judge for the El Paso Council of Judges.
- HB 2560**, Relating to validation of the creation of and certain acts taken by the Rockwall County Public Safety and Fire Assistance District.
- HB 2590**, Relating to the issuance of a package store tasting permit to the holder of a wine only package store permit.
- HB 2636**, Relating to the rate of interest and the period for which interest is paid on certain tax refunds.
- HB 2759**, Relating to the maximum number of registered voters that may be contained in a county election precinct.
- HB 2772**, Relating to health savings accounts and high-deductible health plans implemented as a part of the group benefits program of the Employees Retirement System of Texas.
- HB 2796**, Relating to the provision of health care in areas near the Texas-Mexico border.
- HB 2856**, Relating to the repeal of the regulation of career counseling services.
- HB 2977**, Relating to the establishment of criminal law hearing officers in Hidalgo County.
- HB 3015**, Relating to next of kin for purposes of making funeral arrangements.
- HB 3114**, Relating to managing and maximizing federal money for certain state programs.
- HB 3129**, Relating to the creation of a driver safety program for holders of provisional driver's licenses.
- HB 3144**, Relating to a prohibition on hunting on certain parts of Big Sandy Creek in Wood County; providing penalties.
- HB 3384**, Relating to the authority of a junior college district or local workforce development board to contract under the Interlocal Cooperation Act.
- HB 3434**, Relating to testamentary and nontestamentary transfers of property and other benefits and the administration of those benefits.

HB 3519, Relating to the appointment of temporary justices of the peace in certain counties.

HB 3528, Relating to property exemptions in, and the validation of certain acts of, the Greater Greenspoint Management District of Harris County.

HB 3570, Relating to the creation of an additional county court at law in Hidalgo County.

HCR 185, In memory of the Honorable Joseph E. Moreno of Denver Harbor.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Williams was recognized and introduced to the Senate the debate team from The Woodlands High School in The Woodlands.

The Senate welcomed its guests.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The President at 11:28 a.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE SENATE BILL 1166 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1166** at this time on its second reading:

CSSB 1166, Relating to the enforcement of the laws governing plugging of abandoned oil and gas wells and preventing, controlling, or cleaning up oil and gas wastes or other substances or materials regulated by the Railroad Commission of Texas.

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

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

**COMMITTEE SUBSTITUTE
SENATE BILL 1166 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1166** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1166**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 1166** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

(Senator Armbrister in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 642 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 642** at this time on its second reading:

CSSB 642, Relating to offenses involving use of a child passenger safety seat.

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

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

**COMMITTEE SUBSTITUTE
SENATE BILL 642 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 642** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 642**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 642** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 1677 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1677** at this time on its second reading:

HB 1677, Relating to establishing a sentinel surveillance program for respiratory syncytial virus.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 1677 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1677** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **HB 1677**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **HB 1677** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 1239 ON SECOND READING

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **HB 1239** at this time on its second reading:

HB 1239, Relating to the implementation of unified drug enforcement strategies.

The motion prevailed.

Senators Fraser and Harris asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1239** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 362.001, Local Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Multicounty drug task force" means a mutual aid law enforcement task force that is established as a multicounty law enforcement cooperation between counties and municipalities to enhance multicounty interagency coordination, acquire intelligence information, and facilitate multicounty investigations of drug-related crimes.

SECTION 2. Chapter 362, Local Government Code, is amended by adding Section 362.004 to read as follows:

Sec. 362.004. MULTICOUNTY DRUG TASK FORCE. (a) A multicounty drug task force is composed of law enforcement agencies located in two or more counties in this state. A multicounty drug task force may be established and operated only after the Department of Public Safety confirms:

(1) a strategic need for the task force; and

(2) the composition of the task force.

(b) A multicounty drug task force, and any county or municipality participating in the task force, must comply with the policies and procedures established for the operation of a multicounty drug task force by the Department of Public Safety.

SECTION 3. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0097 to read as follows:

Sec. 411.0097. MULTICOUNTY DRUG TASK FORCES. (a) The department shall establish policies and procedures for multicounty drug task forces, as defined by Section 362.001, Local Government Code, and may exercise the authority necessary to ensure compliance with those policies and procedures.

(b) The department shall evaluate each multicounty drug task force with respect to whether the task force:

(1) complies with state and federal requirements, including policies and procedures established by department rule; and

(2) demonstrates effective performance outcomes.

(c) The department shall submit semiannually to the governor's office and the Legislative Budget Board a report that includes a written evaluation of the matters described by Subsection (b).

SECTION 4. Article 59.06, Code of Criminal Procedure, is amended by adding Subsection (q) to read as follows:

(q)(1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

SECTION 5. Article 59.06(q), Code of Criminal Procedure, as added by this Act, applies to proceeds from the sale of property that is forfeited under Chapter 59 of that code on or after the effective date of this Act. The disposition of proceeds from the sale of property that was forfeited under that chapter before the effective date of this Act is governed by the law in effect on the date the property was forfeited, and the former law is continued in effect for that purpose.

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, 2005.

The amendment to **HB 1239** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Deuell, Fraser, Harris.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

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

HB 1239 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Deuell, Fraser, Harris.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 330 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 330** at this time on its second reading:

HB 330, Relating to exempting health savings accounts from seizure for satisfaction of debts.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 330 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 330** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **HB 330**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **HB 330** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

COMMITTEE SUBSTITUTE SENATE BILL 696 ON SECOND READING

Senator Ogden moved to suspend the regular order of business to take up for consideration **CSSB 696** at this time on its second reading:

CSSB 696, Relating to testing and examination fee requirements for certain provisional license holders.

The motion prevailed.

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

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 696** (Senate committee printing) as follows:

(1) In Section 1 of the bill, in added Section 521.273(c), Transportation Code (page 1, line 17), between "if" and "the" insert "in the year preceding the date of renewal of the license.".

(2) In Section 1 of the bill, in added Section 521.273(c), Transportation Code, (page 1, line 20), between "suspended" and "by" insert "due to one or more incidents involving the operation of a motor vehicle".

(3) Strike Sections 2, 3, and 4 of the bill (page 1, lines 22-50) and renumber the remaining sections of the bill appropriately.

The amendment to **CSSB 696** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

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

CSSB 696 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Staples.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

**COMMITTEE SUBSTITUTE
SENATE BILL 696 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 696** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 22, Nays 2.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, West, Williams, Zaffirini.

Nays: Staples, Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 696**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 696** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 23, Nays 1.

Nays: Staples.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

SENATE BILL 892 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **SB 892** at this time on its second reading:

SB 892, Relating to the operation of property owners' associations; providing a civil penalty.

The motion prevailed.

Senators Harris and Lindsay asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 892** (Senate committee printing) as follows:

(1) Insert the following appropriately numbered SECTION of the bill and renumber subsequent SECTIONS accordingly:

SECTION _____. Chapter 207, Property Code, is amended by adding Section 207.006 to read as follows:

Sec. 207.006. REQUIREMENT TO FURNISH RESALE CERTIFICATE. (a) In this section, "declarant" means a person or a group of persons acting in concert who:

(1) as part of a common promotional plan, offer to dispose of the person's or group's interest in a subdivision lot not previously disposed of; or

(2) reserve or succeed to any special declarant right.

(b) Except as provided by Section 207.004, an owner, other than a declarant selling an unimproved lot to a party that intends to resell the lot after constructing improvements on the lot, who sells a lot in a subdivision shall provide to the purchaser a resale certificate containing the information described by Section 207.003.

(c) A resale certificate provided under this section must be issued by the property owners' association and must have been prepared not earlier than 30 days before the date the certificate is delivered to the purchaser.

(d) An owner's failure to provide a resale certificate under this section does not void a deed to a purchaser.

(e) This section does not apply to a sale made under a lien foreclosure, deed in lieu of foreclosure, or court order.

(2) In the recital to SECTION 7 (page 2, line 34), strike "(e), and (f)" and substitute "and (e)".

(3) In SECTION 7, in amended Section 209.005, Property Code (page 2, lines 45–49), strike added Subsection (d).

(4) In SECTION 7, in added Subsection (e), Section 209.005, Property Code (page 2, line 50), strike "(e)" and substitute "(d)".

(5) In SECTION 7, in added Subsection (f), Section 209.005, Property Code (page 2, line 66), strike "(f)" and substitute "(e)".

(6) In SECTION 10, strike added Section 209.012, Property Code (page 4, lines 13–18), and substitute the following:

Sec. 209.012. CONFLICTS OF INTEREST. (a) Before the board of a property owners' association hires a person who is related within the third degree of consanguinity to a member of the board:

(1) the board member to whom the person is related must disclose the relationship between the person and the member to the other members of the board; and

(2) the board must vote on whether to hire the person.

(b) The member to whom the person to be hired is related may not participate in a vote described by Subsection (a)(2).

The amendment to **SB 892** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

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

SB 892 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Harris, Lindsay.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

SENATE BILL 892 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 892** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 21, Nays 3.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Hinojosa, Jackson, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, West, Williams, Zaffirini.

Nays: Harris, Lindsay, Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 892**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 892** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 22, Nays 2.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Hinojosa, Jackson, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, West, Williams, Zaffirini.

Nays: Harris, Lindsay.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

SENATE BILL 1697 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1697** at this time on its second reading:

SB 1697, Relating to the distinction between surplus lines insurance and unauthorized insurance.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 1697** (committee printing) by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

Section _____. Section 226.005, Insurance Code, is amended to read as follows:

Sec. 226.005. TAX PAYMENT; DUE DATE. (a) The tax imposed by this subchapter is due and payable not later than:

(1) March 1 after the end of the calendar year in which the insurance was effectuated, continued, or renewed; or

(2) another date prescribed by the comptroller.

(b) An unauthorized insurer shall pay the tax imposed by this subchapter using a form prescribed by the comptroller. An insured or agent may pay the tax in lieu of the unauthorized insurer.

(c) The tax under this section, if not paid when due, is a liability of the unauthorized insurer, the agent, and the insured until paid ~~[If an unauthorized insurer defaults in payment of the tax imposed by this subchapter, the insured is responsible for paying the tax].~~

The amendment to **SB 1697** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 1697** (committee printing) as follows:

(1) Add the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION _____. Section 981.101, Insurance Code, is amended by adding section (d) to read as follows:

(d) Every eligible surplus lines insurer shall annually file with the stamping office, a report in a format prescribed by the stamping office, the following information regarding each surplus lines policy:

1) policy number;

2) insured's name and address;

3) policy effective and expiration dates;

4) written premium allocated to Texas; and

5) name, address and agent license number of the surplus lines agent who placed the policy or, in the case of a group of insurers that includes individual unincorporated insurers, the group or its eligible members shall provide (i) policy information which may be aggregated or summarized as approved by the Commissioner; and (ii) such other information as the Commissioner may so direct.

Such information is considered confidential and shall not be made available to the public.

(2) Strike Subsection (d), section 2 of the bill (page 2, lines 1-4) and substitute a new Subsection (d) to read as follows:

(d) For the purposes of Subsection (b)(1), "lawful transaction of surplus lines insurance" means an insurance transaction where the surplus lines insurance is procured from an eligible surplus lines insurer as defined by Section 981.002. Failure to comply with Chapter 981 may subject the eligible surplus lines insurer to sanctions pursuant to Section 981.006 but none of the provisions of Chapter 101 shall apply to the eligible surplus lines insurer.

The amendment to **SB 1697** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

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

SB 1697 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

SENATE BILL 1697 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1697** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1697**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 1697** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

COMMITTEE SUBSTITUTE SENATE BILL 1452 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1452** at this time on its second reading:

CSSB 1452, Relating to the Texas Academy of Mathematics and Science at The University of Texas at Brownsville.

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

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

**COMMITTEE SUBSTITUTE
SENATE BILL 1452 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1452** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1452**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 1452** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 614 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 614** at this time on its second reading:

HB 614, Relating to foster care payments for certain children.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

HOUSE BILL 614 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 614** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 23, Nays 1.

Nays: Wentworth.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **HB 614**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **HB 614** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 24, Nays 0.

Absent-excused: Barrientos, Ellis, Gallegos, Janek, Shapleigh, Van de Putte, Whitmire.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Lindsay submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed:

Members, The Texas A&M University System Board of Regents: Lupe Fraga, Fort Bend County; Bill Jones, Travis County; Gene Stallings, Lamar County.

Members, Texas Board of Criminal Justice: Oliver John Bell, Travis County; Gregory Scott Coleman, Williamson County.

Member, Texas Workforce Commission: Ronald Gene Congleton, Travis County.

Members, Brazos River Authority Board of Directors: Christopher Steve Adams, Jr., Hood County; Truman Otis Blum, Bosque County; Robert Manning Christian, Leon County; Christopher D. DeCluitt, McLennan County; Carolyn H. Johnson, Brazoria County; Roberta Jean Killgore, Burleson County.

Chief Justice, Court of Appeals, Seventh Court of Appeals District: Brian Patrick Quinn, Lubbock County.

Member, Texas Structural Pest Control Board: Richard M. Rogers, Tarrant County.

Directors, Rio Grande Regional Water Authority Board of Directors: Joe A. Barrera III, Cameron County; Wayne Halbert, Cameron County; Sonia Kaniger, Cameron County; Kathleen "Kathy" Reavis, Hidalgo County; Jimmie E. Steidinger, Hidalgo County.

Members, Texas School Safety Center Board of Directors: Charles Arthur Brawner, Waller County; Gigi Edwards Bryant, Travis County; Eric J. Cederstrom, Lubbock County; Garry Edward Eoff, Brown County; Marilea Whatley Lewis, Dallas County; Carl A. Montoya, Ed.D., San Patricio County; James Richard Pendell, El Paso County; Lucy Rubio, Nueces County; Jane A. Wetzell, Dallas County.

Members, Council on Sex Offender Treatment: Frederick Liles Arnold, Collin County; Monica Hernandez, Willacy County; Glen Allen Kercher, Walker County; Maria T. Molett, Dallas County; Aaron Paul Pierce, Bell County.

Chair, Texas Small Business Industrial Development Corporation Board of Directors: Nathaniel Willis Parker IV, Denton County.

Members, Texas Small Business Industrial Development Corporation Board of Directors: A. Mario Castillo, Tom Green County; Nancy R. Kudla, Bexar County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Lindsay gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

RECESS

On motion of Senator Brimer, the Senate at 12:31 p.m. recessed until 2:30 p.m. today.

AFTER RECESS

The Senate met at 2:55 p.m. and was called to order by Senator Whitmire.

SENATORS ANNOUNCED PRESENT

Senators Barrientos, Ellis, Janek, Van de Putte, and Whitmire, who had previously been recorded as "Absent-excused," were announced "Present."

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Rudi Rodriguez, Charles Lara, Albert Richter, Mary Vera Ramirez, and Diane Solano, representing Tejano Texas.

The Senate welcomed its guests.

SENATORS ANNOUNCED PRESENT

Senators Gallegos and Shapleigh, who had previously been recorded as "Absent-excused," were announced "Present."

SENATE BILL 1458 ON SECOND READING

Senator Wentworth moved to suspend the regular order of business to take up for consideration **SB 1458** at this time on its second reading:

SB 1458, Relating to the adoption of a uniform commercial building code for use in the state.

The motion prevailed.

Senators Williams and Zaffirini asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 1458** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION ____ . Section 214.213, Local Government Code, is amended to read as follows:

Sec. 214.213. EXCEPTIONS. (a) The International Residential Code and the International Building Code do [does] not apply to the installation and maintenance of electrical wiring and related components.

(b) A municipality is not required to review and consider adoption of amendments to the International Residential Code or the International Building Code regarding electrical provisions.

SECTION ____ . Section 214.214(a), Local Government Code, is amended to read as follows:

(a) The National Electrical Code, as it existed on May 1, 2001, is adopted as the municipal [~~residential~~] electrical construction code in this state and applies to all residential and commercial electrical construction applications.

The amendment to **SB 1458** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 1458** as follows:

(1) In SECTION 2 of the bill, in added Section 214.216(d), Local Government Code (committee printing, page 1, line 39), strike "2003" and substitute "2000".

(2) In SECTION 2 of the bill, in added Section 214.216(e), Local Government Code (committee printing, page 1, line 42), strike "2003" and substitute "2000".

(3) In SECTION 3 of the bill, in added Section 233.122(d), Local Government Code (committee printing, page 2, line 18), strike "2003" and substitute "2000".

(4) In SECTION 3 of the bill, in added Section 233.122(e), Local Government Code (committee printing, page 2, line 21), strike "2003" and substitute "2000".

The amendment to **SB 1458** was read and was adopted by the following vote: Yeas 17, Nays 9.

Yeas: Brimer, Carona, Deuell, Eltife, Estes, Fraser, Hinojosa, Janek, Lindsay, Nelson, Ogden, Shapiro, Shapleigh, Staples, Wentworth, Whitmire, Williams.

Nays: Armbrister, Barrientos, Ellis, Gallegos, Lucio, Madla, Seliger, West, Zaffirini.

Absent: Averitt, Duncan, Harris, Jackson, Van de Putte.

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

SB 1458 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Williams, Zaffirini.

HOUSE BILL 2453 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2453** at this time on its second reading:

HB 2453, Relating to the eligibility for a commercial establishment to have its name displayed on a specific information logo sign.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2453 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2453** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **HB 2453**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **HB 2453** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 10, 2005

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:

HB 26, Relating to an electronic database of major state contracts and related documents.

HB 107, Relating to prohibiting actions brought against certain persons alleging injury relating to an individual's weight gain, obesity, or any health condition associated with weight gain or obesity.

HB 584, Relating to reimbursement under certain health benefit plans for services provided by licensed athletic trainers.

HB 647, Relating to the issuance of county obligations for public improvements and to the review and approval of refunding bonds by the attorney general.

HB 669, Relating to a study of the feasibility of requiring registration of certain assisted living facilities.

HB 686, Relating to the use of certain factors in determining premiums charged for professional liability insurance for physicians and health care providers.

- HB 692**, Relating to the punishment for and certain civil consequences of committing the offense of prostitution.
- HB 812**, Relating to the creation of the Sunrise Municipal Utility District of Hunt County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 888**, Relating to the reporting of cost claims information under certain health benefit plans.
- HB 949**, Relating to certain limitations in health benefit plans and health insurance policies.
- HB 967**, Relating to administration of the criminal justice information system.
- HB 1012**, Relating to the offense of abuse of a corpse and to the offense of criminal mischief in certain circumstances; providing a criminal penalty.
- HB 1137**, Relating to the authority of the Department of Public Safety to enter into agreements with foreign countries for issuance of driver's licenses.
- HB 1382**, Relating to notice of cancellation of a voter's registration.
- HB 1413**, Relating to the continuation and functions of the Texas State Board of Examiners of Marriage and Family Therapists.
- HB 1467**, Relating to the offense of prohibited sexual conduct.
- HB 1575**, Relating to juvenile delinquency; providing a criminal penalty.
- HB 1634**, Relating to arson and arson investigation; creating offenses.
- HB 1733**, Relating to prohibiting disclosure of certain records or reports by the Texas Feed and Fertilizer Service.
- HB 1799**, Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.
- HB 1870**, Relating to a deceptive trade practice in connection with advertising for a household goods carrier.
- HB 1934**, Relating to security fees for justice courts.
- HB 1984**, Relating to the information required to be provided with a notice of appraised value for ad valorem tax purposes and an ad valorem tax bill.
- HB 2000**, Relating to the information that must be included in a school district bond election proposition.
- HB 2036**, Relating to the regulation of sex offender treatment providers and the treatment of sex offenders; providing a penalty.
- HB 2080**, Relating to the ad valorem tax status of a license to occupy a dwelling unit in a tax-exempt retirement community.
- HB 2158**, Relating to an exemption from annual registration fees for a retired physician who provides volunteer medical services in a disaster.

- HB 2280**, Relating to the implementation of a statewide voter registration system as required by the federal Help America Vote Act.
- HB 2289**, Relating to required notice of and a lien resulting from damage to a fence.
- HB 2337**, Relating to the use of information provided by an applicant for a driver's license or personal identification certificate in an image verification system.
- HB 2378**, Relating to transferring responsibility for the child-care facilities for state employees from the Texas Building and Procurement Commission to the Health and Human Services Commission.
- HB 2381**, Relating to posting on the Internet the notice of a meeting of the governing body of a county and certain districts and political subdivisions.
- HB 2476**, Relating to allowing the Texas Medical Disclosure Panel to hold telephonic hearings.
- HB 2569**, Relating to the office of district attorney for the 253rd Judicial District and to the creation of the office of district attorney for the 344th Judicial District.
- HB 2589**, Relating to local control of fire fighter and police officer employment matters in certain municipalities.
- HB 2613**, Relating to the adoption of the Interstate Insurance Product Regulation Compact.
- HB 2627**, Relating to certain requirements for issuance of a barbershop permit.
- HB 2644**, Relating to delay in the deregulation of certain electric utilities.
- HB 2678**, Relating to the use of certain information to underwrite professional liability insurance for physicians and health care providers.
- HB 2755**, Relating to the authority of certain development corporations to undertake projects for the development, retention, or expansion of business enterprises.
- HB 2826**, Relating to frivolous or bad-faith complaints filed with the Texas Ethics Commission.
- HB 2864**, Relating to the use of sales tax revenue to pay or secure certain municipal public securities.
- HB 2955**, Relating to the operation of a motor vehicle in certain counties.
- HB 3041**, Relating to the designation of the structure on Spur 366 connecting the east and west levee of the Trinity River as the Margaret Hunt Hill Bridge.
- HB 3162**, Relating to the temporary replacement of a member of a political party's county executive committee who enters active military service.
- HB 3195**, Relating to combined municipal sales tax ballot propositions.
- HB 3200**, Relating to single employer benefit plans.
- HB 3269**, Relating to the duties of the Texas Historical Commission relating to El Camino Real de los Tejas National Historic Trail.

HB 3285, Relating to the abolition of the State Aircraft Pooling Board and the principal part of its functions.

HB 3460, Relating to the interest rate to be paid on the deposits made by customers of a water, electric, gas, or telephone utility.

HB 3461, Relating to the manner in which a municipality may impose a moratorium on certain property development.

HB 3490, Relating to the creation of The Lakes Fresh Water Supply District of Denton County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

HB 3541, Relating to the powers and duties of magistrates in Brazos County.

HB 3547, Relating to the creation of an additional county court at law in Kaufman County.

HCR 49, Urging the United States Congress to fully fund NASA's budget request for fiscal year 2006.

HCR 124, Designating April as Child Safety Month in Texas.

HJR 65, Proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation rent-to-own property not held by the lessee primarily to produce income and to prescribe the method to be used to depreciate taxable rent-to-own property for tax appraisal purposes.

HJR 89, Proposing a constitutional amendment to authorize the legislature to allow the governing body of a political subdivision to provide an additional exemption from ad valorem taxation for property owned by certain disabled veterans who have been awarded the Purple Heart or their surviving spouses.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
SENATE BILL 1786 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSSB 1786** at this time on its second reading:

CSSB 1786, Relating to the powers and duties of a navigation district or port authority.

The motion prevailed.

Senators Brimer, Estes, and Wentworth asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1786**, on page 2, lines 30-32 by striking section 60.501 of the bill and inserting a new section 60.501 to read as follows:

Sec. 60.501. SAFETY AND SECURITY PROCEDURES; NO NEW DUTIES. The adoption and use by a district of a safety or security code, policy, or manual does not create any new or additional legal duties of the district not existing under common law or statutory law.

The amendment to **CSSB 1786** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

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

CSSB 1786 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Brimer, Estes, Wentworth.

COMMITTEE SUBSTITUTE SENATE BILL 1786 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1786** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Averitt, Barrientos, Carona, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Brimer, Estes, Wentworth.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1786**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 1786** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 504 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSSB 504** at this time on its second reading:

CSSB 504, Relating to the filing of certain information by arbitrators after each arbitration.

The motion prevailed.

Senators Deuell, Estes, Staples, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 504** (committee report), SECTION 1 of the bill, Section 181.002(4) as follows:

After "purposes.", page 1, line 53, insert the following:

"This term does not include an arbitration proceeding between members of the same real estate trade association."

The amendment to **CSSB 504** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

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

CSSB 504 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Nays: Deuell, Estes, Staples, Williams.

**COMMITTEE SUBSTITUTE
SENATE BILL 504 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 504** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Deuell, Estes, Staples, Wentworth, Williams.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 504**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 504** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Deuell, Estes, Staples, Williams.

COMMITTEE SUBSTITUTE SENATE BILL 918 ON SECOND READING

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSSB 918** at this time on its second reading:

CSSB 918, Relating to a license fee exemption for certain certified public accountants.

The motion prevailed.

Senator Averitt asked to be recorded as "Present-not voting" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to engrossment except as follows:

Present-not voting: Averitt.

**COMMITTEE SUBSTITUTE
SENATE BILL 918 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 918** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Wentworth.

Present-not voting: Averitt.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 918**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 918** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Averitt.

RECESS

On motion of Senator Brimer, the Senate at 3:39 p.m. recessed until 5:30 p.m. today.

AFTER RECESS

The Senate met at 7:03 p.m. and was called to order by the President.

MESSAGES FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 10, 2005

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:

HB 43, Relating to requiring the Texas Department of Criminal Justice to conduct a mandatory human immunodeficiency virus test on certain inmates and state jail felons.

HB 62, Relating to procedures for appealing a residential eviction suit.

HB 506, Relating to hunting on or over certain submerged land; providing a penalty.

HB 541, Relating to the types of nonprofit organizations that may conduct raffles.

HB 608, Relating to school district internship programs in which students earn credit for high school graduation by working with elected government officials.

HB 659, Relating to authorizing a qualified organization under the Charitable Raffle Enabling Act to conduct a reverse raffle.

HB 719, Relating to publicizing a list of voters' rights.

HB 934, Relating to notice requirements in certain proceedings relating to charitable trusts.

HB 1023, Relating to the length of a ballot proposition.

HB 1055, Relating to the creation of the Montgomery County Municipal Utility District No. 101; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

HB 1165, Relating to the employment of county traffic officers by certain counties.

HB 1209, Relating to using county election precincts for any election held on the November uniform election date.

HB 1283, Relating to the continuation and functions of the Texas State Board of Examiners of Professional Counselors; providing an administrative penalty.

HB 1346, Relating to the creation of the CLL Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

HB 1353, Relating to creation and operation of a guaranty fund for certain groups certified to self insure for workers' compensation insurance coverage and to service companies that administer the guaranty fund.

- HB 1571**, Relating to requirements for a group life insurance policy to be issued for certain employee groups.
- HB 1610**, Relating to a county fee for an activity that excavates or cuts the surface of a county road.
- HB 1631**, Relating to amendment of restrictions governing certain residential subdivisions.
- HB 1682**, Relating to a breach in the security of a computerized data system that includes personal identifying information; providing a civil penalty.
- HB 1741**, Relating to the creation by certain municipalities and powers of regional mobility authorities.
- HB 1789**, Relating to certain obsolete documents issued in connection with the licensing of drivers.
- HB 1863**, Relating to the termination of a campaign treasurer appointment.
- HB 1884**, Relating to the records management and preservation services fee.
- HB 1900**, Relating to the assessment and regulation of emissions events.
- HB 1945**, Relating to the filing of personal financial statements by the state chair of a political party.
- HB 1977**, Relating to the presentation of Star of Texas awards to peace officers, firefighters, and emergency medical first responders who are killed or sustain serious or fatal injuries in the line of duty.
- HB 1999**, Relating to the preparation of medical history reports by parents who relinquish children for adoption.
- HB 2011**, Relating to the creation of a living trust; providing a civil penalty.
- HB 2048**, Relating to certain online services and transactions involving state agencies.
- HB 2059**, Relating to the period of voter registration of a person registered by a federal postcard application.
- HB 2079**, Relating to the creation, administration, powers, duties, functions, operations, and financing of the Stephens Regional Special Utility District.
- HB 2100**, Relating to heirloom wedding anniversary certificates.
- HB 2120**, Relating to the efficient administration and certain powers of county government.
- HB 2154**, Relating to the declination of compensation by a candidate for a county or precinct office.
- HB 2301**, Relating to proceedings involving the change of rates of a water and sewer utility.
- HB 2304**, Relating to the regulation of alarm systems and alarm systems companies; providing penalties.

- HB 2408**, Relating to delivery to an employer of an order or writ for the withholding of child support from an employee's earnings.
- HB 2422**, Relating to the designation of Farm-to-Market Road 2065 as the Staff Sergeant Herbert S. Robertson, Jr., Memorial Highway.
- HB 2454**, Relating to the eligibility of certain voters to vote a limited ballot in a new county of residence.
- HB 2458**, Relating to authorizing the commissioners court of a county to delegate its authority to make certain budget transfers.
- HB 2465**, Relating to a public hearing conducted by the secretary of state in regard to the question of approval of a voting system or voting system equipment for use in elections.
- HB 2473**, Relating to certain state publications maintained by the Texas State Library and Archives Commission.
- HB 2495**, Relating to the transfer of a motor vehicle title at a dealer auction.
- HB 2507**, Relating to the regulation of mobile food units and roadside food vendors in certain populous areas.
- HB 2526**, Relating to the promotional activities of certain alcoholic beverage license or permit holders.
- HB 2544**, Relating to the continuation and functions of the Texas Alcoholic Beverage Commission.
- HB 2594**, Relating to the health disparities task force.
- HB 2647**, Relating to designation of Farm-to-Market Road 68 in Fannin County as Speaker Jimmy Turman Road.
- HB 2652**, Relating to the creation of a private activity bond program for highway and surface freight facilities.
- HB 2667**, Relating to the election of a director of a municipal utility district.
- HB 2694**, Relating to the eligibility of certain counties to use the competitive proposal procedure for certain purchases.
- HB 2695**, Relating to allowing a county to consider health insurance benefits provided by a bidder to its employees when awarding a purchasing contract.
- HB 2704**, Relating to the construction, maintenance, or operation of toll or nontoll projects or facilities.
- HB 2783**, Relating to the time for responding to notice of certain sworn complaints filed with the Texas Ethics Commission.
- HB 2823**, Relating to the form of payments made to certain disabled peace officers under the Crime Victims' Compensation Act.
- HB 2883**, Relating to Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

- HB 2931**, Relating to the authority of a municipality that includes or is near a defense base to issue bonds for facilities to be leased to the federal government.
- HB 3116**, Relating to the authority of regional planning commissions with respect to mutual aid agreements for emergency management purposes.
- HB 3118**, Relating to fees collected for services provided by the Commission on Jail Standards.
- HB 3147**, Relating to authorizing the Texas Building and Procurement Commission to enter into more favorable lease with option to purchase agreements with regards to certain space currently occupied under lease with option to purchase agreements.
- HB 3164**, Relating to taxes, assessments, and impact fees imposed on residential property by the Greater East End Management District.
- HB 3315**, Relating to state compensation for certain primary election expenses.
- HB 3473**, Relating to an exemption from the platting requirement in certain counties near an international border.
- HB 3476**, Relating to the creation of the Fort Bend County Municipal Utility District No. 177; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 3573**, Relating to the authority of certain counties to impose a hotel occupancy tax.
- HCR 132**, Granting the John G. and Marie Stella Kenedy Memorial Foundation permission to sue the state, the General Land Office, the School Land Board, and Jerry Patterson.
- SB 286**, Relating to requiring public officials to receive training in the requirements of the open meetings and public information laws.
- SB 489**, Relating to the license requirements of marine dealers, distributors, and manufacturers.
- SB 599**, Relating to the eligibility of a criminal defendant for release from jail after a delay in prosecution.
- SB 728**, Relating to the liability of certain entities that enter agreements with a metropolitan rapid transit authority.
- SB 1211**, Relating to providing information about respiratory syncytial virus under certain continuing education programs.
- SB 1224**, Relating to a landowner's liability for injuries incurred during certain recreational activities.
- SB 1428**, Relating to the establishment of a statewide maintenance program for boll weevil and pink bollworm eradication.

SB 1472, Relating to services provided by manufacturers and distributors of beer to beer retailers.
(Committee Substitute)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 3 ON SECOND READING**

Senator Ogden moved to suspend the regular order of business to take up for consideration **CSHB 3** at this time on its second reading:

CSHB 3, Relating to financing public schools in this state and reducing school property taxes.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Van de Putte, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Shapleigh, West.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 3** as follows:

(1) In Section 1A.04 of the bill, strike proposed Subsection (e-2), Section 42.253, Education Code (committee printing, page 1, lines 57-59), and substitute the following:

(e-2) For the 2005-2006 school year, the limit authorized by Subsection (e) is reduced by \$0.20. For the 2006-2007 school year, the limit authorized by Subsection (e) is reduced by \$0.35. This subsection expires September 1, 2007.

(2) In Section 1A.05 of the bill, in proposed Subsection (a), Section 42.303, Education Code (committee printing, page 1, line 62), strike "(a)".

(3) In Section 1A.05 of the bill, in proposed Subsection (a), Section 42.303, Education Code (committee printing, page 2, line 1), strike "\$0.69" and substitute "\$0.54".

(4) In Section 1A.05 of the bill, strike proposed Subsection (b), Section 42.303, Education Code (committee printing, page 2, lines 3-6).

(5) In Section 1A.06 of the bill, in amended Subsection (d), Section 45.003, Education Code (committee printing, page 2, line 15), strike "\$1.45" and substitute "\$1.30".

(6) In Section 1A.06 of the bill, strike proposed Subsection (e), Section 45.003, Education Code (committee printing, page 2, lines 17-22), and substitute the following:

(e) Notwithstanding Subsection (d):

(1) for the 2006 tax year, a school district may not impose a maintenance tax at a rate that exceeds \$1.20 per \$100 of valuation; and

(2) for the 2007 and 2008 tax years, a school district may not impose a maintenance tax at a rate that exceeds \$1.25 per \$100 of valuation.

(7) In Section 1A.06 of the bill, in proposed Subsection (f), Section 45.003, Education Code (committee printing, page 2, line 26), strike "or a subsequent tax year" and substitute the following:

. An election held before January 1, 2006, authorizing a maintenance tax at a rate of at least \$1.15 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.15 or less for the 2006 tax year. Beginning with the 2007 tax year and subject to Subsection (e), a district may not exceed a rate of \$1.15 unless authorized by a majority of the qualified voters of the district voting at an election held for that purpose.

(8) Strike Article 3 of the bill (committee printing, page 4, line 53, through page 23, line 10).

(9) Strike Subsection (b), SECTION 4.19A of the bill (page 33, lines 15-20) and substitute the following:

(b) This section takes effect January 1, 2007, and applies to a report originally due on or after that date.

(10) Strike Subsection (b), Section 5A.01A of the bill (page 42, line 66, through page 43, line 2), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5A.01 of this Act takes effect.

(11) Strike Subsection (b), Section 5B.02A of the bill (page 45, lines 5-10), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5B.02 of this Act takes effect.

(12) Strike Subsection (b), Section 5B.03A of the bill (page 45, lines 19-24), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5B.03 of this Act takes effect.

(13) Strike Subsection (b), Section 5B.04A of the bill (page 45, lines 37-42), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5B.04 of this Act takes effect.

(14) Strike Subsection (b), Section 5B.05A of the bill (page 45, lines 51-56), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5B.05 of this Act takes effect.

(15) Strike Subsection (b), Section 5C.01A of the bill (page 46, lines 64-69), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5C.01 of this Act takes effect.

(16) Strike Subsection (b), Section 5C.02A of the bill (page 47, lines 9-14), and substitute the following:

(b) This section takes effect on the first anniversary of the date Section 5C.02 of this Act takes effect.

The amendment to **CSHB 3** was read and was adopted by the following vote: Yeas 24, Nays 7.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, West, Whitmire, Williams, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Lucio, Shapleigh, Van de Putte, Wentworth.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 3** (Senate committee report) as follows:

(1) Strike SECTIONS 4.04, 4.05, and 4.06 of the bill (page 23, line 47, through page 24, line 64) and substitute:

SECTION 4.04. Subchapter A, Chapter 171, Tax Code, is amended by amending Sections 171.0011 and 171.002 and adding Sections 171.0012, 171.0013, 171.0014, 171.003, and 171.004 to read as follows:

Sec. 171.0011. TAXABLE ENTITY. (a) Except as provided by Subsection (b), "taxable entity" means a general partnership, limited partnership, limited liability partnership, corporation, banking corporation, savings and loan association, limited liability company, trust, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity doing business in this state for profit.

(b) "Taxable entity" does not include a sole proprietorship or a passive entity as described by Subsection (c).

(c) An entity is a passive entity only if:

(1) the entity is a limited partnership or a trust, other than a business trust;

(2) the entity makes no payments of wages or other compensation to employees or independent contractors, other than for accounting or legal services reasonably necessary for the operation of the entity;

(3) during the period on which earned surplus is based, the entity receives at least 90 percent of its income from one or more of the following:

(A) interest;

(B) dividends;

(C) real property rents;

(D) gains from the sale of real property and securities, other than a sale of securities of an entity that constitutes a controlling interest held by the selling entity and its related parties; or

(E) mineral royalties and other nonoperating mineral interests;

(4) the income described in Subdivision (3) comes only from assets acquired and held for investment purposes; and

(5) the entity was formed, created, or organized before April 30, 2005.

Sec. 171.0012. ELECTION OF RATES. (a) Except as otherwise provided by this section, a taxable entity shall elect to pay the tax imposed under this chapter:

(1) in the amounts and at the rate provided by Section 171.002; or

(2) in the amounts and at the alternate rate provided by Section 171.003.

(b) The election applies to a reporting period and may be changed from one reporting period to the next.

(c) A taxable entity that is in the business of leasing employees:

(1) may not elect to pay the tax imposed under this chapter at the rate provided by Section 171.002 and shall pay the tax imposed under this chapter at the alternate rate provided by Section 171.003; and

(2) for the purposes of this chapter, is considered as having elected to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003.

Sec. 171.0013. MINIMUM TAX LIABILITY. The minimum tax liability for a taxable entity under this chapter is an amount equal to 0.25 percent of the entity's gross receipts from business done in this state under Section 171.1032, including the amounts excepted under Section 171.1032(a).

Sec. 171.0014. ADDITIONAL TAX. (a) An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the rate provided by Section 171.002 and during the period in which that election is in effect [~~corporation that~~] for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the taxable entity [~~corporation~~] remains subject to the taxable capital component of the tax, other than through a valid election to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003. An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the alternate rate provided by Section 171.003 and during the period in which that election is in effect for any reason becomes no longer subject to the tax imposed under this chapter.

(b) The additional tax for an entity that has elected to pay the tax under this chapter at the rate provided by Section 171.002 is equal to 2.5 [4.5] percent of the taxable entity's [~~corporation's~~] net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity [~~corporation~~] is no longer subject to the earned surplus component of the tax. The additional tax for an entity that has elected to pay the tax under this chapter at the alternate rate provided by Section 171.003 is computed as provided by that section for the period beginning on the day after the last day for which the tax imposed under this chapter was computed at the alternate rate provided by Section 171.003 and ending on the date the taxable entity is no longer subject to the tax.

(c) The additional tax imposed and any report required by the comptroller are due on the 60th day after the date the taxable entity [~~corporation~~] becomes no longer subject to the earned surplus component of the tax.

(d) Except as otherwise provided by this section, the provisions of this chapter apply to the tax imposed under this section.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) The franchise tax for an entity that elects to pay the tax at the rate provided by this section is the greater of:

(1) the amount of the minimum tax liability of the taxable entity under Section 171.0013; or

(2) the amount of franchise tax computed at the rates and in the manner provided by this section.

(a-1) The rates of the franchise tax are, for purposes of Subsection (a)(2):

- (1) 0.25 percent per year of privilege period of net taxable capital; and
- (2) 2.5 ~~[4.5]~~ percent of net taxable earned surplus.

(b) The amount of franchise tax under Subsection (a)(2) on each taxable entity ~~[corporation]~~ is computed by adding the following:

- (1) the amount calculated by applying the tax rate prescribed by Subsection (a)(1) to the taxable entity's ~~[corporation's]~~ net taxable capital; and
- (2) the difference between:
 - (A) the amount calculated by applying the tax rate prescribed by Subsection (a)(2) to the taxable entity's ~~[corporation's]~~ net taxable earned surplus; and
 - (B) the amount determined under Subdivision (1).

(c) In making a computation under Subsection (b), an amount computed under Subsection (b)(1) or (b)(2) that is zero or less is computed as a zero.

Sec. 171.003. ALTERNATE RATE. The franchise tax for an entity that elects to pay the tax at the alternate rate provided by this section is the greater of:

- (1) the amount of the minimum tax liability of the taxable entity under Section 171.0013; or
- (2) the lesser of:
 - (A) 1.75 percent of taxable wages for the taxable entity for the reporting period as determined under Subchapter C-1; or
 - (B) \$1,500 for each employee for the reporting period as determined under Subchapter C-1.

Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES. ~~[(4)]~~ A taxable entity ~~[corporation]~~ is not required to pay any tax and is not considered to owe any tax for a period if:

- (1) the amount of tax computed for the taxable entity ~~[corporation]~~ is less than \$100; or
- (2) the amount of the taxable entity's ~~[corporation's]~~ gross receipts:
 - (A) from its entire business under Section 171.105 is less than \$150,000; and
 - (B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than \$150,000.

(2) Strike Section 171.110(a), Tax Code, as amended by SECTION 4.19 of the bill (page 31, lines 6-46) and substitute:

(a) The net taxable earned surplus of a taxable entity ~~[corporation]~~ is computed by:

- (1) determining the taxable entity's ~~[corporation's]~~ reportable federal taxable income and making the following adjustments:
 - (A) for a corporation, subtracting ~~[from that amount]~~ any amount excludable under Subsection (k) and ~~[;]~~ any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code;
 - (B) for a corporation, subtracting ~~[; and]~~ dividends received from a subsidiary, associate, or affiliated taxable entity ~~[corporation]~~ that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States;

(C) [~~and~~] adding 100 percent of compensation as described by Subsection (m) [to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income to determine the corporation's taxable earned surplus]; and

(D) subtracting the lesser of:

(i) 50 percent of the amount of compensation added in Paragraph

(C); or

(ii) \$30,000 for each full-time employee and a fractional amount of \$30,000 for each part-time employee proportionate to the extent of the part-time employee's employment;

(2) apportioning the taxable entity's [~~corporation's~~] taxable earned surplus to this state as provided by Section 171.106(b) or (c), as applicable, to determine the taxable entity's [~~corporation's~~] apportioned taxable earned surplus;

(3) adding the taxable entity's [~~corporation's~~] taxable earned surplus allocated to this state as provided by Section 171.1061; and

(4) subtracting from that amount;

(A) the amount paid to provide health benefits to employees in this state, provided that the total amount may not exceed the lesser of:

(i) \$150,000; or

(ii) 10 percent of the taxable entity's apportioned taxable earned

surplus; and

(B) any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).

(3) Strike SECTION 4.19A of the bill (page 32, line 41, through page 33, line 20).

(4) In Section 171.1101(a), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 26), strike "171.0013(c)" and substitute "171.0011(c)".

(5) In Section 171.1101(b), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 34), strike "171.0013(c)" and substitute "171.0011(c)".

(6) In Section 171.1102(a), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 48), strike "four" and substitute "2.5".

(7) In Section 171.1102(c), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 65), strike "171.002(a)(2)" and substitute "171.002(a-1)(2)".

(8) Insert a new appropriately numbered SECTION (page 35, between lines 47 and 48) and renumber subsequent SECTIONS accordingly:

SECTION 4. Chapter 171, Tax Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. TAXABLE WAGES

Sec. 171.131. TAXABLE WAGES. (a) In this subchapter:

(1) "Employee" means an employee described by Section 171.133 or 171.134.

(2) "Wages" means:

(A) wages as defined under Subchapter F, Chapter 201, Labor Code, paid by a taxable entity and includes the amounts excluded by Sections 201.082(1) and (9), Labor Code; and

(B) wages, to the extent not covered by Paragraph (A), described under Section 171.132.

(b) The taxable wages of a taxable entity are the total amount of wages paid by the entity to all of the entity's employees during the reporting period as provided by Section 171.1533.

Sec. 171.132. LOCATION OF SERVICE. (a) Wages include wages for a service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations but the service is directed or controlled from this state; or

(B) the base of operations or place from which the service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) Wages include wages for a service performed anywhere in the United States, including service performed entirely outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) Wages include wages for a service performed outside the United States by a citizen of the United States.

(d) For the purposes of this section, service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) In this section, "contribution" has the meaning assigned by Section 201.011, Labor Code.

(b) An individual is an employee if the taxable entity pays or is required to pay a contribution for a reporting period without regard to whether:

(1) the individual is a full-time or part-time employee; or

(2) the wages paid were for the entire reporting period or a portion of the reporting period.

Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS ARE EMPLOYEES. An individual is an employee of a taxable entity as provided by this section, without regard to whether the taxable entity pays a contribution, as that term is defined by Section 171.133, for the individual, if the individual provides services in this state to the taxable entity for compensation and the taxable entity has a right to direct and control how the individual performs the services for which the individual is provided compensation, indicated by factors that include:

(1) whether the individual is subject to the taxable entity's instructions about when, where, and how to work;

(2) whether the individual is trained to perform services in a particular manner;

(3) the extent to which the individual has unreimbursed business expenses;

(4) the extent to which the individual has a significant investment in the facilities the individual uses in performing the services;

(5) the extent to which the individual makes the individual's services available to the relevant market by advertising, by maintaining a visible business location, or otherwise;

(6) the extent to which the individual can realize a profit or loss;

(7) the manner in which the individual is paid by the taxable entity;

(8) whether a written contract between the individual and the taxable entity provides that the individual is or is not an employee;

(9) whether the taxable entity provides the individual with employee-type benefits, including insurance, a pension plan, vacation pay, or sick pay;

(10) whether the relationship between the individual and the taxable entity is considered permanent or for a limited period; and

(11) the extent to which services performed by the individual are a key aspect of the affairs of the taxable entity.

(9) Insert a new appropriately numbered SECTION (page 36, between lines 55 and 56) and renumber subsequent SECTIONS accordingly:

SECTION 4. Subchapter D, Chapter 171, Tax Code, is amended by adding Section 171.1533 to read as follows:

Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED. (a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the taxable wages paid by the taxable entity during the period beginning on the taxable entity's beginning date and:

(1) ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; or

(2) if there is no such period ending date in Subdivision (1), then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's first year of business.

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the taxable wages paid by the taxable entity during the period beginning with the day after the last date on which taxable wages on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

(10) In Section 171.201, Tax Code, as amended by SECTION 4.29 of the bill, strike Subsection (a)(4) (page 37, line 13) and substitute:

(4) a statement declaring the entity's election of rate required under Section 171.0012; and

(5) other information required by the comptroller.

(11) In Section 171.202, Tax Code, as amended by SECTION 4.30 of the bill, strike Subsection (a) (page 37, lines 19-28) and substitute:

(a) Except as provided by Section 171.2022, a taxable entity [~~corporation~~] on which the franchise tax is imposed shall file an annual report with the comptroller containing:

(1) financial and other information of the taxable entity [~~corporation~~] necessary to compute the tax under this chapter on both the rate provided by Section 171.002 and the alternate rate provided by Section 171.003;

(2) the name and address of each officer and director of the taxable entity [~~corporation~~];

(3) the name and address of the agent of the taxable entity [~~corporation~~] designated under Section 171.354; [~~and~~]

(4) a statement declaring the entity's election of rate under Section 171.0012 for the reporting period; and

(5) other information required by the comptroller.

(12) Insert a new appropriately numbered SECTION (page 38, between lines 5 and 6) and renumber subsequent SECTIONS accordingly:

SECTION 4. Section 171.202(d), Tax Code, is amended to read as follows:

(d) In the case of a taxpayer whose previous return was its initial report, the optional payment provided under Subsection (c)(2)(B) or (e)(2)(B) must be equal to the greatest [~~greater~~] of:

(1) an amount produced by multiplying the net taxable capital, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a-1)(1) [~~171.002(a)(1)~~] that is effective January 1 of the year in which the report is due; [~~or~~]

(2) an amount produced by multiplying the net taxable earned surplus, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a-1)(2) [~~171.002(a)(2)~~] that is effective January 1 of the year in which the report is due; or

(3) an amount produced by multiplying taxable wages, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.003 that is effective January 1 of the year in which the report is due.

(13) In Section 171.204(b), Tax Code, as amended by SECTION 4.32 of the bill (page 38, line 27), strike "171.002(d)(2)" and substitute "171.004(2) [~~171.002(d)(2)~~]"

(14) Insert a new appropriately numbered SECTION (page 39, between lines 13 and 14) and renumber subsequent SECTIONS accordingly:

SECTION 4. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.213 to read as follows:

Sec. 171.213. ACCESS TO TEXAS WORKFORCE COMMISSION REPORTS. The comptroller shall have full access to reports filed by a taxable entity on wages paid with the Texas Workforce Commission.

(15) Insert a new appropriately numbered SECTION (page 40, between lines 18 and 19) and renumber subsequent SECTIONS accordingly:

SECTION 4. Subchapter H, Chapter 171, Tax Code, is amended by adding Sections 171.364-171.366 to read as follows:

Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. A taxable entity may not deduct the tax imposed under this chapter from any wages of the taxable entity's employees.

Sec. 171.365. CRIMINAL PENALTY. (a) A person who violates Section 171.364 commits an offense.

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

Sec. 171.366. CIVIL PENALTY. (a) A person who violates Section 171.364 is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the comptroller, the attorney general shall file suit to collect a penalty under this section.

(16) Strike SECTIONS 4.48 and 4.49 of the bill (page 41, lines 2-31).

(17) Strike SECTION 4.53 of the bill (page 42, lines 24-53).

(18) Renumber SECTIONS as appropriate.

The amendment was read.

Senator Van de Putte offered the following amendment to Floor Amendment No. 2:

Floor Amendment No. 3

Amend Floor Amendment No. 2 in Section 171.0013, Tax Code, as added in Item (1) of the amendment (page 3, line 1) by striking "gross receipts from business" and substituting "gross receipts from business, not to exceed an amount that would overly burden low margin, high receipts businesses,".

The amendment was read.

Senator Van de Putte withdrew Floor Amendment No. 3.

Question recurring on the adoption of Floor Amendment No. 2 to **CSHB 3**, the amendment was adopted by the following vote: Yeas 31, Nays 0.

(Senator Armbrister in Chair)

(President in Chair)

Senator West offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSHB 3** by adding the following section to the bill, appropriately numbered, and renumbering existing sections accordingly:

SECTION _____. (a) Title 1, Tax Code, is amended by adding Chapter 61 to read as follows:

CHAPTER 61. PROPERTY TAX RELIEF FOR RESIDENTIAL TENANTS

Sec. 61.001. PURPOSE. The purpose of this chapter is to ensure that tenants of certain dwelling units receive direct and immediate benefit from reductions in local school district ad valorem taxes and that landlords of certain dwelling units give a monthly rent rebate or credit to each tenant of the landlord in calendar years 2006 and 2007.

Sec. 61.002. DEFINITIONS. In this chapter:

(1) "Dwelling unit" means one or more rooms rented or leased for residential use under a single lease to one or more tenants. The term includes a dwelling unit in a multifamily residential property.

(2) "Landlord" means the owner, lessor, or sublessor of a dwelling unit, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in a written or oral lease.

(3) "Lease" means a written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling unit.

(4) "Multifamily residential property" includes a duplex, apartment building, dormitory, manufactured housing community, retirement center or community, and assisted living center.

(5) "Rent" includes the total amount charged by a landlord, or by a person on the landlord's behalf, for the use and occupancy of a dwelling unit. The term does not include a refundable security deposit.

(6) "Rental period" means a month, week, or other period for which a rental payment is due under a lease.

(7) "Tenant" means a person who is authorized by a lease to occupy a dwelling unit to the exclusion of others, other than cotenants, and who is obligated under the lease to pay rent.

Sec. 61.003. APPLICABILITY. (a) This chapter applies only to a dwelling unit:

(1) that is subject to ad valorem taxation by a school district; and

(2) except as provided by Subsection (b), for which the rent is \$600 a month or less.

(b) For a dwelling unit that is located in a metropolitan statistical area as established by the federal Office of Management and Budget with a population of greater than one million, this chapter applies only to a dwelling unit for which the rent is \$750 a month or less.

(c) This chapter does not apply to a temporary residential tenancy created by a contract of sale under which the buyer is entitled to occupy the property before closing or the seller is entitled to occupy the property after closing for a term of not more than 90 days.

Sec. 61.004. REBATE OR CREDIT TO TENANT; AMOUNTS. (a) Except as provided by Subsection (b), for each rental period in calendar years 2006 and 2007, a landlord shall provide each of the landlord's tenants, as directed by the tenant, with a rebate, paid in cash or by check, or a credit against the tenant's rent.

(b) For a lease entered into during calendar year 2006 or 2007, in the lease agreement or another writing the tenant may agree to waive the rebate or credit and accept the benefit of this chapter in the form of an appropriate reduction in the tenant's rent for each rental period.

(c) In each rental period of calendar year 2006, the amount of the rental rebate or credit required by Subsection (a) is one percent of the tenant's rent. In each month of calendar year 2007, the amount of the rental rebate or credit required by Subsection (a) is two percent of the tenant's rent.

(d) If two or more tenants are parties to a lease for the same dwelling unit, the rebate or credit shall be provided jointly to all tenants renting the unit.

Sec. 61.005. DATE OF REQUIRED REBATE OR CREDIT. (a) If a landlord pays a rent rebate to the tenant, the landlord shall pay the rebate not later than the 10th day after the date the tenant pays the entire rent due for the applicable rental period. A landlord is presumed to have timely paid a rebate if the rebate is placed in the United States mail and postmarked on or before that date.

(b) If a landlord gives a credit to a tenant under this chapter for a rental period, the landlord shall give the credit on the due date for the rent for the rental period.

Sec. 61.006. NOTICE BY CHIEF APPRAISERS. (a) In calendar years 2005 and 2006, on or before December 1 or as soon as practicable after that date, the chief appraiser of each appraisal district shall send to all property owners a notice describing the requirements of this chapter. The notice shall indicate whether a property owned by a person is in a metropolitan statistical area to which Section 61.003(b) applies.

(b) In December of calendar years 2005 and 2006, each appraisal district shall place at least one advertisement in a newspaper of general circulation in the county for which the appraisal district is established. The advertisement shall be in 14-point or larger type and contain a notice describing the requirements of this chapter.

(c) Not later than November 15, 2005, the comptroller shall prescribe the language to be included in the notice required by Subsections (a) and (b). The notices shall be printed in both English and Spanish, and copies shall be sent to each appraisal district not later than November 30, 2005. A copy of the materials shall be provided by the comptroller without cost to any property owner on request.

(d) The comptroller shall provide necessary technical assistance to appraisal districts and landlords in complying with this chapter.

Sec. 61.007. TAX APPRAISALS. In tax years 2006 and 2007, a chief appraiser or an appraisal district may not consider a reduction of school district ad valorem taxes attributable to a provision of the Act of the legislature enacting this chapter in any determination of the appraised value of a dwelling unit to which this chapter applies.

Sec. 61.008. EXPIRATION. This chapter expires January 1, 2008.

(b) Chapter 1, Tax Code, is amended by adding Section 1.16 to read as follows:

Sec. 1.16. LANDLORD LIABILITY UNDER CHAPTER 61. The expiration of Chapter 61 does not affect the liability of a landlord for any amount arising under Chapter 61 before the expiration of that chapter, and the law governing that liability remains in effect notwithstanding the expiration of that chapter for purposes of enforcing or satisfying the liability.

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 4 was tabled by the following vote: Yeas 20, Nays 11.

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

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

(Senator Armbrister in Chair)

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSHB 3** by striking SECTION 2.02 of the bill (Senate committee printing, page 3, lines 7 through 54) and substituting the following:

SECTION 2.02. Section 25.25(c), Tax Code, is amended to read as follows:

(c) The appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years if the property is real property and may direct by written order changes in the appraisal roll for either or both of the two preceding years if the property is personal property to correct:

- (1) clerical errors that affect a property owner's liability for a tax imposed in that tax year;
- (2) multiple appraisals of a property in that tax year; or
- (3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll.

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSHB 3** as follows:

(1) In SECTION 3.01 of the bill, proposed Subsection (b), Section 45.251, Education Code (committee printing, page 4, line 60), strike "\$1.10" and substitute "\$1.20".

(2) In SECTION 3.05 of the bill, amended Subsection (b), Section 11.13, Tax Code (committee printing, page 7, line 45), strike "\$15,000" and substitute "\$30,000 [~~\$15,000~~"]".

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 6 was tabled by the following vote: Yeas 18, Nays 12, Present-not voting 1.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Janek, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

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

Present-not voting: Hinojosa.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 7

Amend **CSHB 3** as follows:

(1) Strike SECTION 4.10 (committee printing page 26, lines 25-43) and substitute the following:

SECTION 4.10. Section 171.103, Tax Code, is amended to read as follows:

Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE CAPITAL.

(a) In apportioning taxable capital, the gross receipts of a taxable entity [~~corporation~~] from its business done in this state is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) the use of a patent, copyright, trademark, franchise, or license in this state;

(5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests; and

(6) other business done in this state.

(b) If related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005 made an investment of at least \$100,000,000 in a new manufacturing capital improvement project located in this state for which the total capital investment for real and personal property will be in excess of \$400,000,000 and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold.

(2) Strike SECTION 4.11 (committee printing page 26, line 44 - page 27, line 17) and substitute the following:

SECTION 4.11. Section 171.1032, Tax Code, is amended to read as follows:

Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS.

(a) Except for the gross receipts of a taxable entity [~~corporation~~] that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a taxable entity [~~corporation~~] from its business done in this state is the sum of the taxable entity's [~~corporation's~~] receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to any tax on, or measured by, net income, without regard to whether the tax is imposed;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) the use of a patent, copyright, trademark, franchise, or license in this state;

(5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests;

(6) each partnership or joint venture to the extent provided by Subsection (c); and

(7) other business done in this state.

(b) A taxable entity ~~[corporation]~~ shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included under Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated entity ~~[corporation]~~ that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

(c) A taxable entity ~~[corporation]~~ shall include in its gross receipts computed under Subsection (a) the taxable entity's ~~[corporation's]~~ share of the gross receipts of each entity that is not a taxable entity ~~[partnership and joint venture]~~ of which the taxable entity ~~[corporation]~~ is a part apportioned to this state as though the taxable entity ~~[corporation]~~ directly earned the receipts, including receipts from business done with the taxable entity ~~[corporation]~~.

(d) If related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005 made an investment of at least \$100,000,000 in a new manufacturing capital improvement project located in this state for which the total capital investment is budgeted to be in excess of \$400,000,000 and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold.

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7 except as follows:

Nays: Barrientos, Shapleigh.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 8

Amend **CSHB 3** by adding the following appropriately numbered section to the bill:

Section _____. Section 171.109, Tax Code, is amended by adding thereto a new Subsection (o) to read as follows:

"(o) Notwithstanding any other subsection in this Section, there shall be excluded from the taxable capital of a parent or investor taxable entity the direct or indirect investment by that parent or investor taxable entity in the capital of one or more other taxable entities (A) that are also subject to the franchise tax imposed by the State of Texas under this Title, and (B) in which that parent or investor taxable entity has a "controlling interest" as that term is defined in Section 171.1001."

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8 except as follows:

Nays: Shapleigh.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 9

Amend **CSHB 3** as follows:

(1) In the introductory language to SECTION 4.19 (committee printing page 31, line 5), strike "Subsections (m), (n), and (o)" and substitute "Subsections (d-1), (m), (n), and (o)".

(2) In SECTION 4.19, insert a new Subsection (d-1) to Section 171.110, Tax Code (committee printing page 31, between lines 59 and 60), to read as follows:

(d-1) A real estate investment trust may, in determining its reportable federal taxable income for the purpose of this section, deduct dividends paid to shareholders. In this subsection, a real estate investment trust is an entity that complies with Sections 856-860, Internal Revenue Code.

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 10

Amend **CSHB 3** (Senate committee printing) as follows:

(1) Strike Section 171.110(a)(4), Tax Code, as amended by SECTION 4.19 of the bill (page 31, lines 44-46), and substitute:

(4) subtracting from that amount:

(A) the lesser of:

(i) 10 percent of the taxable entity's apportioned taxable earned surplus; or

(ii) the amount paid to provide health benefits to employees in this state; and

(B) any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).

(2) Strike Section 171.110(a)(4), Tax Code, as amended by SECTION 4.19A of the bill (page 33, lines 12-14), and substitute:

(4) subtracting from that amount:

(A) the lesser of:

(i) 10 percent of the taxable entity's apportioned taxable earned surplus; or

(ii) the amount paid to provide health benefits to employees in this state; and

(B) any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 10 was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Whitmire, Williams.

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

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 11

Amend **CSHB 3** as follows:

1. On page 40, line 40, between "physician" and "that" insert "or dentist"
2. On page 40, line 47, between "physician" and "received" insert "or dentist"

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11.

(President in Chair)

Senator Eltife offered the following amendment to the bill:

Floor Amendment No. 12

Amend **CSHB 3** (Senate committee printing) by inserting SECTION 4.471 (page 41, between lines 1 and 2) to read as follows:

SECTION 4.471. Chapter 171, Tax Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. TAX CREDIT FOR MANUFACTURING JOBS

Sec. 171.941. DEFINITIONS. In this subchapter:

(1) "Compensation" means the compensation that is reported by the employer in Box 1 on the employee's federal form W-2.

(2) "Full-time employee" means an employee that works at least 1,800 hours of work a year.

(3) "Manufacturing" means an establishment primarily engaged in activities described in categories 2011-3999 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(4) "Qualifying job" means a job in manufacturing.

Sec. 171.942. ENTITLEMENT TO CREDIT. A taxable entity is entitled to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.943. AMOUNT OF CREDIT. A taxable entity is entitled to a credit under this chapter in an amount equal to:

(1) one percent of the first \$30,000 in compensation paid to each full-time employee with a qualifying job during the period on which the tax is based; and

(2) for each employee with a qualifying job during the period on which the tax is based that is not a full-time employee, an amount computed by:

(A) determining a fraction, the numerator of which is the number of hours the employee is required to work a year and the denominator of which is 1,800;

(B) multiplying the fraction determined under Subdivision (A) by one percent; and

(C) multiplying the number determined under Subdivision (B) by the first \$30,000 in compensation paid to the employee.

Sec. 171.944. LIMITATIONS. (a) A taxable entity may claim the credit only for compensation paid an employee for a position located or based in this state.

(b) The total credit claimed under this subchapter may not exceed the amount of tax due for the report.

(c) A taxable entity may not carry a credit forward or backward to apply the credit to another year's report.

Sec. 171.945. APPLICATION FOR CREDIT. (a) A taxable entity must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall promulgate a form for the application for the credit. A taxable entity must use the form in applying for the credit.

Sec. 171.946. PERIOD FOR WHICH CREDIT MAY BE CLAIMED. A taxable entity may claim a credit under this subchapter for compensation paid during an accounting period only against the tax owed for the corresponding privilege period.

The amendment was read.

Senator Eltife withdrew Floor Amendment No. 12.

Senator Eltife offered the following amendment to the bill:

Floor Amendment No. 13

Amend **CSHB 3** (Senate committee printing) by inserting SECTION 4.472 (page 41, between lines 1 and 2) to read as follows:

SECTION 4.472. Chapter 171, Tax Code, is amended by adding Subchapter Y to read as follows:

SUBCHAPTER Y. TAX CREDIT FOR NEW JOBS

Sec. 171.961. DEFINITIONS. In this subchapter:

(1) "Compensation" means the compensation that is reported by the employer in Box 1 on the employee's federal form W-2.

(2) "Full-time employee" means an employee that is required to work at least 1,800 hours of work a year.

Sec. 171.962. ENTITLEMENT TO CREDIT. A taxable entity is entitled to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.963. AMOUNT OF CREDIT. The credit is an amount equal to:

(1) three percent of the first \$30,000 in compensation paid to each full-time employee during the period on which the tax is based; and

(2) for each employee during the period on which the tax is based that is not a full-time employee, an amount computed by:

(A) determining a fraction, the numerator of which is the number of hours the employee is required to work a year and the denominator of which is 1,800;

(B) multiplying the fraction determined under Subdivision (A) by three percent; and

(C) multiplying the number determined under Subdivision (B) by the first \$30,000 in compensation paid to the employee.

Sec. 171.964. LIMITATIONS. (a) A taxable entity may claim the credit only for compensation paid an employee for a position located or based in this state.

(b) The total credit claimed under this subchapter may not exceed the amount of tax due for the report.

(c) A taxable entity may not carry a credit forward or backward to apply the credit to another year's report.

Sec. 171.965. APPLICATION FOR CREDIT. (a) A taxable entity must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) The comptroller shall promulgate a form for the application for the credit. A taxable entity must use the form in applying for the credit.

Sec. 171.966. PERIOD FOR WHICH CREDIT MAY BE CLAIMED. A taxable entity may claim a credit under this subchapter for compensation paid during an accounting period only against the tax owed for the corresponding privilege period.

The amendment was read.

Senator Eltife withdrew Floor Amendment No. 13.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 14

Amend **CSHB 3** in ARTICLE 5 of the bill by adding the following appropriately numbered SECTION to PART A of the ARTICLE and renumbering subsequent SECTIONS of the part accordingly:

SECTION 5A. __. (a) At the general election to be held November 8, 2005, the voters of this state shall be permitted to vote in a nonbinding referendum on the increases in the state sales tax rate under Section 151.051, Tax Code, as provided by Sections 5A.01 and 5A.01A of this article.

(b) Notwithstanding Subsection (a), if an election is held before November 8, 2005, on one or more amendments to the Texas Constitution proposed by the 79th Legislature, the referendum required by this section shall be held on that date.

(c) The ballot for the referendum shall be printed to permit voting "Yes" or "No" on the following propositions:

- (1) "Do you approve of the state sales tax rate increase to 6.5 percent?"; and
- (2) "Should the state sales tax rate increase to a rate of 6.75 percent if the constitutional amendment proposed by S.J.R. No. 38, Acts of the 79th Legislature, Regular Session, 2005, is approved by the voters?"

(d) The proposition shall be printed on the ballot beneath any proposed constitutional amendments under the heading: "Nonbinding Statewide Referendum."

(e) Except as otherwise provided by this section, the election shall be conducted in the same manner as an election on a proposed amendment to the Texas Constitution. If an election on one or more proposed constitutional amendments will be conducted on the same date, notice of the election on the referendum proposition

shall be given by inclusion of the proposition in the proclamation by the governor ordering the election on the proposed constitutional amendments and in the notice of that election given by each county judge.

(f) Immediately after the results of the election are certified by the governor, the secretary of state shall transmit a copy of the certification to the lieutenant governor and the speaker of the house of representatives.

(g) It is the legislature's intention that the will of the people as reflected by the results of the election should be given the highest consideration by the legislature and the governor in acting to address the important issue of taxation in this state.

The amendment was read.

Senator Shapleigh withdrew Floor Amendment No. 14.

Senator West offered the following amendment to the bill:

Floor Amendment No. 15

Amend **CSHB 3** as follows:

On page 44, committee printing, lines 6-7, strike "100 million" and substitute "the total amount estimated to fund the reimbursements as calculated under subsection (b)".

The amendment was read.

Senator West withdrew Floor Amendment No. 15.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 16

Amend **CSHB 3** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to PART A, ARTICLE 5, of the bill and renumber subsequent SECTIONS of the part accordingly:

SECTION 5A.__. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.0037 to read as follows:

Sec. 151.0037. "ELECTIVE COSMETIC PROCEDURE." (a) In this chapter, "elective cosmetic procedure" means any medical procedure performed on a person that is directed at improving the person's appearance and does not meaningfully promote the proper function of the body or prevent or treat an illness or disease.

(b) "Elective cosmetic procedure" includes cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peels, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic dentistry.

(c) "Elective cosmetic procedure" does not include reconstructive surgery or dentistry, including any surgery or dentistry performed on an abnormal structure caused by or related to a congenital defect, developmental abnormality, injury, trauma, infection, tumor, or disease or performed to improve the structure's function or to give the structure a more normal appearance.

SECTION 5A.__. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

(1) amusement services;

- (2) cable television services;
- (3) personal services;
- (4) motor vehicle parking and storage services;
- (5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:
 - (A) aircraft;
 - (B) a ship, boat, or other vessel, other than:
 - (i) a taxable boat or motor as defined by Section 160.001;
 - (ii) a sports fishing boat; or
 - (iii) any other vessel used for pleasure;
 - (C) the repair, maintenance, and restoration of a motor vehicle; and
 - (D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;
- (6) telecommunications services;
- (7) credit reporting services;
- (8) debt collection services;
- (9) insurance services;
- (10) information services;
- (11) real property services;
- (12) data processing services;
- (13) real property repair and remodeling;
- (14) security services;
- (15) telephone answering services;
- (16) Internet access service; ~~and~~
- (17) a sale by a transmission and distribution utility, as defined in Section 31.002, Utilities Code, of transmission or delivery of service directly to an electricity end-use customer whose consumption of electricity is subject to taxation under this chapter; and
- (18) elective cosmetic procedures.

SECTION 5A. __. Section 151.801, Tax Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) Except for the amounts allocated under Subsections (a-1), (b)₂ and (c), all proceeds from the collection of the taxes imposed by this chapter shall be deposited to the credit of the general revenue fund.

(a-1) The proceeds from the collection of the taxes imposed by this chapter on the sale of an elective cosmetic procedure shall be deposited to the credit of the tax reimbursement program account under Section 151.434.

(d) The comptroller shall determine the amount to be deposited to the tax reimbursement program account under Subsection (a-1) according to available statistical data indicating the estimated average or actual sales of elective cosmetic procedures. The comptroller shall determine the amount to be deposited to the highway fund under Subsection (b) according to available statistical data indicating the estimated average or actual consumption or sales of lubricants used to propel motor vehicles over the public roadways. The comptroller shall determine the amounts to be deposited to the funds or accounts under Subsection (c) according to

available statistical data indicating the estimated or actual total receipts in this state from taxable sales of sporting goods. If satisfactory data are not available, the comptroller may require taxpayers who make taxable sales of elective cosmetic procedures or taxable sales or uses of those lubricants or of sporting goods to report to the comptroller as necessary to make the allocation required by Subsection (a-1), (b), or (c).

(2) In ARTICLE 5 of the bill, in the recital to SECTION 5A.03(a) (page 43, line 19), strike "Section 151.433" and substitute "Sections 151.433 and 151.434".

(3) In ARTICLE 5 of the bill, in added Section 151.433(b), Tax Code (page 43, line 34), strike "20" and substitute "_____".

(4) In ARTICLE 5 of the bill, in added Section 151.433(g), Tax Code (page 44, lines 6 through 7), strike "\$100 million" and substitute "\$_____ million".

(5) In ARTICLE 5 of the bill, immediately following added Section 151.433, Tax Code (page 44, between lines 22 and 23), insert the following:

Sec. 151.434. TAX REIMBURSEMENT PROGRAM ACCOUNT. The tax reimbursement program account is an account in the general revenue fund that may be appropriated only to the Health and Human Services Commission for the purpose of providing reimbursements of estimated taxes under Section 151.433.

The amendment was read.

Senator Barrientos withdrew Floor Amendment No. 16.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 17

Amend **CSHB 3** (Senate committee printing) by adding the following appropriately numbered SECTION to PART A, ARTICLE 5 of the bill and renumbering subsequent SECTIONS of the part accordingly:

SECTION 5A.____. Section 151.326(a), Tax Code, is amended to read as follows:

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

(1) the sales price of the article is less than \$100; and

(2) the sale takes place during:

(A) a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight on the following Sunday; or

(B) a period beginning at 12:01 a.m. on the first Friday in December and ending at 12 midnight on the following Sunday.

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 17 except as follows:

Nays: Deuell, Nelson, Shapiro.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 18

Amend **CSHB 3** (Senate committee printing) as follows:

(1) In Section 171.0011(b), Tax Code, as amended by SECTION 4.04 of the bill (page 23, line 54), strike "four" and substitute "_____".

(2) In Article 4 of the bill (page 23, between lines 64 and 65), insert a new SECTION 4.04A to read as follows:

SECTION 4.04A. (a) Section 171.0011(b), Tax Code, is amended to read as follows:

(b) The additional tax is equal to ____ [~~4.5~~] percent of the taxable entity's [~~corporation's~~] net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity [~~corporation~~] is no longer subject to the earned surplus component of the tax.

(b) This section takes effect January 1, 2006, and applies to a report originally due on or after that date, but only if the constitutional amendment proposed by S.J.R. No. 38, 79th Legislature, Regular Session, 2005, is approved by the voters. If that amendment is not approved by the voters, this section has no effect.

(3) In Section 171.002(a)(2), Tax Code, as amended by SECTION 4.06 of the bill (page 24, line 36), strike "four" and substitute "____".

(4) In Article 4 of the bill (page 24, between lines 64 and 65), insert a new SECTION 4.06A to read as follows:

SECTION 4.06A. (a) Section 171.002(a), Tax Code, is amended to read as follows:

(a) The rates of the franchise tax are:

(1) 0.25 percent per year of privilege period of net taxable capital; and

(2) ____ [~~4.5~~] percent of net taxable earned surplus.

(b) This section takes effect January 1, 2006, and applies to a report originally due on or after that date, but only if the constitutional amendment proposed by S.J.R. No. 38, 79th Legislature, Regular Session, 2005, is approved by the voters. If that amendment is not approved by the voters, this section has no effect.

(5) In Section 171.1102(a)(2), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 48), strike "four percent" and substitute "the rate provided by Section 171.002(a)(2)".

(6) Strike SECTIONS 5A.01A, 5B02A, 5B.03A, 5B.04A, 5B.05A, 5C.01A, AND 5C.02A of the bill.

The amendment was read.

Senator Barrientos withdrew Floor Amendment No. 18.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 19

Amend **CSHB 3** (Senate committee printing) by striking PART B of ARTICLE 6 of the bill (page 49, line 48, through page 50, line 24).

The amendment was read.

Senator Ogden moved to table Floor Amendment No. 19 to **CSHB 3**.

The motion to table was lost by the following vote: Yeas 9, Nays 22.

Yeas: Averitt, Duncan, Harris, Ogden, Shapiro, Staples, Wentworth, West, Zaffirini.

Nays: Armbrister, Barrientos, Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Seliger, Shapleigh, Van de Putte, Whitmire, Williams.

Question recurring on the adoption of Floor Amendment No. 19 to **CSHB 3**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 19.

(Wednesday, May 11, 2005)

VOTE RECONSIDERED

On motion of Senator Ogden and by unanimous consent, the vote by which Floor Amendment No. 19 was adopted was reconsidered.

Question — Shall Floor Amendment No. 19 to **CSHB 3** be adopted?

Senator Williams offered the following amendment to Floor Amendment No. 19:

Floor Amendment No. 20

Amend Floor Amendment No. 19 to **CSHB 3** (Senate committee printing) as follows:

(1) In Section 151.051(b), Tax Code, as amended by SECTION 5A.01 of the bill (page 42, line 60), strike "6.5" and substitute "6.625".

(2) In Section 151.051(b), Tax Code, as amended by SECTION 5A.01A of the bill (page 42, line 64), strike "6.75" and substitute "seven".

The amendment was read.

Senator Williams withdrew Floor Amendment No. 20.

Question — Shall Floor Amendment No. 19 to **CSHB 3** be adopted?

Senator Williams withdrew Floor Amendment No. 19.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 21

Amend **CSHB 3** as follows:

On page 49, lines 38-42, delete Section 6A.03 in its entirety.

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 21 was tabled by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Jackson, Lucio, Williams.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 22

Amend **CSHB 3** (Senate committee printing) as follows:

(1) In Section 154.021(b), Tax Code, as amended by SECTION 6A.01 of the substitute (page 49, line 8), strike "\$58" and substitute "\$70.50".

(2) In Part A of Article 6 of the substitute, insert the following appropriately numbered section to read as follows and renumber subsequent sections accordingly:

SECTION 6A. _____. Section 154.603, Tax Code, is amended to read as follows:

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

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

(2) 81.25 percent to the general revenue fund.

(b) The revenue remaining after the deductions for the purposes provided by Section 154.602 [~~of this code~~] and allocation under Subsection (a) shall be deposited as follows:

(1) the next \$20 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the next \$20 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand shall be deposited to the credit of the Lone Star Card sales tax reimbursement account in the general revenue fund and may be appropriated only to the Health and Human Services Commission to reimburse persons who receive financial assistance under Chapter 31, Human Resources Code, or Chapter 33, Human Resources Code, for estimated taxes paid under Chapter 151; and

(2) the remaining revenue shall be deposited to the credit of [~~of this section is allocated to~~] the general revenue fund.

(3) In Section 151.433(b), Tax Code, as added by SECTION 5A.03 of the substitute (page 43, lines 34 and 35), strike "20 percent" and substitute " percent".

(4) In Section 151.433(g), Tax Code, as added by SECTION 5A.03 of the substitute (page 44, lines 6 and 7), strike "\$100 million" and substitute "\$ ".

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 22 was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Williams.

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

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 23

Amend **CSHB 3** (Senate committee printing) as follows:

(1) In the recital to SECTION 7C.01 of the bill (page 56, line 13) strike "amending Subsections (a), (b), and (e) and".

(2) Strike Sections 57.048(a), (b), and (e), Utilities Code, as amended by SECTION 7C.01 of the bill (page 56, lines 15-27).

The amendment was read.

Senator Janek temporarily withdrew Floor Amendment No. 23.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 24

Amend **CSHB 3** by adding a new appropriately numbered ARTICLE to read as follows:

ARTICLE __. CHARITABLE BINGO

SECTION __.01. Section 2001.002, Occupations Code, is amended by amending Subdivision (5) and adding Subdivisions (9-a), (9-b), (9-c), (20-a), (20-b), and (26-a) 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;

(v) a bingo ball; ~~and~~

(vi) an electronic monitoring terminal;

(vii) a site controller; and

(viii) 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.

(9-a) "Electronic monitoring terminal" means a computer or other electronic terminal with input capabilities and touch screen or other video monitors that may be used to play electronic pull-tab bingo. The term includes a portable, upright, or tabletop terminal.

(9-b) "Electronic pull-tab bingo" means an electronic version of pull-tab bingo that is played on a card-minding device or electronic monitoring terminal using electronic pull-tab bingo tickets.

(9-c) "Electronic pull-tab bingo ticket" means an electronic ticket used in electronic pull-tab bingo that is issued from a finite deal of tickets in which some of the tickets have been designated in advance as winning tickets.

(20-a) "Player account card" means a plastic, magnetic stripe, paper, or smart card that may be used to:

(A) enable or track the play of bingo games;

(B) track and record customer account data, including electronic credits purchased, played, won, or otherwise available for participating in bingo games; or

(C) redeem credits purchased, played, or won through a cashier or other point-of-sale station or redemption system.

(20-b) "Point-of-sale station" includes a cashier or a terminal that accepts or dispenses player account cards, debit cards, or cash.

(26-a) "Site controller" means computer hardware or software that:

(A) stores and distributes electronic pull-tab bingo tickets for display on electronic monitoring terminals or card-minding devices; and

(B) is located on the premises of a licensed authorized organization.

SECTION __.02. 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 and ensure compliance with Sections 2001.409(b) and 2001.4091-2001.4094.

SECTION __.03. Sections 2001.407(b)₂ (d), and (f), Occupations Code, are amended to read as follows:

(b) A licensed distributor may not furnish by sale, lease, or otherwise, bingo equipment or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4). A sale or lease of bingo equipment or supplies authorized by this section must be made on terms requiring immediate payment or payment not later than the 30th day after the date of actual delivery.

(d) A licensed authorized organization may lease or purchase bingo equipment or supplies [~~electronic or mechanical card minding devices, pull tab dispensers, bingo machines, consoles, blowers, and flash boards~~] directly from a licensed distributor.

(f) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of bingo [~~cards or of a used bingo flash board or blower~~] equipment or supplies to another licensed authorized organization.

SECTION __.04. Section 2001.408, Occupations Code, is amended to read as follows:

Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. (a) Subject to the commission's rules, bingo may be played using a pull-tab bingo ticket or an electronic pull-tab bingo ticket.

(b) All prize limitations and exemptions applicable to pull-tab bingo under Section 2001.420 are also applicable to electronic pull-tab bingo.

SECTION __.05. Section 2001.409, Occupations Code, is amended by amending Subsection (a) and by adding Subsection (b) to read as follows:

(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.] A person may use a card-minding device:~~

(1) to account for credits purchased, played, or won by playing electronic bingo games authorized by this chapter;

(2) to display and exchange credits described by Subdivision (1) for electronic bingo cards or electronic pull-tab bingo tickets that may be played by the person during a bingo occasion;

(3) to read a player account card;

(4) for purchasing, marketing, and playing electronic bingo games authorized by this chapter; and

(5) to display graphics and animation that correspond to or represent, in an entertaining manner, the outcome of an approved electronic pull-tab bingo ticket or game.

(b) The display of graphics and animation used to correspond to, display, or represent the outcome of an approved electronic pull-tab bingo ticket or electronic bingo card may not be the basis of a requirement that a card-minding device that has previously been approved for the play of electronic pull-tab bingo be retested or re-approved.

SECTION __.06. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Sections 2001.4091-4001.4094 to read as follows:

Sec. 2001.4091. SITE CONTROLLERS. (a) A site controller may be used to:

(1) create, shuffle, store, and configure electronic pull-tab bingo tickets;

(2) distribute electronic pull-tab bingo tickets to electronic monitoring terminals or card-minding devices;

(3) account for, through a means that may include a player account card, electronic credits purchased, played, or won by playing electronic bingo games authorized by this chapter;

(4) exchange credits described by Subdivision (3) for electronic bingo cards or electronic pull-tab bingo tickets that may be played by a person during a bingo occasion; or

(5) play electronic bingo games authorized by this chapter.

(b) The creation or distribution of electronic pull-tab bingo tickets or electronic bingo cards by or through a site controller or other method may not be the basis of a requirement that a pre-approved site controller be retested or re-approved.

(c) A person who sells or supplies a site controller or other equipment used to play electronic pull-tab bingo is not required to hold a system service provider license, and the functions performed by a site controller or other equipment related to electronic pull-tab bingo may not be construed as the provision of automated bingo services governed by Subchapter F.

(d) A site controller used for electronic pull-tab bingo must be manufactured in accordance with the standards provided by this chapter and is subject to testing by the commission or by an independent testing facility reasonably acceptable to the commission.

(e) The commission may inspect a site controller.

(f) The manufacturer of a site controller shall maintain a central communications system or facility to provide the commission with the ability to review and audit electronic pull-tab bingo sales data.

(g) A site controller must provide a physical and electronic means, by use of a password or other method specified by commission rule, for securing:

(1) electronic pull-tab bingo tickets created, shuffled, stored, and configured by the site controller; and

(2) accounting system data.

(h) Nothing in this chapter requires the use of a site controller to play electronic pull-tab bingo or prohibits the use of other means of creating, shuffling, storing, configuring, or distributing electronic pull-tab bingo tickets.

Sec. 2001.4092. ELECTRONIC MONITORING TERMINALS. (a) A person may use an electronic monitoring terminal:

(1) to insert or read a player account card;

(2) to display or exchange credits purchased, won, or otherwise available for play of electronic bingo games authorized by this chapter; or

(3) as a device capable of purchasing, marketing, and playing electronic bingo games authorized by this chapter.

(b) Nothing in this chapter prohibits an electronic monitoring terminal from generating or creating graphics and animation to correspond to, display, or represent, in an entertaining manner, the outcome of an approved electronic pull-tab bingo ticket or electronic bingo cards. The generation or creation of the graphics and animation may not be the basis of a requirement that a pre-approved electronic monitoring terminal be retested or re-approved.

Sec. 2001.4093. USE OF CARD-MINDING DEVICES OR ELECTRONIC MONITORING TERMINALS IN ELECTRONIC BINGO. (a) A card-minding device, site controller, or an electronic monitoring terminal used for electronic pull-tab bingo:

(1) must be manufactured in accordance with the standards provided under this chapter; and

(2) is subject to testing by the commission or by an independent testing facility reasonably acceptable to the commission.

(3) must be approved by the commission prior to use. All requests for an approval of bingo equipment under this section, that are received within 30 days after the date of adoption of a rule establishing the standards for such approval, and that satisfy all requirements applicable to such equipment, shall be approved on the same date, which shall be no later than 120 days after the date of adoption of such standards. Similar deadlines may be established for future approvals of new card-minding devices, site controllers, or electronic monitoring terminals.

(b) The commission may audit data relating to the sale, exchange, inventory, or play of electronic pull-tab bingo tickets.

(c) The commission may inspect a card-minding device or electronic monitoring terminal.

Sec. 2001.4094. AUDIT AND COMPLIANCE OF ELECTRONIC PULL-TAB BINGO.

(a) The commission may adopt rules governing:

(1) the central communications system or facility required to be maintained by the manufacturer of a site controller to provide the commission with the ability to review and audit electronic pull-tab bingo sales data;

(2) the recording and reporting of:

(A) revenue generated from the play of electronic pull-tab bingo;

(B) all stored but un-played electronic pull-tab bingo tickets or prizes;

and

(C) all electronic pull-tab bingo tickets played and total prizes awarded;

(3) if a player account card is used, the recording and tracking of player account information, including electronic credits purchased, played, won, or otherwise available for play for electronic bingo games authorized by this chapter and electronic credits redeemed for cash; and

(4) the retention of data necessary for audit compliance under this chapter, including a requirement that the data be retained electronically for one year.

(b) The commission may investigate a violation or alleged violation of this chapter.

SECTION __.07. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Sections 2001.421 and 2001.422 to read as follows:

Sec. 2001.421. PRIZE FEE, PAYOUT PERCENTAGE AND REVENUE DEDICATION FOR ELECTRONIC PULL-TAB BINGO. (a) A licensed authorized organization shall collect from a person who wins a an electronic pull-tab bingo prize of more than \$5 a fee in the amount of five percent of the amount or value of the prize and shall remit a fee in the amount of five percent for all prizes awarded as a result of an electronic pull-tab bingo game.

(b) 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.

(c) The revenue received by the state from the fee imposed by Subsection (a) shall be used to finance the public primary and secondary schools of this state or to reduce public school property taxes, or both, as provided by the general appropriations act or other law.

Sec. 2001.422. NO EXCLUSIVE VENDOR FOR ELECTRONIC PULL-TAB BINGO. The commission may not require that electronic pull-tab bingo be provided by a single vendor.

SECTION __.08. Subchapter I, Chapter 2001, Occupations Code, is amended by adding Section 2001.423 to read as follows:

Sec. 2001.423. (a) In addition to the other provisions contained in this chapter, electronic pull-tab bingo may be allowed only under the following circumstances:

(1) at a location authorized by the commission as of January 1, 2005, that is owned by a governmental agency where bingo is conducted;

(2) at a location that was owned by a licensed authorized organization where bingo was authorized to be conducted on January 1, 2005; and

(3) under a license held by a licensed commercial lessor whose license was in effect as of January 1, 2005, and whose license has been in effect continuously since that date.

SECTION __.09. The Legislature finds and declares the following:

(1) In light of the State's need to reduce school property taxes and finance the public schools, the Texas Lottery Commission must be authorized to commence implementation and authorization of electronic pull-tab bingo games in accordance with changes to Chapter 2001, Occupations Code, as amended by this article, at the earliest possible date, consistent with legislative directive.

(2) The implementation of electronic pull-tab bingo described as authorized by Chapter 2001, Occupations Code, as amended by this article, may require significant time, including analysis and testing of electronic monitoring terminals, electronic pull-tab bingo tickets, site controllers, point-of-sale stations, and card-minding devices in order to establish the electronic pull-tab bingo system.

(3) The State's public school finance and property tax reduction program constitute an imminent peril to the public welfare, requiring the adoption of rules and authorization for the Texas Lottery Commission to conduct certain pre-implementation activities related to regulating an electronic pull-tab bingo system to ensure:

(A) that the increase in state revenue from the prize fees derived from the conduct of electronic pull-tab bingo games is realized as soon as possible to further the public interest in reforming the public school finance system and property tax reduction; and

(B) that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and to promote and ensure the integrity, security, honesty, and fairness of the electronic pull-tab bingo system.

(4) In order to commence operation of electronic pull-tab bingo, as authorized by the amendments in this article to Chapter 2001, Occupations Code, the Texas Lottery Commission may conduct limited pre-implementation acts as necessary to ensure the prompt approval of the electronic pull-tab bingo equipment after the effective date of this article.

(5) Before the effective date of the changes made in this article to Chapter 2001, Occupations Code, the Texas Lottery Commission may request and receive information related to applications for licensing and testing of electronic pull-tab bingo components as authorized under Chapter 2001, Occupations Code, as amended by this article.

SECTION __.10. The Texas Lottery Commission may expend money from the Commission's appropriations for the 2006-2007 biennium for purposes of conducting pre-implementation activities to implement the changes made by this article in Subchapter I, Chapter 2001, Occupations Code, including the development and approval of forms for applications for licensing and testing of electronic pull-tab bingo equipment authorized under Chapter 2001, Occupations Code, as amended by this article.

SECTION __.11. (a) Not later than November 1, 2005, the Texas Lottery Commission shall adopt rules necessary to implement the changes in law made to Chapter 2001, Occupations Code, by this article.

(b) Notwithstanding any other law, the following provisions apply to the procedures for adoption of the rules required by Subsection (a):

(1) The Commission shall give at least 15 days' notice of its intention to adopt a rule before it adopts the rule pursuant to this section.

(2) A rule adopted pursuant to this section takes effect on the date it is filed in the office of the secretary of state.

(3) The Commission shall notify all holders of a manufacturer's license of the adoption of a rule pursuant to this section within 10 days of adoption.

(4) To the extent the provisions of this section are inconsistent with Chapter 2001, Subchapter B, Government Code, this section prevails.

The amendment was read.

Senator Armbrister offered the following amendment to Floor Amendment No. 24:

Floor Amendment No. 25

Amend Floor Amendment No. 24 to **CSHB 3** on page 12, by striking lines 17 through 22 and inserting in lieu thereof the following:

(3) The State's need for school finance reform and to reduce property taxes constitute an imminent peril to the public welfare, requiring the adoption of rules and authorization for the Texas Lottery Commission to conduct certain pre-implementation activities related to regulating electronic pull-tab bingo to ensure:

The amendment to Floor Amendment No. 24 to **CSHB 3** was read and was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Duncan, Ellis, Estes, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Ogden, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Deuell, Eltife, Fraser, Nelson, Staples, Williams.

Question — Shall Floor Amendment No. 24 as amended to **CSHB 3** be adopted?

Senator Ogden moved to table Floor Amendment No. 24 to **CSHB 3**.

The motion to table was lost by the following vote: Yeas 7, Nays 24.

Yeas: Deuell, Duncan, Eltife, Fraser, Nelson, Ogden, Staples.

Nays: Armbrister, Averitt, Barrientos, Brimer, Carona, Ellis, Estes, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 24 to **CSHB 3**, the amendment as amended was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Duncan, Fraser, Nelson, Ogden, Staples.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 26

Amend **CSHB 3** (Senate committee printing) as follows:

(1) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES of the bill accordingly:

ARTICLE _____. INHERITANCE TAXES

SECTION __.01. Section 211.001(14), Tax Code, is amended to read as follows:

(14) "Value" means value as finally determined and used for purposes of computing the federal tax or the tax imposed by this chapter.

SECTION __.02. Section 211.003, Tax Code, is amended to read as follows:

Sec. 211.003. REFERENCES TO INTERNAL REVENUE CODE. A citation of or a reference to a subtitle, a chapter, or a section of the Internal Revenue Code of 1954 is a citation of or reference to [includes] that subtitle, chapter, or section as it existed [exists] on December 31, 2000 [September 1, 1981, or as amended after that date and also includes any other provision of the Internal Revenue Code enacted after September 1, 1981, that is similar to or a replacement of the subtitle, chapter, or section cited or referred to].

SECTION __.03. Section 211.056, Tax Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) This section applies only to an estate that is subject to both the federal tax and the tax imposed by this chapter.

(a-1) The comptroller shall confer with the Internal Revenue Service of the United States to determine the value of a decedent's estate that is located in this state and that is valued by the United States for tax purposes.

SECTION __.04. Subchapter B, Chapter 211, Tax Code, is amended by adding Section 211.057 to read as follows:

Sec. 211.057. VALUE OF ESTATES NOT SUBJECT TO FEDERAL TAX. The comptroller shall adopt rules for determining the value of a decedent's estate that is located in this state and that is not subject to the federal tax.

SECTION __.05. Section 211.102, Tax Code, is amended to read as follows:

Sec. 211.102. DAY ON WHICH PAYMENT IS DUE. Except as provided by Sections 211.103 and 211.104 ~~[211.104(b)]~~, payment of a tax imposed by Section 211.051, 211.052, or 211.053 ~~[of this code]~~ on a decedent's estate is due nine months after the day of the decedent's death.

SECTION __.06. Section 211.103, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The personal representative of an estate that is subject to a tax imposed by this chapter but that is not subject to the federal tax may request an extension of time under Section 111.057 for filing a report required by this chapter.

SECTION __.07. Section 211.104, Tax Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) This section applies only to an estate that is subject to both the federal tax and the tax imposed by this chapter.

(a-1) Within 30 days after receiving notice or information of the final assessment and determination of the value of the taxable estate assessed and determined by the federal government for the purpose of fixing federal estate taxes on that estate, the personal representative shall make to the comptroller a report of the value of the estate as so fixed and determined. The report shall be made in a form and contain information as the comptroller directs.

SECTION __.08. Sections 211.105 and 211.106, Tax Code, are amended to read as follows:

Sec. 211.105. DATE DUE OF TAXES ON GENERATION-SKIPPING TRANSFERS. (a) The taxes imposed by this chapter on generation-skipping transfers that are subject to the federal tax are due and payable at the same time as the federal tax on generation-skipping transfers.

(b) The comptroller shall adopt rules specifying a due date for taxes imposed by this chapter on generation-skipping transfers that are not subject to the federal tax.

Sec. 211.106. RETURNS. A payment relating to an estate that is subject to the federal tax must ~~shall~~ be accompanied by a copy of the federal estate or generation-skipping transfer tax return filed with the Internal Revenue Service and the Texas tax return containing any information the comptroller considers necessary for the enforcement of this chapter. A payment relating to an estate that is subject to the tax imposed by this chapter but is not subject to the federal tax must be accompanied by the Texas tax return. ~~[In the event no federal estate or generation skipping transfer tax has been paid or is due and no federal estate or generation skipping transfer tax return must be filed, the filing of a Texas tax return is not required by this chapter.]~~

SECTION __.09. Section 211.301, Tax Code, is amended to read as follows:

Sec. 211.301. ALLOCATION OF REVENUE [GENERAL REVENUE FUND]. The revenue from a tax, interest, or penalty imposed by this chapter shall be deposited in the state treasury to the credit of the tax reimbursement program account established under Section 151.434 [general revenue fund].

SECTION __.10. The change in law made by this article to Chapter 211, Tax Code, applies only to a transfer of property subject to that chapter that occurs as a result of the death of a person on or after the effective date of this article. A transfer of property that occurs as a result of the death of a person before the effective date of this article is governed by the law in effect on the day of the person's death, and that law is continued in effect for that purpose.

SECTION __.11. This article takes effect September 1, 2005.

(2) In ARTICLE 5 of the bill, in the recital to SECTION 5A.03(a) (page 43, line 19), strike "Section 151.433" and substitute "Sections 151.433 and 151.434".

(3) In ARTICLE 5 of the bill, in added Section 151.433(b), Tax Code (page 43, line 34), strike "20" and substitute "40".

(4) In ARTICLE 5 of the bill, in added Section 151.433(g), Tax Code (page 44, lines 6 through 7), strike "\$100 million" and substitute "\$ _____ million".

(5) In ARTICLE 5 of the bill, immediately following added Section 151.433, Tax Code (page 44, between lines 22 and 23), insert the following:

Sec. 151.434. TAX REIMBURSEMENT PROGRAM ACCOUNT. (a) The tax reimbursement program account is an account in the general revenue fund that may be appropriated only to the Health and Human Services Commission for the purpose of providing reimbursements of estimated taxes under Section 151.433.

(b) At the end of each state fiscal biennium, the comptroller shall transfer any unexpended and unobligated balance remaining in the tax reimbursement program account to the foundation school fund.

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 26 was tabled by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, West, Williams, Zaffirini.

Nays: Barrientos, Ellis, Gallegos, Lucio, Madla, Shapleigh, Van de Putte, Whitmire.

Floor Amendment No. 27 was not offered.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 28

Amend **CSHB 3** by adding the following SECTION to the bill and renumbering subsequent sections accordingly:

SECTION _____. (a) This section applies to a suit brought by an entity subject to the tax under Chapter 171, Tax Code, as amended by this article, contending that the imposition of the tax on the entity is unconstitutional.

(b) The suit must be brought in a district court in Travis County.

(c) The judgment of the district court may be reviewed only by direct appeal to the supreme court filed on or before the 15th day after the date the district court enters its judgment. The district court shall try the suit and the supreme court shall hear any appeal relating to the suit as expeditiously as possible.

(d) If a final judgment upheld on appeal or no longer subject to appeal finds that the tax imposed under Chapter 171, Tax Code, is unconstitutional because of the requirements of Section 24, Article VIII, Texas Constitution, all taxable entities, other than a corporation or limited liability company, shall pay the tax at the rate provided by Section 171.003.

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 28 except as follows:

Nays: Williams.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 29

Amend **CSHB 3** as follows:

(1) On page 40, line 40, between "physician" and "that" insert ", optometrist or podiatrist"

(2) On page 40, line 47, between "physician" and "received" insert ", optometrist or podiatrist"

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 29.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 30

Amend **CSHB 3** (Senate committee printing) as follows:

(1) Strike Section 171.001(b)(5), Tax Code, as amended by SECTION 4.02 of the bill (page 23, lines 33-36), and substitute:

(5) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect [~~for the federal tax year beginning~~] on [~~or after~~] January 1, 2005, not including any changes made by federal law after that date [1996, and before January 1, 1997], and any regulations adopted under that code [applicable to that period].

(2) In the recital to SECTION 4.19 of the bill (page 31, line 5), strike "(m), (n), and (o)", and substitute "(m) and (n)".

(3) Strike Section 171.110(n), Tax Code, as added by SECTION 4.19 of the bill (page 32, lines 31-36).

(4) Reletter Subsection (o), Section 171.110, Tax Code, as added by SECTION 4.19 of the bill (page 32, line 37), as Subsection (n).

(5) In Section 171.902(a), Tax Code, as added by SECTION 4.46 of the bill (page 40, lines 44-45), strike "that calendar quarter" and substitute "the period on which earned surplus is based".

(6) In Section 171.902(b), Tax Code, as added by SECTION 4.46 of the bill (page 40, lines 48-49), strike "that calendar quarter" and substitute "the period on which earned surplus is based".

(7) In Section 171.903, Tax Code, as added by SECTION 4.46 of the bill (page 40, line 50), strike "(a)".

(8) Strike Section 171.903(b), Tax Code, as added by SECTION 4.46 of the bill (page 40, lines 53-56).

The amendment to **CSHB 3** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 30.

Senator Gallegos offered the following amendment to the bill:

Floor Amendment No. 31

Amend **CSHB 3** (Senate committee printing) as follows:

Add the following SECTIONS, appropriately numbered, to read as follows:

SECTION 2.01. Section 466.002, Government Code, is amended by amending Subdivisions (2)-(10) and adding Subdivisions (11)-(36) to read as follows:

(2) "Communication technology" means the methods used and the components employed to facilitate the transmission of information, including transmission and reception systems that transmit information through wire, cable, radio, microwave, light, optics, or computer data networks.

(3) "Director" means a ~~[the]~~ director employed by the executive director under Section 467.033 [of the division].

(4) "Disable" with respect to video lottery terminals means the process that causes a video lottery terminal to cease functioning on issuance of a shutdown command from the video lottery central system.

(5) "Distribute," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means the sale, lease, marketing, offer, or other disposition of any of those items.

(6) [(3)] "Division" means the lottery division established by the commission under Chapter 467.

(7) "Electronic storage medium," with respect to video lottery, means the electronic medium on which the operation software for a game playable on a video lottery terminal is stored in the form of erasable programmable read only memory, compact disc-read only memory, flash random access memory, or other technology medium the commission approves for use in a video lottery terminal.

(8) [(4)] "Executive director" means the executive director of the commission.

(9) "Gaming agreement" means an agreement authorized under Subchapter K between this state and a federally recognized Indian tribe under which this state allows the tribe to conduct limited gaming activities authorized under this chapter or applicable federal law.

(10) "House-banked game" means a game of chance in which:

(A) the house plays as a participant;

(B) the house competes against all players, collects from all losers, and pays all winners; and

(C) the house has an opportunity to win.

(11) "Indian lands" means:

(A) land located within an Indian reservation and occupied by an Indian tribe on January 1, 1998; and

(B) land occupied by an Indian tribe on January 1, 1998, over which an Indian tribe exercises governmental power and the title to which is:

(i) held in trust by the United States for the benefit of an Indian tribe or individual member of an Indian tribe; or

(ii) held by an Indian tribe or an individual member of an Indian tribe and subject to restriction by the United States against alienation.

(12) "Institutional investor" means:

(A) a state or federal government pension plan; or

(B) any of the following that meets the requirements of a "qualified institutional buyer" as defined in Rule 144A, Securities Act of 1933 (15 U.S.C. Sections 77a-77aa), and the rules and regulations adopted under that rule by the United States Securities and Exchange Commission:

(i) a bank as defined by Section 3(a)(6), Securities Exchange Act of 1934 (15 U.S.C. Sections 78a-78kk), and the rules and regulations adopted under that act by the United States Securities and Exchange Commission;

(ii) an insurance company as defined by Section 2(a)(17), Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iii) an investment company registered under Section 8, Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iv) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the Securities and Exchange Commission;

(v) a group composed entirely of persons specified by this subdivision; or

(vi) any other person the commission recognizes as an institutional investor for reasons consistent with the policies expressed in this chapter.

(13) ~~(5)~~ "Lottery" means the state lottery established and operated in accordance with the Texas Constitution under this chapter and includes the operation of a state-controlled video lottery system [procedures operated by the state under this chapter through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize].

(14) ~~(6)~~ "Lottery game" means an activity conducted lawfully and in accordance with the Texas Constitution and this chapter that is controlled by this state as part of the lottery and through which prizes are awarded or distributed by chance to persons who have paid or unconditionally agreed to pay, or who otherwise participate in a game, for a chance or other opportunity to receive a prize [includes a lottery activity].

(15) ~~(7)~~ "Lottery operator" means a person selected under Section 466.014(b) to operate a lottery game.

(16) "Manufacture," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means to design, assemble, fabricate, produce, program, or make modifications to any of those items.

(17) "Net terminal income" means the total amount of money paid to play video lottery games less the value of all credits redeemed for money, including any progressive prizes and bonuses, by the players of the video lottery games. Promotional prizes unrelated to video lottery game wagers that are offered by a video lottery retailer or video lottery manager may not be deducted or otherwise considered credits redeemed for money by players for the purpose of determining net terminal income.

(18) "Pari-mutuel license holder" means a person licensed to conduct wagering on a greyhound race or a horse race under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(19) "Person" means, for purposes of video lottery operations, any natural person, corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature.

(20) ~~(8)~~ "Player" means a person who contributes any part of the consideration for a ticket or to play a video lottery game under this chapter.

(21) "Racetrack" means a racetrack as defined by Section 1.03(25), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(22) ~~(9)~~ "Sales agent" or "sales agency" means a person licensed under this chapter to sell tickets.

(23) "Slot machine" means a mechanical, electrical, or other type of device, contrivance, or machine that plays or operates on insertion of a coin, currency, token, or similar object or on payment of any other consideration, and the play or operation of which, through the skill of the operator, by chance, or both, may deliver to the person playing or operating the machine, or entitle the person to receive, cash, premiums, merchandise, tokens, or any other thing of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any equipment, machine, technological aid, or other device used or authorized in connection with the play of bingo under Chapter 2001, Occupations Code.

(24) "Substantial interest holder" means any of the following that is not a bona fide lender, bank, or other authorized or licensed lending institution that holds a mortgage or other lien acquired in the ordinary course of business or a vendor of the applicant or license holder that is not otherwise a substantial business holder:

(A) a person who directly, indirectly, or beneficially owns any interest in a privately owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(B) a person who directly, indirectly, or beneficially owns 10 percent or more of any publicly owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(C) a person associated with an applicant or license holder who the commission determines has the power or authority to:

(i) control the activities of the applicant or license holder; or

(ii) elect or select the executive director, the managers, the partners, or a majority of the board of directors of the applicant or license holder; and

(D) any key personnel of a video lottery retailer or video lottery manager, including an executive director, officer, director, manager, member, partner, limited partner, executive, employee, or agent, who the commission determines has the power to exercise significant influence over decisions concerning any part of the applicant's or license holder's business operation.

(25) [~~(10)~~] "Ticket" means any tangible evidence issued to provide participation in a lottery game authorized by this chapter other than a video lottery game.

(26) "Video lottery central system" means the system of procedures and facilities operated and controlled by the commission that is designed to link together all video lottery terminals operated in this state and allows the commission to continuously monitor the activity of each video lottery terminal and to disable any video lottery terminal in this state.

(27) "Video lottery central system provider" means a person that, under a contract with the commission, provides the video lottery central system.

(28) "Video lottery equipment" means:

(A) a video lottery terminal;

(B) equipment, a component, or a contrivance used remotely or directly in connection with a video lottery terminal to:

(i) affect the reporting of gross revenue and other accounting information, including a device for weighing and counting money;

(ii) connect video lottery terminals together for accounting or wide-area prize or progressive prize purposes;

(iii) monitor video lottery terminal operations; and

(iv) provide for the connection of video lottery terminals to the video lottery central system; or

(C) any other communications technology or equipment necessary for the operation of a video lottery terminal.

(29) "Video lottery game" means an electronically simulated game displayed on a video lottery terminal the outcome of which is determined solely by chance based on a computer-generated random selection of winning combinations of symbols or numbers other than roulette, dice, or baccarat game themes associated with casino gambling, except that game themes displaying symbols that appear to roll on drums to simulate a classic casino slot machine or themes of other card games and keno may be used.

(30) "Video lottery manager" means a person who:

(A) is licensed by the commission under this chapter to manage a video lottery terminal establishment at a racetrack; or

(B) provides management services for a video lottery terminal establishment on Indian lands.

(31) "Video lottery retailer" means a racetrack at which a video lottery terminal establishment is located and that holds a video lottery retailer license under Subchapter K.

(32) "Video lottery system" has the meaning assigned to that term by Section 47(f), Article III, Texas Constitution.

(33) "Video lottery terminal" means an interactive electronic device that is capable of displaying video lottery games.

(34) "Video lottery terminal establishment" means premises at which the operation of video lottery terminals is authorized by the commission under this chapter in accordance with a license or a gaming agreement.

(35) "Video lottery terminal provider" means a person in the business of manufacturing or distributing video lottery terminals in this state.

(36) "Video lottery ticket" means the tangible evidence issued by a video lottery terminal to reflect winnings from the play of a video lottery game.

SECTION 2.02. Section 466.003, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Any [~~A~~] contract or authorized agreement between the division and a lottery operator, the video lottery central system provider, a video lottery terminal provider, or a manufacturer or distributor of video lottery games under Section 466.014(b) must contain a provision allowing the contract or authorized agreement to be terminated without penalty should the division be abolished unless another state agency is assigned to regulate all video lottery game activity as required by this chapter.

(c) Notwithstanding Subsection (a), if any gaming agreement that allows video lottery is in effect, the commission or another state agency designated by the legislature must regulate video lottery games as necessary to comply with a gaming agreement under this chapter.

SECTION 2.03. Section 466.004(a), Government Code, is amended to read as follows:

(a) A political subdivision of this state may not impose:

(1) a tax on the sale of a ticket;

(2) a tax on the payment of a prize under this chapter; ~~or~~

(3) an ad valorem tax on tickets;

(4) a tax, fee, or other assessment on consideration paid to play a video

lottery game; or

(5) a tax or fee for attendance or admission to a video lottery establishment or a racetrack at which a video lottery establishment is located unless specifically authorized by statute.

SECTION 2.04. Section 466.014, Government Code, is amended to read as follows:

Sec. 466.014. POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR; CONTRACT AUTHORITY. (a) The commission and executive director have broad authority and shall exercise strict control and close supervision over ~~all~~ lottery games ~~[conducted in this state]~~ to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.

(b) The executive director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the executive director. A contract relating to the operation of video lottery must be consistent with Subchapter K. Except as provided by this subsection, a ~~[A]~~ person with whom the executive director contracts to operate a lottery game must be eligible for a sales agent license under Section 466.155. A person with whom the executive director contracts to provide the video lottery central system must be eligible under the same standards as those applicable to the registration or approval by the commission of a video lottery terminal provider in accordance with Subchapter K.

(c) The executive director may award a contract for lottery supplies, equipment, or services, including a contract under Subsection (b), pending the completion of any investigation and licensing, registration, or other approval authorized or required by this chapter. A contract awarded under this subsection must include a provision permitting the executive director to terminate the contract without penalty if the investigation reveals that the person to whom the contract is awarded would not be eligible for a sales agent license under Section 466.155 or with regard to video lottery does not satisfy the applicable requirements for licensing, registration, or other approval under Subchapter K.

(e) In the acquisition or provision of facilities, supplies, equipment, materials, or services related to the implementation of video lottery, the commission is exempt from:

(1) procurement procedures prescribed under:

(A) Subtitle D, Title 10; and

(B) Section 466.101; and

(2) any bidding or contract requirements provided by any other law or by commission rules.

(f) Subsection (e) and this subsection expire January 1, 2008.

SECTION 2.05. Section 466.015(b), Government Code, is amended to read as follows:

(b) The commission shall adopt rules to the extent they are not inconsistent with Chapters 551 and 552 governing the:

(1) security for the lottery and the commission, including the development of an internal security plan;

(2) apportionment of the total revenues from the sale of tickets and from all other sources in the amounts provided by this chapter;

(3) enforcement of prohibitions on the sale of tickets to or by an individual younger than 18 years of age or the sale of a video lottery game to or by an individual younger than 21 years of age; ~~and~~

(4) enforcement of prohibitions on a person playing a lottery game by telephone; and

(5) enforcement of prohibitions provided by law on the sale of any purchase or play of a video lottery game.

SECTION 2.06. Section 466.017, Government Code, is amended to read as follows:

Sec. 466.017. AUDITS. (a) The commission ~~[executive director]~~ shall provide for a certified public accountant to conduct an independent audit of the commission's annual financial statements in accordance with generally accepted auditing standards that requires the accountant to express an opinion on the conformity of the financial statements with generally accepted accounting principles ~~[for each fiscal year of all accounts and transactions of the lottery]~~. The certified public accountant may not have ~~[, as determined by the executive director,]~~ a significant financial interest in a sales agent, lottery vendor, ~~[or]~~ lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider. The certified public accountant shall present an audit report to the executive director, the commission, the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report required by the General Appropriations Act. ~~[The report must contain recommendations to enhance the earnings capability of the lottery and improve the efficiency of lottery operations.]~~ The state auditor may review the results of and working papers related to the audit.

(b) The records of a ~~[Each]~~ lottery operator, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider ~~[operator's and sales agent's records]~~ are subject to audit by the commission and the state auditor. For the purpose of carrying out this chapter, the executive director or state auditor may examine all books, records, papers, or other objects that the executive director or state auditor determines are necessary for conducting a complete examination under this chapter and may also examine under oath any officer, director, or employee of a lottery operator, ~~[or]~~ sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider. The executive director or state auditor may conduct an examination at the principal office or any other office of the person subject to the audit ~~[lottery operator or sales agent]~~ or may require the person ~~[lottery operator or sales agent]~~ to produce the records at the office of the commission or state auditor. If a sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video

lottery central system provider refuses to permit an examination or to answer any question authorized by this subsection, the executive director may summarily suspend the license or registration of the sales agent, video lottery manager, video lottery retailer, or video lottery terminal provider under Section 466.160 or Subchapter K until the examination is completed as required. Section 321.013(h) does not apply to an audit of a lottery operator, ~~or~~ sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider.

SECTION 2.07. Section 466.018, Government Code, is amended to read as follows:

Sec. 466.018. INVESTIGATIONS. The attorney general, the district attorney for Travis County, or the district attorney, criminal district attorney, or county attorney performing the duties of district attorney for the county in which the violation or alleged violation occurred may investigate a violation or alleged violation of this chapter and of the penal laws of this state by the commission or its employees, a sales agent, a lottery vendor, ~~or~~ a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider.

SECTION 2.08. Sections 466.020(c), (d), and (e), Government Code, are amended to read as follows:

(c) A security officer or investigator employed by the department of security or a peace officer who is working in conjunction with the commission or the Department of Public Safety in the enforcement of this chapter may:

(1) ~~is~~ without a search warrant, ~~may~~ search and seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is located on premises for which a person holds a sales agent, video lottery retailer, or video lottery manager license issued under this chapter; or

(2) seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is being used or is in the possession of any person in violation of this chapter.

(d) The Department of Public Safety or any other state or local law enforcement agency in this state, at the commission's request and in accordance with an interagency agreement, shall perform a full criminal background investigation of a prospective deputy or investigator of the department of security. The commission shall reimburse the agency ~~[Department of Public Safety]~~ for the actual costs of an investigation.

(e) At least once every two years, the executive director shall employ an independent firm that is experienced in security, including computer security and systems security, to conduct a comprehensive study of all aspects of lottery security, including:

- (1) lottery personnel security;
- (2) sales agent security;
- (3) lottery operator and vendor security;
- (4) security against ticket counterfeiting and alteration and other means of fraudulent winning;
- (5) security of lottery drawings;
- (6) lottery computer, data communications, database, and systems security;
- (7) lottery premises and warehouse security;

- (8) security of distribution of tickets;
- (9) security of validation and payment procedures;
- (10) security involving unclaimed prizes;
- (11) security aspects of each lottery game;
- (12) security against the deliberate placement of winning tickets in lottery games that involve preprinted winning tickets by persons involved in the production, storage, transportation, or distribution of tickets; ~~and~~
- (13) security of video lottery retailers, video lottery managers, video lottery terminal providers, and video lottery central system providers; and
- (14) other security aspects of lottery operations, including video lottery game operations.

SECTION 2.09. Section 466.021(a), Government Code, is amended to read as follows:

(a) The executive director shall, every two years, employ an independent firm experienced in demographic analysis to conduct a demographic study of lottery players. The study must examine ~~include~~ the income, age, sex, race, education, and frequency of participation of players. The study must distinguish between players of traditional lottery games and video lottery games.

SECTION 2.10. Section 466.022, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) 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) information relating to all system operations of video lottery games, including the operation of the video lottery system, security related to video lottery games, and commission plans and procedures intended to ensure the integrity and security of the operation of video lottery games.

(c) Information that is confidential under Subsection (b)(4) includes information and data that:

(1) are furnished to the commission under Subchapter K or that may be otherwise obtained by the commission from any source;

(2) pertain to an applicant's criminal record, antecedents, and background and are furnished to or obtained by the commission from any source, including information obtained by the commission under Section 411.108(d);

(3) are provided to the commission, a commission employee, or an investigator acting on behalf of the commission by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential;

(4) are obtained by the commission from a video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider; or

(5) are prepared or obtained by an agent or employee of the commission relating to a license, registration, or renewal application, a finding of suitability, or any approval required under Subchapter K.

(d) Information that qualifies as confidential under Subsection (b)(4) may be disclosed in whole or in part only as necessary to administer this chapter or under a court order. The commission, subject to appropriate procedures, may disclose the information and data to an authorized agent of a political subdivision of this state, the United States, another state or a political subdivision of another state, a tribal law enforcement agency, or the government of a foreign country.

(e) For the annual report required under Section 466.016, the commission may disclose a compilation of statistical information that is otherwise confidential under Subsection (b)(4) if the compilation does not disclose the identity of an applicant, license or registration holder, or video lottery establishment.

(f) Notwithstanding any other provision of state law, the information provided under Subsection (d) or (e) may not otherwise be disclosed without specific commission authorization.

SECTION 2.11. Section 466.024, Government Code, is amended to read as follows:

Sec. 466.024. PROHIBITED GAMES. (a) The executive director, ~~[or]~~ a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider may not establish or operate a lottery game in which the winner is chosen on the basis of the outcome of a live sports event.

(b) The ~~[commission shall adopt rules prohibiting the]~~ operation of any game using a video lottery machine, slot ~~[or]~~ machine, or other gambling device that is not connected to the video lottery central system and regulated by this state as required by Section 47, Article III, Texas Constitution, and this chapter is prohibited.

(c) In this section, "sports~~[-~~

~~[(1) "Sports] event" means a football, basketball, baseball, or similar game, or a horse or dog race on which pari-mutuel wagering is allowed.~~

~~[(2) "Video lottery machine" or "machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens.]~~

SECTION 2.12. Section 466.025, Government Code, is amended to read as follows:

Sec. 466.025. REPORTS OF TICKETS SOLD, NET TERMINAL INCOME, AND PRIZES AWARDED. For each lottery game, other than a video lottery game, after the last date on which a prize may be claimed under Section 466.408(d), the director shall prepare a report that shows the total number of tickets sold and the

number and amounts of prizes awarded in the game. The report must be available for public inspection. For video lottery games, the director shall prepare a weekly report that shows net terminal income for the preceding week.

SECTION 2.13. Section 466.103(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who:

(1) would be denied a license as a sales agent under Section 466.155; or

(2) with regard to video lottery equipment:

(A) is not a registered video lottery terminal provider if registration is required; or

(B) would be deemed unsuitable to be a video lottery terminal provider under Subchapter K.

SECTION 2.14. Section 466.110, Government Code, is amended to read as follows:

Sec. 466.110. PROHIBITED ADVERTISEMENTS. The legislature intends that advertisements or promotions sponsored by the commission or the division for the lottery not be of a nature that unduly influences any person to purchase a lottery ticket or number or play a video lottery game.

SECTION 2.15. Section 466.151(b), Government Code, is amended to read as follows:

(b) The executive director may establish a provisional license or other classes of licenses necessary to regulate and administer the quantity and type of lottery games provided at each licensed location of a sales agent.

SECTION 2.16. Section 466.158(a), Government Code, is amended to read as follows:

(a) Unless suspended or revoked, a license issued under this subchapter expires on the date specified in the license, which may not be later than the fifth ~~second~~ anniversary of its date of issuance.

SECTION 2.17. Section 466.201(a), Government Code, is amended to read as follows:

(a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) a sales agent or an applicant for a sales agent license;

(2) a person required to be named in a license application;

(3) a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider;

(4) an employee of a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, if the employee is or will be directly involved in lottery operations;

(5) a person who manufactures or distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;

(6) a person who has submitted a written bid or proposal to the commission in connection with the procurement of goods or services by the commission, if the amount of the bid or proposal exceeds \$500;

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license;

(8) a person who proposes to enter into or who has a contract with the commission to supply goods or services to the commission; or

(9) if a person described in Subdivisions (1) through (8) is not an individual, an individual who:

(A) is an officer or director of the person;

(B) holds more than 10 percent of the stock in the person;

(C) holds an equitable interest greater than 10 percent in the person;

(D) is a creditor of the person who holds more than 10 percent of the person's outstanding debt;

(E) is the owner or lessee of a business that the person conducts or through which the person will conduct lottery-related activities;

(F) shares or will share in the profits, other than stock dividends, of the person;

(G) participates in managing the affairs of the person; or

(H) is an employee of the person who is or will be involved in:

(i) selling tickets; or

(ii) handling money from the sale of tickets.

SECTION 2.18. Subchapter E, Chapter 466, Government Code, is amended by adding Section 466.206 to read as follows:

Sec. 466.206. CRIMINAL HISTORY INVESTIGATION FOR VIDEO LOTTERY. (a) Except as otherwise provided by this section, Sections 466.020 and 466.201, and Subchapter K, a criminal history investigation of a video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system provider is governed by commission rules adopted under Subchapter K, which may consider a criminal history investigation conducted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(b) The Department of Public Safety or a state or local law enforcement agency in this state, in accordance with an interagency agreement with the commission, shall provide any assistance requested by the commission in the administration and enforcement of this chapter, including conducting background investigations of a person seeking a license, registration, or other commission authorization required under Subchapter K or of any person required to be named in an application for a license, registration, or other commission authorization under that subchapter.

(c) This section does not limit the commission's right to obtain criminal history record information from any other local, state, or federal agency. The commission may enter into a confidentiality agreement with the agency as necessary and proper.

(d) Except as otherwise provided by Section 411.108(d) or another provision of this chapter, criminal history record information obtained by the commission under this section may be disclosed only:

(1) to another law enforcement agency to assist in or further an investigation related to the commission's operation and oversight of video lottery; or

(2) under a court order.

SECTION 2.19. Section 466.252, Government Code, is amended to read as follows:

Sec. 466.252. PLAYER [PURCHASE OF TICKET] AGREEMENT TO ABIDE BY RULES AND INSTRUCTIONS. (a) By purchasing a ticket in a particular lottery game or participating as a player in a lottery game, a player agrees to abide by and be bound by the commission's rules and instructions, including the rules or instructions applicable to the particular lottery game involved. The player also acknowledges that the determination of whether the player is a valid winner is subject to:

(1) the commission's rules, instructions, and claims procedures, including those developed for the particular lottery game involved; ~~and~~

(2) any validation tests established by the commission for the particular lottery game involved; and

(3) the limitations and other provisions prescribed by this chapter.

(b) If the lottery uses tickets, an abbreviated form of the rules or a reference to the rules may appear on the tickets.

SECTION 2.20. Section 466.3011, Government Code, is amended to read as follows:

Sec. 466.3011. VENUE. Venue is proper in Travis County or any county in which venue is proper under Chapter 13, Code of Criminal Procedure, for:

(1) an offense under this chapter;

(2) an offense under the Penal Code, if the accused:

(A) is a lottery operator, lottery vendor, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, video lottery central system provider, or employee of the division; and

(B) is alleged to have committed the offense while engaged in lottery activities, including video lottery activities; or

(3) an offense that involves property consisting of or including lottery tickets under Title 7 or 11, Penal Code.

SECTION 2.21. Subchapter G, Chapter 466, Government Code, is amended by adding Section 466.3031 to read as follows:

Sec. 466.3031. UNAUTHORIZED OPERATION, USE, OR POSSESSION OF VIDEO LOTTERY TERMINAL. (a) A person may not operate, use, or possess a video lottery terminal unless the operation, use, or possession is expressly authorized by this chapter or other law.

(b) Except for transport to or from a video lottery establishment and as provided by this chapter, a person commits an offense if the person operates, uses, or possesses any video lottery terminal that is not at all times connected to the video lottery central system or that does not generate revenue for this state, except funds retained by the commission to pay administrative costs. An offense under this subsection is a felony of the third degree.

(c) Notwithstanding Subsection (b), a video lottery retailer, video lottery manager, or registered or approved video lottery terminal provider may store or possess a video lottery terminal as authorized by the commission, and the commission may possess video lottery terminals for study and evaluation.

(d) Nothing in this section shall be construed to prohibit the operation, use, or possession of equipment, machines, technological aids, or other devices allowed in connection with the play of bingo under Chapter 2001, Occupations Code.

SECTION 2.22. Section 466.305(a), Government Code, is amended to read as follows:

(a) A sales agent, video lottery manager, or video lottery retailer, or an employee of a sales agent, video lottery manager, or video lottery retailer, commits an offense if the person intentionally or knowingly sells a ticket to another person or allows the person to play or conduct a game on a video lottery terminal by extending credit or lending money to the person to enable the person to purchase the ticket or play the game.

SECTION 2.23. The heading to Section 466.3051, Government Code, is amended to read as follows:

Sec. 466.3051. SALE ~~[OF TICKET]~~ TO OR PURCHASE OF LOTTERY TICKET BY PERSON YOUNGER THAN 18; PLAY OF LOTTERY GAME BY PERSON YOUNGER THAN 21 ~~[YEARS OF AGE]~~.

SECTION 2.24. Section 466.3051, Government Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsections (b)-(f) to read as follows:

(a-1) A video lottery manager, a video lottery retailer, or an employee of a video lottery manager or video lottery retailer commits an offense if the person intentionally or knowingly allows a person younger than 21 years of age to play a video lottery game.

(b) An individual who is younger than 18 years of age commits an offense if the individual:

(1) purchases a lottery ticket; or

(2) falsely represents the individual to be 18 years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to purchase a lottery ticket.

(b-1) An individual who is younger than 21 years of age commits an offense if the individual:

(1) plays a video lottery game; or

(2) falsely represents the individual to be 21 years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to play a video lottery game.

(c) A person 18 years of age or older may purchase a lottery ticket to give as a gift to another person, including an individual younger than 18 years of age.

(d) It is a defense to the application of Subsection (b) that the individual younger than 18 years of age is participating in an inspection or investigation on behalf of the commission or other appropriate governmental entity regarding compliance with this section. It is a defense to the application of Subsection (b-1) that the individual younger than 21 years of age is participating in an inspection or investigation on behalf of the commission or other appropriate governmental entity regarding compliance with this section.

(e) An offense under Subsection (a) or (a-1) is a Class C misdemeanor.

(f) An offense under Subsection (b) or (b-1) is punishable by a fine not to exceed \$250.

SECTION 2.25. Section 466.3053, Government Code, is amended to read as follows:

Sec. 466.3053. PURCHASE OF TICKET OR VIDEO LOTTERY GAME WITH PROCEEDS OF AFDC CHECK OR FOOD STAMPS. (a) A person commits an offense if the person intentionally or knowingly purchases a ticket or plays a video lottery game with:

(1) the proceeds of a check issued as a payment under the Aid to Families with Dependent Children program administered under Chapter 31, Human Resources Code; or

(2) a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code.

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

SECTION 2.26. Section 466.306, Government Code, is amended to read as follows:

Sec. 466.306. FORGERY; ALTERATION OF TICKET. (a) A person commits an offense if the person intentionally or knowingly alters or forges a ticket or video lottery ticket.

(b) An offense under this section is a felony of the third degree unless it is shown on the trial of the offense that the prize alleged to be authorized by the ticket or video lottery ticket forged or altered is greater than \$10,000, in which event the offense is a felony of the second degree.

SECTION 2.27. Section 466.309(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, video lottery terminal or other video lottery equipment, or other mechanical device used in a lottery game.

SECTION 2.28. The heading to Section 466.317, Government Code, is amended to read as follows:

Sec. 466.317. PROHIBITION AGAINST SALE OF CERTAIN LOTTERY TICKETS OR OPERATION OF CERTAIN VIDEO LOTTERY SYSTEMS.

SECTION 2.29. Section 466.317, Government Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) A person may not control or operate a video lottery system in this state except as provided by this chapter.

(b) The state may enter into a compact with another state or state government [~~or an Indian tribe or tribal government~~] to permit the sale of lottery tickets of this state in the state's[~~tribe's,~~] or government's jurisdiction and to allow the sale of the state's[~~tribe's,~~] or government's lottery tickets in this state.

(c) A person commits an offense if the person violates this section. An offense under this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION 2.30. Section 466.355(a), Government Code, is amended to read as follows:

(a) The state lottery account is a special account in the general revenue fund. The account consists of all revenue received from the sale of tickets, license and application fees under this chapter, other than Subchapter K, and all money credited to the account from any other fund or source under law. Interest earned by the state lottery account shall be deposited in the unobligated portion of the general revenue fund.

SECTION 2.31. Subchapter H, Chapter 466, Government Code, is amended by adding Section 466.360 to read as follows:

Sec. 466.360. VIDEO LOTTERY TERMINAL REVENUE. Revenue generated from the operation of video lottery terminals is governed by Subchapter K and commission rules.

SECTION 2.32. Section 466.402, Government Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to the payment of prizes for video lottery games governed by Subchapter K.

SECTION 2.33. Chapter 466, Government Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. VIDEO LOTTERY

Sec. 466.501. LEGISLATIVE FINDINGS AND DECLARATIONS. The legislature finds and declares the following:

(1) The purpose and intent of this chapter is to carry out the intent of the voters as established by the approval of Section 47(e), Article III, Texas Constitution, to expand the revenue-generating ability of the state lottery by authorizing this state to operate a video lottery system consistent with public policy strictly limiting the expansion of gambling in this state.

(2) Except for the operation of video lottery terminals on certain Indian lands as defined by the Texas Constitution, the people of this state intend to allow only state-controlled video lottery games to be conducted in this state and only in locations at which pari-mutuel wagering is conducted at racetracks.

(3) This state has the authority and responsibility to control the proliferation of gambling by:

(A) limiting the total number of video lottery terminals permitted at authorized locations in this state;

(B) limiting video lottery licensing to specific licensed racetracks;

(C) extending strict and exclusive state oversight and supervision to all persons, locations, practices, and associations related to the operation of video lottery games; and

(D) providing comprehensive law enforcement supervision of video lottery game activities.

(4) This state's ability to monitor and control the operation of all video lottery terminals ensures the integrity of the system and provides for the most efficient oversight and supervision. Costs incurred for oversight and supervision of gambling will be significantly less than if video lottery terminals were not operated as part of the video lottery system. In addition, providing for the state-controlled system will defend against criminal infiltration of gambling operations.

(5) The video lottery games operated at racetracks under this chapter are controlled by this state in a manner that allows this state to continuously monitor all video lottery terminals and to disable any video lottery terminal for the protection of the public and this state.

(6) Through the video lottery system this state will monitor the network of video lottery terminals to ensure maximum security unique to state-operated gambling. Except as may otherwise be required by federal law governing Indian lands, each operating video lottery terminal in this state will be connected to a video lottery central system.

(7) The authorization for state-controlled video lottery terminals to fund governmental programs is consistent with this state's public policy prohibiting gambling provided the gambling is not, in any way, expanded beyond that directly controlled by this state. Expanded gambling beyond this limited form of state-controlled gambling would compromise the public safety, law, and long-standing policy against gambling in this state. In addition, such expanded gambling could impose prohibitive cost on this state's regulatory system and, therefore, defeat the effort to raise revenue for state governmental programs through authorized video lottery terminals. For these reasons, any interpretation that allows for casino gaming of the type operating in Nevada and New Jersey in 2005 to be conducted in this state at racetracks or on Indian lands as a result of the authorization of video lottery terminals would have severe adverse consequences on this state's efforts to raise revenue to fund governmental programs through the operation of video lottery terminals and would violate the public policy against gambling in such a way that would clearly outweigh any potential positive economic consequences.

(8) In authorizing only a state-controlled and state-operated video lottery system and state-controlled video lottery terminals in limited locations and continuing the general prohibition on gambling in this state as a matter of public policy, this state is protecting the state's legitimate interests by restricting such vice activity. By limiting the operation of video lottery terminals to those connected to the state-controlled video lottery system and to certain lands and certain types of games, the legislature seeks to foster this state's legitimate sovereign interest in regulating the growth of gambling activities in this state. Historically, this state has banned commercial gambling altogether and, therefore, it is in this state's best interest to limit the placement of commercial gambling operations to certain locations. Limiting video lottery terminals to those controlled by this state and located on racetracks where regulated gambling occurs is reasonably designed to defend against the criminal infiltration of gambling operations and adverse impacts on communities statewide. By restricting gambling such as video lottery terminals to carefully limited locations and

video lottery terminals controlled by this state that may be disabled by this state if necessary to protect the public, this state furthers the state's purpose of ensuring that such gambling activities are free from criminal and undesirable elements.

(9) This chapter is game-specific and may not be construed to allow the operation of any other form of gambling unless specifically allowed by this chapter. This chapter does not allow the operation of slot machines, dice games, roulette wheels, house-banked games, including house-banked card games, or games in which winners are determined by the outcome of a sports contest that are expressly prohibited under other state law.

(10) In considering limitations on expanded gambling in this state, it is a critical factor to effectuate the will of the voters that any gaming on lands of the Ysleta del Sur Pueblo and Alabama-Coushatta Indian tribes must be in strict compliance with state law. The Kickapoo Traditional Tribe of Texas is only entitled to operate video lottery terminals in strict compliance with state law, unless otherwise required by federal law, and in accordance with a gaming agreement negotiated with the governor and ratified by the legislature. A tribe may not under any circumstances operate Class III gaming as defined by federal law other than video lottery terminals connected to a video lottery central system controlled and operated by this state.

(11) The voters have conferred a substantial economic benefit on federally recognized Indian tribes by allowing operation of video lottery terminals on lands held in trust by the Ysleta del Sur Pueblo and Alabama-Coushatta Indian tribes at the time of the ratification and approval of Section 47(f), Article III, Texas Constitution, and on Indian lands of the Kickapoo Traditional Tribe of Texas on which gaming is allowed under applicable federal law. These tribes have the exclusive right to operate video lottery terminals at locations on the Indian lands in this state without incurring the investment necessary to construct, maintain, and operate racetracks for live racing, and through revenue-sharing both the policy of self-governance for the tribes and this state's interests in generating additional revenue to fund governmental programs can be promoted.

(12) The public has an interest in video lottery game operations, and lottery operations conducted under Section 47(f), Article III, Texas Constitution, and this chapter represent an exception to the general policy of this state prohibiting wagering for private gain. Therefore, participation in a video lottery game by a holder of a license, registration, or approval under this chapter is considered a privilege conditioned on the proper and continued qualification of the holder and on the discharge of the affirmative responsibility of each holder to provide to the commission or other regulatory and investigatory authorities established by this chapter any assistance and information necessary to assure that the policies declared by this chapter are achieved. Consistent with this policy, the legislature intends this chapter to:

(A) preclude the creation of any property right in any license, registration, or approval issued or granted by this state under this chapter, the accrual of any value to the privilege of participation in any video lottery game operation, or the transfer of a license or permit; and

(B) require that participation in video lottery game operations be solely conditioned on the individual qualifications of persons seeking this privilege.

(13) Only video lottery terminals lawfully operated in connection with a video lottery system authorized by this subchapter may be lawfully operated on Indian lands under the Johnson Act (15 U.S.C. Section 1175).

Sec. 466.502. CONSTRUCTION; APPLICABILITY OF OTHER LAWS. (a) This subchapter applies uniformly throughout this state and all political subdivisions of this state.

(b) To the extent of any inconsistency between Chapter 2003 and this subchapter or a commission rule governing video lottery terminals, this subchapter or the commission rule controls in all matters related to video lottery terminals, including hearings before the State Office of Administrative Hearings.

(c) Video lottery equipment operated under commission authority and this chapter is exempt from 15 U.S.C. Section 1172.

Sec. 466.505. AUTHORITY TO OPERATE VIDEO LOTTERY SYSTEM. (a) The commission may implement and operate a video lottery system and regulate the operation of video lottery terminals at racetracks in accordance with this chapter and the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes). This chapter supersedes any conflicting or inconsistent provision of the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or other state law.

(b) The commission may allow the operation of video lottery terminals pursuant to this chapter at locations on Indian lands in accordance with an effective gaming agreement and in compliance with applicable federal law.

Sec. 466.506. VIDEO LOTTERY GAMES; STATE OWNERSHIP AND PROPRIETARY INTEREST. (a) This state owns all video lottery games, regardless of ownership of the video lottery terminal. This state possesses a proprietary interest in:

(1) the main logic boards and any electronic storage medium used in video lottery equipment or games; and

(2) software consisting of computer programs, documentation, and other related materials necessary for the operation of the video lottery system.

(b) For purposes of this chapter, this state may acquire a proprietary interest in video lottery game software through:

(1) ownership of the software; or

(2) an exclusive product license agreement with a provider in which the provider retains copyrighted ownership of the software but the license granted to this state is nontransferable and authorizes this state to operate the software program, solely for the state's own use, on the video lottery central system and video lottery terminals connected to the video lottery central system.

Sec. 466.507. STATE CONTROL OF VIDEO LOTTERY SYSTEM. (a) In accordance with Section 47(e), Article III, Texas Constitution, the commission shall control and regulate the video lottery system and the video lottery central system through which this state has the exclusive and unilateral ability to monitor activity of video lottery terminals and remotely disable video lottery terminals for the public safety, health, and welfare or the preservation of the integrity of the lottery and to prevent any financial loss to this state.

(b) This section does not affect or restrict the ability of a video lottery manager or video lottery retailer to monitor activity of video lottery terminals and to disable video lottery terminals in accordance with commission rules.

(c) The commission may disable a video lottery terminal if a video lottery retailer's or video lottery manager's license is revoked, surrendered, or summarily suspended under this subchapter and to prevent any financial loss to this state.

Sec. 466.510. VIDEO LOTTERY CENTRAL SYSTEM. (a) The commission shall establish or cause to be established a video lottery central system to link all video lottery terminals in the video lottery system. The video lottery central system must provide the auditing and other information required by the commission.

(b) The commission shall provide to a registered video lottery terminal provider or an applicant applying for registration as a video lottery terminal provider the protocol documentation data necessary to enable the provider's or applicant's video lottery terminals to communicate with the commission's video lottery central system for transmission of auditing program information and for activation and disabling of video lottery terminals.

(c) The video lottery central system may not limit or preclude potential providers from providing the video lottery terminals, except providers that fail to meet specifications established by the commission.

(d) The commission shall determine whether a video lottery central system provider may sell or distribute video lottery terminals in this state as the commission considers appropriate to ensure the efficiency, integrity, and security of the video lottery system.

(e) The commission may contract with a video lottery central system provider to establish the video lottery central system.

Sec. 466.511. VIDEO LOTTERY TERMINAL PROVIDER: REGISTRATION OR APPROVAL REQUIRED. (a) A person may not manufacture or distribute video lottery equipment for use or play in this state unless the person is registered as a video lottery terminal provider or is otherwise approved by the commission to manufacture or distribute video lottery equipment in this state.

(b) Unless suspended or revoked, the registration or approval expires on the date specified by the commission, which may not be later than the fifth anniversary of the date of the registration or approval. A person may renew an unexpired registration or approval by paying the required renewal fee and complying with the requirements of this subchapter and commission rule.

(c) To be eligible for registration or commission approval as required by this section, an applicant must satisfy all applicable requirements under this subchapter.

Sec. 466.512. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION; CHANGE IN INFORMATION. (a) The commission shall adopt rules governing the registration or approval of video lottery terminal providers. The rules must require the application and any other form or document submitted to the commission by or on behalf of the applicant to determine the applicant's qualification under this section to be sworn to or affirmed before an officer qualified to administer oaths.

(b) An applicant for a video lottery terminal provider registration or approval must provide the following information:

(1) the full name and address of the applicant;

(2) the full name and address of each location at which video lottery equipment is or will be manufactured or stored in this state;

(3) the name, home address, and share of ownership of the applicant's substantial interest holders;

(4) a full description of each separate type of video lottery equipment that the applicant seeks to manufacture or distribute in this state;

(5) the brand name under which each type of video lottery equipment is to be distributed;

(6) if the applicant is incorporated under law other than the laws of this state, the applicant's irrevocable designation of the secretary of state as the applicant's resident agent for service of process and notice in accordance with the law of this state;

(7) a list of all businesses or organizations in this state in which the applicant has any financial interest and the details of that financial interest, including all arrangements through which a person directly or indirectly receives any portion of the profits of the video lottery terminal provider and indebtedness between the license holder and any other person, other than a regulated financial institution, in excess of \$5,000;

(8) a list of all affiliated businesses or corporations in which the applicant or an officer, director, or substantial interest-holder of the applicant, either directly or indirectly, owns or controls as a sole proprietor or partner more than 10 percent of the voting stock of a publicly traded corporation;

(9) a list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which the applicant or an officer, director, or substantial interest-holder of the applicant has any interest;

(10) a list of all jurisdictions in which the applicant or an officer, director, or substantial interest-holder of the applicant has been licensed, registered, qualified, or otherwise approved to conduct gambling-related activities during the 10 years preceding the date of the filing of the application;

(11) a statement, including all related details, indicating whether the applicant or an officer, director, or substantial interest-holder of the applicant has ever had a license, registration, qualification, or other approval for gambling-related activities denied, revoked, or suspended by any jurisdiction or has been fined or otherwise required to pay penalties or monetary forfeitures for gambling-related activities in any jurisdiction; and

(12) a statement acknowledging that the applicant will make available for review at the time and place requested by the commission all records related to the ownership or operation of the business.

(c) The commission may require the following information from an applicant:

(1) personal financial and personal history records of all substantial interest-holders;

(2) all records related to the scope of activity, including sales of product, purchases of raw materials and parts, and any contracts, franchises, patent agreements, or similar contracts or arrangements related to manufacturing or distributing video lottery terminals; and

(3) records related to any financial or management control of or by customers and suppliers.

(d) The applicant must demonstrate the ability to comply with all manufacturing, quality control, and operational restrictions imposed on authorized video lottery equipment, patented or otherwise restricted video lottery games, or other video lottery equipment that the applicant seeks to manufacture or distribute for use in this state. The registration or approval process must include an on-site review of the applicant's manufacturing equipment and process for each separate type of authorized video lottery equipment to ensure compliance with the requirements of this chapter and commission rules.

(e) Not later than the 10th day after the date of any change in the information submitted on or with the application form, the applicant shall notify the commission of the change, including a change that occurs after the registration or other commission approval has been granted.

(f) The applicant shall comply with all federal and state laws, local ordinances, and rules.

Sec. 466.513. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION FEE. (a) An applicant seeking registration or approval or renewal of registration or approval as a video lottery terminal provider must pay a nonrefundable application fee in the amount prescribed by commission rule that is sufficient to pay the costs to the commission of administering and licensing video lottery terminals.

(b) Application fees paid under this section shall be retained by the commission to defray costs incurred in the administration and enforcement of this chapter relating to the operation of video lottery terminals.

(c) The commission may not issue a video lottery terminal provider registration or approval to a person that on January 1, 2005, owned any interest in a racetrack or pari-mutuel license in this state.

Sec. 466.520. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE REQUIRED. Except as provided by a gaming agreement, a person may not own or operate a video lottery terminal if the person does not satisfy the requirements of this subchapter and is not licensed by the commission to act as a video lottery retailer or video lottery manager.

Sec. 466.521. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION AND QUALIFICATION. (a) An applicant for a video lottery retailer or video lottery manager license must apply to the commission under rules adopted by the commission, provide the information necessary to determine the applicant's eligibility for a license, and provide other information considered necessary by the commission. The applicant must:

(1) hold a valid pari-mutuel license granted by the Texas Racing Commission under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) have a valid and executed contract with a racetrack that satisfies the requirements of Subdivision (1) to act as a video lottery manager for the racetrack subject to licensing under this chapter; or

(3) demonstrate to the commission's satisfaction that the applicant seeks to act as a video lottery manager for a federally recognized Indian tribe that has entered into a gaming agreement with this state that is in effect and governs the regulation of video lottery terminals on Indian lands in this state.

(b) Each officer, partner, director, key employee, substantial interest-holder, video lottery game operation employee, and owner of video lottery game operations must be eligible and maintain eligibility in accordance with this subchapter to be involved in video lottery games in this state.

(c) An applicant for a video lottery retailer or video lottery manager license has the burden of proving qualification for a license by clear and convincing evidence. In addition to satisfying minimum requirements established by commission rules, an applicant for a video lottery retailer or video lottery manager license must:

(1) be a person of good character, honesty, and integrity;

(2) be a person whose background and prior activities, including criminal record, reputation, habits, and associations, do not pose a threat to the security and integrity of video lottery or to the public interest of this state or to the effective operation and control of video lottery, or do not create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of video lottery or in the carrying on of the business and financial arrangements incidental to video lottery;

(3) if applying for a new license, provide fingerprints for a criminal records evaluation by the Texas Department of Public Safety or other law enforcement agency, including fingerprints for each person required to be named in an application, accompanied by a signed authorization for the release of information to the commission by the department of public safety and the Federal Bureau of Investigation;

(4) not have been convicted of an offense under this chapter or of any crime related to theft, bribery, or gambling or involving moral turpitude;

(5) demonstrate adequate business probity, competence, experience, and financial stability as defined by the commission;

(6) demonstrate adequate financing for the operation of the facility at which the video lottery terminals will be operated from a source that meets the requirements of this subchapter and is adequate to support the successful performance of the duties and responsibilities of the license holder and disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery equipment in the degree of detail requested by the commission;

(7) when applying for a new license or renewing a license under this chapter, present evidence to the commission of the existence and terms of any agreement regarding the proceeds from the operation of video lottery terminals;

(8) demonstrate that each substantial interest-holder in the applicant meets all applicable qualifications under this subchapter;

(9) provide all information, including financial data and documents, consents, waivers, identification of surety and insurance providers, and any other materials, requested by the commission for purposes of determining qualifications for a license; and

(10) as part of its application, expressly waive any and all claims against the commission, this state, and a member, officer, employee, or authorized agent of the commission or this state for damages resulting from any background investigation, disclosure, or publication relating to an application for a video lottery retailer or video lottery manager license.

(d) An application or disclosure form and any other document submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery retailer or video lottery manager license must be sworn to or affirmed before an officer qualified to administer oaths.

(e) An applicant who knowingly fails to reveal any fact material to qualification for a license, finding of suitability, or other approval or who knowingly submits false or misleading material information is ineligible for a video lottery retailer or video lottery manager license.

(f) An applicant for a license or renewal of a license as a video lottery retailer or video lottery manager shall notify the commission of any change in the application information for a license or renewal of a license not later than the 10th day after the date of the change, except that a publicly traded corporation or other business association or entity applicant is not required to notify the commission of a transfer by which any person directly or indirectly becomes the beneficial owner of less than 10 percent of the stock of the corporation or association.

(g) Except as provided by Section 466.525(e), the commission shall deny an application for a license or shall suspend or revoke a license if the commission finds that the applicant would be subject to denial or revocation of a sales agent license under Section 466.155.

Sec. 466.522. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION FEE. (a) An applicant for a video lottery retailer or video lottery manager license shall submit a nonrefundable application processing fee in the amount prescribed by commission rule that is sufficient and reasonable to pay the costs of determining the applicant's eligibility, not to exceed \$50,000.

(b) An application may not be processed until the applicant pays the application fee. If the application fee is not received by the 30th day after the date the commission notifies the applicant of the amount of the fee, the application is considered withdrawn and may not be considered by the commission.

Sec. 466.525. VIDEO LOTTERY TERMINAL ESTABLISHMENT LICENSE: REQUIREMENTS; LOCATION. (a) An applicant for a video lottery terminal establishment license must ensure that the facility for the establishment will comply with all applicable building codes and rules of the commission. The rules adopted by the commission relating to facilities for video lottery establishments must relate solely to this state's interest in the operation of video lottery terminals.

(b) A video lottery terminal establishment shall provide office space for the commission sufficient for at least one commission employee.

(c) An applicant for a video lottery terminal establishment license or a license holder shall provide the information required by commission rule relating to the applicant's or license holder's video lottery terminal establishment and update the information at least annually.

(d) The commission may not issue a video lottery terminal establishment license to a racetrack if as of January 1, 2005, a property line of the licensed premises of the racetrack is located within one-half mile of the property line of a public school.

(e) Notwithstanding Section 466.155, the commission may not deny, suspend, or revoke a license under this subchapter based on the fact that a video lottery terminal establishment or a proposed video lottery terminal establishment is 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.

Sec. 466.526. LICENSE HOLDER AS SALES AGENT. The holder of a video lottery retailer or video lottery manager license may operate as a sales agent for lottery tickets in accordance with this chapter.

Sec. 466.527. LICENSE TERM; RENEWAL ELIGIBILITY. (a) Unless suspended or revoked, a license issued under this subchapter, other than a video lottery retailer license, expires on the date specified in the license, which may not be later than the fifth anniversary of the date of issuance.

(b) A video lottery retailer license is valid for the same term as a pari-mutuel license and until suspended or revoked. The commission may charge an annual fee not to exceed \$50,000 to the holder of a video lottery retailer license.

(c) To be eligible for renewal of a license, an applicant must satisfy all applicable licensing requirements under this subchapter.

Sec. 466.528. RULES FOR ADDITIONAL LICENSE QUALIFICATIONS. The commission by rule may establish other license qualifications the commission determines are in the public interest and consistent with the declared policy of this state.

Sec. 466.529. APPLICATION AS REQUEST FOR CHARACTER DETERMINATION. An application under this subchapter to receive or renew a license, registration, or approval or to be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in or be associated with the operation of video lottery terminals.

Sec. 466.530. IMMUNITY FOR STATEMENT MADE IN PROCEEDING OR INVESTIGATION. Any written or oral statement made in the course of an official commission proceeding or investigative activities related to an application for commission licensing, registration, or other approval under this subchapter, by any member or agent or any witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

Sec. 466.531. SUITABILITY FINDING. To promote the integrity and security of the lottery, the commission in its discretion may require a suitability finding for any person doing business with or in relation to the operation of video lottery terminals who is not otherwise required to obtain a license, registration, or approval from the commission for the person's video lottery-related operations.

Sec. 466.532. SUMMARY SUSPENSION OF VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE; TERMINAL DISABLED. (a) The commission may summarily suspend the license of a video lottery retailer or video

lottery manager without notice or hearing if the commission finds 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 this state and:

(1) the license holder fails to deposit money received from video lottery terminal operations as required by this chapter or commission rule;

(2) an event occurs that would render the license holder ineligible for a license under this subchapter;

(3) the license holder refuses to allow the commission, the commission's agents, or the state auditor, or their designees, to examine the license holder's books, records, papers, or other objects under Section 466.017; or

(4) the executive director learns the license holder failed to disclose information that would, if disclosed, render the video lottery retailer or video lottery manager ineligible for a license under this subchapter.

(b) A summary suspension under this section must comply with the notice and procedure requirements provided by Section 466.160.

(c) The commission may disable a video lottery terminal operated by a license holder under this subchapter at the time:

(1) a proceeding to summarily suspend the license is initiated;

(2) the commission discovers the license holder failed to deposit money received from video lottery terminal operation as required if the license is being summarily suspended under this section; or

(3) an act or omission occurs that, under commission rules, justifies the termination of video lottery terminal operations to:

(A) protect the integrity of the lottery or the public health, welfare, or safety; or

(B) prevent financial loss to this state.

(d) The commission shall immediately disable a video lottery terminal if necessary to protect the public health, welfare, or safety.

Sec. 466.5321. TRANSFER RESTRICTIONS. (a) A video lottery retailer or video lottery manager license is not transferable.

(b) A pari-mutuel license holder that sells, transfers, assigns, or otherwise conveys any interest or control in the pari-mutuel license or the racetrack owned or managed by the license holder before video lottery operations begin at the racetrack or before the third anniversary of the commencement of video lottery operations shall remit to this state a transfer fee equal to 75 percent of the sales, transfer, assignment, or other conveyance price or other consideration received by the pari-mutuel license holder. A transfer or conveyance of an interest or control under this subsection is subject to Section 6.21, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(c) A sale, transfer, assignment, or conveyance of interest or control to which Subsection (b) applies may not be approved by the commission until this state receives the transfer fee.

(d) This section does not apply to a transfer or assignment the commission determines is necessary to secure financing for the construction or operation of the racetrack. The commission may adopt rules to implement this section.

Sec. 466.533. LICENSING, REGISTRATION, SUITABILITY, AND REGULATORY APPROVAL AS REVOCABLE PERSONAL PRIVILEGES. (a) An applicant for a license, registration, suitability, or other affirmative regulatory approval under this subchapter does not have any right to the license, registration, suitability, or approval sought.

(b) Any license, registration, or suitability or other regulatory approval granted under this subchapter is a revocable privilege, and a holder of the privilege does not acquire any vested right in or under the privilege.

(c) The courts of this state do not have jurisdiction to review a decision to deny, limit, or condition the license, registration, suitability, or approval unless the judicial review is sought on the ground that the denial, limitation, or condition is based on a suspect classification, such as race, color, religion, sex, or national origin, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. If a state court has jurisdiction over a claim under this section, then this state's sovereign immunity is waived only to the extent expressly provided by Section 466.601.

(d) A license, registration, suitability, or regulatory approval granted or renewed under this subchapter may not be transferred or assigned to another person, and a license, registration, suitability, or approval may not be pledged as collateral. The purchaser or successor of a person who has been granted a license, registration, suitability, or regulatory approval must independently qualify for a license, registration, suitability, or approval required by this subchapter.

(e) The following acts void the license, registration, suitability, or other regulatory approval of the holder unless approved in advance by the commission:

(1) the transfer, sale, or other disposition of an interest in the holder that results in a change in the identity of a substantial interest holder; or

(2) the sale of the assets of the holder, other than assets bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined to have met the applicable qualifications of this subchapter.

Sec. 466.535. CAPITAL INVESTMENTS AND IMPROVEMENT REQUIREMENTS FOR VIDEO LOTTERY TERMINAL ESTABLISHMENT. A video lottery retailer or video lottery manager shall provide all necessary capital investments and required improvements at a video lottery terminal establishment operated by the retailer or manager.

Sec. 466.536. VIDEO LOTTERY TERMINAL. The commission shall provide all video lottery retailers or video lottery managers with a list of registered video lottery terminal providers, video lottery games, and video lottery terminals authorized for operation under this subchapter.

Sec. 466.537. VIDEO LOTTERY TERMINAL: DISTRIBUTION AND COMMISSION APPROVAL. (a) A video lottery terminal provider may not distribute a video lottery terminal or other video lottery equipment for placement at a video lottery terminal establishment in this state unless the video lottery terminal has been approved by the commission.

(b) Only a video lottery terminal provider registered with or approved by the commission may apply for approval of a video lottery terminal or other video lottery equipment.

(c) Not later than the 10th day before the date of shipment to a location in this state, a video lottery terminal provider shall file a report with the commission itemizing all video lottery terminals and other video lottery equipment to be provided to a video lottery retailer or video lottery manager in the shipment.

Sec. 466.538. VIDEO LOTTERY TERMINAL: TESTING; REPORT. (a) A video lottery terminal provider shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or other video lottery equipment.

(b) The commission may require a working model of a video lottery terminal to be provided to the commission unless the video lottery terminal provider provides a certification from an independent, commission-approved testing laboratory that the video lottery terminal is compatible with the state's video lottery system and functions as required by the commission.

Sec. 466.539. VIDEO LOTTERY TERMINAL: INSTALLATION; MODIFICATION REQUEST. (a) A video lottery terminal provider is responsible for the assembly and installation of all video lottery terminals and other video lottery equipment.

(b) A video lottery terminal provider or a video lottery retailer or video lottery manager may not change the assembly or operational functions of a video lottery terminal authorized by the commission for placement in this state unless a request for modification of an existing video lottery terminal prototype is approved by the commission. The request must contain:

- (1) a detailed description of the type of change;
- (2) a detailed description of the reasons for the change; and
- (3) technical documentation of the change.

(c) A video lottery terminal approved by the commission for placement at a video lottery terminal establishment must conform to the specifications of the video lottery terminal prototype tested or approved by the commission.

Sec. 466.540. VIDEO LOTTERY TERMINAL REMOVAL. (a) If any video lottery terminal that has not been approved by the commission is distributed by a video lottery terminal provider or operated by a video lottery retailer or video lottery manager or if an approved video lottery terminal malfunctions, the commission shall require the terminal to be removed from use and play.

(b) The commission may order that an unapproved terminal be seized and destroyed.

(c) The commission may suspend or revoke the license of a video lottery retailer or video lottery manager or the registration of a video lottery terminal provider for the distribution, possession, or operation of an unauthorized video lottery terminal.

(d) A video lottery retailer or video lottery manager may retain on the premises of a video lottery establishment a number of machines that the retailer or manager determines is necessary for spare parts or repair purposes or as replacements. The retailer or manager must provide to the commission each month a list of the terminals retained under this subsection.

Sec. 466.541. VIDEO LOTTERY TERMINAL SPECIFICATIONS. (a) The commission shall adopt rules for approval of video lottery terminals, including requirements for video lottery game tickets, maximum and minimum payout, and maximum wagers.

(b) A commission-approved video lottery terminal must meet the following minimum specifications:

(1) the terminal must:

(A) operate through a player's insertion of a coin, currency, voucher, or token into the video lottery terminal that causes the video lottery terminal to display credits that entitle the player to select one or more symbols or numbers or cause the video lottery terminal to randomly select symbols or numbers;

(B) allow the player to win additional game play credits, coins, or tokens based on game rules that establish the random selection of winning combinations of symbols or numbers and the number of free play credits, coins, or tokens to be awarded for each winning combination; and

(C) allow the player at any time to clear all game play credits and receive a video lottery ticket entitling the player to receive the cash value of those credits;

(2) a surge protector must be installed on the electrical power supply line to each video lottery terminal, a battery or equivalent power backup for the electronic meters must be capable of maintaining the accuracy of all accounting records and video lottery terminal status reports for a period of 180 days after power is disconnected from the video lottery terminal, and the power backup device must be in the compartment specified in Subdivision (4);

(3) the operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference;

(4) the main logic boards of all electronic storage mediums must be located in a separate compartment in the video lottery terminal that is locked and sealed by the commission;

(5) the instructions for play of each game must be displayed on the video lottery terminal face or screen, including a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols;

(6) communication equipment and devices must be installed to enable each video lottery terminal to communicate with the video lottery central system through the use of a communications protocol provided by the commission to each registered video lottery terminal provider, which must include information retrieval and programs to activate and disable the terminal; and

(7) a video lottery terminal may be operated only if connected to the video lottery central system, and play on the terminal may not be conducted unless the terminal is connected to the video lottery central system.

(c) The commission may reject any instructions for play required under Subsection (b)(5) that the commission determines to be incomplete, confusing, or misleading.

Sec. 466.542. VIDEO LOTTERY TERMINALS: HOURS OF OPERATION; COMMUNICATION; LOCATION. (a) Except as otherwise provided by the commission, the hours of operation for video lottery terminals are subject to restrictions only as provided by commission rules.

(b) The commission by rule may prescribe restrictions on the hours of video lottery terminal operations for purposes determined by the commission, including accounting for and collecting revenue generated by video lottery terminal operations and performing other operational services on the video lottery system.

(c) Communication between the video lottery central system and each video lottery terminal must be continuous and on a real-time basis as prescribed by the commission.

(d) Except as provided by a gaming agreement or commission rule, placement or movement of video lottery terminals in a video lottery terminal establishment must be consistent with a video lottery terminal establishment floor plan filed with the commission.

Sec. 466.543. VIDEO LOTTERY TERMINAL: TRANSPORT; DISPOSITION OF OBSOLETE TERMINAL. (a) The transportation and movement of video lottery terminals into or within this state is prohibited, except as permitted by this subchapter and approved by the commission.

(b) An obsolete video lottery terminal or a video lottery terminal that is no longer in operation must be promptly reported to the commission.

Sec. 466.545. TRAVEL AND INVESTIGATION COSTS. The commission shall pay the travel and investigative expenses incurred under this chapter from money appropriated to the commission.

Sec. 466.546. CONSENT TO COMMISSION DETERMINATION. (a) An application for a license, registration, finding of suitability, or other approval under this chapter constitutes a request to the commission for a decision on the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with the lottery in the manner or position sought.

(b) By filing an application with the commission, the applicant specifically consents to the commission's decision at the commission's election when the application, after filing, becomes moot for any reason other than death.

Sec. 466.547. ABSOLUTE AUTHORITY OF COMMISSION. To protect the integrity of the lottery or the public health, welfare, or safety, or to prevent financial loss to this state, the commission has full and absolute power and authority to:

(1) deny any application or limit, condition, restrict, revoke, or suspend any license, registration, or finding of suitability or approval; and

(2) fine any person licensed, registered, found suitable, or approved for any cause deemed reasonable by the commission.

Sec. 466.548. WAIVER OF REQUIREMENTS. (a) The commission may waive, either selectively or by general rule, one or more of the requirements of Sections 466.512 and 466.521 if the commission makes a written finding that the waiver is consistent with the policy of this state, the public health, safety, and welfare, and the integrity of the lottery.

(b) The commission may waive any requirement under this chapter for a finding of suitability of an institutional investor that is a substantial interest holder with respect to the beneficial ownership of the voting securities of a publicly traded corporation if the institutional investor holds the securities for investment purposes only and applies for a waiver in compliance with Section 466.549 and commission rules.

(c) An institutional investor is not eligible for the waiver, except as otherwise provided by Subsection (f), if the institutional investor beneficially owns, directly or indirectly, more than 15 percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring.

(d) Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise, or conversion after a debt restructuring, or any securities issued to the institutional investor through a debt restructuring, are considered to have been acquired through a debt restructuring.

(e) A waiver granted under Subsection (b) is effective only as long as the institutional investor's direct or indirect beneficial ownership interest in the voting securities meets the limitations set forth in this section, and if the institutional investor's interest exceeds the limitation at any time, the investor is subject to the suitability findings required under this subchapter.

(f) An institutional investor that has been granted a waiver under Subsection (b) may beneficially own more than 15 percent, but not more than 19 percent, of the voting securities of a publicly traded corporation registered with or licensed by the commission only:

(1) if the additional ownership results from a stock repurchase program conducted by the publicly traded corporation; and

(2) on the conditions that:

(A) the institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage; and

(B) the institutional investor reduces its ownership percentage of the publicly traded corporation to 15 percent or less before the first anniversary of the date the institutional investor receives constructive notice that it exceeded the 15 percent threshold, based on any public filing by the corporation with the United States Securities and Exchange Commission.

(g) The one-year time period under Subsection (f)(2)(B) may be extended for a reasonable time on commission approval.

(h) An institutional investor may not be considered to hold voting securities of a publicly traded corporation for investment purposes only unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of the corporation registered with or licensed by the commission or any of its gaming affiliates, or any other action which the commission finds to be inconsistent with investment purposes only. The following activities may not be considered to be inconsistent with holding voting securities for investment purposes only:

(1) voting, directly or indirectly through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of the voting securities;

(2) serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;

(3) nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;

(4) accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term;

(5) making financial and other inquiries of management of the type normally made by securities analysts for information purposes and not to cause a change in management, policies, or operations; and

(6) any other activity the commission determines to be consistent with the investment intent.

(i) For purposes of this section, "debt restructuring" means:

(1) a proceeding under the United States Bankruptcy Code; or

(2) any out-of-court reorganization of a person that is insolvent or generally unable to pay the person's debts as they become due.

Sec. 466.549. WAIVER APPLICATION REQUIREMENTS. An application for a waiver under Section 466.548(b) must include:

(1) a description of the institutional investor's business and a statement as to why the institutional investor meets the definition of an institutional investor set forth in this chapter;

(2) a certification, made under oath and penalty of perjury, that:

(A) states that the voting securities were acquired and are held for investment purposes only in accordance with Section 466.548;

(B) provides that the applicant agrees to be bound by and comply with this chapter and the rules adopted under this chapter, to be subject to the jurisdiction of the courts of this state, and to consent to this state as the choice of forum in the event any dispute, question, or controversy arises regarding the application or any waiver granted under Section 466.548(b); and

(C) includes a statement by the signatory explaining the basis of the signatory's authority to sign the certification and bind the institutional investor to its terms;

(3) a description of all actions, if any, taken or expected to be taken by the institutional investor related to the activities described in Section 466.548(f);

(4) the names, addresses, telephone numbers, dates of birth, and social security numbers of:

(A) the officers and directors of the institutional investor or the officers' and directors' equivalents; and

(B) the persons that have direct control over the institutional investor's holdings of voting securities of the publicly traded corporation registered with or licensed by the commission;

(5) the name, address, telephone number, date of birth, and social security number or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the publicly traded corporation registered with or licensed by the commission;

(6) the name of each person that beneficially owns more than five percent of the institutional investor's voting securities or other equivalent;

(7) a list of the institutional investor's affiliates;

(8) a list of all securities of the publicly traded corporation registered with or licensed by the commission that are or were beneficially owned by the institutional investor or its affiliates in the preceding year, including a description of the securities, the amount of the securities, and the date of acquisition or sale of the securities;

(9) a list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the publicly traded corporation registered with or licensed by the commission files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor;

(10) a disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding five years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months, except that for a former officer or director, the information need be provided only to the extent that it relates to actions arising out of or during the person's tenure with the institutional investor or its affiliates;

(11) a copy of the institutional investor's most recent Schedule 13D or 13G and any amendments to that schedule filed with the United States Securities and Exchange Commission concerning any voting securities of the publicly traded corporation registered with or licensed by the commission;

(12) a copy of any filing made under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) with respect to the acquisition or proposed acquisition of voting securities of the publicly traded corporation registered with or licensed by the commission; and

(13) any additional information the commission may request.

Sec. 466.550. CHANGE IN INVESTMENT FOLLOWING WAIVER; NOTICE. (a) An institutional investor that has been granted a waiver of a finding of suitability under Section 466.548 and that subsequently intends not to hold the investor's voting securities of the publicly traded corporation for investment purposes only or that intends to take any action inconsistent with the investor's prior intent shall, not later than the second business day after the date of the decision, deliver notice to the commission in writing of the change in the investor's investment intent. The commission may then take any action the commission deems appropriate.

(b) If the commission finds that an institutional investor has failed to comply with this chapter or should be subject to a finding of suitability to protect the public interest, the commission may require the institutional investor to apply for a finding of suitability.

(c) Any publicly traded corporation registered with or licensed by the commission shall immediately notify the commission of any information about, fact concerning, or actions of an institutional investor holding any of its voting securities that may materially affect the institutional investor's eligibility to hold a waiver under Section 466.548.

Sec. 466.551. EFFECT OF DENIAL OF LICENSE OR REGISTRATION. (a) A person whose application for a license or registration has been denied may not have any interest in or association with a video lottery retailer or video lottery manager or any other business conducted in connection with video lottery without prior approval of the commission.

(b) Any contract between a person holding a license or registration and a person denied a license or registration must be terminated immediately on receipt of notice from the commission. If the person denied a license or registration has previously been granted a temporary license or registration, the temporary license or registration expires immediately on denial of the permanent license or registration.

(c) Except as otherwise authorized by the commission, a person denied a license or registration may not reapply for any license or registration before the second anniversary of the date of the denial.

Sec. 466.553. PRACTICE BY VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER. A video lottery retailer or video lottery manager must:

(1) be aware of patron conditions and prohibit play by visibly intoxicated patrons;

(2) comply with state alcoholic beverage control laws;

(3) at all times maintain sufficient change and cash in denominations accepted by video lottery terminals;

(4) promptly report all video lottery terminal malfunctions and down-time;

(5) install, post, and display prominently any material required by the commission;

(6) prohibit illegal gambling and any related paraphernalia;

(7) except as otherwise provided by this subchapter, at all times prohibit money lending or other extensions of credit at the video lottery terminal establishment;

(8) supervise employees and activities to ensure compliance with all commission rules and this chapter;

(9) maintain continuous camera coverage of all aspects of video lottery game operations, including video lottery terminals; and

(10) maintain an entry log for each video lottery terminal on the premises of the video lottery terminal establishment and maintain and submit complete records on receipt of each video lottery terminal on the premises as determined by the commission.

Sec. 466.554. RACETRACK REQUIREMENTS. (a) A video lottery retailer at all times must hold a valid pari-mutuel wagering license, except that the commission may allow a video lottery retailer whose pari-mutuel wagering license has lapsed or been revoked, suspended, or surrendered to reapply for a license in order to operate the video lottery terminal establishment or by rule may establish a period not to

exceed two years during which time the video lottery terminal establishment may be operated pending acquisition by a person qualified and licensed under this chapter to operate video lottery terminals.

(b) If a video lottery retailer is not licensed as required by Subsection (a) before the second anniversary of the date a license lapses or is revoked, suspended, or surrendered or a new video lottery manager or video lottery retailer is not licensed and authorized to operate the facility before the second anniversary, the pari-mutuel license holder shall permanently lose eligibility under this subchapter to operate video lottery terminals.

(c) Subject to the commission's discretion, a video lottery retailer may continue to operate the video lottery terminal establishment after the second anniversary of the date a license lapses or is revoked, suspended, or surrendered only to satisfy the establishment's existing outstanding debt attributable to video lottery operation.

Sec. 466.556. PRIZE RULES. The commission shall adopt rules governing:

(1) the range of amounts a player may be charged to play each video lottery game; and

(2) the range of prizes and credits that may be awarded to the player of a video lottery game.

Sec. 466.557. VIDEO LOTTERY CENTRAL SYSTEM: COMMUNICATION TECHNOLOGY. The video lottery central system provider shall pay for the installation and operation of commission-approved communication technology to provide real-time communication between each video lottery terminal and the video lottery central system.

Sec. 466.558. RESPONSIBILITY FOR VIDEO LOTTERY GAME OPERATIONS. (a) A video lottery retailer or a video lottery manager, if applicable, is responsible for the management of video lottery game operations, including:

(1) the validation and payment of prizes; and

(2) the management of cashiers, food and beverage workers, floor workers, security personnel, the security system, building completion, janitorial services, landscaping design, and maintenance.

(b) Nothing in Subsection (a) limits the authority of the commission, the Department of Public Safety, or another law enforcement agency to administer and enforce this chapter as related to video lottery.

(c) In addition to other requirements under this chapter relating to video lottery, a video lottery retailer or a video lottery manager at all times shall:

(1) operate only video lottery terminals that are distributed by a registered video lottery terminal provider and provide a secure location for the placement, operation, and play of the video lottery terminals;

(2) prevent any person from tampering with or interfering with the operation of a video lottery terminal;

(3) ensure that communication technology from the video lottery central system to the video lottery terminals is connected at all times and prevent any person from tampering or interfering with the operation of the connection;

(4) ensure that video lottery terminals are in the sight and control of designated employees of the video lottery retailer or video lottery manager and in the sight of video cameras as required under this subchapter;

(5) ensure that video lottery terminals are placed and remain placed in the locations in the video lottery terminal establishment that are consistent with the retailer's or manager's floor plan;

(6) monitor video lottery terminals to prevent access to or play by persons who are under 21 years of age or who are visibly intoxicated;

(7) refuse to accept a credit card payment from a player for the exchange or purchase of video lottery game credits or for an advance of coins, currency, vouchers, or tokens to be used by a player to play video lottery games, refuse to extend credit, in any manner, to a player that enables the player to play a video lottery game, and ensure that any person doing business at the video lottery terminal establishment, including a person operating or managing an auxiliary service such as a restaurant, refuses to accept a credit card payment or to extend credit to a person to play a video lottery game in a manner prohibited by this subdivision, except that:

(A) a license holder may cash a check for a player if the license holder exercises reasonable caution cashing the check and does not cash checks for any player in an amount not to exceed \$1,000 in any 24-hour period; and

(B) automated teller machines may be located at a video lottery terminal establishment in compliance with the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or an effective gaming agreement;

(8) pay all credits won by a player on presentment of a valid winning video lottery game ticket;

(9) conduct only the video lottery game advertising and promotional activities consistent with criteria prescribed by the commission, which must prohibit undue influence, offensive language, and anything that would affect the integrity of video lottery operation;

(10) install, post, and display prominently at the licensed location redemption information and other informational or promotional materials as required by the commission;

(11) maintain general liability insurance coverage for the video lottery terminal establishment and all video lottery terminals in the amounts required by the commission;

(12) assume liability for money lost or stolen from any video lottery terminal; and

(13) annually submit an audited financial statement to the commission in accordance with generally accepted accounting principles.

Sec. 466.560. TECHNICAL STANDARDS FOR VIDEO LOTTERY EQUIPMENT. The commission by rule shall establish minimum technical standards for video lottery equipment that may be operated in this state.

Sec. 466.561. INCIDENT REPORTS. (a) A video lottery retailer or video lottery manager shall record all unusual occurrences related to gaming activity in a video lottery terminal establishment operated by the retailer or manager.

(b) A video lottery retailer or video lottery manager shall assign each material incident, without regard to materiality, a sequential number and, at a minimum, provide the following information in a permanent record prepared in accordance with commission rules to ensure the integrity of the record:

(1) the number assigned to the incident;

(2) the date and time of the incident;

(3) the nature of the incident;

(4) each person involved in the incident; and

(5) the name of the employee or other agent of the video lottery retailer or video lottery manager who investigated the incident.

Sec. 466.562. EXCLUSION OF PERSONS. (a) The commission shall compile a list of persons that a video lottery retailer or video lottery manager must bar from a video lottery terminal establishment based on a person's criminal history or association with criminal offenders or because the person poses a threat to the integrity of the lottery.

(b) A video lottery retailer or video lottery manager shall employ the retailer's or manager's best efforts to exclude such persons from entry into the establishment.

(c) A video lottery retailer or video lottery manager may exclude a person for any reason not related to the person's race, sex, national origin, physical disability, or religion.

(d) A person who believes the person may be playing video lottery games on a compulsive basis may request that the person's name be placed on the list compiled by the commission under Subsection (a).

(e) All video lottery game employees shall receive training in identifying players with a compulsive playing problem. Signs and other materials shall be readily available to direct compulsive players to agencies that offer appropriate counseling.

Sec. 466.563. REPORT ON LITIGATION. (a) A video lottery retailer or video lottery manager shall report to the commission any litigation relating to the retailer's or manager's video lottery terminal establishment, including a criminal proceeding, a proceeding involving an issue related to racing activities that impact video lottery operations, or a matter related to character or reputation relevant to a person's suitability under this subchapter.

(b) The report required under Subsection (a) must be filed not later than the fifth day after acquiring knowledge of the litigation.

Sec. 466.564. COMMISSION APPROVAL REQUIRED FOR PROCEDURES AND ADMINISTRATIVE AND ACCOUNTING CONTROLS. (a) The commission's approval is required for all internal procedures and administrative and accounting controls of a video lottery retailer or video lottery manager.

(b) The commission by rule shall establish general accounting and auditing requirements and internal control standards for video lottery retailers and video lottery managers.

Sec. 466.566. VIDEO LOTTERY TERMINAL EVENTS. A video lottery retailer or video lottery manager shall keep a database of video lottery terminal events. The commission by rule shall determine what constitutes a video lottery terminal event for purposes of this section.

Sec. 466.567. EMPLOYEE REPORTING. (a) On or before the 15th day of each month, a video lottery retailer or video lottery manager shall submit to the commission an employee report for the video lottery terminal establishment operated by the retailer or manager. For each employee of the retailer or manager, the report must provide the employee's name, job title, date of birth, and social security number.

(b) The employee report is confidential and may not be disclosed except under commission order or in accordance with Section 466.022(d).

(c) The commission may conduct criminal history investigations for employees of video lottery retailers and video lottery managers.

(d) The commission may prohibit an employee from performing any act relating to video lottery terminals if the commission finds that an employee has:

(1) committed, attempted, or conspired to commit any act prohibited by this chapter;

(2) concealed or refused to disclose any material fact in any commission investigation;

(3) committed, attempted, or conspired to commit larceny or embezzlement;

(4) been convicted in any jurisdiction of an offense involving or relating to gambling;

(5) accepted employment in a position for which commission approval is required after commission approval was denied for a reason involving personal unsuitability or after failing to apply for a license or approval on commission request;

(6) been prohibited under color of governmental authority from being present on the premises of any gaming establishment or any establishment where pari-mutuel wagering is conducted for any reason relating to improper gambling activity or for any illegal act;

(7) wilfully defied any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality that sought to investigate alleged or potential crimes relating to gaming, corruption of public officials, or any organized criminal activities; or

(8) been convicted of any felony or any crime involving moral turpitude.

(e) The commission may prohibit an employee from performing any act relating to video lottery terminals based on a revocation or suspension of any gaming or wagering license, permit, or approval or for any other reason the commission finds appropriate, including a refusal by a regulatory authority to issue a license, permit, or other approval for the employee to engage in or be involved with the lottery or with regulated gaming or pari-mutuel wagering in any jurisdiction.

(f) In this section, "employee" includes any person connected directly with or compensated by an applicant or license holder as an agent, personal representative, consultant, or independent contractor for activities directly related to video lottery operations.

Sec. 466.568. REPORT OF VIOLATIONS. A person who holds a license or registration under this subchapter shall immediately report a violation or suspected violation of this chapter or a rule adopted under this chapter by any license or registration holder, by an employee of a license or registration holder, or by any person on the premises of a video lottery terminal establishment, whether or not associated with the license or registration holder.

Sec. 466.569. SECURITY. (a) In addition to the security provisions applicable under Section 466.020, a video lottery retailer or video lottery manager shall comply with the following security procedures:

(1) all video lottery terminals must be continuously monitored through the use of a closed-circuit television system that records activity for a continuous 24-hour period and all video tapes or other media used to store video images shall be retained for at least 30 days and made available to the commission on request;

(2) access to video lottery terminal areas shall be restricted to persons who are at least 21 years of age;

(3) the video lottery retailer or video lottery manager must submit for commission approval a security plan that includes a floor plan of the area where video lottery terminals are to be operated showing video lottery terminal locations and security camera mount locations; and

(4) each license holder shall employ at least the minimum number of private security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery terminal establishment and the safety and well-being of the players.

(b) Private security personnel must be present during all hours of operation at each video lottery terminal establishment.

(c) An agent or employee of the commission or the Department of Public Safety or other law enforcement personnel may be present at a video lottery terminal establishment at any time.

(d) The commission may adopt rules to impose additional surveillance and security requirements related to video lottery terminal establishments and the operation of video lottery terminals.

Sec. 466.570. VIDEO LOTTERY TERMINAL ESTABLISHMENT: COMMISSION RIGHT TO ENTER. The commission, the commission's representative, the Texas Racing Commission, or a representative of the Texas Racing Commission, after displaying appropriate identification and credentials, has the free and unrestricted right to enter the premises of a video lottery terminal establishment and to enter any other locations involved in operation or support of video lottery at all times to examine the systems and to inspect and copy the records of a video lottery retailer or video lottery manager pertaining to the operation of video lottery.

Sec. 466.587. INDEMNIFICATION, INSURANCE, AND BONDING REQUIREMENTS. (a) A license or registration holder shall indemnify and hold harmless this state, the commission, and all officers and employees of this state and the commission from any and all claims which may be asserted against a license or registration holder, the commission, this state, and the members, officers, employees, and authorized agents of this state or the commission arising from the license or registration holder's participation in the video lottery system authorized under this subchapter.

(b) Surety and insurance required under this subchapter shall be issued by companies or financial institutions financially rated "A" or better as rated by A.M. Best Company or other rating organization designated by the commission and duly licensed, admitted, and authorized to conduct business in this state, or by other surety approved by the commission.

(c) The commission shall be named as the obligee in each required surety and as an additional insured in each required insurance contract.

(d) A video lottery retailer or video lottery manager may not be self-insured with regard to video lottery terminal operations under this section.

(e) The commission by rule shall establish minimum insurance coverage requirements for a video lottery retailer, video lottery manager, or video lottery terminal provider.

Sec. 466.588. LIABILITY FOR CREDIT AWARDED OR DENIED; PLAYER DISPUTE. (a) This state and the commission are not liable for any video lottery terminal malfunction or error by a video lottery retailer, video lottery manager, or video lottery terminal provider that causes credit to be wrongfully awarded or denied to players.

(b) Any dispute arising between a player and a video lottery retailer or video lottery manager shall be resolved by the commission as follows:

(1) if the fair market value of the prize is less than \$1,000, the dispute shall be resolved in accordance with the commission-approved written policies of the video lottery retailer or video lottery manager and without any relief available from the commission or this state; or

(2) if the fair market value of the prize is \$1,000 or more, the dispute shall be resolved by the commission in the commission's sole discretion in accordance with commission rules.

(c) A court of this state does not have jurisdiction to review the decision of the commission resolving a dispute between a player and a video lottery retailer, video lottery manager, or video lottery terminal provider.

Sec. 466.589. STATE VIDEO LOTTERY ACCOUNT. (a) The commission shall deposit funds received under this subchapter to the state video lottery account. The state video lottery account is a special account in the general revenue fund. The account consists of all revenue received by this state from the operation of video lottery terminals.

(a-1) Except as provided by Subsection (b), all revenue received by this state from the operation of the video lottery system shall be distributed solely to reimburse the commission until the \$5 million authorized under this subsection is repaid to the state lottery account. From funds previously appropriated to the commission for the state fiscal biennium ending August 31, 2007, and notwithstanding Section 466.355(b), the commission is authorized to expend an amount not to exceed \$5 million from the state lottery account during that biennium to establish the video lottery system in accordance with this chapter. From revenue deposited in the state video lottery account during that biennium, the commission is hereby appropriated the amount necessary to reimburse the state lottery account for the total amount of funds expended to establish the video lottery system from the appropriation to the state lottery account, and the commission shall deposit that amount to the state lottery account. This subsection expires January 1, 2009.

(b) Two percent of the net terminal income received by this state under Section 466.590 shall be allocated to the commission to defray expenses incurred in administering this chapter related to video lottery, including expenses incurred to operate the video lottery central system. All money allocated to the commission under

this subsection may be retained by the commission to defray expenses of administering this chapter related to video lottery and shall be deposited in the state video lottery account.

Sec. 466.590. ALLOCATION OF NET TERMINAL INCOME; TRANSFER OF MONEY. (a) Net terminal income derived from the operation of video lottery games in this state is allocated as follows:

(1) a portion of the net terminal income generated in each calendar year shall be remitted to this state by the video lottery retailer or video lottery manager in an amount equal to 30 percent of the net terminal income for that year; and

(2) the remainder shall be retained by the video lottery retailer or video lottery manager.

(b) Net terminal income derived from the operation of video lottery terminals on Indian lands under a gaming agreement authorized under this subchapter shall be distributed as set forth in the gaming agreement, provided that the agreement must provide that this state shall receive no more than 25 percent of the net terminal income.

(c) One-quarter of one percent of the net terminal income received by this state under Subsections (a) and (b) shall be transferred to the Texas Commission on Alcohol and Drug Abuse for use in the compulsive gambling program under Section 461.018, Health and Safety Code, if that program is in operation.

(d) One-quarter of one percent of the net terminal income received by this state under Subsections (a) and (b) shall be transferred to the Equine Research Program at the College of Veterinary Medicine at Texas A&M University for use in equine research under Subchapter F, Chapter 88, Education Code.

(e) The commission shall require a video lottery retailer or video lottery manager to establish a separate electronic funds transfer account for depositing money from video lottery terminal operations, making payments to the commission or its designee, and receiving payments from the commission or its designee.

(f) A video lottery retailer or video lottery manager may not make payments to the commission in cash. As authorized by the commission, a video lottery retailer or video lottery manager may make payments to the commission by cashier's check.

(g) The commission at least weekly shall transfer this state's share of net terminal income of a video lottery retailer or video lottery manager to the commission through the electronic transfer of the money.

(h) The commission by rule shall establish the procedures for:

(1) depositing money from video lottery terminal operations into electronic funds transfer accounts; and

(2) handling money from video lottery terminal operations.

(i) Unless otherwise directed by the commission, a video lottery retailer or a video lottery manager shall maintain in its account this state's share of the net terminal income from the operation of video lottery terminals, to be electronically transferred by the commission on dates established by the commission. On a license holder's failure to maintain this balance, the commission may disable all of a license holder's video lottery terminals until full payment of all amounts due is made. Interest shall

accrue on any unpaid balance at a rate consistent with the amount charged under Section 111.060, Tax Code. The interest shall begin to accrue on the date payment is due to the commission.

(j) In the commission's sole discretion, rather than disable a license holder's video lottery terminals under Subsection (i), the commission may elect to impose a fine on a license holder in an amount determined by the commission not to exceed \$250,000 for each violation. If the license holder fails to remedy the violation, including payment of any amounts assessed by or due to this state, within 10 days, the commission may disable the license holder's video lottery terminals or use any other means for collection as provided by the penalty chart established by the commission.

(k) A video lottery retailer or video lottery manager is solely responsible for resolving any income discrepancies between actual money collected and the net terminal income reported by the video lottery central system. Unless an accounting discrepancy is resolved in favor of the video lottery retailer or video lottery manager, the commission may not make any credit adjustments. Any accounting discrepancies which cannot otherwise be resolved shall be resolved in favor of the commission.

(l) A video lottery retailer and video lottery manager shall remit payment as directed by the commission if the electronic transfer of money is not operational or the commission notifies the license holder that other remittance is required. The license holder shall report this state's share of net terminal income, and remit the amount generated from the terminals during the reporting period.

Sec. 466.591. COMMISSION EXAMINATION OF FINANCIAL RECORDS. The commission may examine all accounts, bank accounts, financial statements, and records in the possession or control of a person licensed under this subchapter or in which the license holder has an interest. The license holder must authorize and direct all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

Sec. 466.592. FINANCIAL INFORMATION REQUIRED. (a) A video lottery retailer or video lottery manager shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of money to the commission.

(b) A video lottery retailer or video lottery manager must provide the commission advance notice of any proposed account changes in information and bank authorizations to assure the uninterrupted electronic transfer of money.

(c) The commission is not responsible for any interruption or delays in the transfer of money. The video lottery retailer or video lottery manager is responsible for any interruption or delay in the transfer of money.

Sec. 466.593. DEDUCTIONS FROM VIDEO LOTTERY PROCEEDS AT RACETRACKS. (a) Unless otherwise agreed to under Subsection (c) by the pari-mutuel license holder that owns or operates a horse racetrack at which video lottery games are conducted under this subchapter and the officially recognized horsemen's organization representing the horsemen at the racetrack, the license holder shall allocate 6.5 percent of the net terminal income generated from the operation of video lottery terminals at the racetrack to purses.

(b) Unless otherwise agreed to under Subsection (c) by the pari-mutuel license holder that owns or operates a greyhound racetrack at which video lottery games are conducted under this subchapter and the state breed registry representing the greyhound breeders at the racetrack, the license holder shall allocate 6.5 percent of the net terminal income generated from the operation of video lottery terminals at the racetrack to purses.

(c) The pari-mutuel license holder that owns or operates a racetrack at which video lottery games are conducted under this subchapter and the officially recognized horsemen's organization representing the horsemen at the racetrack or the state breed registry representing the greyhound breeders at the racetrack may enter into a written agreement to allocate a different percentage of net terminal income to be used for purses at that racetrack.

(d) A state breed registry may use a portion, not to exceed 10 percent, of the amount allocated for purses under this section for administration as determined reasonable by the commission.

(e) The commission shall adopt rules to administer this section. A matter considered by the commission under this section is a contested case under Chapter 2001, Government Code, and requires a public hearing.

Sec. 466.595. LIABILITY OF VIDEO LOTTERY RETAILER AND VIDEO LOTTERY MANAGER. (a) A video lottery retailer, video lottery manager, or both, are jointly and severally liable to the commission for the state's share of net terminal income reported by the video lottery central system.

(b) Net terminal income received by the video lottery retailer or video lottery manager is held in trust for the benefit of this state before delivery of the state's share to the commission or electronic transfer to the state treasury, and the video lottery retailer or video lottery manager, or both, are jointly and severally liable to the commission for the full amount of the money held in trust.

(c) If the video lottery retailer or video lottery manager is not an individual, each officer, director, or owner of the video lottery retailer or video lottery manager is personally liable to the commission for the full amount of the money held in trust, except that shareholders of a publicly held corporation shall be liable in an amount not to exceed the value of their equity investment.

Sec. 466.596. PRIZE PAYMENT AND REDEMPTION. (a) Payment of prizes is the sole and exclusive responsibility of the video lottery retailer or video lottery manager. A prize may not be paid by the commission or this state except as otherwise authorized.

(b) Nothing in this subchapter limits the ability of a video lottery retailer or video lottery manager to provide promotional prizes in addition to prize payouts regulated by the commission.

(c) A video lottery ticket must be redeemed not later than the 180th day following the date of issuance. If a claim is not made for prize money on or before the 180th day after the date on which the video lottery ticket was issued, the prize money becomes the property of the video lottery terminal establishment.

(d) The commission shall enact rules consistent with this section governing the use and redemption of prizes and credits recorded on electronic player account records, such as players' club cards and smart cards.

Sec. 466.597. REVOCATION OF LICENSE, REGISTRATION, OR OTHER REGULATORY APPROVAL. (a) The commission shall revoke or suspend a license, registration, or other regulatory approval issued under this subchapter if the holder of the license, registration, or approval at any time fails to meet the eligibility requirements set forth in this subchapter.

(b) Failure to timely remit revenue generated by video lottery terminals to the commission or any tax or other fee owed to this state as demonstrated by report from the applicable taxing authority or to timely file any report or information required under this subchapter as a condition of any license, registration, or other approval issued under this subchapter may be grounds for suspension or revocation, or both, of a license, registration, or other approval issued under this subchapter.

Sec. 466.598. HEARING FOR REVOCATION OR SUSPENSION OF REGISTRATION OR LICENSE. (a) Before the commission revokes or suspends a video lottery terminal provider's registration or video lottery retailer's or video lottery manager's license, or imposes monetary penalties for a violation of this subchapter, the commission shall provide written notification to the license or registration holder of the revocation, the period of suspension, or the monetary penalty. The notice shall include:

(1) the effective date of the revocation or the period of suspension or the amount of the monetary penalty, as applicable;

(2) each reason for the revocation, suspension, or penalty;

(3) an explanation of the evidence supporting the reasons;

(4) an opportunity to present the license or registration holder's position in response on or before the 15th day after the effective date of the revocation; and

(5) a statement explaining the person's right to an administrative hearing to determine whether the revocation, suspension, or penalty is warranted.

(b) The notice required under Subsection (a) must be made by personal delivery or by mail to the person's mailing address as it appears on the commission's records.

(c) To obtain an administrative hearing on a suspension, revocation, or penalty under this section, a person must submit a written request for a hearing to the commission not later than the 20th day after the date notice is delivered personally or is mailed.

(d) If the commission receives a timely request under Subsection (c), the commission shall provide the person with an opportunity for a hearing as soon as practicable. If the commission does not receive a timely request under Subsection (c), the commission may impose the penalty, revoke or suspend a license or registration, or sustain the revocation or suspension without a hearing.

(e) Except as provided by Subsection (g), the hearing must be held not earlier than the 11th day after the date the written request is submitted to the commission.

(f) The commission may provide that a revocation or suspension takes effect on receipt of notice under Subsection (a) if the commission finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare. The commission by rule shall establish a nonexclusive list of violations that present a threat to the public health, safety, or welfare.

(g) A hearing on a revocation or suspension that takes effect on receipt of notice must be held not later than the 14th day after the date the commission receives the request for hearing under this section. The revocation or suspension continues in effect until the hearing is completed. If the hearing is continued, the revocation or suspension shall continue in effect beyond the 14-day period at the request of the license or registration holder or on a finding of good cause by the commission or administrative law judge.

(h) To prevail in a post-deprivation administrative hearing under this section, the license or registration holder must demonstrate by clear and convincing evidence that the deprivation or imposition of a penalty was unwarranted or otherwise unlawful. The post-deprivation hearing may be conducted by the commission or referred to the State Office of Administrative Hearings.

(i) The administrative record created by the hearing conducted by the State Office of Administrative Hearings shall be provided to the commission for review and determination on the revocation or suspension.

(j) If an administrative law judge of the State Office of Administrative Hearings conducts a hearing under this section and the proposal for decision supports the commission's position, the administrative law judge shall include in the proposal a finding of the costs, fees, expenses, and reasonable and necessary attorney's fees this state incurred in bringing the proceeding.

(k) The commission may adopt the findings for costs, fees, and expenses and make the finding a part of the final order entered in the proceeding. Proceeds collected from a finding made under this section shall be paid to the commission.

Sec. 466.599. JUDICIAL REVIEW OF REVOCATION, SUSPENSION, OR PENALTY IMPOSITION. (a) A person aggrieved by a final decision of the commission to revoke or suspend a registration or license or to impose any monetary penalty may obtain judicial review before a district court in Travis County.

(b) The judicial review must be instituted by serving on the commission and filing a petition not later than the 20th day after the effective date of the final decision and must identify the order appealed from and the grounds or reason why the petitioner contends the decision of the commission should be reversed or modified.

(c) The review must be conducted by the court sitting without jury, and must not be a trial de novo but is confined to the record on review. The reviewing court may only affirm the decision, remand the case for further proceedings, or reverse the decision if the substantial rights of the petitioner have been violated.

Sec. 466.600. LICENSE OR REGISTRATION: AGREEMENT TO WAIVE ENFORCEABILITY. A license or registration holder by virtue of accepting the license or registration agrees that the privilege of holding a license or registration under this subchapter is conditioned on the holder's agreement to Sections 466.597-466.599 and waives any right to challenge or otherwise appeal the enforceability of those sections.

Sec. 466.601. LIMITED WAIVER OF SOVEREIGN IMMUNITY; NO LIABILITY OF STATE FOR ENFORCEMENT. (a) This state does not waive its sovereign immunity by negotiating gaming agreements with Indian tribes or other persons for the operation of video lottery terminals or other lottery games under this chapter. An actor or agent on behalf of this state does not have any authority to waive

the state's sovereign immunity absent an express legislative grant of the authority. The only waiver of sovereign immunity relative to video lottery terminal operations is that expressly provided for in this section.

(b) With regard to video lottery terminal operations on Indian lands, this state consents to the jurisdiction of the District Court of the United States with jurisdiction in the county where the Indian lands are located, or if the federal court lacks jurisdiction, to the jurisdiction of a district court in Travis County, solely for the purpose of resolving disputes arising from a gaming agreement authorized under this subchapter for declaratory or injunctive relief or contract damages of \$100,000 or more. Any disputes relating to damages or other awards valued at less than \$100,000 shall be arbitrated under the rules of the American Arbitration Association, provided, however, that application of the rules may not be construed as a waiver of sovereign immunity.

(c) All financial obligations of the commission are payable solely out of the income, revenues, and receipts of the commission and are subject to statutory restrictions and appropriations.

(d) This state and the commission are not liable if performance by the commission is compromised or terminated by acts or omissions of the legislature or the state or federal judiciary.

(e) This state and the commission are not liable related to any enforcement of this chapter.

Sec. 466.602. ABSOLUTE PRIVILEGE OF REQUIRED COMMUNICATIONS AND DOCUMENTS. (a) Any communication, document, or record of a video lottery central system provider, video lottery terminal provider, video lottery retailer, or video lottery manager, an applicant, or a license or registration holder or holder of a regulatory approval that is made or transmitted to the commission or any of its employees to comply with any law, including a rule of the commission, to comply with a subpoena issued by the commission, or to assist the commission or its designee in the performance of their respective duties is absolutely privileged, does not impose liability for defamation, and is not a ground for recovery in any civil action.

(b) If a communication, document, or record provided under Subsection (a) contains any information that is privileged under state law, that privilege is not waived or lost because the communication, document, or record is disclosed to the commission or any of the commission's employees.

(c) The commission shall maintain all privileged information, communications, documents, and records in a secure place as determined in the commission's sole discretion that is accessible only to members of the commission and authorized commission employees.

Sec. 466.603. INTELLECTUAL PROPERTY RIGHTS OF COMMISSION. The legislature finds and declares that the commission has the right to establish ownership of intellectual property rights for all lottery products, including video lottery terminals and related video lottery equipment.

Sec. 466.604. MODEL GAMING AGREEMENT. (a) The governor shall execute, at the governor's discretion as chief executive officer of this state and on behalf of this state, a gaming agreement with the Ysleta del Sur Pueblo Indian tribe,

the Alabama-Coushatta Indian tribe, or the Kickapoo Traditional Tribe of Texas containing the terms set forth in Subsection (b), as a ministerial act, without preconditions, not later than the 30th day after the date the governor receives a request from the tribe, accompanied by or in the form of a duly enacted resolution of the tribe's governing body, to enter into the gaming agreement.

(b) A gaming agreement executed under Subsection (a) must contain substantially the terms set forth in a model gaming agreement adopted by the attorney general and filed with the secretary of state. The attorney general shall adopt a model gaming agreement for purposes of this section, consistent with the applicable provisions of this chapter, and shall file the agreement with the secretary of state.

(c) An Indian tribe may operate video lottery games and video lottery terminals in accordance with a gaming agreement entered into under this section.

(d) The governor may not amend, alter, or otherwise modify an agreement under this section until after the 10th anniversary of the date the governor signed the original agreement.

Sec. 466.605. VIDEO LOTTERY GAMES BY INDIAN TRIBES AUTHORIZED. (a) Notwithstanding any other law, an Indian tribe may operate video lottery games and video lottery terminals as authorized by this subchapter pursuant to a compact with the governor.

(b) To operate video lottery games under this section, an Indian tribe must be an Indian tribe as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 on or before January 1, 1998, and must, on or before January 1, 1998, have had Indian lands within the boundaries of this state. At any time there may not be more than three Indian tribes operating video lottery games on Indian lands in this state.

(c) An Indian tribe may operate video lottery games under this section only on or immediately adjacent to Indian lands placed into trust by the United States for the benefit of the Indian tribe on or before January 1, 1998, that were held and occupied by the Indian tribe on or before January 1, 1998.

(d) A compact or agreement entered into under this section must contain provisions for the monitoring and auditing of the operation of video lottery games and any other gaming activity. The compact must:

(1) provide that the commissioner may inspect all public and nonpublic areas of the premises where the Indian tribe operates video lottery games or other gaming activity;

(2) require the conduct of an annual audit by the commission or an auditor selected by the commission of the Indian tribe's video lottery game operations; and

(3) provide that the commission may examine and review all financial records of the Indian tribe's video lottery game operations at any reasonable time.

(e) An agreement entered into under this section with a federally recognized Indian tribe, or an affiliated entity, to allow the tribe or entity to operate video lottery games must provide that the tribe agrees to collect and remit to the comptroller all state sales and use taxes for all taxable goods and services sold on the tribe's Indian lands in this state and all state taxes on motor fuels, alcoholic beverages, cigarettes and tobacco products, and hotel occupancy sold on the tribe's Indian lands. In the case of a federally recognized Indian tribe, the requirement to collect and remit these state

taxes does not apply to taxes on the sale, use, or consumption of an item by a member of the tribe. The agreement shall provide a method to secure payment of these taxes to this state.

(f) The comptroller may adopt rules to ensure that the exemption from the collection and remission of state taxes under Subsection (e) applies only to members of the tribe owning that tribal land.

SECTION 2.34. Section 467.001, Government Code, is amended by amending Subdivision (9) and adding Subdivision (12) to read as follows:

(9) "Person that has a significant financial interest in the lottery" means:

(A) a person or a board member, officer, trustee, or general partner of a person that manufactures, distributes, sells, or produces lottery equipment, video lottery equipment, video lottery games, video lottery central systems, supplies, services, or advertising;

(B) an employee of a video lottery terminal provider, video lottery central system provider, or person that manufactures, distributes, sells, or produces lottery equipment, supplies, services, or advertising or video lottery equipment or games and that employee is directly involved in the manufacturing, distribution, selling, or production of lottery equipment, supplies, services, or advertising or video lottery equipment or games;

(C) a person or a board member, officer, trustee, or general partner of a person that has made a bid to operate the lottery in the preceding two years or that intends to make a bid to operate the lottery or an employee of the person if the employee is directly involved in making the bid; or

(D) a sales agent, video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system provider.

(12) "Video lottery central system," "video lottery equipment," "video lottery game," "video lottery manager," "video lottery retailer," and "video lottery terminal provider" have the meanings assigned by Section 466.002.

SECTION 2.35. Section 467.027(a), Government Code, is amended to read as follows:

(a) A commission member is [~~not~~] entitled to compensation for serving on the commission. The annual salary of the commission members is set by legislative appropriation.

SECTION 2.36. Section 467.031, Government Code, is amended to read as follows:

Sec. 467.031. DIVISIONS. The commission shall establish separate divisions to oversee bingo and the state lottery. The commission may create a division to oversee video lottery and delegate responsibilities in the administration of Chapter 466 to the executive director, the director of the appropriate division, and the division's staff; provided, however, that the commission may not delegate the following actions:

(1) a final determination in any application or request for licensing or registration under Chapter 466;

(2) a final determination in any proceeding involving the suspension or revocation of a registration or license under Chapter 466;

(3) a final determination that Chapter 466 has been violated; or

(4) a final determination or imposition of an assessment of fines or penalties under a law administered by the commission.

SECTION 2.37. 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 owns a financial interest in:

(1) a bingo commercial lessor, bingo distributor, or bingo manufacturer; or

(2) a lottery sales agency, ~~or~~ a lottery operator, a video lottery retailer, a video lottery manager, a video lottery terminal provider, a video lottery central system provider, or a manufacturer of video lottery games.

SECTION 2.38. Section 467.108, Government Code, is amended to read as follows:

Sec. 467.108. REPRESENTATION BY FORMER OFFICER OR EMPLOYEE. (a) A former commission member, former executive director, or former director may not:

(1) ~~[for compensation,]~~ represent a person, either with or without compensation, [that has made or intends to make a bid to operate the lottery] before the commission before the fifth ~~[second]~~ anniversary of the date that the person's service in office or employment with the commission ceases;

(2) represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of service or employment with the commission, either through personal involvement or because the matter was within the scope of the officer's or employee's official responsibility; or

(3) ~~[for compensation]~~ communicate on behalf of any person, whether compensated or not compensated, directly with a member of the legislative branch to influence legislation on behalf of a person that has any ~~[a significant financial]~~ interest in the lottery, before the fifth ~~[second]~~ anniversary of the date that the person's service in office or employment with the commission ceases.

(b) A person commits an offense if the person violates this section. An offense under this section is a felony of the third degree ~~[Class A misdemeanor]~~.

SECTION 2.39. Section 411.108, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Lottery Commission may obtain from the department, subject to an interagency agreement entered into under Section 466.020(d) or 466.206, criminal history record information maintained by the department that relates to any natural person, corporation, association, trust, partnership, limited partnership, joint venture, government, subsidiary, or other entity, regardless of its form, structure, or nature that the commission has the authority to investigate under Chapter 466 as related to the commission's operation and oversight of video lottery. Criminal history record information obtained by the commission under this subsection may be released or disclosed only as provided in Sections 466.022(d) and 466.206.

SECTION 2.40. Section 47.01(4), Penal Code, is amended to read as follows:

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, slot machines, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if:

(i) the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less;

(ii) any merchandise or a representation of value received by a player may be exchanged only at the same business and business location at which the contrivance operated by the player is located and may not be exchanged for a gift certificate or similar conveyance that is redeemable at another business or business location; and

(iii) the contrivance or device does not resemble a slot machine or any other casino game.

SECTION 2.41. Section 47.06(e), Penal Code, is amended to read as follows:

(e) An offense under this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION 2.42. Section 47.09, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) Subsection (a)(3) applies to a person manufacturing, distributing, possessing, or operating a gambling device with the authorization of the Texas Lottery Commission under Subchapter K, Chapter 466, Government Code.

SECTION 2.43. Chapter 47, Penal Code, is amended by adding Section 47.095 to read as follows:

Sec. 47.095. INTERSTATE OR FOREIGN COMMERCE DEFENSE. It is a defense to prosecution under this chapter that a person sells, leases, transports, possesses, stores, or manufactures a gambling device with the authorization of the Texas Lottery Commission under Subchapter K, Chapter 466, Government Code, for transportation in interstate or foreign commerce.

SECTION 2.44. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Sections 6.20-6.22 to read as follows:

Sec. 6.20. LIVE RACING REQUIREMENT. (a) The commission by rule shall require a person who holds a horse racetrack license and operates a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, and that conducted live racing in 2002 to conduct at least the same number of live racing days in each calendar year after 2005 that the racetrack conducted in 2002.

(b) The commission by rule shall require a person who holds a greyhound racetrack license and operates a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, and that conducted live racing in 2004 to conduct not less than 420 live greyhound racing performances in each calendar year after 2005 unless otherwise agreed to by the official state breed registry.

Sec. 6.21. TRANSFER FEE. The commission may not approve the sale, transfer, assignment, or other conveyance of any interest or control in a pari-mutuel license or the racetrack owned or managed by the license holder if the license holder holds a video lottery retailer license under Subchapter K, Chapter 466, Government Code, until the transfer fee required by Section 466.5321, Government Code, is fully paid to this state.

Sec. 6.22. BREED SPLITS AT VIDEO LOTTERY TERMINAL ESTABLISHMENTS. The commission shall adopt rules to require a horse racetrack that holds a video lottery retailer license under Subchapter K, Chapter 466, Government Code, to allocate from the amount set aside for purses under Section 466.593(a) or (c), Government Code, 30 percent to quarter horse purses and 70 percent to thoroughbred purses.

The amendment was read.

POINT OF ORDER

Senator Nelson raised a point of order that Floor Amendment No. 31 was in violation of the rules established for amendments to **CSHB 3**.

POINT OF ORDER RULING

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

Senator Janek again offered the following amendment to the bill:

Floor Amendment No. 23

Amend **CSHB 3** (Senate committee printing) as follows:

(1) In the recital to SECTION 7C.01 of the bill (page 56, line 13) strike "amending Subsections (a), (b), and (e) and".

(2) Strike Sections 57.048(a), (b), and (e), Utilities Code, as amended by SECTION 7C.01 of the bill (page 56, lines 15-27).

The amendment to **CSHB 3** was again read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 23.

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

CSHB 3 as amended was passed to third reading by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Ogden, Shapiro, Staples, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Ellis, Eltife, Gallegos, Nelson, Seliger, Shapleigh, Van de Putte, West, Williams.

Reason for Vote

Senator Eltife submitted the following reason for vote:

Although I oppose **CSHB 3** as it was reported from the Senate Finance Committee, I voted to suspend the regular order of business so that amendments could be considered.

ELTIFE

Reason for Vote

Senator Seliger submitted the following reason for vote:

Although I oppose **CSHB 3** as it was reported from the Senate Finance Committee, I voted to suspend the regular order of business so that amendments could be considered.

SELIGER

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 849 by Barrientos, In memory of Marguerite Agnes Grissom of Austin.

SR 851 by Ellis, In memory of Helen Ann Fisher of Houston.

HCR 185 (Gallegos), In memory of the Honorable Joseph E. Moreno of Denver Harbor.

Congratulatory Resolutions

SR 834 by Whitmire, Recognizing Michael T. Murphy on the occasion of his graduation from Harvard Law School.

SR 836 by Jackson, Recognizing Tara Michelle Rhyne of Angleton on the occasion of her home school graduation.

SR 837 by Jackson, Recognizing Dana Marie Caldwell of Lake Jackson on the occasion of her home school graduation.

SR 838 by Jackson, Recognizing Katlyn Mae Raymer of Lake Jackson on the occasion of her home school graduation.

SR 839 by Jackson, Recognizing Christopher Sean Dunn of Angleton on the occasion of his home school graduation.

SR 840 by Jackson, Recognizing Lindsey Renee Backen of Sweeny on the occasion of her home school graduation.

SR 841 by Jackson, Recognizing Timothy Paul Gallion of Lake Jackson on the occasion of his home school graduation.

SR 842 by Jackson, Recognizing Lauren Christine Windle of Lake Jackson on the occasion of her home school graduation.

SR 843 by Jackson, Recognizing Sarah Beth Raymer of Lake Jackson on the occasion of her home school graduation.

SR 844 by Jackson, Recognizing Cody Ray Lebow of Lake Jackson on the occasion of his home school graduation.

SR 845 by Jackson, Recognizing Jonathan Benjamin Kidd of Angleton on the occasion of his home school graduation.

SR 846 by Shapiro, Commending participants in the North Texas Student Voices project.

SR 852 by Ellis, Recognizing Jean LaNell Hines Caldwell of Houston for her contributions to her community.

SR 853 by Ellis, Recognizing Conrad "Prof" Johnson for his contributions to the fields of education and music in Texas.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 1:49 a.m. Wednesday, May 11, 2005, adjourned, in memory of the Honorable Joseph E. Moreno of Denver Harbor, until 1:50 a.m. today.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 10, 2005

HEALTH AND HUMAN SERVICES — **CSHB 2331**

NATURAL RESOURCES — **SB 1839, CSSB 1840**

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **CSHB 322, CSSB 1735**

SIGNED BY GOVERNOR

May 9, 2005

SB 129, SB 177, SB 187, SB 402, SB 407, SB 492, SB 541, SB 566, SB 574, SB 692, SB 693, SB 766, SB 796, SB 877, SB 1014, SB 1299, SB 1342

SENT TO GOVERNORMay 10, 2005**SB 182, SB 262, SB 321, SB 359, SB 376, SB 441, SB 446, SB 449, SB 550,
SB 580, SB 644, SB 718, SB 895, SB 896, SB 1005, SB 1011, SB 1126, SB 1217,
SB 1563, SB 1680, SCR 25**