

# SEVENTY-SEVENTH DAY

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TUESDAY, MAY 24, 2005

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## PROCEEDINGS

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The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by President Pro Tempore Shapiro.

The roll was called and the following Senators were present: Armbrister, Averitt, 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, Wentworth, West, Whitmire, Williams, Zaffirini.

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

Rabbi Jack Segal, Congregation Beth Yeshurun, Houston, offered the invocation as follows:

O God, we have been blessed because we live in a country where the Judeo-Christian ethic is the foundation stone of our American land. Our Declaration of Independence, 229 years ago, proclaimed, O God, "All men are created equal." However, that statement was preceded by the biblical comment in the book of Leviticus (25:10), "Thou shalt proclaim freedom throughout the land unto all the inhabitants thereof." President Lincoln in his Gettysburg Address, 142 years ago, O God, stressed the importance of the people of this land when he called out, "that government of the people, by the people, and for the people, shall not perish from the Earth." But King David in the book of Psalms, 3,000 years ago, stated that same premise in the biblical principle (Psalms 133:1), "Behold, how good and how pleasant it is for brethren to dwell together in unity." And, O God, President Franklin Delano Roosevelt stated the American goal for the future in his Four Freedoms Speech to Congress on January 6, 1941. He stated that our fourth aim and ambition was "freedom from fear," no more aggression, no more belligerence, no more wars. But this thought, O God, was merely a repetition of the words of the prophet Isaiah, who proclaimed more than 2,700 years ago (Isaiah 4:3-4), "They shall beat their swords into ploughshares, and their spears into pruning-hooks, nation shall not lift up sword against nation, neither shall they learn war anymore." We pray, O God, that You will walk together with the legislators of our great State of Texas, to help them and aid them to follow in the footsteps of our national giants, the founding fathers of our republic, and the prophets of the Bible.

Help them to legislate for our state the principles of freedom and liberty and democracy so that we will be able to be a light unto the other states of our nation as Isaiah proclaimed (Isaiah 49:6), "I have made you a light unto all the nations." These are difficult times, O God. Always be with our legislators; always guide them to see what is right and what is wrong, what is proper and what is improper; always help them to focus on the paths that will bring glory and praise to our State of Texas and consequently to our nation. May God's blessings always be upon our state leaders. Amen.

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

The motion prevailed without objection.

#### **CO-SPONSOR OF HOUSE BILL 823**

On motion of Senator Hinojosa, Senator Wentworth will be shown as Co-sponsor of **HB 823**.

#### **CO-SPONSOR OF HOUSE BILL 1483**

On motion of Senator Eltife, Senator Wentworth will be shown as Co-sponsor of **HB 1483**.

#### **CO-SPONSOR OF HOUSE BILL 2110**

On motion of Senator Eltife, Senator Wentworth will be shown as Co-sponsor of **HB 2110**.

#### **CO-SPONSOR OF HOUSE BILL 2221**

On motion of Senator West, Senator Hinojosa will be shown as Co-sponsor of **HB 2221**.

#### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 24, 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:**

**HCR 215**, Instructing the enrolling clerk of the house to make corrections in H.B. No. 1544.

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

**HB 56** (non-record vote)

- HB 57** (non-record vote)  
**HB 93** (non-record vote)  
**HB 322** (non-record vote)  
**HB 481** (138 Yeas, 0 Nays, 1 Present, not voting)  
**HB 540** (non-record vote)  
**HB 544** (non-record vote)  
**HB 874** (132 Yeas, 0 Nays, 1 Present, not voting)  
**HB 1045** (141 Yeas, 0 Nays, 1 Present, not voting)  
**HB 1095** (non-record vote)  
**HB 1098** (non-record vote)  
**HB 1170** (non-record vote)  
**HB 1339** (132 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1599** (non-record vote)  
**HB 1630** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1705** (136 Yeas, 0 Nays, 1 Present, not voting)  
**HB 1734** (135 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1747** (non-record vote)  
**HB 1833** (non-record vote)  
**HB 1938** (non-record vote)  
**HB 2039** (non-record vote)  
**HB 2331** (non-record vote)  
**HB 2587** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2902** (non-record vote)  
**HB 2921** (136 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3547** (non-record vote)  
**HJR 87** (143 Yeas, 0 Nays, 2 Present, not voting)

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

**HB 167** (non-record vote)

House Conferees: Smith, Wayne - Chair/Frost/Howard/McReynolds/West, George "Buddy"

**HB 182** (non-record vote)

House Conferees: Mowery - Chair/Gonzales/Truitt/Veasey/Wong

**HB 468** (non-record vote)

House Conferees: Hegar - Chair/Driver/Frost/Hill/Veasey

**HB 905** (non-record vote)

House Conferees: Delisi - Chair/Cook, Byron/Swinford/Villarreal/Wong

**HB 969** (non-record vote)

House Conferees: Keel - Chair/Bonnen/Escobar/Gattis/Pena

**HB 1225** (non-record vote)

House Conferees: Puente - Chair/Bonnen/Campbell/Geren/Turner

**HB 1358** (non-record vote)

House Conferees: Flores - Chair/Geren/Hardcastle/Homer/Puente

**HB 1835** (non-record vote)

House Conferees: Talton - Chair/Bailey/Blake/Cook, Robby/Howard

**HB 2438** (non-record vote)

House Conferees: Haggerty - Chair/Guillen/Hamilton/Jones, Delwin/Quintanilla

**HB 2465** (non-record vote)

House Conferees: Denny - Chair/Anderson/Bohac/Chisum/Pickett

**HB 2481** (non-record vote)

House Conferees: Bonnen - Chair/Branch/Hamric/Homer/Kuempel

**HB 2702** (non-record vote)

House Conferees: Krusee - Chair/Cook, Robby/Hegar/Hill/Phillips

**HB 2760** (non-record vote)

House Conferees: Taylor - Chair/Keffer, Bill/Oliveira/Seaman/Thompson

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

**SB 368** (non-record vote)

House Conferees: Hartnett - Chair/Crabb/Dutton/Keel/Luna

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**HB 872**, Point of order sustained due to non-germane Senate amendments. Returned to the Senate for further action.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RULE 11.13 SUSPENDED**  
**(Consideration of Bills in Committees)**

On motion of Senator Staples and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committees on **SB 5** and **HB 7** permission to meet while the Senate is meeting today.

## 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:

Member, State Commission on Judicial Conduct: Rex G. Baker III, Hays County.

Members, Texas Transportation Commission: Esperanza "Hope" Andrade, Bexar County; Ted Houghton, Jr., El Paso County; Robert Lee Nichols, Cherokee County.

Members, Texas Residential Construction Commission: Lewis Brown, Montgomery County; John R. Krugh, Harris County; Scott M. Porter, Kerr 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.

### HOUSE BILL 3574 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 3574** at this time on its second reading:

**HB 3574**, Relating to the creation of the Dallas County Municipal Utility District No. 3; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

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 3574 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 3574** be placed on its third reading and final passage.

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

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

### HOUSE BILL 3582 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 3582** at this time on its second reading:

**HB 3582**, Relating to the Kingsborough Municipal Utility District Nos. 1, 2, 3, 4, and 5 of Kaufman County.

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 3582 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 3582** be placed on its third reading and final passage.

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

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

### **PHYSICIAN OF THE DAY**

Senator Estes was recognized and presented Dr. Max Latham of Bowie as the Physician of the Day.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 412 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 412** at this time on its second reading:

**CSHB 412**, Relating to the use of credit scoring and credit history by certain telecommunications and electric service providers.

The bill was read second time.

### **(President in Chair)**

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

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

Amend **CSHB 412** (Senate committee printing) by striking SECTIONS 1 and 2 of the bill (page 1, line 13 through page 3, line 39) and substituting the following:

SECTION 1. Subchapter A, Chapter 17, Utilities Code, is amended by adding Sections 17.008 and 17.009 to read as follows:

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE APPLICANTS AND CUSTOMERS. (a) In this section and in Section 17.009:

(1) "Credit history":

(A) means information regarding an individual's past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), using data from a credit history in any type of model, method, or program for the purpose of grading or ranking credit report data, whether derived electronically, from an algorithm, through a computer software application model or program, or through any other analogous process.

(3) "Utility payment data" means a measure that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), from a model specifically designed to correlate to utility payment histories.

(b) A retail electric provider may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history or credit score, but may use the applicant's utility payment data until the later of January 1, 2007, or the date on which the price to beat is no longer in effect in the geographic area in which the customer is located.

(c) Notwithstanding Subsection (b), while a retail electric provider is required to provide service to a geographic area as the affiliated retail electric provider, the provider may not deny an applicant's request to become a residential electric service customer within that geographic area on the basis of the applicant's credit history, credit score, or utility payment data.

(d) After the date described in Subsection (b), a retail electric provider, including an affiliated retail electric provider, may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data but may use the applicant's electric bill payment history.

(e) A retail electric provider may not use a credit score, a credit history, or utility payment data as the basis for determining the price for month-to-month electric service or electric service that includes a fixed price commitment of 12 months or less:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential electric service customer.

(f) After the date described in Subsection (b), on request by a customer or former customer in this state, a retail electric provider or electric utility shall timely provide to the customer or former customer bill payment history information with the retail electric provider or electric utility during the preceding 12-month period. Bill payment history information may be obtained by the customer or former customer once during each 12-month period without charge. If additional copies of bill payment history information are requested during a 12-month period, the electric service provider may charge the customer or former customer a reasonable fee for each copy.

(g) On request by a retail electric provider, another retail electric provider or electric utility shall timely verify information that purports to show a customer's service and bill payment history with the retail electric provider or electric utility.

(h) This section does not limit a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(i) Notwithstanding Subsection (e), a retail electric provider may provide rewards, benefits, or credits to residential electric service customers on the basis of the customer's payment history for retail electric service to that provider.

Sec. 17.009. PROTECTION OF RESIDENTIAL TELEPHONE SERVICE APPLICANTS AND CUSTOMERS. (a) A provider of basic local telecommunications services and nonbasic network services may not deny an applicant's request to become a residential customer on the basis of the applicant's credit history or credit score.

(b) A provider of basic local telecommunications services and nonbasic network services may not use a credit score or credit history as the basis for determining price for service:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential customer.

(c) This section does not limit the authority of a provider of basic local telecommunications services and nonbasic network services to require a deposit, advance payment, or credit limit as a condition of service.

SECTION 2. (a) The Public Utility Commission of Texas shall conduct one or more public workshops to consider the merits of both voluntary and mandatory databases that are used to determine whether a customer has a satisfactory electric bill payment history. The commission shall report its conclusions to the governor, the lieutenant governor, and the speaker of the house of representatives not later than January 15, 2007.

(b) This Act does not prevent or prohibit the creation or use of one or more databases to determine whether a customer has a satisfactory electric bill payment history, provided that the database, including the use of the database, is not discriminatory and does not otherwise violate the Public Utility Regulatory Act (Title 2, Utilities Code).

The amendment to **CSHB 412** 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 Van de Putte and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 412** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 412 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 412** be placed on its third reading and final passage.

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

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



**SENATE RESOLUTION 1005**

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Banco Bilbao Vizcaya Argentaria, which is expanding into the Hispanic market in the United States with the purchase of Laredo National Bancshares, Incorporated; and

WHEREAS, Laredo National Bancshares is the leading financial services provider to the Hispanic market in the South Texas border region and the holding company of two banks—The Laredo National Bank and South Texas National Bank of Laredo; Laredo National Bancshares will be added to Banco Bilbao Vizcaya Argentaria's United States division; and

WHEREAS, Banco Bilbao Vizcaya Argentaria is an established financial leader in Spanish-speaking countries; it is based in Spain and provides a full range of financial services to 35 million customers in 37 countries; and

WHEREAS, The border region is a prime area for the financial company, as approximately 38 percent of the border trade between the United States and Mexico is done through Laredo, and Laredo National Bancshares has a 23 percent share in the Texas-Mexico border region with 110,000 customers and assets of \$3.4 billion; and

WHEREAS, The Texas Senate congratulates Banco Bilbao Vizcaya Argentaria on its expansion into Texas and is honored to have three of the bank's primary executives visiting the Capitol today: José Ignacio Goirigolzarri, president and chief operating officer; Vitalino Manuel Nafria Aznar, director general of BBVA América; and José Maria García Meyer-Dohner, chief executive officer of BBVA USA; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby welcome Banco Bilbao Vizcaya Argentaria as a new corporate citizen of this state and pay tribute to Señor Goirigolzarri, Señor Aznar and Señor Meyer-Dohner; and, be it further

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

**SR 1005** was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate the executive leadership of Banco Bilbao Vizcaya Argentaria: José Ignacio Goirigolzarri, Vitalino Manuel Nafria Aznar, and José Maria García Meyer-Dohner.

The Senate welcomed its guests.

**(Senator Armbrister in Chair)**

**HOUSE BILL 3527 ON SECOND READING**

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3527** at this time on its second reading:

**HB 3527**, Relating to the ability of certain water supply or sewer service corporations to dissolve and transfer assets to a municipality.

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 3527 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3527** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 1892 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1892** at this time on its second reading:

**HB 1892**, Relating to excluding certain challenge courses from regulation as amusement rides.

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 1892 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1892** be placed on its third reading and final passage.

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

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

#### **SENATE RESOLUTION 985**

Senator Williams offered the following resolution:

**SR 985**, In memory of Thomas Edgar Jackson of Beaumont.

The resolution was read.

Senator Williams was recognized and introduced to the Senate family members of Thomas Edgar Jackson: his wife, Kathleen Jackson, and his children, Thomas "Tommy" Jackson, Gabriel "Kit" Jackson, and Thea Jackson.

The Senate welcomed its guests and extended its sympathy.

On motion of Senator Williams, **SR 985** was adopted by a rising vote of the Senate.

In honor of the memory of Thomas Edgar Jackson of Beaumont, the text of the resolution is printed at the end of today's *Senate Journal*.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3526 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3526** at this time on its second reading:

**CSHB 3526**, Relating to the creation of the Greater Sharpstown Management District; providing authority to impose a tax and issue a bond or similar obligation.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3526 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3526** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1516 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1516** at this time on its second reading:

**CSHB 1516**, Relating to the Department of Information Resources' management of state electronic services.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

1) Amend **CSHB 1516** on page 6 by striking lines 58-61, and substituting the following:

(c) In contracting for commodity items under this section, the department shall make good faith efforts to provide contracting opportunities for, and to increase contract awards to, historically underutilized businesses and persons with disabilities' products and services available under Chapter 122, Human Resources Code.

2) Amend **CSHB 1516** on page 10, line 51 after "September" by adding "1, 2005."

The amendment to **CSHB 1516** 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 Duncan and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1516** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1516 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1516** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1107 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **HB 1107** at this time on its second reading:

**HB 1107**, Relating to procedures for obtaining relief from local matching funds requirements for highway projects.

The motion prevailed.

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

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:

Nays: Brimer.

**HOUSE BILL 1107 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1107** be placed on its third reading and final passage.

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

Nays: Brimer.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1800**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1800** was reconsidered:

**SB 1800**, Relating to the creation of the Galveston County Municipal Utility District No. 60; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1800**?

Senator Jackson again moved to concur in the House amendment to **SB 1800**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1801**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1801** was reconsidered:

**SB 1801**, Relating to the creation of the Galveston County Municipal Utility District No. 61; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1801**?

Senator Jackson again moved to concur in the House amendment to **SB 1801**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1802**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1802** was reconsidered:

**SB 1802**, Relating to the creation of the Galveston County Municipal Utility District No. 62; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1802**?

Senator Jackson again moved to concur in the House amendment to **SB 1802**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1803**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1803** was reconsidered:

**SB 1803**, Relating to the creation of the Galveston County Municipal Utility District No. 63; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1803**?

Senator Jackson again moved to concur in the House amendment to **SB 1803**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1804**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1804** was reconsidered:

**SB 1804**, Relating to the creation of the Galveston County Municipal Utility District No. 64; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1804**?

Senator Jackson again moved to concur in the House amendment to **SB 1804**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1805**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1805** was reconsidered:

**SB 1805**, Relating to the creation of the Galveston County Management District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.

Question — Shall the Senate concur in the House amendment to **SB 1805**?

Senator Jackson again moved to concur in the House amendment to **SB 1805**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1808**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate concurred in the House amendment **SB 1808** was reconsidered:

**SB 1808**, Relating to the creation of the Galveston County Municipal Utility District No. 54; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1808**?

Senator Jackson again moved to concur in the House amendment to **SB 1808**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1855**

On motion of Senator Deuell and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1855** was reconsidered:

**SB 1855**, Relating to the creation of the Rockwall County Municipal Utility Districts Nos. 6, 7, 8, and 9; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

Question — Shall the Senate concur in the House amendment to **SB 1855**?

Senator Deuell again moved to concur in the House amendment to **SB 1855**.

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

**HOUSE BILL 2868 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2868** at this time on its second reading:

**HB 2868**, Relating to civil liability for provision of alcohol to a minor.

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 2868 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2868** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3569 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 3569** at this time on its second reading:

**HB 3569**, Relating to the creation, administration, powers, duties, operation, and financing of the Zapata County Municipal Utility District No. 2.

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 3569 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 3569** be placed on its third reading and final passage.

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

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 833**

On motion of Senator Barrientos and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 833** was reconsidered:

**SB 833**, Relating to the required use of tax increment financing to provide affordable housing in certain reinvestment zones.

Question — Shall the Senate concur in the House amendment to **SB 833**?

Senator Barrientos again moved to concur in the House amendment to **SB 833**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1214**

On motion of Senator Barrientos and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1214** was concurred in was reconsidered:

**SB 1214**, Relating to the selection and retention of an insurance broker by certain counties; imposing an administrative penalty.

Question — Shall the Senate concur in the House amendment to **SB 1214**?

Senator Barrientos again moved to concur in the House amendment to **SB 1214**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 261**

On motion of Senator Williams and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 261** was reconsidered:

**SB 261**, Relating to the creation of a program to educate the public on the value of health coverage and to increase public awareness of health coverage options.

Question — Shall the Senate concur in the House amendment to **SB 261**?

Senator Williams again moved to concur in the House amendment to **SB 261**.

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

**HOUSE BILL 3546 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3546** at this time on its second reading:

**HB 3546**, Relating to the creation of the East Montgomery County Municipal Utility Districts Nos. 5, 6, and 7; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

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 3546 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3546** be placed on its third reading and final passage.

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

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



**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1792**

On motion of Senator Wentworth and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1792** was reconsidered:

**SB 1792**, Relating to the South Buda Water Control and Improvement District No. 1.

Question — Shall the Senate concur in the House amendment to **SB 1792**?

Senator Wentworth again moved to concur in the House amendment to **SB 1792**.

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

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 24, 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:

**SB 1691**, Relating to certain retired school employees and the powers and duties of the Teacher Retirement System of Texas; providing a penalty.  
(Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 863**

On motion of Senator Van de Putte and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 863** was reconsidered:

**SB 863**, Relating to the administration of promotional examinations to certain firefighters and police officers who are members of the armed forces on active duty.

Question — Shall the Senate concur in the House amendment to **SB 863**?

Senator Van de Putte again moved to concur in the House amendment to **SB 863**.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 789 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 789** at this time on its second reading:

**CSHB 789**, Relating to furthering competition in the telecommunications industry.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 789** on page 1, line 13, by adding new SECTION 1 and SECTION 2 to read as follows and renumber subsequent sections accordingly:

"SECTION 1. Subtitle B, Title 2, of the Utilities Code is amended by adding Chapter 43 to read as follows:

CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR  
ACCESS TO BROADBAND AND OTHER ENHANCED SERVICES,

INCLUDING COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. LEGISLATIVE FINDINGS. (a) The Legislature finds that broadband over power lines, also known as BPL, is an emerging technology platform that offers a means of providing broadband services to reach homes and businesses. BPL services can also be used to enhance existing electric delivery systems, which can result in improved service and reliability for electric customers.

(b) The Legislature finds that access to broadband services is important to this state. BPL deployment in Texas has the potential to extend broadband service to customers where broadband access is currently not available and may provide an additional option for existing broadband consumers in Texas, resulting in a more competitive market for broadband services. The Legislature further finds that BPL development in Texas is fully dependent upon the participation of electric utilities in this state that own and operate power lines and related facilities that are necessary for the construction of BPL systems and the provision of BPL services.

(c) Consistent with the goal of increasing options for telecommunications in this state, the Legislature finds that it is in the public interest to encourage the deployment of BPL by permitting affiliates of the electric utility, or permitting unaffiliated entities to own and/or operate all or a portion of such BPL systems. The purpose of this chapter is to provide the appropriate framework to support the deployment of BPL.

(d) The Legislature finds that an electric utility may choose to implement BPL under the procedures set forth in this section, but is not required to do so. The electric utility shall have the right to decide, in its sole discretion, whether to implement BPL and may not be penalized for deciding to implement or not to implement BPL.

Sec. 43.002. APPLICABILITY. (a) This chapter applies to an electric utility whether or not the electric utility is offering customer choice under Chapter 39 of this subtitle.

(b) If there is a conflict between the specific provisions of this chapter and any other provisions of this title, the provisions of this chapter control.

(c) No provision of this title shall impose an obligation on an electric utility to implement BPL, to provide broadband services, or to allow others to install BPL facilities or use the electric utility's facilities for the provision of broadband services.

Sec. 43.003. DEFINITIONS. In this chapter:

(1) "BPL," "broadband over power lines," and "BPL services" mean the provision of broadband services over electric power lines and related facilities, whether above ground or in underground conduit.

(2) "BPL access" means the ability to access broadband services via a BPL operator or BPL Internet service provider.

(3) "BPL operator" means an entity that owns or operates a BPL system on the electric power lines and related facilities of an electric utility.

(4) "BPL Internet service provider" and "BPL ISP" mean an entity that provides Internet services to others on a wholesale basis or to end-use customers on a retail basis.

(5) "BPL system" means the materials, equipment, and other facilities installed on electric utility property to facilitate the provision of BPL services.

(6) "BPL electric utility applications" means services and technologies that are used and useful and designed to improve the operational performance and service reliability of an electric utility including, but not limited to, automated meter reading, real time system monitoring and meter control, remote service control, outage detection and restoration, predictive maintenance and diagnostics, and monitoring and enhancement of power quality.

(7) "Electric delivery system" means the power lines and related transmission and distribution facilities used by an electric utility to deliver electric energy.

(8) "Electric utility" shall include an electric utility and a transmission and distribution utility as defined in Section 31.002(6) or (19) of this title.

#### SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

Sec. 43.051. AUTHORIZATION FOR A BPL SYSTEM. An affiliate of an electric utility or a person unaffiliated with an electric utility may own, construct, maintain, and operate a BPL system and provide BPL services on an electric utility's electric delivery system consistent with the requirements of this chapter. Nothing in this chapter shall prohibit an entity defined in Section 11.003(9) of this title from providing BPL service or owning and operating a BPL system. Nothing in this chapter shall prohibit an electric utility from providing construction or maintenance services to a BPL operator or BPL ISP provided that the costs of these services are properly accounted for between the electric utility and the BPL operator or BPL ISP.

Sec. 43.052. OWNERSHIP AND OPERATION OF A BPL SYSTEM. (a) An electric utility may elect to:

(1) allow an affiliate to own or operate a BPL system on the utility's electric delivery system;

(2) allow an unaffiliated entity to own or operate a BPL system on the electric utility's electric delivery system; or

(3) allow an affiliate or unaffiliated entity to provide Internet service over a BPL system.

(b) The BPL operator and the electric utility shall determine what BPL Internet service providers may have access to broadband capacity on the BPL system.

Sec. 43.053. FEES AND CHARGES. (a) An electric utility that allows an affiliate or an unaffiliated entity to own a BPL system on the electric utility's electric delivery system shall charge the owner of the BPL system for the use of the electric utility's electric delivery system.

(b) An electric utility may pay a BPL owner, a BPL operator, or a BPL ISP for the use of the BPL system required to operate BPL utility applications.

(c) If all or part of a BPL system is installed on poles or other structures of a telecommunications utility as that term is defined in Section 51.002, the owner of the BPL system shall be required to pay the telecommunications utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the BPL system so installed.

(d) Notwithstanding Subsections (a) through (c) of this section:

(1) an electric utility may not charge an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items;

(2) an electric utility may not pay an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items; and

(3) An electric utility or an affiliate of an electric utility may not discriminate against a retail electric provider that is not affiliated with the utility in the terms or availability of BPL services.

Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION REQUIRED. Because BPL systems provide benefits to electric delivery systems, the installation of a BPL system on an electric delivery system shall not require the electric utility or the owner of the BPL system or an entity defined in Section 11.003(9) of this title to obtain or expand easements or other rights of way for the BPL system or to give additional consideration as a result of the installation or the operation of a BPL system. For purposes of this section, installation of a BPL system shall be deemed to be consistent with installation of an electric delivery system.

Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED. An electric utility that allows the installation and operation of a BPL system on its electric delivery system shall employ all reasonable measures to ensure that the operation of the BPL system does not interfere with or diminish the reliability of the utility's electric delivery system. Should a disruption in the provision of electric service occur, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff. At all times, the provision of broadband services shall be secondary to the reliable provision of electric delivery services.

SUBCHAPTER C. IMPLEMENTATION OF A BPL SYSTEM  
BY AN ELECTRIC UTILITY

Sec. 43.101. PARTICIPATION BY AN ELECTRIC UTILITY. (a) An electric utility through an affiliate, or through an unaffiliated entity, may elect to install and operate a BPL system on some or all of its electric delivery system in any part or all of its certificated service area.

(b) The installation, operation, and use of a BPL system and the provision of BPL services shall not be regulated by the state, a municipality, or local government other than as provided for in this Chapter.

(c) Neither the commission nor any state or local government or regulatory or quasi-government or quasi-regulatory authority shall:

(1) require an electric utility, either through an affiliate or an unaffiliated entity, to install a BPL system on its power lines or offer BPL services in all or any part of the electric utility's certificated service area;

(2) require an electric utility to allow others to install a BPL system on the utility's electric delivery system in any part or all of the electric utility's certificated service area; or

(3) prohibit an electric utility from having an affiliate or unaffiliated entity install a BPL system or offering BPL services in any part or all of the electric utility's certificated service area.

(d) If a municipality or local government is already collecting a charge or fee from the electric utility for the use of the public rights of way for the delivery of electricity to retail electric customers, the municipality or local government is prohibited from requiring a franchise or an amendment to a franchise or from requiring a charge, fee, or tax from any entity for use of the public rights of way for a BPL system.

(e) The state or a municipality may impose a charge on the provision of BPL services. However, such charge may not be greater than the lowest charge that the state or municipality imposes on other providers of broadband services for use of the public rights of way in its respective jurisdiction.

Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND UTILITY APPLICATIONS. (a) Where an electric utility permits the installation of a BPL system on its electric delivery system under Section 43.052(a)(1)-(3), the electric utility's investment in that BPL system to directly support the BPL electric utility applications and other BPL services consumed by the electric utility that are used and useful in providing electric utility service shall be eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary shall be eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36. The invested capital and expenses described in this section must be allocated to the customer classes directly receiving the services.

(b) In any proceeding under Chapter 36, just and reasonable charges for the use of the electric utility's electric delivery system by a BPL owner or operator shall be limited to the usual and customary pole attachment charges paid to the electric utility for comparable space by cable television operators.

(c) The revenues of an affiliated BPL operator or an affiliated BPL ISP shall not be deemed the revenues of an electric utility for purposes of setting rates under Chapter 36.

#### SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 43.151. AFFILIATES OF AN ELECTRIC UTILITY. (a) Subject to the limitations of this Chapter, an electric utility may have a full or partial ownership interest in a BPL operator or a BPL ISP. Whether a BPL operator or a BPL ISP is an affiliate of the electric utility shall be determined under Section 11.003(2) or Section 11.006.

(b) Neither a BPL operator nor a BPL ISP shall be considered a "competitive affiliate" of an electric utility as that term is defined in Section 39.157.

Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators shall comply with all applicable federal laws, including those protecting licensed spectrum users from interference by BPL systems. The operator of a radio frequency device shall be required to cease operating the device upon notification by a Federal Communications Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected.

SECTION 2. Section 33.001, Utilities Code, is amended to read as follows:

Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair, just, and reasonable rates and adequate and efficient services, the governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality, subject to the limitations imposed by this title.

(b) Notwithstanding subsection (a), the governing body of a municipality shall not have jurisdiction over the BPL system, BPL services, telecommunications using BPL services, or the rates, operations, or services of the electric utility or transmission and distribution utility to the extent that such rates, operations, or services are related, in whole or in part, to the construction, maintenance or operation of a BPL system used to provide BPL services to affiliated or unaffiliated entities."

The amendment to **CSHB 789** 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: Wentworth.

Senator Fraser offered the following amendment to the bill:

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

Amend **CSHB 789** as follows:

(1) On page 1, line 44, insert new SECTION 3 to read as follows and renumber subsequent section accordingly:

"SECTION 3. Section 54.202, Utilities Code, is amended by adding new Subsection (c) to read as follows:

(c) This section may not be construed to prevent a municipally owned utility from providing to its energy customers, either directly or indirectly, any energy related service involving the transfer or receipt of information or data concerning the use,

measurement, monitoring, or management of energy utility services provided by the municipally owned utility, including services such as load management or automated meter reading."

(2) On page 4, strike lines 23 through 30.

The amendment to **CSHB 789** 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.

Senator Estes offered the following amendment to the bill:

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

Amend **CSHB 789** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION \_\_\_\_\_. Chapter 64, Utilities Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. PROTECTIONS RELATED TO BROADBAND NETWORKS AND ADVANCED SERVICES

Sec. 64.201. POLICY. It is the policy of this state to foster free market intermodal communications competition, including providing incentives to invest in advanced communications infrastructure, while still maintaining the "end to end" concept that facilitated the creation and growth of the Internet and still preserving customer choice in the Internet-enabled applications customers employ in association with broadband service.

Sec. 64.202. PROHIBITION ON PREVENTION OR INHIBITION. A network provider that deploys broadband networks and provides advanced services may not prevent or inhibit the use of any application or product by customers in association with the use of an advanced service by blocking transmission and delivery of traffic to and from a particular port, Internet address, or Internet site, by limiting the speed available for use by any particular application, or by instituting technical limitations on the use of any Internet-enabled application. However, a network provider may take reasonable and necessary actions to protect the network from harm and to prevent degradation of service to its general body of customers. This section does not prohibit a network provider from offering or supporting a service or application, including adware, spyware, malware, antivirus, antispam, content filtering, or parental controls or protections, if the customer has a choice between the network provider's service or application and those of an unaffiliated vendor.

Sec. 64.203. PROHIBITION ON BLOCKING AND REDIRECTING. A network provider that deploys broadband networks and provides advanced services or an Internet service may not knowingly or intentionally block or redirect a customer's attempt to access an Internet application or advanced service without notice to the customer unless the:

(1) blocking or redirecting is necessary to comply with the Digital Millennium Copyright Act (Pub. L. No. 105-304), any other federal or state law, a court order, a request from a law enforcement official, or a lawful process or is necessary for reasons of national security;

(2) owner or others in control of the application or advanced service request the blocking or redirecting of traffic;

(3) blocking or redirecting is necessary for the protection of the advanced services provider's or Internet service provider's customers, network, facilities, or business reputation or is the consequence of the advanced services provider's or Internet service provider's activities with respect to maintenance, monitoring, repair, network, reconfiguration, software or hardware changes, or network outages;

(4) blocking or redirecting occurs as a result of software changes, incompatibility of software used by the customer, or any other reason attributable to a third party or not within the reasonable control of the advanced services provider or Internet service provider;

(5) blocking or redirecting is done to provide notice to the customer of:

(A) network conditions;

(B) conditions pertaining to the customer's system or software; or

(C) changes to prices, features, functions, operations, or terms of

service; or

(6) action taken is incident to the enforcement of, or allowed by, the posted terms of service, privacy policy or acceptable use policies, or conditions that apply to use of the service.

Sec. 64.204. JURISDICTION. The commission has jurisdiction to enforce this subchapter.

SECTION \_\_\_\_\_. The Public Utility Commission of Texas shall conduct a study to determine whether Title 2, Utilities Code, adequately preserves customer choice in the Internet-enabled applications employed in association with broadband service and report its conclusions and recommendations to the legislature not later than January 1, 2007. The study must include consultation with and comment from all interested parties.

The amendment to **CSHB 789** 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. 3.

Senator Barrientos offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 789** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_. Section 56.021, Utilities Code, is amended to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas;

(2) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(3) finance the specialized telecommunications assistance program established under Subchapter E;



(4) reimburse the department, the Texas Commission for the Deaf and Hard of Hearing, and the commission for costs incurred in implementing this chapter and Chapter 57;

(5) reimburse a telecommunications carrier providing lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended;

(6) finance the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to telecommunications services, including outreach expenses the commission determines are reasonable and necessary;

(7) reimburse a designated provider under Subchapter F; ~~and~~

(8) reimburse a successor utility under Subchapter G; and

(9) finance the program established under Subchapter H.

SECTION \_\_. Chapter 56, Utilities Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The commission by rule shall establish a program to provide from the universal service fund financial assistance for a free telephone service for blind and visually impaired persons that offers the text of newspapers using synthetic speech. The commission may adopt rules to implement the program.

The amendment to **CSHB 789** 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. 4.

Senator Lucio offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSHB 789** by adding a new SECTION 9 as follows and renumbering the SECTIONS of the bill appropriately:

SECTION 9. Subchapter B, Chapter 56, Utilities Code, is amended by adding Section 56.031 to read as follows:

Sec. 56.031. COMMISSION REVIEW AND EVALUATION OF DISTANCE LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN ENTITIES. (a) On or before October 1, 2005, the commission shall initiate a study for the purpose of evaluating a new funding mechanism to provide financial support to all telecommunications utilities that provide discounts or private network services at prescribed rates to the entities identified in Chapter 57, Subchapter B, Chapter 58, Subchapter G and Chapter 59, Subchapter D.

(b) The study must include an evaluation of alternative sources of funding such support, including utilizing federal E-rate funding, and an evaluation of alternative funding mechanisms that would result in support being made available to all telecommunications utilities on a non-discriminatory basis and on a technology neutral basis in exchange for providing services at rates comparable to those preferred rates being paid by the entities identified under Chapter 57, Subsection B, Chapter 58, Subsection G and Chapter 59, Subsection D provisions.

(c) The commission shall conduct necessary proceedings to evaluate the appropriate funding mechanism and the appropriate method for determining the amount of support to be made available to telecommunications utilities that provide discounts to entities listed in subsection (b).

(d) On or before November 15, 2006, the commission shall issue a report to the speaker of the house or representatives and the lieutenant governor on the viability of establishing a new program or funding mechanism through which support shall be funded and support disbursed in exchange for providing discounts to the entities listed in subsection (b). The commission shall include in the report its findings regarding the cost of any new funding mechanism, the benefit of establishing a new program or funding mechanism and any other relevant information the commission deems appropriate to assist the Legislature in its review of discounts for distance learning and private network services. This section expire September 1, 2007.

The amendment to **CSHB 789** 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.

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

**CSHB 789** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 789 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 789** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3534 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3534** at this time on its second reading:

**HB 3534**, Relating to the creation of the Denton County Municipal Utility District No. 6; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

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 3534 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3534** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 916 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 916** at this time on its second reading:

**CSHB 916**, Relating to creating the Texas Health Care Policy Council.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 916** by adding the following appropriately numbered section to the bill, and renumber subsequent sections as appropriate:

SECTION \_\_\_\_\_. (a) In this Act, "medically underserved community" means a community that has been designated under state or federal law as a health professional shortage area.

(b) The statewide health coordinating council in conjunction with area health education centers shall study the health care delivery system in five geographically diverse medically underserved communities of the state who request to be part of the study. Four of the communities must be located in a county with a population of 50,000 or less. One of the communities must be located in an urban county. As part of the study the Department of State Health Services shall:

(1) identify the ways in which nonphysician health care providers are being used to supplement the provision of health care services in medically underserved communities;

(2) determine which medically underserved communities of the state have been successful and unsuccessful in recruiting and retaining physicians to practice in the community;

(3) identify the nonphysician health care providers who could, within the scope of the health care providers' license, certification, or registration, supplement the provision of health care services in medically underserved communities;

(4) examine whether alternative supervision of nonphysician health care providers or delivery of services by nonphysician health care providers in nontraditional settings would provide a benefit in the delivery of health care services in medically underserved communities;

(5) examine whether each community is medically underserved as a result of a shortage of providers, a shortage of appropriate health care facilities, or both; and

(6) evaluate the measures each medically underserved community has taken to resolve the health professional shortage in the community, determine whether those measures have been successful in reducing the shortage, and identify innovative solutions that should be replicated.

(c) In performing the study under Subsection (b) of this section, the Department of State Health Services shall consult with a variety of the health care practitioners in medically underserved communities, including emergency medical service providers, physicians, nonphysician health care providers, rural hospitals, rural health clinics, and family planning clinics.

(d) The Department of State Health Services shall seek the participation of, and consult with, representatives of each medically underserved community in the study to develop ways the community can improve the delivery of health care services.

(e) Not later than January 1, 2007, the Department of State Health Services shall report the results of the study conducted under this section in writing to the lieutenant governor, the speaker of the house of representatives, and the members and members-elect of the 80th Legislature. The report must include any proposed legislation the department, through this study, determines will facilitate the improvement of the delivery of health care in medically underserved communities.

(f) This Act expires September 1, 2007.

The amendment to **CSHB 916** 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 Nelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 916** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 916 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 916** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3098 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 3098** at this time on its second reading:

**HB 3098**, Relating to the composition of the Rockwall County Juvenile Board.

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 3098 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 3098** be placed on its third reading and final passage.

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

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

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

On motion of Senator Carona and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., was suspended and the time was extended to 6:00 p.m. today for the Wednesday, May 25, 2005, Intent Calendar.

**RECESS**

On motion of Senator Whitmire, the Senate at 1:02 p.m. recessed until 1:45 p.m. today.

**AFTER RECESS**

The Senate met at 2:06 p.m. and was called to order by Senator Armbrister.

**BILLS AND RESOLUTIONS SIGNED**

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

**HB 535, HB 628, HB 719, HB 813, HB 839, HB 904, HB 960, HB 1186, HB 1271, HB 1409, HB 1428, HB 1474, HB 1558, HB 1577, HB 1863, HB 1997, HB 2420, HB 2619, HB 3525, HCR 93, HCR 131, HCR 159, HCR 202, HCR 211.**

**HOUSE BILL 551 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 551** at this time on its second reading:

**HB 551**, Relating to a project of a development corporation in connection with a primary job.

The motion prevailed.

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

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:

Nays: Brimer.

**HOUSE BILL 551 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 551** be placed on its third reading and final passage.

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

Nays: Brimer.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 736**

On motion of Senator Brimer and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 736** was reconsidered:

**SB 736**, Relating to the authority of certain counties to apply a county fire code to certain buildings.

Question — Shall the Senate concur in the House amendment to **SB 736**?

Senator Brimer again moved to concur in the House amendment to **SB 736**.

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

**VOTE RECONSIDERED ON  
HOUSE AMENDMENT TO SENATE BILL 1810**

On motion of Senator Shapleigh and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 1810** was reconsidered:

**SB 1810**, Relating to the dissolution of the Homestead Municipal Utility District, the provision of water supply services to the residents of the district's service area after dissolution, and the rates charged for water service by the City of El Paso.

Question — Shall the Senate concur in the House amendment to **SB 1810**?

Senator Shapleigh again moved to concur in the House amendment to **SB 1810**.

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

**HOUSE BILL 1379 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 1379** at this time on its second reading:

**HB 1379**, Relating to the admissibility in a civil action of certain information relating to identify theft.

The bill was read second time.

Senator Deuell, on behalf of Senator Armbrister, offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1379** as follows:

(1) On page 1, line 16, strike "; and" and substitute ":"

(2) On page 1, lines 17-18, strike "(2) offered to prove liability of the seller, employee, or agent for damages arising from the alleged violation."

The amendment to **HB 1379** was read and was adopted by a viva voce vote.

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

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1379** (Senate committee printing) in SECTION 1 of the bill by striking added Section 18.062, Civil Practice and Remedies Code (page 1, lines 20-30), and substituting the following:

Sec. 18.062. CERTAIN INFORMATION RELATING TO IDENTITY THEFT.

(a) Except as provided by Subsection (b), a business record is not admissible in a civil action if the business record is provided to law enforcement personnel in connection with an investigation of an alleged violation of Section 32.51, Penal Code (fraudulent use or possession of identifying information).

(b) A business record described by Subsection (a) is admissible if the party offering the record has obtained the record from a source other than law enforcement personnel.

The amendment to **HB 1379** 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 Deuell and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1379** 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.

**HOUSE BILL 1379 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 1379** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3016 ON THIRD READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **HB 3016** at this time on its third reading and final passage:

**HB 3016**, Relating to the determination of the market value of certain drug supplies for ad valorem property tax purposes.

The motion prevailed.

Senators Barrientos, Deuell, Gallegos, and Shapleigh asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Barrientos, Deuell, Gallegos, Shapleigh.

**HOUSE BILL 2932 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **HB 2932** at this time on its second reading:

**HB 2932**, Relating to requiring state agency purchasing personnel to disclose certain family relationships with business entities receiving certain state agency contracts.

The motion prevailed.

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

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:

Nays: Brimer.

**HOUSE BILL 2932 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 2932** be placed on its third reading and final passage.

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

Nays: Brimer.

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



**HOUSE BILL 2193 ON SECOND READING**

Senator Whitmire moved to suspend the regular order of business to take up for consideration **HB 2193** at this time on its second reading:

**HB 2193**, Relating to the operation of a system of community supervision.

The motion prevailed by the following vote: Yeas 24, Nays 6.

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

Nays: Brimer, Harris, Jackson, Janek, Staples, Williams.

Absent: Shapiro.

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:

Nays: Brimer, Harris, Jackson, Janek, Staples, Williams.

Absent: Shapiro.

**HOUSE BILL 2193 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2193** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

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

Nays: Brimer, Harris, Jackson, Janek, Staples, Williams.

Absent: Shapiro.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Averitt, Barrientos, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Fraser, Harris, Jackson, Janek, Staples, Williams.

Absent: Shapiro.

**HOUSE BILL 3539 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3539** at this time on its second reading:

**HB 3539**, Relating to the composition of the board of directors of the Saratoga Underground Water Conservation District.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3539** (Senate committee printing) as follows:

(1) Between the enacting clause and SECTION 1 of the bill (page 1, between lines 10 and 11), insert the following:

ARTICLE 1. SARATOGA UNDERGROUND WATER  
CONSERVATION DISTRICT

(2) Redesignate SECTIONS 1-2 of the bill as SECTIONS 1.01-1.02.

(3) Strike SECTION 3 of the bill (page 2, lines 1-5) and substitute the following appropriately numbered ARTICLES:

ARTICLE \_\_. PRESIDIO COUNTY UNDERGROUND WATER  
CONSERVATION DISTRICT

SECTION \_\_.01. Section 5, Chapter 453, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (c) to read as follows:

(c) Section 36.121, Water Code, does not apply to the district.

ARTICLE \_\_. EFFECTIVE DATE

SECTION \_\_.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **HB 3539** 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 Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3539** 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.

**HOUSE BILL 3539 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3539** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 988 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 988** at this time on its second reading:

**CSHB 988**, Relating to the county in which a seller of a motor vehicle may file an application for registration and certificate of title.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 988** (Senate committee printing) by striking SECTION 1 (page 1, lines 13-38) and substituting the following:

SECTION 1. Section 501.0234, Transportation Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A seller who applies for the registration or a certificate of title for a motor vehicle under Subsection (a)(1) shall apply in the county as directed by the purchaser from the counties set forth in Section 501.023 of this code.

(e) The department shall promulgate a form on which the purchaser of a motor vehicle shall designate the purchaser's choice as set out in Section 501.023 as the recipient of all taxes, fees, and other revenue collected as a result of the transaction, which the tax assessor-collector is authorized by law to retain. A seller shall make that form available to the purchaser of a vehicle at the time of purchase.

The amendment to **CSHB 988** 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 Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 988** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 988 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 **CSHB 988** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1137 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1137** at this time on its second reading:

**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.

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 1137 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1137** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1481 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **HB 1481** at this time on its second reading:

**HB 1481**, Relating to the offense of disobeying certain motor vehicle traffic warning devices.

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

Nays: Barrientos.

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:

Nays: Barrientos.

**HOUSE BILL 1481 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1481** be placed on its third reading and final passage.

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

Nays: Barrientos.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 664 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSHB 664** at this time on its second reading:

**CSHB 664**, Relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.

The motion prevailed.

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

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:

Nays: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 664 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 664** be placed on its third reading and final passage.

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

Nays: Ogden.

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

**HOUSE BILL 1485 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **HB 1485** at this time on its second reading:

**HB 1485**, Relating to health benefit plan coverage for screening tests for human papillomavirus and cervical cancer.

The motion prevailed.

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

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:

Nays: Janek, Staples, Williams.

**HOUSE BILL 1485 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1485** be placed on its third reading and final passage.

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

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

Nays: Janek, Staples, Williams.

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

**HOUSE BILL 1791 ON SECOND READING**

Senator Barrientos moved to suspend the regular order of business to take up for consideration **HB 1791** at this time on its second reading:

**HB 1791**, Relating to application of the hazing statutes to private institutions of higher education; providing penalties.

The motion prevailed.

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

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:

Nays: Brimer, Deuell.

**HOUSE BILL 1791 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1791** be placed on its third reading and final passage.

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

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

Nays: Brimer, Deuell.

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

**COMMITTEE SUBSTITUTE****HOUSE BILL 1701 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1701** at this time on its second reading:

**CSHB 1701**, Relating to the defense of indigent persons accused of a criminal offense.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1701 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1701** be placed on its third reading and final passage.

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

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

**HOUSE BILL 209 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 209** at this time on its second reading:

**HB 209**, Relating to challenging an acknowledgment of paternity executed by a minor.

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 209 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 209** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1172 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1172** at this time on its second reading:

**CSHB 1172**, Relating to policies and measures to promote timely graduation of students from public institutions of higher education.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1172** by adding the following appropriately numbered **SECTIONS** to the bill and renumbering subsequent **SECTIONS** of the bill accordingly:

**SECTION** \_\_. Section 56.076, Education Code, is amended to read as follows:

Sec. 56.076. ELIGIBLE EMPLOYER. An eligible institution may enter into agreements with employers that participate in the work-study program. To be eligible to participate in the work-study program, an employer must:

(1) provide part-time employment to an eligible student in nonpartisan and nonsectarian activities;

(2) provide, insofar as is practicable, employment to an eligible student that is related to the student's academic interests;

(3) use Texas college work-study program positions only to supplement and not to supplant positions normally filled by persons not eligible to participate in the work-study program;

(4) provide from sources other than federal college work-study program funds a percentage [not less than 30 percent] of an employed student's wages that is equal to the percentage of a student's wages that the employer would be required to provide to the student in that academic year under the [and 100 percent of other employee benefits for the employed student from sources other than] federal college work-study program [funds, if the employer is a nonprofit entity]; and

(5) provide from sources other than federal college work-study funds [not less than 50 percent of an employed student's wages and] 100 percent of other employee benefits for the employed student[, if the employer is a profit-making entity].

SECTION \_\_. Subchapter E, Chapter 56, Education Code, is amended by adding Section 56.079 to read as follows:

Sec. 56.079. WORK-STUDY STUDENT MENTORSHIP PROGRAM. (a) In this section, "general academic teaching institution" has the meaning assigned by Section 61.003.

(b) A general academic teaching institution may establish a work-study student mentorship program under which students who are enrolled in their junior or senior year at the institution and who meet the eligibility requirements for employment in the Texas college work-study program under Section 56.075 may be employed by the institution under the Texas college work-study program to mentor students who are on academic probation at the institution.

(c) A general academic teaching institution that has established a work-study student mentorship program under this section may require students who are on academic probation at the institution to be matched with a student mentor employed under the program.

(d) Not later than November 1 of each year, each general academic teaching institution that has established a work-study student mentorship program under this section shall submit to the Texas Higher Education Coordinating Board a report regarding the progress of the institution's program. The report must include the number of students employed by the institution as mentors under the program in the preceding academic year and information relating to the costs of the program and the academic progress of the students receiving mentoring under the program in that year.

(e) Each general academic teaching institution that has established a work-study student mentorship program under this section shall set aside a portion of the institution's Texas college work-study program funds to pay for the state's contribution toward the costs of the program.



(f) Notwithstanding Section 56.076, a general academic teaching institution that employs a student mentor under the work-study student mentorship program shall provide from sources other than federal college work-study funds:

- (1) not less than 10 percent of the employed student's wages; and
- (2) 100 percent of other employee benefits for the employed student.

SECTION \_\_. Section 56.304, Education Code, is amended by amending Subsection (e) and adding Subsections (e-1) and (e-2) to read as follows:

(e) If a person is initially awarded a TEXAS grant before the 2005 fall semester, the [A] person's eligibility for a TEXAS grant ends on the sixth anniversary of the initial award of a TEXAS grant to the person and the person's enrollment in an eligible institution, unless the person is provided additional time during which the person may receive a TEXAS grant under Subsection (e-2) [this subsection].

(e-1) If a person is initially awarded a TEXAS grant during or after the 2005 fall semester, unless the person is provided additional time during which the person may receive a TEXAS grant under Subsection (e-2), the person's eligibility for a TEXAS grant ends on:

- (1) the fifth anniversary of the initial award of a TEXAS grant to the person, if the person is enrolled in a degree or certificate program of four years or less; or
- (2) the sixth anniversary of the initial award of a TEXAS grant to the person, if the person is enrolled in a degree program of more than four years.

(e-2) The coordinating board shall adopt rules to provide a person who is otherwise eligible to receive a TEXAS grant additional time during which the person may receive a TEXAS grant in the event of a hardship or other good cause shown that prevents the person from continuing the person's enrollment during the period the person would otherwise have been eligible to receive a TEXAS grant, including a showing of a severe illness or other debilitating condition or that the person is or was responsible for the care of a sick, injured, or needy person.

SECTION \_\_. Section 56.305, Education Code, is amended by amending Subsections (e) and (g) and adding Subsection (e-1) to read as follows:

(e) For the purpose of this section, a person who is initially awarded a TEXAS grant before the 2005 fall semester makes satisfactory academic progress toward an undergraduate degree or certificate only if:

- (1) in the person's first academic year the person meets the satisfactory academic progress requirements of the institution at which the person is enrolled; and
- (2) in a subsequent academic year, the person:
  - (A) completes at least 75 percent of the semester credit hours attempted in the student's most recent academic year; and
  - (B) earns an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at institutions of higher education.

(e-1) For purposes of this section, a person who is initially awarded a TEXAS grant during or after the 2005 fall semester makes satisfactory academic progress toward an undergraduate degree or certificate only if:

- (1) in the person's first academic year the person meets the satisfactory academic progress requirements of the institution at which the person is enrolled; and
- (2) in a subsequent academic year, the person:

(A) completed at least 24 semester credit hours in the student's most recent academic year; and

(B) has earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at institutions of higher education.

(g) The coordinating board shall adopt rules to allow a person who is otherwise eligible to receive a TEXAS grant, in the event of a hardship or for other good cause shown, including a showing of a severe illness or other debilitating condition that may affect the person's academic performance or that the person is responsible for the care of a sick, injured, or needy person and that the person's provision of care may affect the person's academic performance, to receive a TEXAS grant:

(1) while enrolled in a number of semester credit hours that is less than the number of semester credit hours required under Subsection (a)(3); or

(2) if the student's grade point average or the student's completion rate or number of semester credit hours completed, as applicable, falls below the satisfactory academic progress requirements of Subsection (e) or (e-1).

SECTION \_\_. Subchapter M, Chapter 56, Education Code, is amended by adding Section 56.3071 to read as follows:

Sec. 56.3071. EFFECT OF ELIGIBILITY FOR TUITION EQUALIZATION GRANT. (a) Notwithstanding Section 56.307, the total amount of financial aid that a student enrolled in a private or independent institution of higher education is eligible to receive in a state fiscal year from TEXAS grants awarded under this subchapter may not exceed the maximum amount the student may receive in tuition equalization grants in that fiscal year as determined under Subchapter F, Chapter 61.

(b) Notwithstanding any other law, a student enrolled in a private or independent institution of higher education may not receive a TEXAS grant under this subchapter and a tuition equalization grant under Subchapter F, Chapter 61, for the same semester or other term, regardless of whether the student is otherwise eligible for both grants during that semester or term. A student who but for this subsection would be awarded both a TEXAS grant and a tuition equalization grant for the same semester or other term is entitled to receive only the grant of the greater amount.

SECTION \_\_. Section 56.462, Education Code, is amended to read as follows:

Sec. 56.462. LOAN FORGIVENESS. A student who receives a Texas B-On-time loan shall be forgiven the amount of the student's loan if the student is awarded an undergraduate certificate or degree at an eligible institution with a cumulative grade point average of at least 3.0 on a four-point scale or the equivalent:

(1) within:

(A) four calendar years after the date the student initially enrolled in the institution or another eligible institution if:

(i) the institution is a four-year institution; and

(ii) the student is awarded a degree other than a degree in engineering, architecture, or any other program determined by the coordinating board to require more than four years to complete;

(B) five calendar years after the date the student initially enrolled in the institution or another eligible institution if:

(i) the institution is a four-year institution; and

(ii) the student is awarded a degree in engineering, architecture, or any other program determined by the coordinating board to require more than four years to complete; or

(C) two years after the date the student initially enrolled in the institution or another eligible institution if the institution is a public junior college or public technical institute; or

(2) with a total number of semester credit hours, including transfer credit hours and excluding hours earned exclusively by examination, hours earned for a course for which the student received credit toward the student's high school academic requirements, and hours earned for developmental coursework that an institution of higher education required the student to take under Section 51.3062 or under the former provisions of Section 51.306, that is not more than six hours more than the minimum number of semester credit hours required to complete the certificate or degree.

SECTION \_\_. Section 61.225, Education Code, is amended to read as follows:

Sec. 61.225. ELIGIBILITY [~~QUALIFICATIONS~~] FOR GRANT; PERSONS AWARDED GRANTS BEFORE 2005-2006 ACADEMIC YEAR. (a) This section applies only to a person who initially received a tuition equalization grant before the 2005-2006 academic year.

(b) To be eligible for a tuition equalization grant, a person must:

(1) be a Texas resident as defined by the coordinating board and meet, at a minimum, the resident requirements defined by law for Texas resident tuition in fully state-supported institutions of higher education;

(2) be enrolled for at least one-half of a full course load conforming to an individual degree plan in an approved college or university;

(3) be required to pay more tuition than is required at a public college or university and be charged no less than the regular tuition required of all students enrolled at the institution;

(4) establish financial need in accordance with procedures and regulations of the coordinating board;

(5) not be a recipient of any form of athletic scholarship; and

(6) have complied with other requirements adopted by the coordinating board under this subchapter.

(c) A grant to a part-time student under this section shall be made on a pro rata basis of a full-time equivalent.

SECTION \_\_. Subchapter F, Chapter 61, Education Code, is amended by adding Section 61.2251 to read as follows:

Sec. 61.2251. ELIGIBILITY FOR GRANT; PERSONS INITIALLY AWARDED GRANTS DURING OR AFTER 2005-2006 ACADEMIC YEAR.

(a) This section does not apply to a person who initially received a tuition equalization grant before the 2005-2006 academic year.

(b) To be eligible for a tuition equalization grant in the first academic year in which the person receives the grant, a person must:

(1) be a Texas resident as defined by the coordinating board and meet, at a minimum, the resident requirements defined by law for Texas resident tuition in fully state-supported institutions of higher education;

(2) be enrolled for a full course load conforming to an individual degree plan in an approved college or university;

(3) be required to pay more tuition than is required at a public college or university and be charged no less than the regular tuition required of all students enrolled at the institution;

(4) establish financial need in accordance with procedures and regulations of the coordinating board;

(5) not be a recipient of any form of athletic scholarship; and

(6) have complied with other requirements adopted by the coordinating board under this subchapter.

(c) After qualifying for a tuition equalization grant under Subsection (b), a person may receive a tuition equalization grant in a subsequent academic year in which the person is enrolled at an approved institution only if the person:

(1) meets the requirements of Subsection (b);

(2) completed at least:

(A) 24 semester credit hours in the person's most recent academic year, if the person is enrolled in an undergraduate degree or certificate program; or

(B) 18 semester credit hours in the person's most recent academic year, if the person is enrolled in a graduate or professional degree program; and

(3) has earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions of higher education.

(d) Notwithstanding Subsections (b) and (c), a person's eligibility for a tuition equalization grant ends on:

(1) the fifth anniversary of the initial award of a tuition equalization grant to the person, if the person is enrolled in an undergraduate degree or certificate program of four years or less; or

(2) the sixth anniversary of the initial award of a tuition equalization grant to the person, if the person is enrolled in an undergraduate degree program of more than four years.

(e) The coordinating board shall adopt rules to allow a person who is otherwise eligible to receive a tuition equalization grant, in the event of a hardship or for other good cause shown, to receive a tuition equalization grant if the person does not:

(1) complete the semester credit hours required by Subsection (c)(2);

(2) maintain the grade point average required by Subsection (c)(3); or

(3) complete the person's certificate or degree program within the period prescribed by Subsection (d).

SECTION \_\_. Section 61.227, Education Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In no event shall a tuition equalization grant paid pursuant to this subchapter in behalf of any student during any one fiscal year exceed an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at public senior colleges and universities, as determined by the board. ~~[A grant to a part-time student shall be made on a pro-rata basis of a full-time equivalent.]~~

(d) Notwithstanding any other law, a student enrolled in a private or independent institution of higher education may not receive a tuition equalization grant under this subchapter and a TEXAS grant under Subchapter M, Chapter 56, for the same semester or other term, regardless of whether the student is otherwise eligible for both grants during that semester or term. A student who but for this subsection would be awarded both a tuition equalization grant and a TEXAS grant for the same semester or other term is entitled to receive only the grant of the greater amount.

SECTION \_\_. Subsection (h), Section 56.307, Education Code, is repealed.

SECTION 11. (a) The change in law made by this Act to Subchapter M, Chapter 56, Education Code, applies beginning with the 2005-2006 academic year, but does not affect the amount of or entitlement to any grant awarded before the effective date of this Act.

(b) The changes in law made by this Act to Section 56.076, Education Code, apply only to an agreement entered into by an institution of higher education and an employer under that section on or after the effective date of this Act.

(c) The changes in law made by this Act to Section 56.462, Education Code, apply to a student who is awarded an undergraduate certificate or degree on or after the effective date of this Act, without regard to when the student is awarded a Texas B-On-time loan.

(d) The changes in law made by this Act by amending Sections 61.225 and 61.227, Education Code, and by adding Section 61.2251, Education Code, apply beginning with tuition equalization grants for the 2005-2006 academic year, but only for tuition equalization grants awarded on or after the effective date of this Act. A tuition equalization grant awarded before the effective date of this Act is governed by the law in effect immediately before the effective date, and the former law is continued in effect for that purpose.

The amendment to **CSHB 1172** 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 Zaffirini offered the following amendment to the bill:

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

Amend **CSHB 1172** by adding the following new SECTIONs to the bill, appropriately numbered, and renumbering the subsequent SECTIONs of the bill accordingly:

SECTION \_\_. Subsection (c), Section 52.91, Education Code, is amended to read as follows:

(c) The board shall repay bonds issued by the board to fund the Texas B-On-time student loan program using legislative appropriations and money collected by the board as repayment for Texas B-On-time student loans awarded by the board. The board may use tuition set aside under Section 56.465 to repay bonds issued by the board for the Texas B-On-time student loan program. The board may not use money collected by the board as repayment for student loans awarded by the board under Subchapter C to repay bonds issued by the board for the Texas B-On-time student loan program under Section 56.464(b).

SECTION \_\_\_\_\_. Subsection (b), Section 56.463, Education Code, is amended to read as follows:

(b) Money in the Texas B-On-time student loan account may be used only to pay any costs of the coordinating board related to the operation of the Texas B-On-time loan program and as otherwise provided by this subchapter.

SECTION \_\_\_\_\_. Subsection (b), Section 56.465, Education Code, is amended to read as follows:

(b) The amount of tuition set aside under Subsection (a) shall be deposited to the credit of the Texas B-On-time student loan account established under Section 56.463 or to the interest and sinking fund established by the coordinating board under Section 52.91(b) in accordance with the resolution of the board establishing such fund.

SECTION \_\_\_\_\_. The Texas Higher Education Coordinating Board shall, as necessary, adopt rules consistent with Sections 52.91, 56.463, and 56.465, Education Code, as amended by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the rules in the manner provided by law for emergency rules.

The amendment to **CSHB 1172** 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.

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

**CSHB 1172** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1172 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1172** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 2753 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2753** at this time on its second reading:

**CSHB 2753**, Relating to the powers, duties, and functions of the Legislative Budget Board.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2753 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2753** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2110 ON SECOND READING**

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2110** at this time on its second reading:

**CSHB 2110**, Relating to the applicability of certain weapon laws to certain judges and prosecutors.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2110** (Senate committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 13-57), and substitute the following:

SECTION 1. Subsection (a), Section 46.15, Penal Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 ~~[20]~~ years of service as a commissioned officer; and

(B) is issued by ~~[the agency from which the peace officer retired or, for a federal criminal investigator, by]~~ a state or local law enforcement agency; or

(6) a district attorney, criminal district attorney, or county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

(2) Add the following appropriately numbered SECTIONS and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 1701.357, Occupations Code, is amended by amending Subsections (a) through (d) and adding Subsection (i) to read as follows:

(a) This section applies only to:

(1) a peace officer ~~[designated as a peace officer under Article 2.12(1), (2), (3), or (10), Code of Criminal Procedure];~~ and

(2) a federal criminal investigator designated as a special investigator under Article 2.122 ~~[2.122(a)(1) or (5)]~~, Code of Criminal Procedure.

(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer ~~[of the agency to whom this section applies]~~ an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:

(1) the officer honorably retired after not less than a total of 15 ~~[20]~~ years of service as a commissioned officer with one or more state or local law enforcement agencies;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b), provides proof that the officer is receiving retirement benefits on the basis of service with a state or local law enforcement agency, and satisfies the written procedures established by the agency. The agency shall maintain records of any retired officer who holds a certificate issued under this section.



(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued. A retired officer to whom this section applies may request an annual evaluation of weapons proficiency and issuance of a certificate of proficiency as needed to comply with applicable federal or other laws.

(i) On request of a retired officer who holds a certificate of proficiency under this section, the head of a state or local law enforcement agency may issue to the retired officer identification that indicates that the officer retired from the agency. An identification under this subsection must include a photograph of the retired officer.

SECTION \_\_\_\_ . Subsection (g), Section 46.15, Penal Code, as added by Chapter 795, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

The amendment to **CSHB 2110** 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 Van de Putte offered the following amendment to the bill:

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

Amend **CSHB 2110** by inserting the following new SECTIONS, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 30.05, Penal Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2.122, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.

(h) For purposes of Subsection (g), "recognized state" has the meaning assigned by Section 46.15.

SECTION \_\_\_\_ . The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION \_\_\_\_ . This Act takes effect September 1, 2005.

The amendment to **CSHB 2110** 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.

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

**CSHB 2110** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2110 ON THIRD READING**

Senator Eltife moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2110** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2806 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **HB 2806** at this time on its second reading:

**HB 2806**, Relating to the regulation of career schools and colleges.

The motion prevailed.

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

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2806** (Senate committee printing) as follows:

(1) In SECTION 6 of the bill, in the introductory language (page 3, line 45), strike "Subsections (j) and (k)" and substitute "Subsection (j)".

(2) In SECTION 6 of the bill, strike added Subsection (j), Section 132.061, Education Code (page 5, lines 37-47).

(3) In SECTION 6 of the bill, in added Subsection (k), Section 132.061, Education Code (page 5, line 48), strike "(k)" and substitute "(j)".

(4) In SECTION 7 of the bill, in added Section 132.065, Education Code (page 5, line 52), between "ATTENDANCE." and "A", insert "(a)".

(5) In SECTION 7 of the bill, in added Section 132.065, Education Code (page 5, between lines 56 and 57), insert the following:

(b) Before a student begins a program offered by a career school or college to which Subsection (a) applies, the school or college shall provide to the student written notice of all policies related to program interruption occurring before the student's completion of the program. The career school or college shall also notify each student in writing that if the student withdraws from the program, it is the student's responsibility to inform the school or college of the student's withdrawal.

(c) A student attending a program offered by a career school or college to which Subsection (a) applies may not be required to pay tuition to the school or college during the first week of the program. Except as otherwise provided by this subsection, the career school or college shall verify the student's enrollment in the program by documenting the student's participation in an academically related activity of the program at the end of the first week of each semester or other academic term of the program, at the end of the first month each semester or other academic term of the

program, at the midpoint of each semester or other academic term of the program, and at the end of each semester or other academic term of the program. If the career school or college is unable to verify the student's enrollment in the program at any of those times, the student is considered to have withdrawn from the program. The date on which the career school or college was first unable to verify the student's enrollment in the program is the date of the student's withdrawal for refund purposes, and the school or college is not required to verify the student's enrollment in the program after that date.

The amendment to **HB 2806** 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.

**HB 2806** 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: Brimer.

#### **HOUSE BILL 2806 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2806** be placed on its third reading and final passage.

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

Nays: Brimer.

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

#### **HOUSE BILL 1765 ON SECOND READING**

Senator Shapiro moved to suspend the regular order of business to take up for consideration **HB 1765** at this time on its second reading:

**HB 1765**, Relating to the creation of programs and funding for emerging technology industries.

The motion prevailed.

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

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

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

Amend **HB 1765** in Section 1 of the bill (Senate committee printing, page 4, line 25) between "the" and "Lower" by adding "Middle and".

The amendment to **HB 1765** 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 Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1765** 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: Harris, Ogden.

#### **HOUSE BILL 1765 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1765** be placed on its third reading and final passage.

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

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

Nays: Harris, Ogden.

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

#### **HOUSE BILL 2701 ON SECOND READING**

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2701** at this time on its second reading:

**HB 2701**, Relating to higher education authorities.

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 2701 ON THIRD READING**

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2701** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 646 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 646** at this time on its second reading:

**CSHB 646**, Relating to the provision of certain reports and records requested by the attorney general.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 646 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 646** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1068 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1068** at this time on its second reading:

**HB 1068**, Relating to the collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1068** (Senate committee printing) as follows:

(1) Strike SECTIONS 1 and 2 of the bill (page 1, line 13, through page 3, line 31) and substitute the following appropriately numbered SECTIONS:

SECTION \_\_\_\_\_. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.01 to read as follows:

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITION. In this article, "forensic analysis" has the meaning assigned by Article 38.35(a).

Sec. 3. COMPOSITION. (a) The commission is composed of the following 11 members:

(1) one member appointed by the governor, one member appointed by the lieutenant governor, and one member appointed by the speaker of the house of representatives;

(2) one member appointed by the attorney general, who must have expertise in the field of forensic science;

(3) one member appointed by the chancellor of The Texas A&M University System and one member appointed by the chancellor of The University of Texas System, both of whom must be faculty members of a medical school and specialize in clinical laboratory medicine;

(4) one member appointed by the chancellor of the Texas State University System, who must be a faculty or staff member of the Sam Houston State University College of Criminal Justice;

(5) one member appointed by the chancellor of the University of North Texas System, who must be a faculty member and specialize in clinical laboratory medicine;

(6) one member appointed by the president of Texas Southern University, who must be a faculty member of the College of Pharmacy and Health Sciences;

(7) one member appointed by the executive director of the Texas District and County Attorneys Association; and

(8) one member appointed by the executive director of the Texas Criminal Defense Attorneys Association.

(b) Each member of the commission serves a two-year term. The term of the members appointed under Subsections (a)(1), (4), and (5) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsections (a)(2), (3), (6), (7), and (8) expires on September 1 of each even-numbered year.

(c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 4. DUTIES. (a) The commission shall:

(1) develop and implement:

(A) an accreditation process for all laboratories, facilities, or entities that conduct forensic analyses; and

(B) a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;

(2) require all laboratories, facilities, or entities that conduct forensic analyses to:

(A) become accredited by the commission; and

(B) report professional negligence or misconduct to the commission;

and

(3) investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

(b) An investigation under Subsection (a)(3):

(1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred; and

(C) any corrective action required of the laboratory, facility, or entity;  
and

(2) may include one or more:

(A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and

(B) follow-up evaluations of the laboratory, facility, or entity to review:

(i) the implementation of any corrective action required under Subdivision (1)(C); or

(ii) the conclusion of any retrospective reexamination under Paragraph (A).

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) to any person the commission determines to be qualified to assume those duties.

(d) As part of the accreditation process developed and implemented under Subsection (a)(1), the commission may:

(1) establish:

(A) minimum accreditation standards;

(B) mandatory training requirements for individuals employed by a laboratory, facility, or entity that conducts forensic analyses; and

(C) minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and code;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(e) The commission may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with Subsection (b)(1).

(f) The commission shall make all accreditation reviews conducted under Subsection (a)(2) and investigation reports completed under Subsection (b)(1) available to the public. A report completed under Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. REIMBURSEMENT. A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION. The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

SECTION \_\_\_\_ . Article 38.35, Code of Criminal Procedure, is amended by amending Subsections (a), (d), and (e) and adding Subsection (f) to read as follows:

(a) In this article:

(1) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term does not include:

(A) latent print examination; or

(B) a test of a specimen of breath under Chapter 724, Transportation Code[; ~~or~~

~~[(C) an examination or test excluded by rule under Section 411.0205(e), Government Code].~~

(2) "Physical evidence" means any tangible object, thing, or substance relating to a criminal offense.

(d) Physical evidence subjected to a forensic analysis, and testimony regarding the evidence, under this article is not admissible in a criminal case if, at the time of the analysis or the time the evidence is submitted to the court, the crime laboratory or other entity conducting the analysis was not accredited by the Texas Forensic Science Commission [~~Department of Public Safety~~] under Article 38.01 [~~Section 411.0205, Government Code~~].

(e) Notwithstanding Subsection (d), physical evidence subjected to a forensic analysis under this article is not inadmissible in a criminal case based solely on the accreditation status of the crime laboratory or other entity conducting the analysis if the laboratory or entity:

(1) has preserved one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and

(2) has agreed to preserve those samples until all appeals in the case are final. This subsection expires September 1, 2007 [~~2005~~].

(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(2) In SECTION 7 of the bill, in Subsection (c) of amended Section 411.145, Government Code (page 6, line 57), strike "and Section 411.0205".

(3) In Subdivision (2) of SECTION 21 of the bill, between "Sections" and "411.0206" (page 15, line 19), insert "411.0205,".

(4) Add the following appropriately numbered sections to the bill and renumber subsequent sections of the bill accordingly:

SECTION \_\_\_\_\_. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) A sample or specimen taken as part of a test for controlled substances that is a condition of placement on community supervision must be analyzed by a laboratory certified by:

(1) the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services;

(2) the College of American Pathologists Forensic Urine Drug Testing Accreditation Program;

(3) the American Board of Forensic Toxicology;

(4) the American Society of Crime Laboratory Directors; or

(5) the National Association of Medical Examiners.



SECTION \_\_\_\_\_. Article 38.35, Code of Criminal Procedure, as amended by this Act, applies only to the admissibility of physical evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of physical evidence in a criminal proceeding that commenced before the effective date of this Act is governed by the law in effect at the time the proceeding commenced, and that law is continued in effect for that purpose.

SECTION \_\_\_\_\_. (a) Initial appointments to the Texas Forensic Science Commission must be made not later than the 60th day after the effective date of this Act.

(b) Of the initial members of the Texas Forensic Science Commission:

(1) the members appointed under Subdivision (1), (4), or (5), Subsection (a), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act, serve terms expiring September 1, 2007; and

(2) the other members serve terms expiring September 1, 2006.

(c) A member whose term expires on September 1, 2006, is eligible to be reappointed for a two-year term as provided by Subsection (b), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act.

The amendment to **HB 1068** 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 Hinojosa and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1068** 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.

### **HOUSE BILL 1068 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1068** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 1823 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSHB 1823** at this time on its second reading:

**CSHB 1823**, Relating to the rights of a purchaser under an executory contract for conveyance of real property.

The motion prevailed.

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

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 1823** (Senate committee printing) as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 28), strike "Subsection (a)" and substitute "Subsections (a) and (b)".

(2) In SECTION 2 of the bill, between amended Subsection (a) and added Subsection (e), Section 5.062, Property Code (page 1, between lines 42 and 43), insert the following:

(b) This subchapter does not apply to the following transactions under an executory contract:

(1) [a transaction involving] the sale of state land; or

(2) a sale of land by:

(A) the Veterans' Land Board;

(B) this state or a political subdivision of this state; or

(C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code [under an executory contract].

The amendment to **CSHB 1823** 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 Lucio offered the following amendment to the bill:

### Floor Amendment No. 2

Amend **CSHB 1823** (Senate committee printing) as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 28), strike "Subsection (e)" and substitute "Subsections (e), (f), and (g)".

(2) In SECTION 2 of the bill, between added Subsection (e), Section 5.062, Property Code, and SECTION 3 of the bill (page 1, between lines 44 and 45), insert the following:

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory contract to purchase the property covered by the executory contract for longer than three years:

(1) Sections 5.063-5.065;

(2) Section 5.073, except for Section 5.073(a)(2); and

(3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

(3) In SECTION 3 of the bill, in added Subsection (a), Section 5.0621, Property Code (page 1, lines 48-50), strike "if a residential lease of real property includes an option to purchase the property, the provisions of this subchapter and Chapter 92

apply to the lease" and substitute "the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement".

(4) In SECTION 6 of the bill, at the end of added Section 5.082, Property Code (page 3, between lines 44 and 45), insert the following:

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

(1) be sent to the purchaser by regular and certified mail;

(2) include the amount the seller claims is the amount owed under the contract; and

(3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

The amendment to **CSHB 1823** 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.

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

**CSHB 1823** 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.

### COMMITTEE SUBSTITUTE HOUSE BILL 1823 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 **CSHB 1823** be placed on its third reading and final passage.

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

Nays: Deuell.

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

### HOUSE BILL 3111 ON SECOND READING

Senator Janek moved to suspend the regular order of business to take up for consideration **HB 3111** at this time on its second reading:

**HB 3111**, Relating to authorizing the presiding officer of a political subdivision to order an evacuation in certain emergency circumstances.

The motion prevailed.

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

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:

Nays: Williams.

#### **HOUSE BILL 3111 ON THIRD READING**

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3111** be placed on its third reading and final passage.

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

Nays: Williams.

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

#### **MOTION TO PLACE HOUSE BILL 1096 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **HB 1096** at this time on its second reading:

**HB 1096**, Relating to the regulation of dogs in certain municipalities; creating an offense.

The motion was lost by the following vote: Yeas 16, Nays 11, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Barrientos, Carona, Ellis, Gallegos, Hinojosa, Janek, Lindsay, Lucio, Madla, Seliger, Shapleigh, Wentworth, West, Whitmire, Zaffirini.

Nays: Averitt, Brimer, Deuell, Eltife, Estes, Harris, Jackson, Nelson, Shapiro, Staples, Williams.

Present-not voting: Van de Putte.

Absent: Duncan, Fraser, Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2958 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2958** at this time on its second reading:

**CSHB 2958**, Relating to the creation of freight rail districts; granting authority to issue bonds or other similar obligations to create public debt; granting the power of eminent domain.

The bill was read second time.

**(Senator Brimer in Chair)**

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2958** (Senate committee printing) in Section 1 of the bill (page 3, lines 8-13), by striking added Section 171.155, Transportation Code, and substituting a new Section 171.155 to read as follows:

Sec. 171.155. MUNICIPAL LIMIT ON DISTRICT'S POWER OF EMINENT DOMAIN. If the property to be condemned is located in the corporate limits of one or more municipalities, the district may exercise the power of eminent domain to condemn the property only if each municipality in which the property is located consents to the exercise of that power.

The amendment to **CSHB 2958** was read and was adopted by the following vote: Yeas 18, Nays 11.

Yeas: Armbrister, Averitt, Brimer, Duncan, Eltife, Estes, Fraser, Harris, Hinojosa, Jackson, Lucio, Madla, Nelson, Seliger, Shapiro, Van de Putte, Wentworth, Williams.

Nays: Barrientos, Deuell, Ellis, Gallegos, Janek, Lindsay, Shapleigh, Staples, West, Whitmire, Zaffirini.

Absent: Carona, Ogden.

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

**CSHB 2958** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2958 ON THIRD READING**

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2958** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1116 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1116** at this time on its second reading:

**CSHB 1116**, Relating to the governmental entities subject to the sunset review process.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1116** (Senate committee printing) by adding the following appropriately numbered new SECTIONS in the appropriate ARTICLES, and renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_. TEXAS DEPARTMENT OF INSURANCE. Section 31.004, Insurance Code, is amended to read as follows:

Sec. 31.004. SUNSET PROVISION. The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2009 [~~2007~~].

SECTION \_\_. OFFICE OF PUBLIC INSURANCE COUNSEL. Section 501.003, Insurance Code, is amended to read as follows:

Sec. 501.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2009 [~~2007~~].

The amendment to **CSHB 1116** 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 **CSHB 1116**, (Senate committee printing) by adding the following appropriately numbered new SECTIONS in the appropriate ARTICLES, and renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_. TEXAS WORKERS' COMPENSATION COMMISSION. (a) Section 401.002, Labor Code, is amended to read as follows:

Sec. 401.002. APPLICATION OF SUNSET ACT. The Texas Workers' Compensation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2007 [~~2005~~]. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 401.002, Labor Code, to extend the sunset date of the Texas Workers' Compensation Commission. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION \_\_. TEXAS EDUCATION AGENCY. (a) Section 7.004, Education Code, is amended to read as follows:

Sec. 7.004. SUNSET PROVISION. The Texas Education Agency is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the agency is abolished September 1, 2011 [~~2005~~].

(b) Section 8.010, Education Code, is repealed.

(c) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 7.004, Education Code, to extend the sunset date of the Texas Education Agency. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION \_\_. STATE BOARD FOR EDUCATOR CERTIFICATION. (a) Section 21.035(a), Education Code, is amended to read as follows:

(a) The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2007 [~~2005~~].

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 21.035, Education Code. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION \_\_. TEXAS LOTTERY COMMISSION. Section 467.002, Government Code, is amended to read as follows:

Sec. 467.002. APPLICATION OF SUNSET ACT. The commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 466, and Chapter 2001, Occupations Code, expire [~~Act expires~~] September 1, 2011. [~~2005. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 78th Legislature. In the Sunset Advisory Commission's report to the 79th Legislature, the sunset commission may include any recommendations it considers appropriate.~~]

SECTION \_\_. TEXAS ALCOHOLIC BEVERAGE COMMISSION. (a) Section 5.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The Texas Alcoholic Beverage Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and Subchapter A, Chapter 5, of this code expires September 1, 2007 [~~2005~~]. In the review of the commission by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 5.01(b), Alcoholic Beverage Code, to extend the sunset date of the Texas Alcoholic Beverage Commission. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

SECTION \_\_. TEXAS STATE BOARD OF MEDICAL EXAMINERS. (a) Section 151.004, Occupations Code, is amended to read as follows:

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas State Board of Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September 1, 2007 [~~2005~~]. In the review by the Sunset Advisory Commission, as required by this section, the sunset commission shall limit its review to the appropriateness of recommendations made by the sunset commission to the 79th Legislature. In the Sunset Advisory Commission's report to the 80th Legislature, the sunset commission may include any recommendations it considers appropriate.

(b) Sections 204.004 and 205.002, Occupations Code, are repealed.

(c) This section takes effect only if the 79th Legislature, Regular Session, 2005, does not enact other legislation that becomes law and that amends Section 151.004, Occupations Code, to extend the sunset date of the Texas State Board of Medical Examiners. If the 79th Legislature, Regular Session, 2005, enacts legislation of that kind, this section has no effect.

The amendment to **CSHB 1116** 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.

Senator Armbrister offered the following amendment to the bill:

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

Amend **CSHB 1116**, by adding a new Section 2.05 and 2.06 as follows:

SECTION. 2.05. GROUNDWATER CONSERVATION DISTRICTS. Chapter 325, Government Code is amended by adding Sec. 325.025 as follows:

Sec. 325.025. A groundwater conservation district is subject to review under this chapter as if it were a state agency.

SECTION. 2.06. Prior to December 31, 2006, the Sunset Advisory Commission shall develop a recommended schedule for review of all groundwater conservation districts and submit such recommendation to the Governor, Lieutenant Governor and Speaker of the House of Representatives. Such recommendation shall consider such factors as recharge and sustainability of the aquifer and particular attention should be paid to expedite review of those districts with the lowest recharge rates or that overlie multi-state aquifers of five or more contiguous states.

The amendment to **CSHB 1116** 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. 3 except as follows:

Nays: Duncan, Fraser, Staples.



Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 1116** by adding a new appropriately numbered SECTION \_\_\_ by adding a new Subsection (b), Section 11.0111, Parks and Wildlife Code, to read as follows:

SECTION \_\_. (b) The Parks and Wildlife Commission as established by Section 11.012 is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Commission is abolished September 1, 2007.

The amendment to **CSHB 1116** 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. 4 except as follows:

Nays: Wentworth.

Absent: Williams.

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

**CSHB 1116** 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:

Absent: Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1116 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1116** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

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

On motion of Senator Duncan and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., which had been extended to 6:00 p.m., was again suspended and the time was extended to 8:00 p.m. today for the Wednesday, May 25, 2005, Intent Calendar.

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

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

**CSHB 867**, Relating to the registration and supervision of sex offenders; providing penalties.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 867** (Senate committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_. STATE ASSISTANCE TO SEX OFFENDERS.

SECTION \_\_\_.01. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.078 to read as follows:

Sec. 531.078. CERTAIN MEDICATION FOR SEX OFFENDERS PROHIBITED. (a) To the maximum extent allowable under federal law, the commission may not provide sexual performance enhancing medication under the Medicaid vendor drug program or any other health and human services program to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) The executive commissioner of the health and human services commission may adopt rules as necessary to implement this section.

The amendment to **CSHB 867** 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 Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

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

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

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

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 867** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 843 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 843** at this time on its second reading:

**CSHB 843**, Relating to the authority of certain counties to regulate certain communication facility structures in certain circumstances; providing a penalty.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 843 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 843** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2217 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2217** at this time on its second reading:

**CSHB 2217**, Relating to the management of public school land and the permanent school fund.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2217** (Senate committee printing), in SECTION 8 of the bill, immediately following amended Subsection (b), Section 51.402, Natural Resources Code (page 3, between lines 5 and 6), by adding the following:

(c) Notwithstanding Subsection (a), the market value of the investments in real estate under this section on January 1 of each even-numbered year may not exceed an amount that is equal to fifteen percent of the market value of the permanent school fund on that date.

The amendment to **CSHB 2217** 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 Madla offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2217** (Senate committee printing) as follows:

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

SECTION \_\_\_\_\_. Subchapter D, Chapter 11, Natural Resources Code, is amended by adding Section 11.087 to read as follows:

Sec. 11.087. PROHIBITION ON EXPORTATION OF GROUNDWATER PRODUCED FROM STATE-OWNED LAND. A person may not export from this state to a foreign country groundwater produced from state-owned land.

SECTION \_\_\_\_\_. Subchapter D, Chapter 51, Natural Resources Code, is amended by adding Section 51.132 to read as follows:

Sec. 51.132. LEASE OF RIGHT TO PRODUCE GROUNDWATER. (a) The commissioner may lease the right to produce groundwater from unsold public school land only as provided by this section. The commissioner shall consult with the board prior to approving a groundwater lease subject to this chapter. The other provisions of this subchapter apply to leases entered into under this section to the extent those provisions do not conflict with this section.

(b) The board shall adopt clear and detailed rules governing the lease of the right to produce groundwater from unsold public school land. The rules must require:

(1) each regional water planning group and groundwater conservation district in whose jurisdiction the land is located to be notified when the board receives a proposal to lease the right to produce groundwater from the land;

(2) the lease contract to be negotiated by the board;

(3) the lessee to comply with:

(A) the rules and permitting requirements of any groundwater conservation district in which the land is located; and

(B) all state and local laws and rules;

(4) the right to produce groundwater from land to be leased separately from oil and gas rights; and

(5) a lease proposal submitted by a political subdivision of this state to include a letter of interest, approved by the governing body of the political subdivision, that includes:

(A) an estimated total daily and annual amount of water to be produced under the lease;

(B) any requirements of the political subdivision regarding water quality;

(C) a time frame for delivery of the water;

(D) an estimated delivered price for the water; and

(E) a statement that the political subdivision commits to act in compliance with all state and local laws and rules.

(c) Before filing notice of the proposed rules with the secretary of state for publication in the Texas Register, the board must notify the attorney general, Parks and Wildlife Department, Texas Commission on Environmental Quality, Texas Water Development Board, and Department of Agriculture and each member of the legislature that notice of the proposed rules will be published.

(d) The commissioner may not enter into a lease to produce groundwater from unsold public school land prior to adoption of rules as required by this subsection.

SECTION \_\_\_\_ . Subsections (c) and (e), Section 16.053, Water Code, are amended to read as follows:

(e) Each regional water planning group shall submit to the board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the board under Section 16.051(d);

(2) provides information based on data provided or approved by the board in a format consistent with the guidelines provided by the board under Subsection (d);

(3) identifies:

(A) each source of water supply in the regional water planning area in accordance with the guidelines provided by the board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response; and

(C) actions to be taken as part of the response;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) certified groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, acquisition of available existing water supplies, and development of new water supplies, including, if appropriate, groundwater produced from land dedicated to the permanent school fund or permanent university fund;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

(2) Strike SECTION 11 of the bill (page 5, lines 35-39) and substitute the following appropriately numbered section:

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

(b) The following provisions take effect September 1, 2005:

(1) Sections 11.087 and 51.132, Natural Resources Code, as added by this Act;

(2) Section 16.053, Water Code, as amended by this Act.

The amendment to **CSHB 2217** 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.

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

**CSHB 2217** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2217 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2217** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 1611 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1611** at this time on its second reading:

**HB 1611**, Relating to the use of money for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program; making an appropriation.

The bill was read second time.

Senator Armbrister, on behalf of Senator Ogden, offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1611** (Senate committee printing) as follows:

Strike Section 5 of the bill and renumber the following sections accordingly.

The amendment to **HB 1611** 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 Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1611** 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.

**HOUSE BILL 1611 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 **HB 1611** be placed on its third reading and final passage.

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

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

**MOTION TO PLACE**

**HOUSE BILL 1634 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **HB 1634** at this time on its second reading:

**HB 1634**, Relating to arson and arson investigation; creating offenses.

Senator Gallegos temporarily withdrew the motion to suspend the regular order of business.

**HOUSE BILL 1053 ON SECOND READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **HB 1053** at this time on its second reading:

**HB 1053**, Relating to the location of certain municipal solid waste landfills.

The motion prevailed.

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

The bill was read second time.

Senator Staples offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **HB 1053** by striking all below the enacting clause and substituting:

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.123 to read as follows:

Sec. 361.123. LIMITATION ON LOCATION OF MUNICIPAL SOLID WASTE LANDFILLS. (a) This section applies to an application for a permit for a new Type I or new Type IV municipal solid waste landfill or for a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill only if the landfill or proposed site for the new landfill is located in a county that is adjacent to a county with a population of more than 3.3 million and inside the boundaries of a national forest, as designated by the United States Forest Service, on public or private land.

(b) The commission may not issue a permit for a new Type I or new Type IV municipal solid waste landfill to be located as described by Subsection (a).

(c) The commission may not issue a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill located as described by Subsection (a) to a Type I municipal solid waste landfill.

(d) This section does not apply to an application for a permit or permit amendment authorizing an areal expansion of an existing Type I municipal solid waste landfill.

SECTION 2. Section 361.123, Health and Safety Code, as added by this Act, applies only to the issuance of a permit for a new municipal solid waste landfill or of a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill, the application for which is received by the Texas Commission on Environmental Quality on or after September 1, 2005.

SECTION 3. This Act takes effect September 1, 2005.

The amendment was read.

Senator Staples offered the following amendment to Floor Amendment No. 1:

### Floor Amendment No. 2

Amend Floor Amendment No. 1 to **HB 1053** as follows:

1. On page 2, line 3, strike "September 1, 2005" and replace with "the effective date of this Act".

2. Strike SECTION 3 in its entirety, and substitute the following:

"SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005."

The amendment to Floor Amendment No. 1 to **HB 1053** 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.



Question recurring on the adoption of Floor Amendment No. 1 to **HB 1053**, the amendment as amended was adopted by a viva voce vote.

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

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

**HB 1053** 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: Brimer.

### **HOUSE BILL 1053 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1053** be placed on its third reading and final passage.

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

Nays: Brimer.

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

### **HOUSE BILL 1634 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1634** at this time on its second reading:

**HB 1634**, Relating to arson and arson investigation; creating offenses.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

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

Amend **HB 1634** on page 1, line 30 by adding a new subsection (f) to read as follows:

(f) It is a felony of the third degree if a person commits an offense under (a)(2) of this section and he intentionally starts a fire in or on a building, habitation, or vehicle, with intent to damage or destroy property belonging to another, or with intent to injure any person, and in so doing, recklessly causes damage to the building, habitation or vehicle.

The amendment to **HB 1634** 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.

**HB 1634** 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.

**HOUSE BILL 1634 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 **HB 1634** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3434 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3434** at this time on its second reading:

**CSHB 3434**, Relating to testamentary and nontestamentary transfers of property and other benefits and the administration of those benefits.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3434** as follows:

- (1) In SECTION 4 of the bill (committee printing page 1, line 49), strike "(a)".
- (2) In SECTION 4 of the bill (committee printing page 1, lines 55-60), strike Subsection (b).
- (3) Strike SECTION 5 of the bill (committee printing page 1, line 61) and substitute the following:

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **CSHB 3434** 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 Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3434** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3434 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3434** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1772 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1772** at this time on its second reading:

**HB 1772**, Relating to permitting a general-law municipality to annex land in certain circumstances.

The bill was read second time.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1772** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS appropriately:

SECTION \_\_. Subchapter B, Chapter 43, Local Government Code, is amended by adding Section 43.035 to read as follows:

Sec. 43.035. AUTHORITY OF MUNICIPALITY TO ANNEX AREA QUALIFIED FOR AGRICULTURAL OR WILDLIFE MANAGEMENT USE. (a) This section applies only to an area:

(1) eligible to be the subject of a development agreement under Subchapter G, Chapter 212; and

(2) appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code.

(b) A municipality may not annex an area to which this section applies unless:

(1) the municipality offers to make a development agreement with the landowner under Section 212.172 that would:

(A) guarantee the continuation of the extraterritorial status of the area;  
and

(B) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the agricultural or wildlife management use of the area; and

(2) the landowner declines to make the agreement described by Subdivision (1).

SECTION \_\_. The change in law made by Section 43.035, Local Government Code, as added by this Act, applies only to an annexation for which the first hearing required under Section 43.0561 or 43.063, Local Government Code, as appropriate, occurs on or after the effective date of this Act. An annexation for which the first hearing under either of those sections was held before the effective date of this Act is governed by the law in effect at the time of the hearing, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Fraser offered the following amendment to Committee Amendment No. 1:

**Floor Amendment No. 1**

Amend Committee Amendment No. 1 to **HB 1772** (Senate committee printing) on page one, line 30-31, by striking subsection (2) in its entirety and replacing with the following new subsection (2):

(2) the landowner declines to make the agreement described by Subdivision (1) within thirty days of the municipality's offer under subsection (b)(1).

The amendment to Committee Amendment No. 1 to **HB 1772** 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.

Question recurring on the adoption of Committee Amendment No. 1 to **HB 1772**, the amendment as amended was adopted by a viva voce vote.

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

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1772** by adding the following appropriately numbered SECTION and by renumbering the remaining SECTIONS as appropriate:

SECTION \_\_. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0721 to read as follows:

Sec. 43.0721. AUTHORITY OF MUNICIPALITY TO ANNEX LAKE L.B.J. MUNICIPAL UTILITY DISTRICT. Territory located in the Lake L.B.J. Municipal Utility District may not be annexed by a municipality without the consent of the governing body of the district.

The amendment to **HB 1772** 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.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 1772** by adding the following appropriately numbered section to the bill and renumbering the remaining sections of the bill as appropriate:

SECTION \_\_. Subchapter B, Chapter 42, Local Government Code, is amended by adding Section 42.027 to read as follows:

Sec. 42.027. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN HOME-RULE AND GENERAL-LAW MUNICIPALITIES.  
(a) In this section:

(1) "Accepting municipality" means a Type A general-law municipality with a population of less than 7,500 that does not own an electric, gas, or water utility and that is located in the same county with at least 75 percent of the incorporated land area of a releasing municipality.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 1.1 million that has annexed territory for a limited purpose.

(b) The governing bodies of an accepting municipality and a releasing municipality by resolution or ordinance may agree on or before September 1, 2005, to include in the accepting municipality's extraterritorial jurisdiction and exclude from the releasing municipality's extraterritorial jurisdiction an area that is in the extraterritorial jurisdiction of the releasing municipality.

(c) If an agreement is not reached as provided by Subsection (b), the governing body of an accepting municipality by resolution or ordinance enacted before January 1, 2007, may include in the accepting municipality's extraterritorial jurisdiction and exclude from the releasing municipality's extraterritorial jurisdiction, without the releasing municipality's consent, an area that is in the extraterritorial jurisdiction of the releasing municipality if the area:

(1) is not, as of September 30, 2004, identified for annexation by the releasing municipality in the releasing municipality's annexation plan under Section 43.052; and

(2) is contiguous to the accepting municipality's corporate limits or extraterritorial jurisdiction as of the effective date of the resolution or ordinance.

(d) The total area that may be transferred from a releasing municipality's extraterritorial jurisdiction to an accepting municipality's extraterritorial jurisdiction under this section may not exceed in size the area contained in the corporate limits of the accepting municipality as of the date of the transfer.

(e) An accepting municipality that has adopted a resolution or ordinance under Subsection (b) or (c) may without consent annex the following in the manner provided by Subchapter C, Chapter 43:

(1) any territory located in the accepting municipality's extraterritorial jurisdiction on January 1, 2005; and

(2) an area transferred to the accepting municipality's extraterritorial jurisdiction under this section.

(f) An area to be transferred under this section must be identified by a map and a metes and bounds description that must be attached to or included in the resolution or ordinance. The map and metes and bounds description need not be established by an on-the-ground survey.

(g) A copy of the resolution or ordinance adopted by the accepting municipality must be published once in a newspaper of general circulation within the accepting municipality and once in a newspaper of general circulation within the releasing municipality not later than the 30th day after the date the resolution or ordinance is adopted. If the newspaper in which publication is made is a newspaper of general circulation in both municipalities, only one publication of the copy of the resolution or ordinance is required.

(h) The transfer of extraterritorial jurisdiction identified in the resolution or ordinance is effective on the 10th day after the date of publication under Subsection (g).

(i) To the extent of any conflict, this section controls over another provision of a home-rule charter, this chapter, or Chapter 43 or any other provision of this code.

(j) A resolution or ordinance adopted under this section and the relevant provisions of this subchapter may be challenged only by a quo warranto proceeding initiated by the attorney general.

The amendment to **HB 1772** 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. 3.

Senator Wentworth offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **HB 1772** (Senate committee printing) by adding the following appropriately numbered section to the bill and renumbering the remaining sections of the bill accordingly:

SECTION \_\_. Subchapter B, Chapter 43, Local Government Code, is amended by adding Section 43.032 to read as follows:

Sec. 43.032. AUTHORITY OF CERTAIN TYPE A GENERAL-LAW MUNICIPALITIES TO ANNEX AN AREA UPON PETITION BY OWNERS. (a) The governing body of a general-law municipality with a population of 1,500 to 1,599 may annex an area:

(1) that is adjacent to the annexing municipality;

(2) that is not being served with water or sewer service from a governmental entity; and

(3) for which a petition requesting annexation has been filed with the municipality.

(b) A petition requesting annexation filed under Subsection (a)(3) must:

(1) describe the area to be annexed by metes and bounds;

(2) be signed by each owner of real property in the area to be annexed; and

(3) be filed with the secretary or clerk of the municipality.

(c) Before filing the petition, the petitioners and the governing body of the municipality may enter into a development agreement to further cooperation between the municipality regarding the proposed annexation. The agreement must be attached to the petition and may allow:

(1) a facility or service, including optional, backup, emergency, mutual aid, or supplementary facilities or services, to be provided to the area or any part of the area by the municipality, a landowner, or by any other person;

(2) standards for requesting and receiving any form of municipal consent or approval required to perform an activity;

(3) remedies for breach of the agreement;

(4) the amendment, renewal, extension, termination, or any other modification of the agreement;

(5) a third-party beneficiary to be specifically designated and conferred rights or remedies under the agreement; and

(6) any other term to which the parties agree.

(d) If the governing body certifies that the petition meets the requirements of this section and agrees to enter any proposed development agreement attached to the petition, the governing body by ordinance may annex the area. On the effective date of the ordinance, the area is annexed.

(e) If the area is annexed, the municipality shall:

(1) file a certified copy of the ordinance together with a copy of the petition, including any attached development agreement, in the office of the county clerk of the county in which the municipality is located and with each party to the agreement; and

(2) provide a copy of the filed documents to each landowner in the area.

(f) The annexation of an area under this section does not expand the extraterritorial jurisdiction of the municipality. Sections 42.021 and 42.022 do not apply to an annexation made under this section.

The amendment to **HB 1772** 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. 4.

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

**HB 1772** 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.

### **HOUSE BILL 1772 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1772** be placed on its third reading and final passage.

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

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

### **ANNIVERSARY WISHES EXTENDED**

Senator Armbrister was recognized and, on behalf of the Senate, extended anniversary wishes to Senator Fraser and his wife, Linda.

**(Senator Carona in Chair)**

### **HOUSE BILL 2491 ON SECOND READING**

Senator Armbrister moved to suspend the regular order of business to take up for consideration **HB 2491** at this time on its second reading:

**HB 2491**, Relating to the administration and collection of ad valorem taxes, including the transfer of an ad valorem tax lien and a contract for foreclosure of an ad valorem tax lien; amending, correcting, and clarifying the Tax Code, Property Code, and Civil Practice and Remedies Code.

The motion prevailed.

Senators Harris and Staples 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 committee amendment to the bill:

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

Amend **HB 2491** (engrossed version) as follows:

(1) On page 8, line 16, after "transferee" insert "within 30 days."

(2) Insert the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. Section 32.065(c), Tax Code, is amended to read as follows:

(c) Notwithstanding any other provision of this code, a transferee of a tax lien is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure of judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

(3) Insert the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. Section 33.11, Tax Code, is amended to read as follows:

Sec. 33.11. EARLY ADDITIONAL PENALTY FOR COLLECTION COSTS FOR TAXES IMPOSED ON PERSONAL PROPERTY. (a) In addition to the authority granted by Section 33.07, in order to defray costs of collection, the governing body of a taxing unit or appraisal district in the manner required by law for official action may provide that taxes imposed on tangible personal property that become delinquent on or after February 1 of a year incur an additional penalty on a date that occurs before July 1 of the year in which the taxes become delinquent if:

(1) the taxing unit or appraisal district or another unit that collects taxes for the unit has contracted with an attorney under Section 6.30; and

(2) the taxes on the personal property become subject to the attorney's contract before July 1 of the year in which the taxes become delinquent.

(b) A penalty imposed under Subsection (a) is incurred by the delinquent taxes on the later of:

(1) the date those taxes become subject to the attorney's contract; or

(2) 60 days after the date the taxes become delinquent.

(c) The amount of the penalty may not exceed the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes.

(d) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(e) If a penalty is provided under this section, a taxing unit or appraisal district may not:

(1) recover attorney's fees in a suit to collect delinquent taxes subject to the penalty, or

(2) impose an additional penalty under Section 33.07 on a delinquent personal property tax.



(f) If the governing body of a taxing unit or appraisal district provides for a penalty under this section, a tax bill relating to tangible personal property that is sent under Section 31.01 must include a notice of the penalty and the date on which it is incurred the collector for the taxing unit or appraisal district shall send a notice of the penalty to the property owner. The notice shall state the date on which the penalty is incurred, and the tax collector shall deliver the notice at least 30 and not more than 60 days before that date. If the amount of personal property tax, penalty and interest owed to all taxing units for which the tax collector collects exceeds \$10,000 on a single account identified by a unique property identification number, the notice regarding that account must be delivered by certified mail, return receipt requested. All other notices under this section may be delivered by regular first-class mail.

(g) The authority granted to taxing units and appraisal districts under this section is to be construed as an alternative, with regards to delinquent personal property taxes, to the authority given by Section 33.07.

(4) On page 13, line 3, strike Subsection (6) in its entirety and replace with the following:

(6) requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the foreclosure notices in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes on the first page, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows:

"PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)."

(5) On page 13, line 24, strike Subsection (f) in its entirety and replace with the following:

(f) Before accepting an application fee or executing a contract, ~~[The first written communication by the lender]~~ the transferee shall disclose to the transferee's ~~[its]~~ prospective borrower ~~[shall disclose]~~ each type and the amount ~~[types]~~ of possible additional charges or fees that may be incurred by the borrower in connection with the loan or contract under this section.

The amendment to **HB 2491** was read and was adopted by a viva voce vote.

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

Senator Madla offered the following committee amendment to the bill:

### **Committee Amendment No. 2**

Amend **HB 2491** adding the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 31.05(a), Tax Code, is amended to read as follows:

(a) The governing body of a taxing unit [~~that collects its own taxes~~] may adopt the discounts provided by Subsection (b) or Subsection (c) [~~of this section~~], or both, in the manner required by law for official action by the body. The discounts, if adopted, apply only to that taxing unit's taxes [~~for a taxing unit for which the adopting taxing unit collects taxes if the governing body of the other unit, in the manner required by law for official action by the body, adopts the discounts or approves of their application to its taxes by the collecting unit.~~] If a taxing unit adopts both discounts under Subsections (b) and (c) [~~of this section~~], the discounts adopted under Subsection (b) apply unless the [~~unit mails its~~] tax bills for the unit are mailed after September 30, in which case only the discounts under Subsection (c) apply. A taxing unit that collects taxes for another taxing unit that adopts the discounts may prepare and mail separate tax bills on behalf of the adopting taxing unit and may charge an additional fee for preparing and mailing the separate tax bills and for collecting the taxes imposed by the adopting taxing unit. If under an intergovernmental contract a county assessor-collector collects taxes for a taxing unit that adopts the discounts, the county assessor-collector may terminate the contract if the county has adopted a discount policy that is different from the discount policy adopted by the adopting taxing unit.

SECTION \_\_\_\_\_. (a) The change in law made in SECTION \_\_\_\_\_, amending Section 31.05(a), Tax Code, applies to the adoption of a discount by a taxing unit beginning with the 2005 tax year, except as provided by Subsection (b) of this section.

(b) If a taxing unit's tax bills for the 2005 tax year are mailed before the effective date of this Act, the change in law made to Section 31.05(a), Tax Code, applies to the adoption of a discount by the taxing unit beginning with the 2006 tax year, and the law in effect when the tax bills were mailed applies to the 2005 tax year with respect to that taxing unit.

The amendment to **HB 2491** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 2.

Senator Madla offered the following committee amendment to the bill:

### **Committee Amendment No. 3**

Amend **HB 2491** adding the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 22.28(a), Tax Code, is amended to read as follows:

(a) Except as otherwise provided by Section 22.30, the chief appraiser shall impose a penalty on a person who fails to timely file a rendition statement or property report required by this chapter in an amount equal to 10 percent of the total amount of taxes imposed on the property for that year by taxing units participating in the appraisal district. A lien in the amount of the penalty attaches to the property against which the penalty is imposed, as if it were a tax, and a delinquent penalty accrues penalties and interest in the same manner as a delinquent tax.

SECTION \_\_\_\_\_. Section 22.29, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A lien in the amount of the penalty attaches to the property against which the penalty is imposed, as if it were a tax, and a delinquent penalty accrues penalties and interest in the same manner as a delinquent tax.

SECTION \_\_\_\_\_. Subchapter B, Chapter 22, Tax Code, is amended by adding Section 22.31 to read as follows:

Sec. 22.31. RENDITION VERIFICATION. (a) The chief appraiser or an authorized representative of the chief appraiser may request in writing that a property owner provide to the chief appraiser or authorized representative of the chief appraiser copies of the schedules and forms filed by the property owner with the Internal Revenue Service that relate to the acquisition and cost of fixed assets, including fixed asset ledgers and depreciation schedules. Not later than the 21st day after the date the request is received, the property owner shall deliver or make available the requested documents for inspection by the chief appraiser or authorized representative.

(b) Any document delivered or made available for inspection under Subsection (b) is confidential to the same extent that a rendition statement or property report is confidential under Section 22.27.

(c) A property owner who delivers or makes available for inspection documents under Subsection (b) may redact from the documents any information not specifically related to the acquisition, cost, or depreciation of fixed assets.

(d) An appraisal district may contract with a qualified person to perform services under this section. A person performing services under this section is not an appraiser for purposes of Chapter 25. A person performing services under this section shall not perform a field visit to verify assets.

(e) A contract entered into under this section is not subject to Section 6.11(a) of this code.

(f) The chief appraiser shall submit a report increased value added as a result of rendition verification for each school district within the appraisal district boundaries no later than July 31 of each year to the commissioner of education. The commissioner shall adjust distributions from the Texas education fund to the school district based on the reported value increases.

SECTION \_\_\_\_\_. Sections \_\_.-\_\_. amending Sections 22.28(a) and 22.29, Tax Code and adding new Section 22.31, Tax Code, take effect September 1, 2005, and apply only to the rendition of property for ad valorem tax purposes for a tax year that begins on or after that date. Any additional value identified as a result of rendition verification for tax year 2006 shall be treated as omitted property as authorized by Section 25.21(a), Tax Code.

The amendment to **HB 2491** was read and failed of adoption by the following vote: Yeas 14, Nays 16.

Yeas: Armbrister, Barrientos, Duncan, Ellis, Hinojosa, Lindsay, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Averitt, Brimer, Carona, Deuell, Eltife, Estes, Fraser, Gallegos, Harris, Jackson, Janek, Nelson, Seliger, Shapiro, Staples, Williams.

Absent: Ogden.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 4**

Amend **HB 2491** adding the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subdivision (3), Section 23.51, Tax Code, is amended to read as follows:

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. The chief appraiser shall determine the categories into which land in the appraisal district is classified. In classifying land according to categories, the chief appraiser shall distinguish between [~~Categories of land may include but are not limited to~~] irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste. The chief appraiser may establish additional categories. The chief appraiser shall [~~and may be~~] further divide each category [~~divided~~] according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors that [~~which~~] influence the productive capacity of the category. The chief appraiser shall obtain information from the Texas Agricultural [~~Agriculture~~] Extension Service, the Natural Resources [~~Soil~~] Conservation Service of the United States Department of Agriculture, and other recognized agricultural sources for the purposes of determining the categories of land [~~production~~] existing in the appraisal district.

The amendment to **HB 2491** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 4.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 5**

Amend the House engrossed version of **HB 2491** as follows:

On page 13, line 5, strike "foreclosure notices" and insert "notice of sale".

The amendment to **HB 2491** was read and was adopted by a viva voce vote.

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

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 6**

Amend **HB 2491** on page 28, line 24, SECTION 21, by adding the following and by renumbering the subsequent sections appropriately.

The Civil Practice and Remedies Code is amended by adding Title 8 to read as follows:

TITLE 8. CIVIL PROCESS  
CHAPTER 191. PRIVATE PROCESS SERVERS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. In this chapter:

(1) "Civil court" includes:

(A) a civil district court;

- (B) a family district court;
- (C) a county court at law;
- (D) a probate court;
- (E) a justice court; and
- (F) a small claims court.

(2) "Civil process" means all process issued or sanctioned by a civil court, except that the term does not include service of any writ that requires the actual taking of possession of a person, property, or thing or an enforcement action required of or directed to a peace officer related to the taking of possession of a person, property, or thing.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Constable" means a constable, deputy constable, or reserve deputy constable.

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

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

(7) "Person" means an individual.

(8) "Private process server" means a person who serves or offers to serve civil process

(9) "Public servant" has the meaning assigned by Section 1.07, Penal Code.

(10) "Sheriff" means a sheriff, deputy sheriff, or reserve deputy sheriff.

Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to a sheriff or constable engaged in the discharge of that person's official duties. A sheriff or constable who serves civil process other than in the performance of official duties must be licensed under this chapter.

(b) This chapter does not apply to an investigator who is a peace officer employed by a county or district attorney in this state engaged in the discharge of that person's official duties or in the delivery of nonjudicial notices. An investigator described by this subsection who serves civil process other than in the performance of official duties must be licensed under this chapter.

(c) This chapter does not limit or restrict the service of process in this state as provided by a court order in a specific civil case in which the presiding magistrate or judge has determined the credibility of the person designated to serve the process. A court may not issue a blanket or standing order authorizing service of process.

(d) This chapter does not apply to service of a subpoena by a court reporter certified under Chapter 52, Government Code.

[Sections 191.003-191.050 reserved for expansion]

#### SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 191.051. LICENSE REQUIRED. (a) Except as provided by Section 191.002, a person may not serve civil process in this state unless the person is licensed under this chapter.

(b) A person who is not a license holder and who is not exempt under Section 191.002 may serve outside this state a civil process issued by a civil court of this state if the person:

(1) is authorized by law, rule, or court order in the person's jurisdiction to serve process;

(2) is a disinterested person competent to make an oath of that fact; and

(3) makes a return of service under a declaration under penalty of perjury.

(c) A person may not represent that the person is a licensed private process server unless the person is licensed under this chapter.

Sec. 191.052. LICENSE APPLICATION. (a) An applicant for a process server license under this chapter must submit an application on a form prescribed by the commission. To be eligible for a license under this section, an applicant must:

(1) be a least 18 years of age;

(2) demonstrate honesty, trustworthiness, and integrity;

(3) submit the nonrefundable application fee; and

(4) comply with the requirements adopted under Subsection (b).

(b) Each license applicant must provide proof to the department in a manner acceptable to the department of completion of a department-approved 10-hour course on civil process consisting of a least eight hours of instruction on service of process and two hours of instruction on department regulation and rules.

Sec. 191.053. CRIMINAL HISTORY RECORD CHECK. (a) Each applicant for a process server license under this chapter shall disclose to the department in the manner prescribed by the commission any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

(b) On receipt of an original application for issuance of a process server license, the department shall conduct a thorough background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. The investigation must include:

(1) the submission of fingerprints by the applicant for processing through appropriate local, state, and federal law enforcement agencies, and;

(2) the examination by the department of law enforcement records maintained by a local, state, or federal law enforcement agency.

(c) On receipt of an application for renewal of a process server license, the department shall conduct a background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. The investigation must include examination by the department of law enforcement records maintained by a local, state, or federal law enforcement agency.

(d) A background check under this section and the department's consideration of any criminal conviction is governed by:

(1) this chapter;

(2) Sections 411.093 and 411.122, Government Code; and

(3) Chapter 53, Occupations Code.

(e) The conviction of an applicant of a crimes does not automatically;

(1) disqualify the applicant;

(2) require revocation of a license; or

(3) require denial of an application for renewal of a license.

(f) An application for issuance or renewal of a license by a person who has pled guilty to a crime and been placed on deferred adjudication in any jurisdiction shall be considered on the basis of the criteria set forth in Subsections (d) and (e).

Sec. 191.054. ISSUANCE OF LICENSES. (a) The department shall issue a process server license to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, as applicable, and pays all required fees.

(b) Except as provided by Subsection (c), the department shall issue the license no later than the 60th day after the date on which the application is received by the department.

(c) If the department is notified by the Department of Public Safety that a criminal history record check affecting an applicant will not be completed within the 60 days prescribed by Subsection (b), the department shall notify the applicant of the delay.

Sec. 191.055. TERM OF LICENSE; RENEWAL. (a) A license issued under this chapter expires on the first anniversary of the date of issuance.

(b) The department shall send a renewal notice to each license holder not later than the 90th day before the date of expiration of the license.

(c) A license holder may renew the license by submitting to the department before the expiration date, on a form prescribed by the commission, a renewal application accompanied by the renewal fee. To renew a license, the license holder must also present evidence satisfactory to the department of completion, before the expiration of the license, of department-approved continuing education consisting of at least four hours of instruction.

[Sections 191.056-191.100 reserved for expansion]

#### SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A license holder may serve civil process in the manner provided by law for service by sheriffs and constables. The person may serve the process anywhere in this state.

(b) A license holder may determine the location of an individual for the purpose of serving civil process.

(c) A license holder may serve all civil process, except for a citation in an action of forcible entry and detainer or a civil process requiring that an enforcement action be physically enforced by the person delivering the civil process.

(d) A license holder may not serve a civil process in any action in which the license holder is an interested party.

(e) An employee of an attorney or a law firm may not serve a civil process, except a subpoena under Rule 176, Texas Rules of Civil Procedure, in an action in which the employing attorney or law firm is counsel to a party.

(f) A license holder may not have a firearm on the license holder's person when in the act of serving civil process, unless the license holder is also a peace officer or an honorably retired peace officer authorized to carry a firearm. A weapon may not be visible during the delivery of civil process.

Sec. 191.102. COSTS. A fee charged and collected by a license holder for service of process may be charged as costs in a judicial proceeding. Fees charged by a license holder for service of process exceeding the service of process fees set by the commissioners court in the county in which the case is pending may not be charged as costs in a judicial proceeding unless otherwise approved by the judge presiding over the case.

Sec. 191.103. PUBLIC SERVANT. An assault on a license holder during the delivery of civil process shall be treated as an assault on a public servant. A county is not liable for the actions of a license holder unless the license holder is an employee of the county.

Sec. 191.104. IDENTIFICATION NUMBER. (a) The department shall issue to each license holder a unique identification number:

(b) The unique identification number of the private process server must be included on or attached to each valid process return and each copy of process served. The license holder is not required to provide with the service any other department information. Failure to include the person's unique identification number on each valid process return or on the copy does not render the service of process invalid.

(c) The department shall issue to each license holder a photo identification card with the person's unique identification number on the card. The department shall determine the size, design, and content of the identification card. The card remains the property of the state and must be returned on demand by the department.

(d) A license holder shall produce the license holder's identification card to any person requesting it during the performance of service of process.

(e) An identification card, badge, insignia, seal, patch, or other form of identification that may be construed to be that of a peace officer may not be worn or displayed by a license holder.

Sec. 191.105. RETURN OF SERVICE OF PROCESS. The return of service completed by the license holder may be attached to a court-issued return of service. The return of service is not required to be verified but must be signed by the license holder, under penalty of perjury, verifying the truthfulness of the return of any process delivered. The return of service shall be returned to the party requesting service or, at the party's direction, filed with the appropriate court.

[Sections 191.106-191.150 reserved for expansion]

#### SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission may deny, suspend, or revoke a license and the commission may impose an administrative penalty under Subchapter F, Chapter 51, Occupations Code, on a finding that the license holder has:

(1) refused to permit an examination by the department of the records required to be maintained under rules adopted by the commission;

(2) violated this chapter, a rule implementing this chapter, or an order of the executive director or commission;

(3) knowingly made a false or fraudulent return of service; or

(4) been convicted of a misdemeanor that directly relates to the duties and responsibilities involved in performing the duties of a process server or of any felony.

(b) Proceedings for the denial, revocation, or suspension of a license, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51, Occupations Code, and Chapter 2001, Government Code.

(c) The commission may not suspend or revoke a license or impose an administrative penalty on the basis of a determination that the license holder has:



(1) made not more than three unintentionally defective returns of service in any 12-month period as long as a corrected return is made to the appropriate recipient within a reasonable time; or

(2) effected service employing a deceptive or misleading method as long as the method is legal.

[Sections 191.152-191.200 reserved for expansion]

#### SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an offense if the person practices as a private process server and is not authorized to do so under this chapter. An offense under this subsection is a Class C misdemeanor, unless it is shown on the trial of the offense that the defendant has previously been convicted under this subsection, in which the offense is a Class A misdemeanor.

(b) A person commits an offense if the person knowingly or intentionally falsifies a return of civil process. An offense under this subsection is a Class A misdemeanor unless the person's intent is to defraud or harm another, in which even the offense is a state jail felony.

SECTION 2. Subsection (d), Section 154.005, Local Government Code, is amended to read as follows:

(d) A constable may receive, in addition to Subsection (c), all fees, commissions, or payments for delivering notices required by Section 24.005, Property Code, relating to eviction actions. Notices may only be delivered when not in conflict with the official duties and responsibilities of the constable. A constable delivering said notices must not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while delivering said notices. ~~[For purposes of collecting fees for serving said notices, a constable is considered a private process server.]~~

SECTION 3. (a) Except as provided by Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 2005.

(b) Sections 191.051 and 191.201, Civil Practice and Remedies Code, as added by this Act, take effect March 1, 2006.

SECTION 4. Notwithstanding Section 191.052, Civil Practice and Remedies Code, as added by this Act, a person who provides proof to the Texas Department of Licensing and Regulation in a manner satisfactory to the department that the person is named or included, by the terms of standing orders promulgated by any county of this state that required named persons to have completed process server training equivalent to that required by Section 191.052, Civil Practices and Remedies Code, as added by this Act, as one authorized to serve civil process in this state, is entitled to a license under this chapter without complying with the requirement of instruction on service of civil process if the person meets all other requirements of that section, including the completion of two hours of instruction on law and rules.

SECTION 5. Except as provided by Section 3 of this Act, this Act takes effect September 1, 2005.

The amendment to **HB 2491** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 6.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2491** by adding the following to Section 43.01, Tax Code:

Sec. 43.01. AUTHORITY TO BRING SUIT. (a) ~~The following persons [A taxing unit]~~ may sue the appropriate appraisal district or the appraisal review board established for that appraisal district [that appraises property for the unit] to compel the appraisal district or appraisal review board to comply with the provisions of this title, rules of the comptroller, or other applicable law;

(1) a taxing unit;

(2) a property owner;

(3) a lessee of property who is contractually obligated to pay taxes imposed on the property;

(4) an agent of a property owner designated under Section 1.111; or

(5) any other person authorized to bring an action on behalf of a person listed in Subdivisions (1)-(4).

(b) The court shall award court costs and reasonable attorney's fees to a plaintiff who prevails in a suit brought under this section.

SECTION 2. The changes in law made by this Act apply only to a suit filed under Section 43.01, Tax Code, on or after the effective date of this Act. A suit filed under Section 43.01, Tax Code, before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

The amendment to **HB 2491** 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 Barrientos offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2491** (Senate committee printing) by adding the following appropriately numbered sections and renumbering the subsequent sections of the bill accordingly:

SECTION \_\_\_\_. Section 11.43, Tax Code, is amended by adding Subsections (l) and (m) to read as follows:

(l) The form for an application under Section 11.13 must include a space for the applicant to state the applicant's date of birth. Failure to provide the date of birth does not affect the applicant's eligibility for an exemption under that section, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older.

(m) Notwithstanding Subsections (a) and (k), a person who receives an exemption under Section 11.13, other than an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older, in a tax year is entitled to receive an exemption under Section 11.13(c) or (d) for an individual 65 years of age or older in the next tax year on the same property without applying for the exemption if the

person becomes 65 years of age in that next year as shown by information in the records of the appraisal district that was provided to the appraisal district by the individual in an application for an exemption under Section 11.13 on the property or in correspondence relating to the property. This subsection does not apply if the chief appraiser determines that the individual is no longer entitled to any exemption under Section 11.13 on the property.

SECTION \_\_\_\_ . Subchapter A, Chapter 33, Tax Code, is amended by adding Section 33.045 to read as follows:

Sec. 33.045. NOTICE OF PROVISIONS AUTHORIZING DEFERRAL OR ABATEMENT. (a) A tax bill mailed by an assessor or collector under Section 31.01 and any written communication delivered to a property owner by an assessor or collector for a taxing unit or an attorney or other agent of a taxing unit that specifically threatens a lawsuit to collect a delinquent tax shall contain the following explanation in capital letters: "IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES".

(b) This section does not apply to a communication that relates to taxes that are the subject of pending litigation.

SECTION \_\_\_\_ . Section 11.43(m), Tax Code, as added by this Act, applies only to eligibility for an exemption from ad valorem taxation under Section 11.13(c) or (d), Tax Code, for an individual 65 years of age or older for a tax year beginning on or after January 1, 2006.

The amendment to **HB 2491** 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.

Senator Staples offered the following amendment to the bill:

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

Amend **HB 2491** by adding the following appropriately numbered ARTICLE to the bill and renumbering the other ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . APPEAL OF ORDER OF APPRAISAL REVIEW BOARD

SECTION \_\_\_\_ .01. Section 42.23, Tax Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Each party to an appeal is considered a party seeking affirmative relief for the purpose of discovery regarding expert witnesses under the Texas Rules of Civil Procedure if, on or before the 120th day after the date the appeal is filed, the property owner:

(1) makes a written offer of settlement;

(2) requests alternative dispute resolution; and

(3) designates, in response to an appropriate written discovery request,

which cause of action under this chapter is the basis for the appeal.

(e) For purposes of Subsection (d), a property owner may designate a cause of action under Section 42.25 or 42.26 as the basis for an appeal, but may not designate a cause of action under both sections as the basis for the appeal. Discovery regarding a cause of action that is not specifically designated by the property owner under Subsection (d) shall be conducted as provided by the Texas Rules of Civil Procedure.

SECTION \_\_.02. The change in law made by this article applies only to an appeal of an appraisal review board order if the appeal is filed or amended on or after the effective date of this Act. An appeal filed or amended before the effective date of this Act is covered by the law in effect when the appeal was filed or amended, and the former law is continued in effect for that purpose.

The amendment to **HB 2491** 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. 3.

Senator Armbrister offered the following amendment to Committee Amendment No. 1:

#### **Floor Amendment No. 4**

Amend Committee Amendment No. 1 to **HB 2491** as follows:

On page 1, line 20-21, after the word "In" strike "addition to the authority granted by Section 33.07, in"

On page 3, line 7, after "section," strike "a tax bill relating to tangible personal property that is sent under Section 31.03 must include a notice of the penalty and the date on which it is incurred"

The amendment to Committee Amendment No. 1 to **HB 2491** 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. 4.

Senator Wentworth offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 2491** as follows:

Insert the following in the appropriate place and renumber appropriately:

SECTION \_\_. Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.225 to read as follows:

Sec. 23.225. APPRAISAL OF CERTAIN LAND INCLUDED IN HABITAT PRESERVE AND SUBJECT TO CONSERVATION EASEMENT. (a) In this section, "endangered species," "federal permit," and "habitat preserve" have the meanings assigned by Section 83.011, Parks and Wildlife Code.

(b) In appraising land that is included in a habitat preserve and is subject to a conservation easement, created under Chapter 183, Natural Resources Code, or other law, that is held by a local government and that restricts the use of the land to protect an endangered species under a federal permit, the chief appraiser shall consider the effect of the restriction on the value of the land.

SECTION \_\_. Section 23.225, Chapter 23, Tax Code, applies only to the appraisal of land for a tax year beginning on or after the effective date of this Act.

The amendment to **HB 2491** 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 Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **HB 2491** by adding new SECTIONS to the bill, numbered appropriately, to read as follows:

SECTION \_\_. The heading to Subchapter C, Chapter 22, Tax Code, is amended to read as follows:

#### SUBCHAPTER C. [~~OTHER~~] REPORTS OF POLITICAL SUBDIVISION ACTIONS

SECTION \_\_. Chapter 22, Tax Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. REPORT OF SALES PRICE

Sec. 22.61. SALES PRICE DISCLOSURE REPORT. (a) Except as provided by Subsection (b), not later than the 10th day after the date the deed is recorded in the county real property records, the purchaser or grantee of real property under a recorded deed conveying an interest in the real property shall file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located.

(b) This section does not apply to a sale or other transfer of real property if:

(1) the sale or other transfer is made:

(A) pursuant to a court order;

(B) to or from a trustee in bankruptcy;

(C) pursuant to a power of sale under a deed of trust or other encumbrance secured by the property;

(D) by a deed in lieu of foreclosure;

(E) by one co-owner to one or more other co-owners;

(F) to a spouse or to a person or persons in the first degree of lineal consanguinity of one or more of the sellers or grantors;

(G) to or from a governmental entity;

(H) pursuant to the power of eminent domain; or

(I) to a utility company and the real property is an easement, license, or right-of-way; or

(2) the real property is a severed mineral interest.

(c) A sales price disclosure report must be signed by the purchaser or grantee of the real property described in the report.

Sec. 22.62. REPORT FORM. (a) A sales price disclosure report filed under this subchapter must read as follows, with the appropriate information included in the blanks:

#### SALES PRICE DISCLOSURE REPORT

Section 22.61, Tax Code, requires a purchaser or grantee under a deed to prepare this report, sign it, and file it with the chief appraiser of the appraisal district established for the county in which the property is located not later than the 10th day after the date the deed is recorded. This report is not required to be filed if the sale or

transfer is made: (1) under a court order; (2) to or from a trustee in bankruptcy; (3) under a deed of trust or other encumbrance secured by the property; (4) by a deed in lieu of foreclosure; (5) between co-owners; (6) between spouses or between family members in the first degree of lineal consanguinity; (7) to or from a governmental entity; (8) pursuant to the power of eminent domain; or (9) to a utility company and the property is an easement, license, or right-of-way. In addition, this report is not required to be filed if the property being sold or transferred is a severed mineral interest. Knowingly making a false statement on this form is grounds for prosecution of a Class A misdemeanor or a state jail felony under Section 37.10, Penal Code. The chief appraiser may not use the information in this form as the sole basis on which to increase the market value of the property.

Seller's or grantor's name: \_\_\_\_\_

Purchaser's or grantee's name: \_\_\_\_\_

Purchaser's or grantee's address: \_\_\_\_\_

Property description (as stated in deed): \_\_\_\_\_

Sales price of or other consideration paid for the property: \_\_\_\_\_

The method used to finance the sales price or other consideration was:  none (cash sale)  cash and third-party financing  cash and seller financing  exchange of other property  other, describe: \_\_\_\_\_

Describe any unusual or extraordinary terms of the sale or transfer that affected the amount of the sales price or other consideration: \_\_\_\_\_

Provide any additional information relevant to the sale or transfer, including:

(1) whether the sale or transfer involved property other than real property and the type of property, whether tangible or intangible, involved in the sale or transfer;

(2) whether the sale or transfer involved property located in more than one appraisal district and, if so, the portion of the sales price or other consideration allocated to the property located in the appraisal district with which the report is filed;

(3) in the case of a sale, whether the sale is the sale of an entire business or business unit; and

(4) any other facts or circumstances that affected the sales price or other consideration (optional): \_\_\_\_\_

To the best of my knowledge, this statement is true and accurate.

Purchaser's or grantee's signature: \_\_\_\_\_

Date: \_\_\_\_\_

Return this form to: \_\_\_\_\_

(b) The appraisal district shall include at the end of the form instructions for the filing of the form by mail, hand delivery, or, if permitted by the chief appraiser, facsimile machine or other electronic means.

(c) Each appraisal district shall prepare and make available sales price disclosure report forms that conform to the requirements of this section. Except for instructions for the filing of the form, no additional information may be required to be included in a sales price disclosure report form.

Sec. 22.63. FILING AND RECEIPT OF REPORT. (a) A purchaser or grantee may file a sales price disclosure report with a chief appraiser by mail, hand delivery, or, if permitted by the chief appraiser, facsimile machine or other electronic means.

(b) On receipt of the completed sales price disclosure report, the chief appraiser shall provide to the purchaser or grantee a written acknowledgement that the report has been received. If the acknowledgement of receipt is mailed, the chief appraiser shall mail it to the purchaser or grantee at the address provided in the report.

Sec. 22.64. PREPARATION OF REPORT; IMMUNITY FROM LIABILITY.

(a) A sales price disclosure report must be prepared by the purchaser or grantee of the property described in the report or by a person on behalf of the purchaser or grantee.

(b) A person who prepares a sales price disclosure report on behalf of a purchaser or grantee of the property described in the report is not liable to any person for preparing the report or for any unintentional error or omission in the report.

Sec. 22.65. ACTION TO COMPEL COMPLIANCE. The chief appraiser may bring an action for an injunction to compel a person to comply with the requirements of this subchapter. If the court finds that this subchapter applies and that the person has failed to fully comply with its requirements, the court:

(1) shall order the person to comply; and

(2) may assess costs and reasonable attorney's fees against the person.

Sec. 22.66. PUBLIC INFORMATION. A sales price disclosure report filed with the chief appraiser under this subchapter is a public record and must be made available on request for inspection and copying during normal business hours.

SECTION \_\_. Section 23.013, Tax Code, is amended to read as follows:

Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.

(a) If the chief appraiser uses the market data comparison method of appraisal to determine the market value of real property, the chief appraiser shall use comparable sales data and shall adjust the comparable sales to the subject property.

(b) The chief appraiser may use information contained in a sales price disclosure report filed under Subchapter D, Chapter 22, in determining the market value of real property but may not increase the market value of the real property described in the report solely on the basis of the information contained in the report.

SECTION \_\_. (a) As soon as practicable after September 1, 2005, but not later than January 1, 2006, each appraisal district shall prepare and make available sales price disclosure report forms as provided by Section 22.62, Tax Code, as added by this Act.

(b) The provisions of this Act amending Subchapter C, Chapter 22, Tax Code, and Section 23.013, Tax Code, and adding Subchapter D, Chapter 22, Tax Code, apply only to a sale of real property that occurs on or after January 1, 2006.

SECTION \_\_. (a) The provision of this Act requiring an appraisal district to prepare and make available sales price disclosure forms as provided by Section 22.62, Tax Code, as added by this Act, takes effect September 1, 2005.

(b) The provisions of this Act amending Subchapter C, Chapter 22, Tax Code, and Section 23.013, Tax Code, and adding Subchapter D, Chapter 22, Tax Code, take effect January 1, 2006.

The amendment to **HB 2491** was read and was adopted by the following vote: Yeas 19, Nays 11.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Ellis, Estes, Gallegos, Hinojosa, Lindsay, Lucio, Madla, Seliger, Shapleigh, Van de Putte, Wentworth, Whitmire, Zaffirini.

Nays: Duncan, Eltife, Fraser, Harris, Jackson, Janek, Nelson, Shapiro, Staples, West, Williams.

Absent: Ogden.

**Floor Amendment No. 7 was not offered.**

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **HB 2491** by adding a new ARTICLE to the bill, appropriately numbered, to read:

ARTICLE \_\_\_\_\_. HOMESTEAD EXEMPTION TO AD VALOREM TAXES

SECTION \_\_\_\_\_.01. (a) Section 11.13(l), Tax Code, is amended to read as follows:

(1) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if:

(1) that owner does not establish a different principal residence; or

(2) [~~and~~] the absence is[~~+~~

~~[(1) for a period of less than two years and the owner intends to return and occupy the structure as the owner's principal residence; or~~

~~[(2)]~~ caused by the owner's:

(A) military service outside of the United States as a member of the armed forces of the United States or of this state; or

(B) residency in a facility that provides services related to health, infirmity, or aging.

(b) The change in law made by this section to Section 11.13, Tax Code, applies only to ad valorem taxes imposed on or after the effective date of this section.

SECTION \_\_\_\_\_.02. This Article takes effect January 1, 2006.

The amendment to **HB 2491** 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.

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

**HB 2491** as amended was passed to third reading by the following vote: Yeas 16, Nays 12, Present-not voting 1.

Yeas: Armbrister, Averitt, Barrientos, Deuell, Ellis, Estes, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Carona, Eltife, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Seliger, Shapiro, Williams.

Present-not voting: Staples.

Absent: Duncan, Ogden.



**MOTION TO PLACE  
HOUSE BILL 2491 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 **HB 2491** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 16, Nays 12, Present-not voting 1. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Averitt, Barrientos, Deuell, Ellis, Estes, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Carona, Eltife, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Seliger, Shapiro, Williams.

Present-not voting: Staples.

Absent: Duncan, Ogden.

**HOUSE BILL 240 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 240** at this time on its second reading:

**HB 240**, Relating to the right of an adopted person to have access to the person's original birth certificate.

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 240 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 240** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2579 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2579** at this time on its second reading:

**CSHB 2579**, Relating to procedures to ensure the involvement of parents or guardians of children placed in certain institutions.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2579 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2579** be placed on its third reading and final passage.

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

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

**HOUSE JOINT RESOLUTION 80 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 80** at this time on its second reading:

**HJR 80**, Proposing a constitutional amendment clarifying that certain economic development programs do not constitute a debt.

The resolution was read second time.

Senator Ogden offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HJR 80** on page 1, line 36, between "debt" and ";" by inserting ", except to the extent that bonds or other debt instruments are issued for the purpose of funding a program or making a loan or grant under this section".

The amendment to **HJR 80** 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 Ogden and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

**HJR 80** 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.

**VOTES RECONSIDERED**

On motion of Senator Ogden and by unanimous consent, the vote by which **HJR 80** was passed to third reading was reconsidered.

Question — Shall **HJR 80** be passed to third reading?

On motion of Senator Ogden and by unanimous consent, the vote by which Floor Amendment No. 1 to **HJR 80** was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **HJR 80** be adopted?

Senator Ogden withdrew Floor Amendment No. 1.

Senator Ogden offered the following amendment to the resolution:

**Floor Amendment No. 2**

Amend **HJR 80** by striking all below the resolving clause and substituting the following:

SECTION 1. Section 52-a, Article III, Texas Constitution, is amended to read as follows:

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not financed by the issuance of any bonds or other obligations of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 8, 2005. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment clarifying that certain economic development programs do not constitute a debt."

The amendment to **HJR 80** 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.

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

**HJR 80** as amended was again passed to third reading by a viva voce vote.

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

**HOUSE JOINT RESOLUTION 80 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 **HJR 80** be placed on its third reading and final passage.

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

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

**HOUSE BILL 345 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 345** at this time on its second reading:

**HB 345**, Relating to the disclosure of certain information provided on a voter registration application.

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 345 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 345** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE****HOUSE BILL 2218 ON SECOND READING**

On motion of Senator Brimer and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2218** at this time on its second reading:

**CSHB 2218**, Relating to the regulation of money services businesses; providing a penalty.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2218** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.52 to read as follows:

Sec. 32.52. PROVIDING FALSE INFORMATION TO INDEPENDENT PUBLIC ACCOUNTANT OR ACCOUNTING FIRM. (a) In this section:

(1) "Financial institution" means a bank, savings association, savings bank, or credit union maintaining an office, branch, or agency office in this state.

(2) "Insurer" means a person who engages in the business of insurance in this state, including:

(A) an insurer that is not authorized to do business in this state; and

(B) a person described by Section 82.002(a), Insurance Code.

(3) "Issuer" has the meaning assigned by 15 U.S.C. Section 7201.

(4) "Public interest entity":

(A) means:

- (i) a financial institution;
- (ii) an insurer;
- (iii) a county hospital;
- (iv) a pension or retirement plan;
- (v) the state or a state agency;
- (vi) a school district;
- (vii) a municipality;
- (viii) a county; or
- (ix) an institution of higher education; and

(B) does not include an issuer or a subsidiary of an issuer.

(b) An officer or director of a public interest entity, or another person designated by the officer or director to provide information to an independent public accountant or accounting firm, commits an offense if, for the purpose of rendering financial statements of the public interest entity materially misleading, the person intentionally or knowingly:

(1) influences, coerces, manipulates, or misleads the independent public accountant or accounting firm engaged in the performance of an audit of the financial statements of the public interest entity and that conduct renders the financial statements materially misleading; or

(2) communicates or causes to be communicated information to the independent public accountant or accounting firm that the person knew was false at the time the information was communicated.

(c) An offense under this section is a:

(1) state jail felony if it is shown on the trial of the offense that the violation resulted in a monetary loss of less than \$10,000 or did not result in a monetary loss;

(2) felony of the third degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$10,000 but less than \$100,000;

(3) felony of the second degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$100,000 but less than \$1 million;  
or

(4) felony of the first degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least \$1 million.

The amendment was read.

### **POINT OF ORDER**

Senator Armbrister raised a point of order that Floor Amendment No. 1 was not germane to the body of the bill.

Senator Williams withdrew Floor Amendment No. 1.

### **POINT OF ORDER WITHDRAWN**

Senator Armbrister withdrew the point of order.

**CSHB 2218** was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2218 ON THIRD READING**

Senator Brimer moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2218** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1601 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1601** at this time on its second reading:

**HB 1601**, Relating to the use of interpreter services in a criminal case.

The bill was read second time.

Senator Averitt offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1601** (Senate committee printing) in SECTION 1 of the bill, in proposed Subsection (a-1), Article 38.30, Code of Criminal Procedure (page 1, lines 34-36), by striking "In this subsection, "qualified telephone interpreter" means a telephone service that employs licensed court interpreters as defined by Section 57.001, Government Code." and substituting the following:

In this subsection, "qualified telephone interpreter" means a telephone service that employs:

(1) licensed court interpreters as defined by Section 57.001, Government Code; or

(2) federally certified court interpreters.

The amendment to **HB 1601** 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 Averitt and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1601** 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.

**HOUSE BILL 1601 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1601** be placed on its third reading and final passage.

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

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

**(Senator Armbrister in Chair)****SENATE RULE 5.14(a) SUSPENDED  
(Intent Calendar)**

On motion of Senator West and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., which had been extended to 8:00 p.m., was again suspended and the time was extended to 11:00 p.m. today for the Wednesday, May 25, 2005, Intent Calendar.

**AT EASE**

The Presiding Officer at 7:53 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

The President at 8:23 p.m. called the Senate to order as In Legislative Session.

**BILLS SIGNED**

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

**SB 48, SB 316, SB 335, SB 485, SB 679, SB 898, SB 912, SB 945, SB 1257, SB 1330, SB 1378, SB 1465, SB 1864, SB 1865, SB 1882, SB 1884.**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3540 ON SECOND READING**

Senator Ogden moved to suspend the regular order of business to take up for consideration **CSHB 3540** at this time on its second reading:

**CSHB 3540**, Relating to certain fiscal matters affecting governmental entities; providing penalties.

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

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

Nays: Eltife, Harris, Nelson.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3540** (Senate committee printing) as follows:

(1) In ARTICLE 6 of the bill, in the heading of PART B of the article (page 10, line 53), strike "BENEFITS FOR" and substitute "RETIREMENT SYSTEM CONTRIBUTIONS AND BENEFITS FOR".

(2) In PART B of ARTICLE 6 of the bill, insert the following new SECTION, appropriately numbered, and renumber subsequent SECTIONS of the PART appropriately:

SECTION 6B. \_\_. Section 825.404(a), Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to at least six and not more than eight percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(3) Strike ARTICLE 10 of the bill (page 14, line 5, through page 15, line 19) and renumber subsequent ARTICLES accordingly.

(4) Strike PART A of ARTICLE 11 of the bill (page 15, line 21, through page 16, line 27), and substitute the following:

PART A. STATE SALES TAX EXEMPTIONS

SECTION 11A.01. 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 period:

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

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

SECTION 11A.02. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3211 to read as follows:

Sec. 151.3211. BOOKS PURCHASED BY UNIVERSITY AND COLLEGE STUDENTS FOR LIMITED PERIOD. (a) The sale of a book is exempted from the taxes imposed by this chapter if:

(1) the book is bought by a full-time or part-time student enrolled at an institution of higher education as defined by Section 61.003, Education Code, or a private or independent college or university that is located in this state and that is accredited by a recognized accrediting agency under Section 61.003, Education Code; and

(2) the sale takes place during a period:

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

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

(b) A person may establish that the person is a full-time or part-time student by presenting a valid student identification card.

SECTION 11A.03. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a) The sale or storage, use, or other consumption of a school supply, including a backpack, is exempted from the taxes imposed by this chapter if the school supply is purchased:



(1) for use by a student in a class in a public or private elementary or secondary school;

(2) during the period described by Section 151.326(a)(2); and

(3) for a sales price of less than \$100 per item.

(b) The comptroller shall adopt rules specifying the school supplies that are exempt from taxation under this section.

(c) The exemption provided by this section does not apply to the purchase of a textbook.

SECTION 11A.04. The change in law made by this part does not affect tax liability accruing before the effective date of this part. That liability continues in effect as if this part had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability of those taxes.

SECTION 11A.05. Except as otherwise provided by this part, this part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect October 1, 2005.

(5) Strike the heading to PART E of ARTICLE 11 of the bill (page 19, line 11) and substitute the following:

#### ARTICLE 12. FRANCHISE TAX

(6) Strike existing SECTION 11E.01 of Article 11 of the bill (page 19, lines 12-25), and substitute the following:

##### PART A. CORPORATE OWNERSHIP IN PARTNERSHIPS

SECTION 12A.01. Section 113.001, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) Any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(d) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax, including a general or limited partnership interest that the person is considered to own under Sections 171.001(e) and (f).

SECTION 12A.02. Section 171.001(b), Tax Code, is amended by adding Subdivisions (6-a) and (6-b) to read as follows:

(6-a) "Partner" includes a beneficiary in a trust.

(6-b) "Partnership" includes a partnership, a joint venture, and a trust.

SECTION 12A.03. Section 171.001, Tax Code, is amended by adding Subsections (d), (e), (f), (g), and (h) to read as follows:

(d) For purposes of Subsection (a), a corporation does business in this state if the corporation is a foreign corporation and:

(1) holds a partnership interest, including an interest as an assignee, as a general partner in a general partnership that is doing business in this state;

(2) holds a partnership interest, including an interest as an assignee, as a general partner in a limited partnership that is doing business in this state; or

(3) holds a controlling interest in a partnership, including an interest as an assignee, as a limited partner in a limited partnership that is doing business in this state.

(e) For purposes of Subsection (d), a partner who owns an interest in an upper tier partnership is considered to be both a partner in the upper tier partnership and a partner in each lower tier partnership.

(f) For purposes of Subsection (d)(3), a limited partner is considered to hold a controlling interest if any related party owns a controlling interest, directly or indirectly, in the partnership. In this subsection, "controlling interest" and "related party" have the meanings assigned those terms by Section 171.1001.

(g) If a corporate partner asserts that the tax imposed under this chapter violates the United States Constitution or federal law because of the application of Subsection (d), the franchise tax is imposed on the partnership doing business in this state and the franchise tax liability of the partnership shall be calculated as provided by Subsection (h).

(h) For purposes of Subsection (g), reportable federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is owned directly or indirectly by a corporation, as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation.

SECTION 12A.04. Section 171.1032(c), Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation directly or indirectly owns an interest [~~of which the corporation is a part~~] apportioned to this state as though the corporation directly earned the receipts[~~, including receipts from business done with the corporation~~]. A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.05. Section 171.1051(d), Tax Code, is amended to read as follows:

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation directly or indirectly owns an interest [~~of which the corporation is a part~~]. A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.06. Section 171.110, Tax Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) In computing net taxable earned surplus, a corporation shall include the corporation's share of a partnership's items of income or loss, without regard to whether the partnership is taxed as a corporation for federal income tax purposes.

SECTION 12A.07. Section 171.1121, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.08. This part takes effect September 1, 2005, and applies to reports originally due on or after that date.

#### PART B. APPLICATION TO PARTNERSHIPS

SECTION 12B.01. (a) This part takes effect only if a court enters a final judgment that the tax imposed under Chapter 171, Tax Code, violates the United States Constitution because of the application of Section 171.001(d), Tax Code.

(b) This part takes effect on the earlier of the date that the final judgment under Subsection (a) of this section is upheld on appeal without any possibility of further appeal or is not appealed and is no longer subject to appeal, and applies to a report originally due on or after that date.

SECTION 12B.02. Section 113.001, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(a)(3) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax.

SECTION 12B.03. Section 171.001(a), Tax Code, is amended to read as follows:

(a) A franchise tax is imposed on:

(1) each corporation that does business in this state or that is chartered in this state; ~~and~~

(2) each limited liability company that does business in this state or that is organized under the laws of this state; and

(3) each partnership that does business in this state and that is owned directly or indirectly by a corporation, to the extent the partnership is not owned by a natural person.

SECTION 12B.04. Section 171.001(b)(3), Tax Code, is amended to read as follows:

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; ~~and~~

(C) a banking corporation; and

(D) a partnership, to the extent appropriate for purposes of the administration, collection, and enforcement of the tax under this chapter as it is imposed on partnerships.

SECTION 12B.05. Section 171.1032(c), Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.

SECTION 12B.06. Section 171.1051(d), Tax Code, is amended to read as follows:

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part.

SECTION 12B.07. Section 171.110, Tax Code, is amended by adding Subsection (d-2) to read as follows:

(d-2) Reportable federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is not owned by a natural person, as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation.

SECTION 12B.08. Subchapter F, Chapter 171, Tax Code, is amended by adding Section 171.2515 to read as follows:

Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSMIT BUSINESS IN THIS STATE. (a) The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a partnership subject to a tax imposed by this chapter to transmit business in this state.

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a partnership's right to transmit business in this state.

SECTION 12B.09. The following provisions of the Tax Code are repealed:

- (1) Section 113.001(c);
- (2) Sections 171.001(d), (e), (f), (g), and (h);
- (3) Section 171.110(d-1); and
- (4) Section 171.1121(f).

SECTION 12B.10. (a) For a partnership becoming subject to the franchise tax under this part, income or losses and related gross receipts occurring before one year before the effective date of this part may not be considered for purposes of the earned surplus component or for apportionment purposes for the taxable capital component.

(b) The comptroller shall adopt rules relating to establishing the applicable reporting periods for partnerships becoming subject to the franchise tax under this part.

(7) Before existing SECTION 11E.02 (page 19, between lines 25 and 26), insert the following:

#### PART C. ADD-BACK OF CERTAIN PAYMENTS

(8) Renumber existing SECTIONS 11E.02 and 11E.03 as SECTIONS 12C.01 and 12C.02.

(9) Between existing SECTIONS 11E.03 and 11E.04 of the bill (page 20, between lines 67 and 68), insert the following:

## PART D. TRANSITIONAL PROVISIONS

(10) Renumber existing SECTION 11E.04 as SECTION 12D.01.

(11) Renumber subsequent ARTICLES accordingly.

(12) Add the following appropriately lettered PARTS to existing Article 13 of the bill and reletter subsequent PARTS accordingly:

## PART \_\_. USE OF MONEY IN COASTAL PROTECTION FUND

SECTION \_\_.01. Section 40.152, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33, and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to the fund annually.

## PART \_\_. SYSTEM BENEFIT FUND

SECTION \_\_.01. Section 39.903(h), Utilities Code, is amended to read as follows:

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

(13) Strike existing Article 15 of the bill (page 29, line 66, through page 30, line 49) and renumber subsequent ARTICLES accordingly.

The amendment was read.

Senator Ogden offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 1A**

Amend Floor Amendment No. 1 to **CSHB 3540** as follows:

(1) In item No. (10) of the amendment (page 9, line 28), strike "SECTION 11E.04 as SECTION 12D.01" and substitute "SECTIONS 11E.04 and 11E.05 as SECTIONS 12D.01 and 12D.02".

(2) Add the following appropriately numbered item to the amendment to read as follows:

( ) In existing SECTIONS 11E.04 and 11E.05 (page 20, line 69 and page 21, lines 1, 3, and 34), strike "part" each time it appears and substitute "article".

The amendment to Floor Amendment No. 1 to **CSHB 3540** 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. 1A.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 3540**, the amendment as amended was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Estes, Shapleigh.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3540** (Senate committee printing) as follows:

(1) In ARTICLE 2 of the bill, strike the heading of the ARTICLE, and substitute the following:

ARTICLE 2. GROUP BENEFITS PROGRAM FOR  
STATE EMPLOYEES AND ANNUITANTS

(2) In ARTICLE 2 of the bill, insert the following new SECTIONS, appropriately numbered, and renumber subsequent SECTIONS of the article accordingly:

SECTION \_\_\_\_ . Section 1551.323, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) An annuitant eligible to participate under Section 1551.102(i), 1551.111(e), or 1551.112(c) is ~~is, except as provided by this subsection,~~ required to pay, [the total cost, as determined by the board, attributable to the participation of that individual and the dependents of that individual] until the date the individual is 65 years of age, an amount equal to the amount of the state or other employer contribution that would be made on behalf of the annuitant and, if applicable, the annuitant's dependents under this chapter if the annuitant were eligible to participate under another provision of Section 1551.102, 1551.111, or 1551.112.

(a-1) The payment made under this section is in addition to other contributions required under Sections 1551.305, 1551.306, and 1551.307.

(a-2) Notwithstanding Subsection (a), if [H] the General Appropriations Act or other similar legislation provides that some or all of the costs paid under Subsection (a) are payable by a state contribution [addresses the payment of those costs], those costs shall be paid in the manner specified by that legislation.

(a-3) Notwithstanding Subsection (a), an institution of higher education may provide some or all of the costs paid under Subsection (a) from money appropriated from a fund other than the general revenue fund or from money available from local sources.

SECTION \_\_. The change in law made by this article to Section 1551.323, Insurance Code, applies only to participation on or after September 1, 2005, in the state employees group benefits program established under Chapter 1551, Insurance Code. Participation in the group benefits program before September 1, 2005, is governed by the law as it exists immediately before that date and that law is continued in effect for this purpose.

SECTION \_\_. The change in law made by this article to Section 1551.323, Insurance Code, takes effect September 1, 2005.

The amendment was read.

Senator Staples withdrew Floor Amendment No. 2.

Senator Whitmire moved to call the previous question on the passage to third reading of **CSHB 3540**.

Senators Averitt, Duncan, Estes, Hinojosa, and Ogden seconded the motion.

Question — Shall the main question be now put?

The motion to call the previous question prevailed by the following vote: Yeas 16, Nays 15.

Yeas: Averitt, Brimer, Deuell, Duncan, Estes, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ogden, Staples, West, Whitmire, Williams, Zaffirini.

Nays: Armbrister, Barrientos, Carona, Ellis, Eltife, Fraser, Gallegos, Harris, Jackson, Janek, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth.

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

**CSHB 3540** as amended was passed to third reading by the following vote: Yeas 20, Nays 11.

Yeas: Averitt, Brimer, Deuell, Duncan, Estes, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Armbrister, Barrientos, Carona, Ellis, Eltife, Fraser, Gallegos, Harris, Jackson, Janek, Shapleigh.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3540 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3540** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Deuell, Duncan, Estes, Fraser, Gallegos, Hinojosa, Janek, Lindsay, Lucio, Madla, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Carona, Ellis, Eltife, Harris, Jackson, Nelson.

The bill was read third time.

Senator Ogden offered the following amendment to the bill:

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

Amend **CSHB 3540** on third reading as follows:

(1) Add the following appropriately numbered ARTICLES to read as follows and renumber subsequent ARTICLES accordingly:

ARTICLE \_\_. REGISTRATION FEE FOR CERTAIN LOBBYISTS

SECTION \_\_.01. Section 305.005(c), Government Code, is amended to read as follows:

(c) The registration fee and registration renewal fee are:

(1) \$100 for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986; or

(2) \$500 [\$300] for any other registrant.

SECTION \_\_.02. This article takes effect December 1, 2005.

ARTICLE \_\_. FEES FOR CERTAIN INSPECTIONS CONDUCTED  
BY THE COMMISSION ON JAIL STANDARDS

SECTION \_\_.01. Section 511.0091, Government Code, is amended by adding Subsection (c-1) and amending Subsection (d) to read as follows:

(c-1) In addition to the other fees authorized by this section, the commission may set and collect a reasonable fee to cover the cost of performing any reinspection of a municipal or county jail that is conducted by the commission:

(1) following a determination by the commission that the jail is not in compliance with minimum standards;

(2) in response to a request by the operator of the jail; and

(3) before the operator of the jail has taken actions as necessary to ensure that the jail is in compliance with minimum standards.

(d) All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404. Fees collected under Subsection (c-1) shall be deposited to the credit of a special account in the general revenue fund to be appropriated only to pay costs incurred by the commission in performing services under this section.

SECTION \_\_.02. This article takes effect September 1, 2005.



## ARTICLE \_\_. MODEL FINES COLLECTION

SECTION \_\_.01. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM. (a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

(1) a county with a population of 50,000 or greater; and

(2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and

(2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

(1) make available on the office's Internet website requirements for a program; and

(2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

SECTION \_.02. Section 133.058, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION \_.03. Section 133.103, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c-1), the [The] treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) Except as provided by Subsection (c-1), the [The] treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION \_.04. (a) Notwithstanding Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article, not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall identify those counties and municipalities that are able to implement a collection improvement program under Article 103.0033, Code of Criminal Procedure, as amended by this article, before April 1, 2006. Beginning June 1, 2006, the Office of Court Administration of the Texas Judicial System shall comply with Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article.

(b) Not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website requirements for a program under Article 103.0033, Code of Criminal Procedure, as amended by this article, in accordance with Subsection (g) of that article.

(2) Strike Article 9 of the bill (Senate committee printing, page 11, line 46 through page 14, line 4).

The amendment was read.

Senator Ogden offered the following amendment to Floor Amendment No. 1 on Third Reading:

### **Floor Amendment No. 2 on Third Reading**

Amend Floor Amendment No. 1 on Third Reading to **CSHB 3540** in Item (12) of the amendment, in the PART added to the bill pertaining to the use of money in the coastal protection fund, as follows:

(1) Strike the heading of the PART (page 10, line 2) and substitute the following:

PART \_\_. FUNDING OF THE COASTAL PROTECTION FUND  
AND THE USE OF MONEY IN THE FUND

(2) Immediately following proposed Section 40.152(c), Natural Resources Code (page 10, between lines 11 and 12), insert the following:

SECTION \_\_.02. Sections 40.155(a)-(d), Natural Resources Code, are amended to read as follows:

(a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents [~~two cents~~] per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached \$20 [~~\$25~~] million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million.

(b) If the unencumbered balance in the fund falls below \$10 [~~\$14~~] million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

(1) the unencumbered balance in the fund is less than \$20 [~~\$25~~] million;

(2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and

(3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches \$20 [~~\$25~~] million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without

substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

The amendment to Floor Amendment No. 1 on Third Reading to **CSHB 3540** 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 on Third Reading.

Question recurring on the adoption of Floor Amendment No. 1 on Third Reading to **CSHB 3540**, the amendment as amended was adopted by a viva voce vote.

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

Senator Averitt offered the following amendment to the bill:

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

Amend **CSHB 3540** on third reading by inserting the following appropriately numbered Section and renumbering subsequent sections:

SECTION \_\_. Amend Section 62.102(a), Health and Safety Code to read as follows:

(a) The commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

- (1) the end of a period[~~, not to exceed~~] of 12 months, following the date of the eligibility determination; or
- (2) the individual's 19th birthday.

The amendment to **CSHB 3540** was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Deuell, Ellis, Eltife, Estes, Gallegos, Hinojosa, Janek, Lindsay, Lucio, Madla, Seliger, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Carona, Duncan, Fraser, Harris, Jackson, Nelson, Ogden, Shapiro, Staples, Williams.

Senator Shapleigh offered the following amendment to the bill:

### **Floor Amendment No. 4 on Third Reading**

Amend **CSHB 3540** on third reading by adding a new appropriately numbered ARTICLE to read as follows:

ARTICLE \_\_. AUTHORIZATION OF CERTAIN NONPROFIT ORGANIZATIONS TO CONDUCT BINGO

SECTION \_\_. Section 2001.002(11), Occupations Code, is amended to read as follows:

- (11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; ~~or~~

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States; or

(C) a nonprofit organization that:

(i) is organized under tribal law by a federally recognized Indian tribe that is not subject to the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.) and that exercises tribal authority over a reservation, as defined by 25 U.S.C. Section 1300g, that is located in a county on the international border with Mexico; and

(ii) is organized to perform and is engaged primarily in performing charitable, benevolent, patriotic, or educational functions.

SECTION \_\_. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.1015 to read as follows:

Sec. 2001.1015. CERTAIN TRIBAL ORGANIZATIONS SUBJECT TO REGULATORY JURISDICTION AND LICENSE REQUIREMENTS. (a) A nonprofit organization in existence for at least 180 days that qualifies as a fraternal organization under Section 2001.002(11)(C) may conduct bingo on the reservation of the Indian tribe under whose tribal law the organization is organized on adoption by the tribe of rules governing the conduct of bingo by the organization that conform to the substantive provisions of this chapter and of Sections 47(b) and (c), Article III, Texas Constitution.

(b) In accordance with Section 107(b), Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act (25 U.S.C. Section 1300g-6), an organization described by Subsection (a) may conduct bingo activities in accordance with the tribe's rules adopted under Subsection (a) by submitting to the regulatory jurisdiction, including licensing requirements, of this state.

(c) A nonprofit organization described by Subsection (b) may not conduct bingo under this section unless the organization transfers to the state on a monthly basis an amount equal to five percent of the gross receipts from bingo in a manner determined by the comptroller.

The amendment to **CSHB 3540** 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. 4 on Third Reading except as follows:

Nays: Fraser.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 5 on Third Reading**

Amend **CSHB 3540** on third reading by adding the following SECTIONS to the bill and renumbering subsequent sections accordingly.

SECTION \_\_\_\_ Chapter 531, Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. STATE PHARMACY ASSISTANCE PROGRAM

Sec. 531.501. STATE PHARMACY ASSISTANCE PROGRAM. (a) The commission shall develop and implement a state pharmacy assistance program that provides prescription drug discounts to eligible persons and is a state pharmacy assistance program for purposes of 42 U.S.C. Section 1396r-8(c)(1)(C).

(b) The state pharmacy assistance program may only be funded with state general revenue funds or local funds. This subsection applies only to the provision of prescription drug discounts under the state pharmacy assistance program and does not affect the sources of funding permissible for other benefits provided to eligible persons under programs described by Section 531.503.

(c) The commission may contract with a private entity to negotiate on behalf of the commission for discounted prescription drug acquisition prices with manufacturers and labelers, as those terms are defined by Section 531.070.

(d) The commission may agree to pay a private contractor a percentage of the gross purchases under the program. Any such payment shall be incorporated into the sales price.

Sec. 531.502. MAXIMUM PRICE. The price of a prescription drug charged to an eligible person under the state pharmacy assistance program may not exceed the sum of:

- (1) the discounted acquisition price under the program; and
- (2) a dispensing fee in an amount not to exceed 115 percent of the dispensing fee paid for providing the drug under the vendor drug program.

Sec. 531.503. ELIGIBILITY. (a) A person is eligible for prescription drug benefits under the state pharmacy assistance program if the person is:

(1) qualified to receive services under Chapter 31 or Subchapter B, Chapter 61, Health and Safety Code; or

(2) qualified to receive services from a community mental health or mental retardation center established under Subchapter A, Chapter 534, Health and Safety Code.

(b) The commissioner may expand eligibility for prescription drug benefits under the state pharmacy assistance program to persons who are qualified to receive services under a program other than those listed in Subsection (a) provided that the other program:

(1) is developed by the state specifically for the benefit of disabled, indigent, low-income, elderly, or other financially vulnerable persons;

(2) is funded using state funds and not federal funds;

(3) provides payments directly to service providers;

(4) provides only a pharmaceutical benefit or a pharmaceutical benefit in conjunction with other medical benefits or services;

(5) prohibits the diversion, resale, or transfer of benefits reimbursed under the state pharmacy assistance program to persons who are not beneficiaries of that program; and

(6) does not violate any applicable nondiscrimination provisions under federal law.

Sec. 531.504. PARTICIPATING WHOLESALERS AND PHARMACIES.

(a) The commission or its contractor shall contract with each wholesaler that:

(1) elects to participate in the state pharmacy assistance program; and

(2) satisfies the commission's participation requirements.

(b) A contract between the commission or its contractor and a participating wholesaler must require the wholesaler to:

(1) provide prescription drugs available through the program to pharmacies that voluntarily elect to participate in the program at a price not to exceed the sum of:

(A) the discounted acquisition cost under the program;

(B) a reasonable delivery fee in an amount negotiated by the wholesaler and the commission or its contractor, which fee may vary based on the monthly volume of prescription drugs provided by the wholesaler and the number of required weekly deliveries; and

(C) a reasonable percentage of the gross purchases approved by the commission as provided by Section 531.501(d);

(2) meet service levels specified in the contract;

(3) provide next-day delivery service on all orders under the program to participating pharmacies;

(4) provide software and data interface capacity to participating pharmacies as necessary to enable participating pharmacies to comply with Subsection (d); and

(5) participate in the program on an ongoing basis for the period specified in the contract.

(c) The commission or its contractor shall collect utilization information from each participating wholesaler as necessary to administer the program and shall protect the confidentiality of any information obtained under this subsection that is confidential under state or federal law, rule, or regulation.

(d) The executive commissioner by rule shall require a participating pharmacy to:

(1) maintain a separate inventory of prescription drugs obtained by the pharmacy under the program or segregate those drugs from the pharmacy's other prescription drug stock; and

(2) maintain separate records of acquisition and disposition of prescription drugs obtained by the pharmacy under the program and ensure that all computer records regarding those drugs are readily available on the request of the commission or its contractor.

(e) A participating pharmacy or wholesaler may not resell or otherwise transfer a prescription drug obtained under the program to:

(1) a pharmacy that is not participating in the program; or

(2) a person who is not an eligible program participant.

(f) If the commission, after notice and opportunity for a hearing, determines that a participating pharmacy or wholesaler violated Subsection (e), the pharmacy or wholesaler is liable to the manufacturer of the prescription drugs for an amount equal to the difference between:

(1) the retail price of the drug at the time of the resale or transfer in violation of Subsection (e); and

(2) the price at which the drug was obtained by the pharmacy or wholesaler under the program.

Sec. 531.505. ACCESS TO PROGRAM BENEFITS. (a) An eligible person is entitled to obtain a prescription drug dispensed under this subchapter from an entity designated by the executive commissioner or from a pharmacy that voluntarily participates in the state pharmacy assistance program.

(b) The commission shall maintain an electronic database on a website listing the names and addresses of all pharmacies or other entities participating in the program.

(c) The commission or its contractor shall engage in outreach activities to publicize the availability of discounted prescription drug prices under the program and to maximize enrollment in the program. The commission shall establish simplified procedures for enrolling eligible persons.

Sec. 531.506. CERTAIN DISPUTES OR DISCREPANCIES. (a) A dispute or discrepancy in the amount negotiated under Section 531.501 must be resolved using the process established by this section.

(b) The commission may hire an independent auditor acceptable to all affected parties to perform an audit at the commission's expense if there is a dispute or discrepancy in favor of a manufacturer or labeler relating to the amount of a discount for a prescription drug provided by the manufacturer or labeler. If the audit does not resolve the dispute or discrepancy, the manufacturer or labeler shall:

(1) provide justification for the dispute or discrepancy that is satisfactory to the commission; or

(2) pay the additional amount due.

(c) A manufacturer or labeler may hire an independent auditor acceptable to all affected parties to perform an audit at the expense of the manufacturer or labeler if there is a dispute or discrepancy in favor of the state relating to the amount of the discount for a prescription drug provided by the manufacturer or labeler. If the audit does not resolve the dispute or discrepancy, the commission shall:

(1) provide justification for the dispute or discrepancy that is satisfactory to the manufacturer or labeler; or

(2) require participating entities to refund to the manufacturer or labeler the amount due.

(d) A party that is not satisfied with the resolution of a dispute or discrepancy under Subsection (b) or (c) may request in writing a hearing before the State Office of Administrative Hearings. The party must include supporting documentation with the request for a hearing.

Sec. 531.507. RULEMAKING. The executive commissioner may adopt rules as necessary to administer this subchapter.



Sec. 531.508. ANNUAL REPORT. Not later than January 1 of each year, the commission shall submit a report to the legislature on the commission's activities under this subchapter. The report must include the number of persons enrolled in the state pharmacy assistance program and information regarding the financial condition of the program.

Sec. 531.509. IMPLEMENTATION OF PROGRAM. (a) The commission shall fully implement this subchapter and make discounted drug prices available to eligible persons in accordance with the state pharmacy assistance program described by this subchapter only if the commission determines that adequate voluntary discounts negotiated under Section 531.501 are available.

(b) If the commission does not fully implement this subchapter, the commission may adopt preferred drug lists and impose prior authorization requirements, as authorized by Sections 531.072 and 531.073, for programs that provide prescription drugs to persons described by Section 531.503(a).

SECTION \_\_\_\_. Subsections (h) and (j), Section 531.070, Government Code, are amended to read as follows:

(h) Subject to Subsection (i), the commission shall negotiate with manufacturers and labelers, including generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments; and  
(2) the child health plan program~~;~~ and

~~[(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals].~~

(j) A manufacturer or labeler that sells prescription drugs in this state may voluntarily negotiate with the commission and enter into an agreement to provide supplemental rebates for prescription drugs provided under:

(1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments; and  
(2) the child health plan program~~;~~ and

~~[(3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals].~~

SECTION \_\_\_\_. Section 531.072, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding Subsection (a), the commission may adopt preferred drug lists under this section for a program that serves persons described by Section 531.503(a) only if the commission cannot obtain adequate voluntary discounts under Subchapter M, Chapter 531, to permit full implementation of that subchapter.

SECTION \_\_\_\_. Section 531.073, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding Subsection (a), the commission may require prior authorization under this section for a program that serves persons described by Section 531.503(a) only if the commission cannot obtain adequate voluntary discounts under Subchapter M, Chapter 531, to permit full implementation of that subchapter.

SECTION \_\_\_\_\_. If before implementing any provision of chapter 531, Government Code as amended by Sec. \_\_\_\_ through Sec. \_\_\_\_ of this act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

The amendment to **CSHB 3540** 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 on Third Reading.

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

**CSHB 3540** as again amended was finally passed by the following vote: Yeas 18, Nays 13.

Yeas: Averitt, Brimer, Deuell, Duncan, Hinojosa, Lindsay, Lucio, Madla, Ogden, Seliger, Shapiro, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Armbrister, Barrientos, Carona, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Jackson, Janek, Nelson, Shapleigh.

#### **REMARKS ORDERED PRINTED**

On motion of Senator Williams and by unanimous consent, the remarks by Senators Shapleigh and Nelson regarding **CSHB 3540** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks were printed in the addendum to today's journal.

#### **REMARKS ORDERED PRINTED**

On motion of Senator Gallegos and by unanimous consent, the remarks by Senator Armbrister regarding **CSHB 3540** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks were printed in the addendum to today's journal.

#### **LOCAL AND UNCONTESTED CALENDAR SESSION POSTPONED**

On motion of Senator Harris and by unanimous consent, the time for the Local and Uncontested Calendar Session to be held at 7:30 a.m. Wednesday, May 25, 2005, was changed to 1:00 p.m. Wednesday, May 25, 2005.

**VOTES RECONSIDERED ON  
HOUSE BILL 2491**

On motion of Senator Wentworth and by unanimous consent, the vote by which **HB 2491** was passed to third reading was reconsidered.

Question — Shall **HB 2491** be passed to third reading?

On motion of Senator Wentworth and by unanimous consent, the vote by which Floor Amendment No. 6 to **HB 2491** was adopted was reconsidered.

Question — Shall Floor Amendment No. 6 to **HB 2491** be adopted?

Senator Wentworth withdrew Floor Amendment No. 6.

On motion of Senator Armbrister and by unanimous consent, the vote by which Floor Amendment No. 1 to **HB 2491** was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **HB 2491** be adopted?

Senator Armbrister withdrew Floor Amendment No. 1.

**HB 2491** as amended was again 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 2491 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 **HB 2491** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2421 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 2421** at this time on its second reading:

**HB 2421**, Relating to the use of an employer assessment to fund the skills development program and authorizing the Texas Workforce Commission to develop new job incentive programs.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2421** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 204.006(a), Labor Code, is amended to read as follows:

(a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:

(1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or

(2) two and six-tenths ~~[seven-tenths]~~ percent.

SECTION 2. Subchapter A, Chapter 204, Labor Code, is amended by adding Section 204.0065 to read as follows:

Sec. 204.0065. INITIAL CONTRIBUTION RATE. Notwithstanding Section 204.006, on and after January 1, 2006, a person's contribution rate shall be two and six-tenths percent until the date the experience rate computed under Section 204.041 takes effect for the employer.

SECTION 3. Subchapter D, Chapter 204, Labor Code, is amended by adding Section 204.0625 to read as follows:

Sec. 204.0625. ADJUSTMENT TO REPLENISHMENT TAX RATE. On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

SECTION 4. Chapter 204, Labor Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. EMPLOYMENT AND TRAINING  
INVESTMENT ASSESSMENT; FUNDS

Sec. 204.121. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT. (a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.

(b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.

(c) The employment and investment training assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

Sec. 204.122. HOLDING FUND. (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.

(b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

Sec. 204.123. TRANSFER TO TEXAS ENTERPRISE FUND, SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) from the first \$160 million deposited in the holding fund:

(A) during the state fiscal biennium ending August 31, 2007:

(i) 67 percent to the Texas Enterprise Fund created under Section 481.078, Government Code; and

(ii) 33 percent to the skills development fund created under Section 303.003; and

(B) during any state fiscal biennium beginning on or after September 1, 2007:

(i) 80 percent to the Texas Enterprise Fund created under Section 481.078, Government Code; and

(ii) 20 percent to the skills development fund created under Section 303.003; and

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the Texas Enterprise Fund, the skills development fund, and the training stabilization fund in the percentages prescribed by Subsection (a).

SECTION 5. Chapter 302, Labor Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. EMPLOYMENT AND TRAINING

##### INVESTMENT ASSESSMENT

Sec. 302.101. TRAINING STABILIZATION FUND. (a) The training stabilization fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state. The fund is composed of:

(1) money deposited to the fund under Section 204.123; and

(2) any other money received for deposit in the fund.

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for either the Texas Enterprise Fund or the skills development fund.

(c) Money in the training stabilization fund shall be transferred to the Texas Enterprise Fund and the skills development fund under Subsection (b) not later than September 30. The transfer under Subsection (b) shall consist of transferring 67 percent of the money in the training stabilization fund to the Texas Enterprise Fund and 33 percent of the money in the training stabilization fund to the skills development fund. The amount transferred from the training stabilization fund may not exceed the amounts appropriated to the Texas Enterprise Fund and skills development fund in the fiscal year in which the transfer is made.

(d) Interest that accrues on the money in the training stabilization fund shall be deposited quarterly to the credit of the compensation fund.

SECTION 6. Chapter 303, Labor Code, is amended by adding Section 303.0035 to read as follows:

Sec. 303.0035. USE OF MONEY IN HOLDING FUND (GENERAL REVENUE ACCOUNT 5069) FOR SKILLS DEVELOPMENT. Money in the holding fund (general revenue account 5069) may be used only for the purposes for which the money in the skills development fund under Section 303.003 may be used.

SECTION 7. Section 303.005, Labor Code, is amended to read as follows:

Sec. 303.005. PARTICIPATION IN ADDITIONAL PROGRAMS; APPLICATION REQUIREMENTS; PRIORITY. (a) An employer may not apply both to a public community or technical college for customized training and assessment from the college through a grant issued to the college under the skills development fund program established under this chapter and for a grant under the Texas Enterprise Fund [~~smart jobs fund~~] program established under Subchapter E [F], Chapter 481, Government Code, unless the employer and the college file an application for concurrent participation in both programs that complies with any rules adopted by the Texas Workforce Commission on concurrent participation [Section 481.1565, Government Code].

(b) In awarding any grant under this chapter, the commission shall consider giving priority to training incentives for small businesses.

SECTION 8. Section 2308.308, Government Code, is amended to read as follows:

Sec. 2308.308. PUBLIC COMMUNITY COLLEGE. A public community college shall promptly provide workforce training and services that are requested:

(1) by a board if the need for the training and services is based on the labor market information system available for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the employers or through the board; or

(3) as part of economic development incentives designed to attract or retain an employer, including incentives offered under the skills development [smart jobs] fund program under [Subchapter J,] Chapter 303, Labor Code [481].

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **HB 2421** 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 Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2421** 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.

### HOUSE BILL 2421 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 2421** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 2129 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2129** at this time on its second reading:

**HB 2129**, Relating to energy-saving measures that reduce the emission of air contaminants.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

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

Amend **HB 2129** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which \$296,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan;

(3) for administrative costs incurred by the commission and the laboratory, three percent.

The amendment was read.

Senator Armbrister withdrew Committee Amendment No. 1.

Senator Armbrister offered the following committee amendment to the bill:

#### **Committee Amendment No. 2**

Amend **HB 2129** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Amend Section 386.056, Health and Safety Code, by adding a new subsection (e) to read as follows:

(e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

The amendment to **HB 2129** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 2.

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 3**

Amend **HB 2129** as follows:

(1) On page 3, after line 9, add a new sub item (10) to the list of Section 31.005. CUSTOMER-OPTION PROGRAMS, section (a):

"(10) a program to encourage the use of appropriate trees or other landscaping for energy efficiency."

The amendment to **HB 2129** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 3.

**Committee Amendment No. 4 was not offered.**

**Committee Amendment No. 5 was not offered.**

Senator Barrientos offered the following committee amendment to the bill:

**Committee Amendment No. 6**

Amend **HB 2129** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0173 to read as follows:

Sec. 382.0173. AREAS SUBJECT TO EARLY ACTION COMPACTS. (a) In this section:

(1) "Early action compact" has the meaning assigned by Section 382.301.

(2) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(3) "Participating county" has the meaning assigned by Section 382.301.

(b) The commission shall:

(1) consider the implementation of each air quality control measure proposed in an early action plan submitted to the commission pursuant to an early action compact;

(2) authorize or implement each submitted air quality control measure that the commission determines is reasonably necessary to ensure attainment of the eight-hour ozone national ambient air quality standard and prevent a nonattainment designation in a participating county, including any measure that could be authorized or implemented in a nonattainment area; and



(3) in authorizing or implementing a submitted air quality control measure, consider reasonable margins included in a submitted early action plan that allow for population and industrial growth, weather events, and scientifically accepted margins of error in data and modeling.

(c) The commission shall authorize or implement any subsequent revision to an air quality control measure proposed under Subsection (b) that directly affects or requires action of a significant portion of the general population of a participating county only if the governing bodies of both the participating county and the most populous municipality that has a majority of the municipality's residents residing in the participating county request or consent to the measure as part of an early action plan.

The amendment to **HB 2129** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 6.

Senator Staples offered the following committee amendment to Committee Amendment No. 6:

#### **Committee Amendment No. 7**

Amend Committee Amendment No. 6 for **HB 2129** by adding the following to Section 382.0173(b) in the appropriately numbered Section:

"(4) This section only applies to early action compacts with a population of 1 million, and any measure shall only apply to those counties."

The amendment to Committee Amendment No. 6 to **HB 2129** was read and was adopted by a viva voce vote.

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

Absent: Williams.

Senator Armbrister offered the following amendment to the bill:

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

Amend **HB 2129** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less

than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which \$216,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan;

(3) for administrative costs incurred by the commission and the laboratory, three percent.

The amendment to **HB 2129** 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: Williams.

Senator Armbrister offered the following amendment to the bill:

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

Amend **HB 2129** by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 39.904, Utilities Code, is amended by adding subsection (g) to read as follows:

(g) For installation by 2015, the commission shall establish a renewable energy credit program of 100 megawatts of renewable distributed generation technology in each non-attainment area in the state.

The amendment to **HB 2129** 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: Williams.

Senator Armbrister offered the following amendment to the bill:

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

Amend **HB 2129** by adding the appropriately numbered section and renumbering the subsequent sections accordingly:

SECTION \_\_. Section 382.0215, Health and Safety Code, is amended by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (h) to read as follows:

(a) In this section:

(1) "Emissions~~[-emissions]~~ event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more [an] emissions points at a regulated entity [point].

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity [~~facility~~] provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity [~~facility~~] that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity [~~facility~~] in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity [~~facility~~];

(B) the location of the reporting regulated entity [~~facility~~];

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(f) An owner or operator of a regulated entity [~~facility~~] required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity [~~facility~~] experienced no emissions events during the prior year. An owner or operator of a regulated entity [~~facility~~] required by

Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

The amendment to **HB 2129** 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. 3 except as follows:

Absent: Williams.

Senator Armbrister offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **HB 2129** by amending Section 1 to read as follows:

SECTION 1. Chapter 388, Health and Safety Code, is amended by adding Section 388.012 to read as follows:

Sec. 388.012. DEVELOPMENT OF ALTERNATIVE ENERGY-SAVING METHODS. The laboratory shall develop at least three alternative methods for achieving a 15 percent greater potential energy savings in residential, commercial, and industrial construction than the potential energy savings of construction that is in minimum compliance with Section 388.003. The laboratory shall consider the use of indirect evaporative cooling with an integral economizer. The alternative methods:

(1) may include both prescriptive and performance-based approaches, such as the approach of the United States Environmental Protection Agency's Energy Star qualified new home labeling program; and

(2) must include an estimate of:

(A) the implementation costs and energy savings to consumers; and

(B) the related emissions reductions.

The amendment to **HB 2129** 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. 4 except as follows:

Absent: Williams.

Senator Carona offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 2129** (Senate committee report) by adding the following appropriately numbered sections:

SECTION \_\_. Section 39.107, Utilities Code, is amended by amending Subsections (a) and (b) and by adding Subsection (h) to read as follows:

(a) On introduction of customer choice in a service area, metering services for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of

customer choice. Metering services provided to commercial and industrial customers that are required by the independent system operator to have an interval data recorder meter may ~~shall~~ be provided on a competitive basis ~~[beginning on January 1, 2004].~~

(b) Metering services provided to residential customers and to nonresidential customers other than those required by the independent system operator to have an interval data recorder meter shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice ~~[until the later of September 1, 2005, or the date on which at least 40 percent of those residential customers are taking service from unaffiliated retail electric providers].~~ Retail electric providers serving residential and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter may request that the transmission and distribution utility provide specialized meters, meter features, or add-on accessories so long as they are technically feasible and generally available in the market and provided that the retail electric provider pays the differential cost of such a meter or accessory. Metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the commission under Section 39.101. All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information. A customer may authorize its data to be provided to one or more retail electric providers under rules and charges established by the commission.

(h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year, and shall ensure that the nonbypassable surcharge does not result in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs.

SECTION \_\_. (a) In recognition that advances in digital and communications equipment and technologies, including new metering and meter information technologies, have the potential to increase the reliability of the regional electrical network, encourage dynamic pricing and demand response, make better use of generation assets and transmission and generation assets, and provide more choices for consumers, the legislature encourages the adoption of these technologies by electric utilities in this state.

(b) The Public Utility Commission of Texas shall study the efforts of electric utilities to benefit from the use of advanced metering and metering information networks. The commission shall present to the legislature on or before September 30, of each even-numbered year a report detailing those efforts and identifying changes in

this state's policies that may be necessary to remove barriers to the use of advanced metering and metering information networks or of other advanced transmission and distribution technologies. On or before September 30, 2010, the commission shall:

- (1) evaluate whether advances in technology, changes in the market, or other unanticipated factors, would allow meters or various meter-related products or services to be provided more efficiently or more effectively through competition; and
- (2) make recommendations for legislation the commission considers appropriate.

The amendment was read.

Senator Carona temporarily withdrew Floor Amendment No. 5.

Senator Fraser offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **HB 2129** (Senate committee printing) by adding the following numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly.

SECTION \_\_\_\_\_. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION \_\_\_\_\_. Subsection (e), Section 39.203, Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1)-(3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final

order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION \_\_\_\_\_. Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (g) through (n) to read as follows:

(a) It is the intent of the legislature that by January 1, 2015 [2009], an additional 5,000 [2,000] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 5,880 [4,280] megawatts by January 1, 2015, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The cumulative installed renewable capacity in this state shall total 2,280 megawatts by January 1, 2007, 3,272 megawatts by January 1, 2009, 4,264 megawatts by January 1, 2011, 5,256 megawatts by January 1, 2013, and 5,880 megawatts by January 1, 2015. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of capacity from a renewable energy technology other than a source using wind energy [2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009].

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones; and

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold in this state are counted toward the goal in Subsection (a).

(n) Notwithstanding any other provision of law, the commission shall have the authority to cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if such suspension is necessary to protect the reliability and operation of the grid.

The amendment was read.

Senator Duncan offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 7**

Amend Floor Amendment No. 6 to **HB 2129** by striking Section 39.904(m), Utilities Code, as added by Floor Amendment No. \_\_ (page \_\_, line \_\_).

The amendment was read.

On motion of Senator Fraser, Floor Amendment No. 7 to Floor Amendment No. 6 to **HB 2129** was tabled by the following vote: Yeas 15, Nays 13.

Yeas: Averitt, Brimer, Carona, Eltife, Estes, Fraser, Gallegos, Harris, Jackson, Janek, Nelson, Shapiro, Staples, Van de Putte, West.

Nays: Armbrister, Barrientos, Deuell, Duncan, Ellis, Lindsay, Lucio, Madla, Seliger, Shapleigh, Wentworth, Whitmire, Zaffirini.

Absent: Hinojosa, Ogden, Williams.

Senator Duncan offered the following amendment to Floor Amendment No. 6:

**Floor Amendment No. 8**

Amend Floor Amendment No. 6 to **HB 2129** as follows:

(1) Strike Section 39.904(a), Utilities Code (added at page \_\_, line \_\_) and replace with the following:

(a) It is the intent of the legislature that by January 1, 2017 [2009], an additional 7,000 [2,000] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 7,880 [1,280] megawatts by January 1, 2017, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by



January 1, 2025. The cumulative installed renewable capacity in this state shall total 3,113 megawatts by January 1, 2007, 3,946 megawatts by January 1, 2009, 4,779 megawatts by January 1, 2011, 5,612 megawatts by January 1, 2013, 6,445 megawatts by January 1, 2015 and 7,880 megawatts by January 1, 2017. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of capacity from a renewable energy technology other than a source using wind energy [2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009].

The amendment to Floor Amendment No. 6 to **HB 2129** was read and failed of adoption by the following vote: Yeas 12, Nays 18.

Yeas: Armbrister, Barrientos, Duncan, Ellis, Lucio, Madla, Seliger, Shapleigh, Van de Putte, Wentworth, Whitmire, Zaffirini.

Nays: Averitt, Brimer, Carona, Deuell, Eltife, Estes, Fraser, Gallegos, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Shapiro, Staples, West, Williams.

Absent: Hinojosa.

Question recurring on the adoption of Floor Amendment No. 6 to **HB 2129**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6 except as follows:

Absent: Williams.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 9**

Amend **HB 2129** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_. Subchapter Z, Chapter 44, Education Code, is amended by adding Section 44.902 to read as follows:

Sec. 44.902. ENERGY AND WATER CONSERVATION CLEARINGHOUSE.

(a) The agency shall establish a clearinghouse of information relating to energy and water conservation measures and programs that are appropriate for school districts.

(b) The agency shall:

(1) solicit information from the state energy conservation office regarding energy and water conservation measures and programs appropriate for school districts;

(2) allow a private entity to submit examples of energy and water conservation measures and programs that have resulted in cost savings and energy efficiency for the entity and that are likely to result in similar benefits for school districts; and

(3) periodically update information described by this section as the agency determines necessary to provide timely information regarding energy and water conservation.

(c) The agency may include in the clearinghouse any information that the agency determines to be relevant to energy and water conservation for school districts.

(d) The agency shall make the information described by this section available on its Internet website in a manner that permits school districts and interested members of the public to easily obtain the information.

The amendment to **HB 2129** 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 except as follows:

Absent: Williams.

Senator Estes offered the following amendment to the bill:

#### **Floor Amendment No. 10**

Amend **HB 2129** by adding the following appropriately numbered section as follows:

SECTION \_\_. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.356 to read as follows:

Sec. 151.356. NONVEHICULAR FUEL CELLS. (a) In this section, "fuel cell" means a device that uses fuel, oxygen, and a catalyst to generate electricity by electrochemical means.

(b) The sale, use, or other consumption of a fuel cell is exempted from the taxes imposed by this chapter unless the fuel cell is designed to be the source of motive power of a vehicle or provides the motive power of a vehicle.

(c) This section expires January 1, 2013.

The amendment to **HB 2129** 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. 10.

Senator Corona again offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 2129** (Senate committee report) by adding the following appropriately numbered sections:

SECTION \_\_. Section 39.107, Utilities Code, is amended by amending Subsections (a) and (b) and by adding Subsection (h) to read as follows:

(a) On introduction of customer choice in a service area, metering services for the area shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice. Metering services provided to commercial and industrial customers that are required by the independent system operator to have an interval data recorder meter may ~~shall~~ be provided on a competitive basis ~~beginning on January 1, 2004~~.

(b) Metering services provided to residential customers and to nonresidential customers other than those required by the independent system operator to have an interval data recorder meter shall continue to be provided by the transmission and distribution utility affiliate of the electric utility that was serving the area before the introduction of customer choice [until the later of September 1, 2005, or the date on

which at least 40 percent of those residential customers are taking service from unaffiliated retail electric providers]. Retail electric providers serving residential and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter may request that the transmission and distribution utility provide specialized meters, meter features, or add-on accessories so long as they are technically feasible and generally available in the market and provided that the retail electric provider pays the differential cost of such a meter or accessory. Metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the commission under Section 39.101. All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information. A customer may authorize its data to be provided to one or more retail electric providers under rules and charges established by the commission.

(h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year, and shall ensure that the nonbypassable surcharge does not result in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs.

SECTION \_\_. (a) In recognition that advances in digital and communications equipment and technologies, including new metering and meter information technologies, have the potential to increase the reliability of the regional electrical network, encourage dynamic pricing and demand response, make better use of generation assets and transmission and generation assets, and provide more choices for consumers, the legislature encourages the adoption of these technologies by electric utilities in this state.

(b) The Public Utility Commission of Texas shall study the efforts of electric utilities to benefit from the use of advanced metering and metering information networks. The commission shall present to the legislature on or before September 30, of each even-numbered year a report detailing those efforts and identifying changes in this state's policies that may be necessary to remove barriers to the use of advanced metering and metering information networks or of other advanced transmission and distribution technologies. On or before September 30, 2010, the commission shall:

(1) evaluate whether advances in technology, changes in the market, or other unanticipated factors, would allow meters or various meter-related products or services to be provided more efficiently or more effectively through competition; and

(2) make recommendations for legislation the commission considers appropriate.

The amendment to **HB 2129** 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 Van de Putte in Chair)

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 11**

Amend **HB 2129** by adding the appropriately numbered sections as follows:

SECTION \_\_. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0161, 382.0162, 382.042, and 382.043 to read as follows:

Sec. 382.0161. MONITORING REQUIREMENTS FOR MAJOR SOURCES.

(a) In this section, "major source" has the meaning assigned by Title V of the federal Clean Air Act (42 U.S.C. Section 7661).

(b) In addition to other monitoring requirements under this chapter, the commission by rule shall require the owner or operator of a major source to:

(1) provide for daily fence-line monitoring of the emission of air contaminants from the major source; and

(2) make and maintain records on the measuring and monitoring of the emissions.

(c) In providing for the daily fence-line monitoring of emissions as required by this section, the owner or operator of the major source must:

(1) provide for at least two monitors with each of the monitors placed on opposite sides of the source;

(2) provide for a sufficient number of monitors so that the maximum distance measured along the fence-line between each monitor is one-eighth of a mile; and

(3) place the monitors in such a way that the monitors are evenly spaced.

(d) The owner or operator of a major source shall designate an independent consultant approved by the commission to certify to the commission that the major source is in compliance with this section. A member, employee, or agent of the commission may examine during regular business hours the monitoring equipment or any records or memoranda relating to the monitoring equipment required under this section.

(e) The commission by rule shall require the owner or operator of a major source to submit for the executive director's approval a list of the air contaminants that the owner or operator will monitor under this section. To be eligible for approval, the list must include:

(1) each hazardous air pollutant listed under 42 U.S.C. Section 7412 of the federal Clean Air Act that is applicable to the major source; and

(2) any other air contaminant that the executive director or a local municipal or county air pollution control agency requests that the owner or operator monitor.

(f) The commission may adopt rules allowing for the owner or operator of a major source to request an exemption from the fence-line monitoring requirements of this section. To be eligible for an exemption, the owner or operator must submit to the executive director for approval an alternative monitoring plan that demonstrates continuous or semi-continuous monitoring of each stack, vent, flare, cooling tower, or other device for which technologically feasible monitoring devices are available. The

owner or operator shall review the plan at least once every five years to identify additional monitoring opportunities based on new technology and submit proposed changes to the executive director for approval.

Sec. 382.0162. COMMISSION PROGRAMS CONCERNING THE IMPACT OF AIR CONTAMINANTS ON PUBLIC HEALTH. (a) The commission, in conjunction with the Department of State Health Services, the Mickey Leland National Urban Air Toxics Research Center, universities located in this state, and other leading researchers, shall establish the programs described by this section. The purposes of the programs are to:

(1) prevent public health problems in this state;

(2) improve understanding of the effects of emissions of air contaminants from a variety of sources on public health in this state; and

(3) improve the legislature's ability to develop the best public policies for ensuring better public health in this state.

(b) The commission shall conduct personal exposure monitoring as part of the TexAQS II ozone field research program to improve the understanding of the relationship between emissions of ozone-forming air contaminants, particularly highly reactive volatile organic compounds, and public health effects, such as asthma.

(c) The commission, in conjunction with leading state and national researchers and policymakers, annually shall host an air toxics workshop concerning the effects of emissions of air contaminants on individuals who experience outdoor, indoor, or personal exposure to the air contaminants, to advance this critical field of study in this state.

(d) The commission shall issue grants for research concerning the effects of emissions of air contaminants on public health, including research concerning the deployment or development of low-cost, effective personal exposure monitoring technology.

(e) The commission shall conduct an exposure study to map the levels of air contaminants in a community that is located near a concentration of industrial sources of air contaminants. The study must evaluate the effects of emissions of air contaminants on public health by monitoring over a one-year period the total outdoor, indoor, and personal exposure of individuals who are exposed to emissions of air contaminants in those communities. The commission shall integrate data collected during the course of the study with available ambient monitoring data and provide the legislature with a report concerning the integrated data not later than January 1, 2007. This subsection expires September 1, 2007.

Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The commission by rule shall adopt effects screening levels for air contaminants. Each effects screening level must:

(1) be set in a manner that takes into consideration all acute and chronic health effects on a person due to exposure to an air contaminant;

(2) be based in part on the health effects of:

(A) the one-hour, eight-hour, or 24-hour exposure of a person to the air contaminant at the fence-line of an emission source; and

(B) the lifetime exposure of a person to the air contaminant at the fence-line of an emission source; and

(3) be set at a level that does not increase the risk of cancer in a person exposed to the air contaminant by greater than one chance in one million.

(b) Not later than January 1, 2006, the commission shall assemble a panel of independent, nationally recognized experts in the fields of toxicology, epidemiology, medicine, and public health to review the commission's effects screening levels and to recommend standards to the commission that comply with the requirements of Subsection (a). The panel shall consider the effects screening levels, methods, and programs of other states as part of the review. The panel must provide opportunities for public comment in conducting the review. The panel shall make recommendations to the commission regarding the commission's effects screening levels, methods, and programs not later than July 1, 2007. Not later than October 1, 2007, the commission shall adopt effects screening levels as required under Subsection (a) that take into consideration the panel's recommendations. The owner or operator of an emission source must comply with the effects screening levels set by the commission under this section not later than January 1, 2009. This subsection expires September 1, 2009.

(c) Until the commission adopts effects screening levels that comply with the requirements of Subsection (a), the effects screening levels adopted by the commission as of September 1, 2005, are interim standards for purposes of Sections 382.043 and 382.085. This subsection expires November 1, 2007.

Sec. 382.043. SANCTIONS; REPORT. (a) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes an effects screening level set by the commission to be exceeded. The commission by rule shall establish requirements for assessing a penalty or initiating an action for an injunction against a person who violates this section.

(b) The commission annually shall publish a report that lists each violation of this section. The report must include any instance in which the commission suspected a violation but later determined that the evidence was not sufficient or credible enough to amount to a violation of this section.

SECTION \_\_. Section 382.085, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (c)-(e) to read as follows:

(a) A ~~[Except as authorized by a commission rule or order, a]~~ person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, either in isolation or in conjunction with air contaminants from other sources, a condition of air pollution.

(c) For purposes of this section, a condition of air pollution is considered to exist if credible evidence demonstrates an unacceptable risk of health effects due to air pollution as determined by:

(1) a measured level of an air contaminant in excess of an effects screening level for the air contaminant for a relevant period as provided by commission rule;

(2) a measured level of multiple air contaminants that in conjunction with one another increase the risk of cancer in a person exposed to the air contaminants by greater than one chance in one million;

(3) a measured level of multiple air contaminants that are associated with the same chronic health condition and that in conjunction with one another are likely to result in a greater risk to an exposed person's health than would one of the contaminants in isolation if measured at the relevant effects screening level for the contaminant; or

(4) any other evidence that is of sufficient value and credibility to demonstrate an injurious or adverse effect to human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

(d) In addition to any other remedy authorized by law, the commission by rule shall establish requirements for assessing a penalty or initiating an action for an injunction against a person who violates this section.

(e) If the commission brings an action for a violation of this section, the burden is on the owner or operator of the facility or source, through certification by a responsible official, to demonstrate to the commission that the facility or source:

(1) is in compliance with all technological requirements applicable to the facility or source;

(2) is in compliance with all monitoring requirements applicable to the facility or source; and

(3) is not aware of any evidence that demonstrates that the facility or source has caused or contributed to a condition of air pollution in violation of this section.

SECTION \_\_. (a) Not later than September 1, 2006, the owner or operator of a major source must provide for the fence-line monitoring of air contaminants as required by Section 382.0161, Health and Safety Code, as added by this Act.

(b) Not later than January 1, 2006, the Texas Commission on Environmental Quality shall adopt requirements for assessing a penalty or initiating an action for an injunction against a person who violates Section 382.043, Health and Safety Code, as added by this Act, or Section 382.085, Health and Safety Code, as amended by this Act.

(c) Not later than March 1, 2006, the Texas Commission on Environmental Quality shall publish an annual report listing violations of effects screening levels as required by Section 382.043, Health and Safety Code, as added by this Act.

(d) Section 382.085, Health and Safety Code, as amended by this Act, applies only to a violation of Section 382.085, Health and Safety Code, that occurs on or after the effective date of this Act. A violation of Section 382.085, Health and Safety Code, that occurs before the effective date of this Act is governed by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

(e) Section 382.043, Health and Safety Code, as added by this Act, applies to any violation of an effects screening level set by the commission that occurs on or after the effective date of this Act. A violation of an effects screening level that occurs before the effective date of this Act is governed by the law in effect when the violation occurs, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

The amendment to **HB 2129** was read and failed of adoption by the following vote: Yeas 6, Nays 19.

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

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Wentworth, Williams.

Absent: Ellis, Fraser, Harris, Staples, West, Whitmire.

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

**(President in Chair)**

**HB 2129** 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.

### **HOUSE BILL 2129 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 **HB 2129** be placed on its third reading and final passage.

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

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

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

On motion of Senator West and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., which had been previously extended to 11:00 p.m., was again suspended and the time was extended to 11:55 p.m. today for the Wednesday, May 25, 2005, Intent Calendar.

**(Senator Armbrister in Chair)**

### **COMMITTEE SUBSTITUTE HOUSE BILL 164 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 164** at this time on its second reading:

**CSHB 164**, Relating to the civil and criminal consequences of engaging in conduct related to the manufacture of methamphetamine and to the distribution and retail sales of certain chemical substances.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

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

Amend **CSHB 164** (Senate committee printing) as follows:



(1) Strike SECTION 3 of the bill on page 2, lines 3-55.

(2) Add appropriately numbered SECTIONS of the bill to read as follows:

SECTION \_\_\_\_\_. Section 481.136(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

(1) does not hold a chemical precursor transfer permit as required by Section 481.078 at the time of the transaction;

(2) does not comply with Section 481.077 or 481.0771;

(3) knowingly makes a false statement in a report or record required by Section 481.077, 481.0771, or 481.078; or

(4) knowingly violates a rule adopted under Section 481.077, 481.0771, or 481.078.

SECTION \_\_\_\_\_. Subtitle C, Title 6, Health and Safety Code, is amended by adding Chapter 486 to read as follows:

CHAPTER 486. OVER-THE-COUNTER SALES OF EPHEDRINE,

PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. DEFINITIONS. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Council" means the State Health Services Council.

(3) "Department" means the Department of State Health Services.

(4) "Ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(5) "Sale" includes a conveyance, exchange, barter, or trade.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002.

Sec. 486.002. APPLICABILITY. This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Sec. 486.003. RULES. The council shall adopt rules necessary to implement and enforce this chapter.

Sec. 486.004. FEES. (a) The department shall collect fees for:

(1) the issuance of a certificate of authority under this chapter; and

(2) an inspection performed in enforcing this chapter and rules adopted under this chapter.

(b) The commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing applications for the issuance of a certificate of authority under this chapter;

(2) issuing certificates of authority under this chapter;

(3) inspecting and auditing a business establishment that is issued a certificate of authority under this chapter; and

(4) otherwise implementing enforcing this chapter.

(c) Fees collected under this section shall be deposited to the credit of a special account in the general revenue fund and appropriated to the department to implement and enforce this chapter.

Sec. 486.005. STATEWIDE APPLICATION AND UNIFORMITY. (a) To ensure uniform and equitable implementation and enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(b) This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(c) This section does not preclude a political subdivision from imposing administrative sanctions on the holder of a business or professional license or permit issued by the political subdivision who engages in conduct that violates this chapter.

[Sections 486.006-486.010 reserved for expansion]

#### SUBCHAPTER B. OVER-THE-COUNTER SALES

Sec. 486.011. SALES BY PHARMACIES. A business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Sec. 486.012. SALES BY ESTABLISHMENTS OTHER THAN PHARMACIES; CERTIFICATE OF AUTHORITY. (a) A business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, or norpseudoephedrine only if the establishment holds a certificate of authority issued under this section.

(b) The department may issue a certificate of authority to engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine to a business establishment that does not operate a pharmacy licensed by the Texas State Board of Pharmacy if the establishment:

(1) applies to the department for the certificate in accordance with department rule; and

(2) complies with the requirements established by the department for issuance of a certificate.

(c) The department by rule shall establish requirements for the issuance of a certificate of authority under this section. The rules must include a consideration by the department of whether the establishment:

(1) complies with the requirements of the Texas State Board of Pharmacy for the issuance of a license to operate a pharmacy;

(2) sells a wide variety of healthcare products; and

(3) employs sales techniques and other measures designed to deter the theft of products containing ephedrine, pseudoephedrine, or norpseudoephedrine and other items used in the manufacture of methamphetamine.

(d) The department may inspect or audit a business establishment that is issued a certificate of authority under this section at any time the department determines necessary.

Sec. 486.013. RESTRICTION OF ACCESS TO EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. A business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine shall:

(1) if the establishment operates a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind the pharmacy counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a pharmacy counter staffed by an employee of the establishment; or

(2) if the establishment does not operate a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind a sales counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a sales counter continuously staffed by an employee of the establishment.

Sec. 486.014. PREREQUISITES TO SALE. Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) sign for the purchase;

(2) make a record of the sale, including the name of the person making the purchase, the date of the purchase, and the item and number of grams of purchased; and

(3) take actions necessary to prevent a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining from the establishment in a single transaction more than:

(A) two packages of those products; or

(B) six grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Sec. 486.015. MAINTENANCE OF RECORDS. The business establishment shall maintain each record made under Section 486.014(2) until at least the second anniversary of the date the record is made and shall make each record available on request by the department or the Department of Public Safety.

[Sections 486.016-486.020 reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter.

Sec. 486.022. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

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

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

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

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

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

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 486.023, the person in writing may:

(1) accept the determination and recommended penalty; or

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

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner by order shall approve the determination.

Sec. 486.025. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

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

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

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

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 486.026 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

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

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

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

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

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

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 486.029. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

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

Sec. 486.030. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

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

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

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

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

Sec. 486.032. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

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

Sec. 486.033. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty under this subchapter is considered to be a contested case under Chapter 2001, Government Code.

(3) In SECTION 5 of the bill, in proposed Section 481.0771(c), Health and Safety Code, on page 3, line 18, strike "five business days" and substitute "10 business days".

(4) Renumber existing SECTIONS of the bill as appropriate.

The amendment to **CSHB 164** 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 Janek offered the following amendment to the bill:

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

Amend **CSHB 164** by adding the following appropriately numbered sections to the bill and renumbering existing sections accordingly:

SECTION \_\_\_\_\_. (a) The heading to Subchapter I, Chapter 431, Health and Safety Code, is amended to read as follows:

SUBCHAPTER I. WHOLESALE ~~[DRUG]~~ DISTRIBUTORS  
OF NONPRESCRIPTION DRUGS

(b) Section 431.201, Health and Safety Code, is amended to read as follows:

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Nonprescription drug" means any drug that is not a prescription drug as defined by Section 431.401.

(2) "Place of business" means each location at which a drug for wholesale distribution is located.

(3) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager [~~repacker~~], own label distributor, broker, jobber, warehouse, or wholesaler.

~~[(2) "Place of business" means each location at which a drug for wholesale distribution is located.]~~

(c) Subchapter I, Chapter 431, Health and Safety Code, is amended by adding Section 431.2011 to read as follows:

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of nonprescription drugs.

(d) Section 431.202, Health and Safety Code, is amended to read as follows:

Sec. 431.202. LICENSE ~~[STATEMENT]~~ REQUIRED. (a) A person may not engage in wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the department under this subchapter or Subchapter N ~~[has filed with the commissioner a signed and verified license statement on a form furnished by the commissioner].~~

(b) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department or electronically on the TexasOnline Internet website [The license statement must be filed annually].

(c) A license issued under this subchapter expires on the second anniversary of the date of issuance.

(e) Section 431.204, Health and Safety Code, is amended to read as follows:

Sec. 431.204. FEES. (a) The department ~~[board]~~ shall collect fees for:

- (1) a license that is filed or renewed;
- (2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.206; and
- (3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission ~~[board may charge annual fees.~~

~~[(e) The board]~~ by rule shall set the fees in amounts that allow the department to recover ~~[at least 50 percent of]~~ the biennial ~~[annual]~~ expenditures of state funds by the department in:

- (1) reviewing and acting on a license;
- (2) amending and renewing a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) ~~[(d)]~~ Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and ~~[may be]~~ appropriated to the department ~~[only]~~ to carry out the administration and enforcement of this chapter.

(f) Sections 431.206 and 431.207, Health and Safety Code, are amended to read as follows:

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department ~~[commissioner or the commissioner's designee]~~ in writing of the licensee's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the licensee shall notify the department ~~[commissioner or the commissioner's designee]~~ in writing to confirm the completion of ~~[verify]~~ the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent ~~[, the address of the new location, and the name and residence address of the individual in charge of the business at the new address].~~

(d) The notice and confirmation required by this section are ~~[Notice will be]~~ deemed adequate if the licensee sends ~~[provides]~~ the ~~[intent and verification]~~ notices ~~[to the commissioner or the commissioner's designee]~~ by certified mail, return receipt requested, ~~[mailed]~~ to the central office of the department or submits them electronically through the TexasOnline Internet website.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; ~~or~~

(5) has not complied with this chapter or the ~~board's~~ rules implementing this chapter;

(6) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter ~~[may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:~~

~~[(1) has violated Section 431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;~~

~~[(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or~~

~~[(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain].~~

(c) The refusal to license an applicant or the suspension or revocation of a license by the department ~~[commissioner]~~ and the appeal from that action are governed by ~~[the board's formal hearing procedures and]~~ the procedures for a contested case hearing under Chapter 2001, Government Code.

(g) Chapter 431, Health and Safety Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. WHOLESALE DISTRIBUTORS OF  
PRESCRIPTION DRUGS

Sec. 431.401. DEFINITIONS. In this subchapter:



(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree for the drug has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products in accordance with Section 431.4011.

(3) "Chain pharmacy warehouse" means a location for which a person holds a wholesale drug distribution license under this subchapter, that serves primarily as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(4) "Logistics provider" means a person that receives prescription drugs only from the original manufacturer, delivers the prescription drugs at the direction of that manufacturer, and does not purchase, sell, trade, or take title to any prescription drug.

(5) "Normal distribution chain" means a chain of custody for a drug from:

(A) a manufacturer to an authorized distributor of record or to a wholesale distributor licensed under this subchapter to a pharmacy or practitioner to a patient;

(B) a manufacturer to an authorized distributor of record to one other authorized distributor of record to a pharmacy or practitioner to a patient; or

(C) a manufacturer to an authorized distributor of record to a chain pharmacy warehouse to a pharmacy or practitioner to a patient.

(6) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of a prescription drug, from sale by a manufacturer, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the prescription drug.

(7) "Place of business" means each location at which a drug for wholesale distribution is located.

(8) "Prescription drug" has the meaning assigned by 21 C.F.R. Section 203.3.

(9) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient.

(10) "Repackager" means a person who engages in repackaging.

(11) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, retail pharmacy that conducts wholesale distribution, or wholesaler. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control of a corporate entity;

(B) the sale, purchase, distribution, trade, or transfer of prescription drugs or the offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, retail pharmacy, chain pharmacy warehouse, or charitable institution in accordance with 21 C.F.R. Section 203.23; or

(E) the delivery by a retail pharmacy of a prescription drug to a patient or a patient's agent under the lawful order of a licensed practitioner.

Sec. 431.4011. ONGOING RELATIONSHIP. In this subchapter, "ongoing relationship" means an association that exists when a manufacturer and distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute the manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Sec. 431.4012. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of prescription drugs.

Sec. 431.402. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of prescription drugs in this state unless the person holds a wholesale drug distribution license under this subchapter for each place of business.

(b) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Sec. 431.403. EXEMPTION FROM LICENSING. (a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted under this chapter to administer and enforce the other provisions of this chapter.

Sec. 431.4031. EXEMPTION FROM CERTAIN PROVISIONS FOR CERTAIN WHOLESALE DISTRIBUTORS. A wholesale distributor that distributes prescription drugs that are medical gases or a wholesale distributor that is a logistics provider on behalf of a manufacturer is exempt from Sections 431.404(b) and (c), 431.405, 431.407, 431.408, 431.412, and 431.413.

Sec. 431.404. LICENSE APPLICATION. (a) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department. The application must contain:

(1) all trade or business names under which the business is conducted;

(2) the address and telephone number of each place of business that is licensed;

(3) the type of business and the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and business addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association;

(6) the name, telephone number, and any information necessary to complete a criminal history record check on a designated representative of each place of business;

(7) the state of incorporation, if the business is a corporation;

(8) a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs; and

(9) the name of the manager for each place of business.

(b) Each person listed in Subsections (a)(6) and (a)(9) shall provide the following to the department:

(1) the person's places of residence for the past seven years;

(2) the person's date and place of birth;

(3) the person's occupations, positions of employment, and offices held during the past seven years;

(4) the business name and address of any business, corporation, or other organization in which the person held an office under Subdivision (3) or in which the person conducted an occupation or held a position of employment;

(5) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license and the nature and disposition of the proceeding;

(6) a statement of whether during the preceding seven years the person has been enjoined, either temporarily or permanently, by a court from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, including the details concerning the event;

(7) a written description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(8) a description of any felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(9) a description of any criminal conviction of the person under appeal, a copy of the notice of appeal for that criminal offense, and a copy of the final written order of an appeal not later than the 15th day after the date of the appeal's disposition; and

(10) a photograph of the person taken not earlier than 30 days before the date the application was submitted.

(c) The information submitted under Subsection (b) must be attested to under oath.

(d) An applicant or license holder shall file with the department a written notice of any change in the information required under this section.

Sec. 431.405. QUALIFICATIONS FOR LICENSE. To qualify for the issuance or renewal of a wholesale distributor license under this subchapter, the designated representative of an applicant or license holder must:

(1) be at least 21 years of age;

(2) have been employed full-time for at least three years by a pharmacy or a wholesale distributor in a capacity related to the dispensing or distributing of prescription drugs, including recordkeeping for the dispensing or distributing of prescription drugs;

(3) be employed by the applicant full-time in a managerial-level position;

(4) be actively involved in and aware of the actual daily operation of the wholesale distributor;

(5) be physically present at the applicant's place of business during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;

(6) serve as a designated representative for only one applicant at any one time;

(7) not have been convicted of a violation of any federal, state, or local laws relating to wholesale or retail prescription drug distribution or the distribution of controlled substances; and

(8) not have been convicted of a felony under a federal, state, or local law.

Sec. 431.406. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this subchapter and the minimum standards adopted under this subchapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state if, after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the rules adopted under this subchapter.

(d) The department shall consider each license application and any related documents or reports filed by or in connection with a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Sec. 431.407. CRIMINAL HISTORY RECORD INFORMATION. The department shall submit to the Department of Public Safety the fingerprints provided by a person with an initial or a renewal license application to obtain the person's criminal history record information and may forward the fingerprints to the Federal Bureau of Investigation for a federal criminal history check.

Sec. 431.408. BOND. (a) A wholesale distributor applying for or renewing a license shall submit payable to this state a bond or other equivalent security acceptable to the department, including an irrevocable letter of credit or a deposit in a trust account or financial institution, in the amount of \$100,000 payable to this state.

(b) The bond or equivalent security submitted under Subsection (a) shall secure payment of any fines or penalties imposed by the department or imposed in connection with an enforcement action by the attorney general, any fees or other enforcement costs, including attorney's fees payable to the attorney general, and any other fees and costs incurred by this state related to that license holder, that are authorized under the laws of this state and that the license holder fails to pay before the 30th day after the date a fine, penalty, fee, or cost is assessed.

(c) The department or this state may make a claim against a bond or security submitted under Subsection (a) before the first anniversary of the date a license expires or is revoked under this subchapter.

(d) The department shall deposit the bonds and equivalent securities received under this section in a separate account.

Sec. 431.409. FEES. (a) The department shall collect fees for:

- (1) a license that is filed or renewed;
- (2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.410; and
- (3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner of the Health and Human Services Commission by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

- (1) reviewing and acting on a license;
- (2) amending and renewing a license;
- (3) inspecting a licensed facility; and
- (4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out this chapter.

Sec. 431.410. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the license holder shall notify the department in writing of the license holder's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the license holder shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are considered adequate if the license holder sends the notices by certified mail, return receipt requested, to the central office of the department or submits the notices electronically through the TexasOnline Internet website.

Sec. 431.411. MINIMUM RESTRICTIONS ON TRANSACTIONS. (a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. The returns or exchanges received by the wholesale distributor as provided by this subsection are not subject to the pedigree requirement under Section 431.412. In connection with the returned goods process, a wholesale distributor should establish appropriate business practices and exercise due diligence designed to prevent the entry of adulterated or counterfeit drugs into the distribution channel.

(b) A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed by the appropriate state licensing authorities or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(c) Except as otherwise provided by this subsection, prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established;  
and

(2) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

Sec. 431.412. PEDIGREE REQUIRED. (a) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer and the original labeler of a prescription drug, shall provide a pedigree for each prescription drug that is not distributed through the normal distribution chain and is sold, traded, or transferred to any other person.

(b) A pharmacy that sells a drug to a person other than the final consumer shall provide a pedigree to the person acquiring the prescription drug. The sale of a reasonable quantity of a drug to a practitioner for office use is not subject to this subsection.

(c) The sale, trade, or transfer of a prescription drug between license holders with common ownership or for an emergency is not subject to this section.

(d) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, and who is in possession of a pedigree for a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Sec. 431.413. PEDIGREE CONTENTS. (a) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(1) the name, address, telephone number, and, if available, the e-mail address of each person who owns or possesses the prescription drug, except common carriers and logistics providers;

(2) the signature of each owner of the prescription drug;

(3) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(4) the transaction dates; and

(5) certification that each recipient has authenticated the pedigree.

(b) The pedigree must include, at a minimum, the:

(1) name of the prescription drug;

(2) dosage form and strength of the prescription drug;

(3) size of the container;

(4) number of containers;

(5) lot number of the prescription drug; and

(6) name of the manufacturer of the finished dosage form.

(c) Each pedigree statement must be:

(1) maintained by the purchaser and the wholesale distributor for at least three years; and

(2) available for inspection and photocopying on a request by the department or a peace officer in this state.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this section.

(e) The department shall:

(1) conduct a study on the implementation of electronic pedigrees;

(2) in conducting the study under Subdivision (1), consult with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drugs in this state; and

(3) based on the results of the study, establish an implementation date, which may not be earlier than December 31, 2007, for electronic pedigrees.

(f) Subsection (e) and this subsection expire January 1, 2009.

Sec. 431.414. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The commissioner of state health services may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(b) The executive commissioner of the Health and Human Services Commission by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The department shall deny a license application that is incomplete, contains false, misleading, or incorrect information, or contains information that cannot be verified by the department.

(d) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 431.415. ORDER TO CEASE DISTRIBUTION. (a) The commissioner of state health services shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the commissioner determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or



(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(b) An order under Subsection (a) must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(c) If, after providing an opportunity for a hearing, the commissioner of state health services determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

(h) Section 431.059, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Subsection (a-2) or Section 431.021, as applicable, to establish criminal responsibility for the violation.

(a-1) A person commits an offense if the person engages in the wholesale distribution of prescription drugs in violation of Subchapter N. An offense under this subsection is punishable by a fine not to exceed \$50,000.

(a-2) A person commits an offense if the person knowingly engages in the wholesale distribution of prescription drugs in violation of Subchapter N. An offense under this subsection is punishable by imprisonment for not more than 15 years, a fine not to exceed \$500,000, or both imprisonment and a fine.

(i) Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042–431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N [filing a licensing statement with the commissioner as required by Section 431.202 or having a license as required by Section 431.272], as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition; ~~[or]~~

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department [the board, the commissioner, or the department] under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413; or

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market.

(j) Section 411.110, Government Code, is amended to read as follows:

Sec. 411.110. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: ~~[TEXAS]~~ DEPARTMENT OF STATE HEALTH SERVICES.

(a) The ~~[Texas]~~ Department of State Health Services is entitled to obtain from the department criminal history record information maintained by the department that relates to:

(1) a person who is:

(A) [(4)] an applicant for a license or certificate under the Emergency Medical Services Act (Chapter 773, Health and Safety Code);

(B) [(2)] an owner or manager of an applicant for an emergency medical services provider license under that Act; or

(C) [(3)] the holder of a license or certificate under that Act; or

(2) an applicant for a license or a license holder under Subchapter N, Chapter 431, Health and Safety Code.

(b) Criminal history record information obtained by the [~~Texas~~] Department of State Health Services under Subsection (a) may not be released or disclosed to any person except on court order, with the written consent of the person or entity that is the subject of the criminal history record information, or as provided by Subsection (e).

(c) After an entity is licensed or certified, the [~~Texas~~] Department of State Health Services shall destroy the criminal history record information that relates to that entity.

(d) The Department of State Health Services [~~Texas Board of Health~~] shall destroy criminal history record information that relates to an applicant that is not certified.

(e) The Department of State Health Services [~~Texas Board of Health~~] is not prohibited from disclosing criminal history record information obtained under Subsection (a) in a criminal proceeding or in a hearing conducted by the [~~Texas~~] Department of State Health Services.

(k) Sections 431.2021 and 431.205, Health and Safety Code, are repealed.

(l) Not later than January 1, 2006, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this section by amending Subchapter I, Chapter 431, Health and Safety Code, and adding Subchapter N, Chapter 431, Health and Safety Code.

(m) Not later than January 1, 2006, the Department of State Health Services shall prescribe the forms required to implement the changes in law made by this section by the amendment of Subchapter I, Chapter 431, Health and Safety Code, and the addition of Subchapter N, Chapter 431, Health and Safety Code.

(n) The change in law made by this section applies only to an offense committed on or after March 1, 2006. An offense committed before that date is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before March 1, 2006, if any element of the offense was committed before that date.

(o) Except as provided by Subsection (p) of this section, this section takes effect September 1, 2005.

(p) Subsections (a) through (i) of this section take effect March 1, 2006.

The amendment to **CSHB 164** 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.

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

**CSHB 164** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 164 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 164** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Nelson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 3093 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3093** at this time on its second reading:

**HB 3093**, Relating to ex parte petitions for the expunction of criminal records and files.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3093** by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 411.081, Government Code, is amended by amending Subsections (d), (g), and (h) and by adding Subsections (g-1), (g-2), (i), and (j) to read as follows:

(d) Notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection. Except as provided by Subsection (e), a person may petition the court under this subsection regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order ~~[an individual or agency described by Section 411.083(b)(1), (2), or (3)]~~. A person may petition the court that

placed the person on deferred adjudication for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after:

(1) the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described by Subdivision (2);

(2) the second ~~[fifth]~~ anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a misdemeanor under Chapter 20, 21, 22, 25, 42, or 46, Penal Code; or

(3) the fifth ~~[10th]~~ anniversary of the discharge and dismissal, if the offense for which the person was placed on deferred adjudication was a felony.

(g) When an order of nondisclosure is issued under this section ~~[subsection]~~, the clerk of the court shall send a copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety. Not later than 10 business days after receipt of the order, the ~~[The]~~ Department of Public Safety shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall also send a copy of the order by mail or electronic means to all:

(1) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(2) ~~[, and to all]~~ central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order; and

(3) private entities that purchase criminal history record information from the department.

(g-1) Not later than 30 business days after receipt of an order from the Department of Public Safety under Subsection (g), an individual or entity described by Subsection (g)(1) shall seal any criminal history record information maintained by the individual or entity that is the subject of the order.

(g-2) A person whose criminal history record information has been sealed under this section is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of an order issued under this section.

(h) The clerk of a court that collects a fee under Subsection (d) shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

(1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;

(2) the actions taken by the department with respect to the petitions and orders received; ~~[and]~~

(3) the costs incurred by the department in taking those actions; and

(4) the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure to the following noncriminal justice agencies or entities only:

(1) the State Board for Educator Certification;

(2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;

(3) the Texas State Board of Medical Examiners;

(4) the Texas School for the Blind and Visually Impaired;

(5) the Board of Law Examiners;

(6) the State Bar of Texas;

(7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;

(8) the Texas School for the Deaf;

(9) the Department of Family and Protective Services;

(10) the Texas Youth Commission;

(11) the Department of Assistive and Rehabilitative Services;

(12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;

(13) the Texas Private Security Board;

(14) a municipal or volunteer fire department;

(15) the Board of Nurse Examiners;

(16) a safe house providing shelter to children in harmful situations;

(17) a public or nonprofit hospital or hospital district;

(18) the Texas Juvenile Probation Commission;

(19) the securities commissioner, the banking commissioner, the savings and loan commissioner, or the credit union commissioner;

(20) the Texas State Board of Public Accountancy; and

(21) the Texas Department of Licensing and Regulation.

(j) If the Department of Public Safety receives information indicating that a private entity that purchases criminal history record information from the department has been found by a court to have committed five or more violations of Section 552.1425 by compiling or disseminating information with respect to which an order of nondisclosure has been issued, the department may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

SECTION \_\_\_\_\_. Article 35.12, Code of Criminal Procedure, is amended to read as follows:

Art. 35.12. MODE OF TESTING. (a) In testing the qualification of a prospective juror after the juror [he] has been sworn, the juror [he] shall be asked by the court, or under its direction:



1. Except for failure to register, are you a qualified voter in this county and state under the Constitution and laws of this state?
2. Have you ever been convicted of theft or any felony?
3. Are you under indictment or legal accusation for theft or any felony?

(b) In testing the qualifications of a prospective juror, with respect to whether the juror has been the subject of an order of nondisclosure or has a criminal history that includes information subject to that order, the juror may state only that the matter in question has been sealed.

SECTION \_\_\_\_\_. The changes in law made by this Act relating to a person's eligibility for an order of nondisclosure apply to criminal history record information related to a deferred adjudication or similar procedure described by Subsection (f), Section 411.081, Government Code, regardless of whether the deferred adjudication or procedure is entered before, on, or after the effective date of this Act.

The amendment was read.

Senator West offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **HB 3093**, on page 5, line 4, following subsection (21), add the following:

(22) the Health and Human Services Commission; and

(23) the Department of Aging and Disability Services".

The amendment to Floor Amendment No. 1 to **HB 3093** 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.

Question recurring on the adoption of Floor Amendment No. 1 to **HB 3093**, the amendment as amended was adopted by a viva voce vote.

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

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

**HB 3093** 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.

### **HOUSE BILL 3093 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3093** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 1006 ON SECOND READING**

Senator Janek moved to suspend the regular order of business to take up for consideration **CSHB 1006** at this time on its second reading:

**CSHB 1006**, Relating to the adoption of ad valorem tax rates by taxing units and to related tax bills.

The motion prevailed.

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

The bill was read second time.

Senator Janek offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1006** as follows:

(1) Add the following appropriately numbered section to the bill and renumber existing sections accordingly:

SECTION \_\_\_\_\_. Section 25.19, Tax Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) For real property, in addition to the information required by Subsection (b), the chief appraiser shall state in a notice required to be delivered under Subsection (a), the difference, expressed as a percent increase or decrease, as applicable, in the appraised value of the property for the current tax year as compared to the fifth tax year before the current tax year.

(2) Strike SECTION 5 of the bill (committee printing, page 4, lines 7-60), and substitute the following:

SECTION 5. Section 31.01, Tax Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) The tax bill or a separate statement accompanying the tax bill shall:

- (1) identify the property subject to the tax;
- (2) state the appraised value, assessed value, and taxable value of the property;
- (3) if the property is land appraised as provided by Subchapter C, D, E, or H, Chapter 23, state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, 23.76, or 23.9807, as applicable;
- (4) state the assessment ratio for the unit;
- (5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;
- (6) state the total tax rate for the unit;
- (7) state the amount of tax due, the due date, and the delinquency date;
- (8) explain the payment option and discounts provided by Sections 31.03 and 31.05, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;

(9) state the rates of penalty and interest imposed for delinquent payment of the tax;

(10) include the name and telephone number of the assessor for the unit and, if different, of the collector for the unit; ~~and~~

(11) for real property, state the differences, expressed as a percent increase or decrease, as applicable, in the following for the current tax year as compared to the fifth tax year before that tax year:

(A) the appraised value of the property; and

(B) the amount of taxes imposed on the property by the unit; and

(12) include any other information required by the comptroller.

(c-1) If any information required by Subsection (c)(11) to be included in a tax bill or separate statement is unavailable, the tax bill or statement must state that the information is not available for that year. This subsection expires December 31, 2011.

The amendment to **CSHB 1006** 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 Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1006** 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: Zaffirini.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1006 ON THIRD READING**

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1006** be placed on its third reading and final passage.

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

Nays: Zaffirini.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 2335 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSHB 2335** at this time on its second reading:

**CSHB 2335**, Relating to certain duties of state agencies with regard to members of the United States armed forces and their dependents and the communities in which they reside.

The motion prevailed.

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

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2335** as follows:

(1) In the recital to Section 8 of the bill (page 4, line 46), strike "Sections 1101.3605 and" and substitute "Section".

(2) In Section 8 of the bill, strike added Section 1101.3605, Occupations Code (page 4, lines 48-60).

(3) In Section 8 of the bill, in added Section 1101.3606, Occupations Code (page 4, line 62), strike "DEPENDENTS" and substitute "SPOUSES".

(4) In Section 8 of the bill, in added Section 1101.3606, Occupations Code (page 4, line 69), strike "dependent" and substitute "spouse".

(6) Strike SECTION 9 of the bill (page 5, lines 6-10), and substitute the following:

SECTION 9. Section 1101.454, Occupations Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Except as provided by Subsection (e), the [The] commission may not waive the requirements for renewal under this section.

(e) The commission shall waive the requirements under this section for a license holder who is issued a license under Section 1101.3606 if before the first renewal of the license, the license holder provides to the commission satisfactory evidence that the license holder has completed:

(1) two semester hours, or equivalent classroom hours, of core real estate courses described by Section 1101.003(a)(1); and

(2) two semester hours, or equivalent classroom hours, of core real estate courses described by Section 1101.003(a)(2).

The amendment to **CSHB 2335** 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 Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2335** (committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTION accordingly:

SECTION 11. Subchapter A, Chapter 17, Utilities Code, is amended by adding Section 17.008 to read as follows:

Sec. 17.008. RELIEF PROGRAM FOR CERTAIN MEMBERS OF ARMED FORCES. (a) In this section, "service member" means a member of the Texas National Guard or a reserve component of the United States armed forces called to federal active duty for any national emergency or other deployment for a period of at least 180 days away from the primary residence.

(b) The commission shall adopt and enforce rules to establish a leveled payment plan for service members and their dependents. The rules must require that, on the request of a residential customer who is a service member or a dependent of a service member who resides at the service member's main residence, an electric

utility, retail electric provider, power generation company, aggregator, or other entity that provides retail electric service to the residential customer shall provide a levelized payment plan for the residential customer. The service member or the service member's dependent must provide to the entity providing service a copy of the military orders calling the service member to active duty. The levelized payment plan must:

(1) allow the residential customer to negotiate a fixed monthly payment up to 9 months equal to or greater than 75 percent of the service member's average bill for the previous 12 month period, and if the service member has resided at the location for less than 12 months, the entity that provides retail electric service to the residential customer may use an alternative method to calculate the average bill, such as the average billing at the same premise by a previous occupant;

(2) after the initial 9 month or less payment plan, require payment of the customer's regular utility payment for a period not to exceed 9 months,

(3) After the second 9 month period, require payment of the full deferred amount owed in equal monthly payments for a period not to exceed 9 months; and

(4) prohibit the entity providing retail electric service from disconnecting service to the residential customer for nonpayment as long as the residential customer complies with the terms of the levelized payment plan.

(c) This section does not prohibit a residential customer from entering into an alternative, mutually agreed upon, payment plan with an entity that provides retail electric service to the residential customer, nor does it prohibit the entity from offering other assistance programs in addition to a levelized payment plan, nor does it prohibit the customer from accelerating repayment of the deferred charges.

SECTION 12. Subchapter F, Chapter 104, Utilities Code, is amended by adding Section 104.259 to read as follows:

Sec. 104.259. RELIEF PROGRAM FOR CERTAIN MEMBERS OF THE ARMED SERVICES. (a) In this section:

(1) "Provider" means:

(A) a gas utility, as defined by Sections 101.003 and 121.001; and

(B) an owner, operator, or manager of a mobile home park or apartment who purchases natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house under Chapter 124.

(2) "Service member" means a member of the Texas National Guard or a reserve component of the United States armed forces called to federal active duty for any national emergency or other deployment for a period of at least 180 days away from the primary residence.

(b) The commission shall adopt and enforce rules to establish a levelized payment plan for service members and their dependents. The rules must require that, on the request of a residential customer who is a service member or a dependent of a service member who resides at the service member's main residence, a provider shall provide a levelized payment plan for the residential customer. The service member or the service member's dependent must provide to the provider a copy of the military orders calling the service member to active duty. The levelized payment plan must:

(1) allow the residential customer to negotiate a fixed monthly payment up to 9 months equal to or greater than 75 percent of the service member's average bill for the previous 12 month period, and if the service member has resided at the location for less than 12 months, the entity that provides retail electric service to the residential customer may use an alternative method to calculate the average bill, such as the average billing at the same premise by a previous occupant;

(2) after the initial 9 month or less payment plan, require payment of the customer's regular utility payment for a period not to exceed 9 months;

(3) After the second 9 month period, require payment of the full deferred amount owed in equal monthly payments for a period not to exceed 9 months; and

(4) prohibit the entity providing retail electric service from disconnecting service to the residential customer for nonpayment as long as the residential customer complies with the terms of the levelized payment plan.

(c) This section does not prohibit a residential customer from entering into an alternative, mutually agreed upon, payment plan with an entity that provides retail electric service to the residential customer, nor does it prohibit the entity from offering other assistance programs in addition to a levelized payment plan, nor does it prohibit the customer from accelerating repayment of the deferred charges.

The amendment to **CSHB 2335** 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.

Senator Shapleigh offered the following amendment to the bill:

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

Amend **CSHB 2335** (committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTION accordingly:

SECTION 11. Chapter 342, Finance Code, is amended by adding the Subchapter M to read as follows:

#### SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

Sec. 342.601. DEFINITIONS. In this subchapter:

(1) "Lender" means a lender licensed under this chapter.

(2) "Member of the United States military" means:

(A) a member of the armed forces of the United States; or

(B) a member of the Texas National Guard who is called to federal active duty.

Sec. 342.602. The Office of Consumer Credit Commissioner shall adopt and enforce rules to protect military borrowers. The rules shall ensure the following:

(1) Before engaging in a deferred presentment transaction, a lender shall provide to a customer who is a member of the United States military or the member's spouse a written statement that clearly and conspicuously states that:

(1) the lender is prohibited by law from:

(A) garnishing the wages of any borrower, including a borrower who is a member of the United States military;

(B) conducting any collection activity against a borrower who is:

(i) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(ii) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(iii) the spouse of a person described by Paragraph (i), for the duration of the posting; or

(iv) the spouse of a person described by Paragraph (ii), for the duration of the duty; or

(C) from contacting the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse;

(2) the lender shall honor the terms of a repayment agreement entered into with a member of the United States military or the member's spouse, including a repayment agreement negotiated through military counselors or third-party credit counselors; and

(3) the lender shall honor any statement made by a commanding officer of a member of the United States military declaring any location where deferred presentment transaction business is to be conducted by the lender to be a place at which a member of the United States military or the member's spouse is prohibited from transacting business.

Sec. 342.603. The Office of Consumer Credit Commissioner shall adopt and enforce rules to protect military borrowers. The rules shall ensure the following:

(1) A lender may not contact the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse.

(2) A lender may not engage in collection activity against a borrower who is:

(a) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(b) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(c) the spouse of a person described by Subdivision (1), for the duration of the posting; or

(d) the spouse of a person described by Subdivision (2), for the duration of the duty.

(3) A lender may not garnish the wages of a borrower who is a member of the United States military or the member's spouse.

(4) A lender shall honor a repayment agreement entered into with a borrower who is a member of the United States military or the member's spouse, including a repayment agreement negotiated through a military counselor or a third-party credit counselor.

The amendment to **CSHB 2335** 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. 3.

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

**Floor Amendment No. 4**

Amend **CSHB 2335** by adding the following appropriately numbered Section to the bill and renumbering subsequent Sections as appropriate:

SECTION \_\_\_\_ . Section 431.006, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The reemployment rights provided by this section apply to a member of the national guard of another state who works in this state.

The amendment to **CSHB 2335** 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. 4.

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

**CSHB 2335** 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: Brimer.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2335 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2335** be placed on its third reading and final passage.

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

Nays: Brimer.

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

**HOUSE BILL 2376 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2376** at this time on its second reading:

**HB 2376**, Relating to the environmental regulation and remediation of dry cleaning facilities; imposing a penalty.

The bill was read second time.

Senator Jackson, on behalf of Senator Staples, offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2376**, in SECTION 10 of the bill, immediately after amended Subsection (b), Section 374.104, Health and Safety Code, (Senate committee printing page 4, between lines 45 and 46) by adding the following:



(b-1) An owner of a dry cleaning facility who files an option not to participate in accordance with Subsection (b) is entitled to a credit against future registration fees under Section 374.102, Health and Safety Code, to the extent that a registration fee paid in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

The amendment to **HB 2376** 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 Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2376** 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.

### **HOUSE BILL 2376 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2376** be placed on its third reading and final passage.

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

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

**(Wednesday, May 25, 2005)**

### **COMMITTEE SUBSTITUTE**

### **HOUSE BILL 1579 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSHB 1579** at this time on its second reading:

**CSHB 1579**, Relating to certain retired school employees and the powers and duties of the Teacher Retirement System of Texas.

The motion prevailed by the following vote: Yeas 20, Nays 10.

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

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

Absent: Ogden.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

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

Amend **CSHB 1579** by inserting the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 1575.004, Insurance Code, is amended to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. (a) In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) ~~[is at least 65 years of age and]~~ has taken a service retirement under the Teacher Retirement System of Texas after September 1, 2005, with at least 10 years of service credit in the system, which may include up to five years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit, and either:

(i) the sum of the retiree's age and years of service credit in the retirement system equals or exceeds 80 at the time of retirement, regardless of whether the retiree had a reduction in the retirement annuity for early age; or

(ii) the retiree has 30 or more years of service credit in the retirement system at the time of retirement;

(B) has taken a service retirement under the Teacher Retirement System of Texas after September 1, 2004, but on or before August 31, 2005, and on September 1, 2005, either:

(i) [was employed in actual service in public schools in this state during or before the 2003-2004 school year and at the time of retirement] meets the requirements for eligibility for the group program for coverage as a retiree as those requirements existed on August 31, 2004;

(ii) meets the requirements of Paragraph (A); or

(iii) is enrolled in the group program and was enrolled in the group program on August 31, 2005; or

(C) ~~[purchased equivalent or special service credit, and:~~

~~[(i) had that service credited on or before August 31, 2003;~~

~~[(ii) retires on or before August 31, 2009;~~

~~[(iii) at the time of retirement, meets the requirements for eligibility for the group program for coverage as a retiree as those requirements existed on August 31, 2004, including using up to five years of out of state service toward retiree eligibility; and~~

~~[(iv) has taken a service retirement under the Teacher Retirement System of Texas without reduction for early age;~~

~~[(D) has taken a service retirement under the Teacher Retirement System of Texas and who has at least 10 years of service credit in the system, which may include up to five years of military service credit but which may not include any other service credit purchased for equivalent or special service credit, and the sum of the individual's age and amount of service credit described by this paragraph equals or exceeds the number 80; or~~

~~[(E) has taken a service retirement under the Teacher Retirement System of Texas on or before August 31, 2004, and who is enrolled in the group program on August 31, 2005 ~~[2004]~~; or~~

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas.

~~(b) [Each year of service credit in the system that an individual would have received but for the individual's participation in the deferred retirement option plan under Subchapter I, Chapter 824, Government Code, is considered a year of service credit solely for the purpose of meeting the definition of "retiree" under Subsection (a)(1)(A) or (D)].~~

~~[(e)]~~ In this section, "public school" has the meaning assigned by Section 821.001, Government Code.

(c) For purposes of this section, to meet the requirements for eligibility that existed on August 31, 2004, for a service retiree, an individual must not have been eligible to be covered by a plan provided under Chapter 1551 or 1601 and must have taken a service retirement under the Teacher Retirement System of Texas with either:

(1) at least 10 years of service credit in the retirement system for actual service in public schools in this state; or

(2) at least five years of service credit for actual service in the public schools in this state and five years of out-of-state service credit in the Teacher Retirement System of Texas.

The amendment to **CSHB 1579** 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 Duncan offered the following amendment to the bill:

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

Amend **CSHB 1579** (Senate committee printing) as follows:

(1) In SECTION 19 of the bill, strike Subsection (b) of that section (page 7, lines 54-63) and substitute:

(b) A person who retires under the Teacher Retirement System of Texas on or after September 1, 2005, is governed by the law as it existed immediately before September 1, 2005, and that law is continued in effect for that purpose, if the person:

(1) on or before August 31, 2005, meets one or more of the following requirements:

(A) the person has attained age 50;

(B) the sum of the person's age and amount of service credit in the retirement system equals 70 or greater; or

(C) the person has at least 25 years of service credit in the retirement system; or

(2) on or before September 1, 2010, the sum of the person's age and amount of service credit in the retirement system equals the number 80.

(2) In SECTION 19 of the bill, in Subsection (c) of that section, strike "Subsections (b)(2) and (3)" each place the phrase appears (page 7, line 66, and page 8, line 1) and substitute "Subsections (b)(1)(B) and (C)".

The amendment to **CSHB 1579** 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.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 1579** (Senate committee printing) as follows:

(1) In SECTION 13 of the bill, in the recital, strike "Section 825.4092" (page 5, line 39) and substitute "Sections 825.4092 and 825.4093".

(2) In SECTION 13 of the bill, in Subsection (b) of added Section 825.4092, Government Code, between "Subsection (e)" and the comma, (page 5, line 43), insert "or Section 825.4093".

(3) In SECTION 13 of the bill, in Subsection (c) of added Section 825.4092, Government Code, between "Subsection (e)" and the comma, (page 5, line 53), insert "or Section 825.4093".

(4) In SECTION 13 of the bill, following added Section 825.4092, Government Code (page 6, between lines 1 and 2), insert the following:

Sec. 825.4093. REDUCED EMPLOYER CONTRIBUTIONS FOR EMPLOYED RETIREES FOR CERTAIN SCHOOL DISTRICTS. (a) The Texas Education Agency, in accordance with rules adopted by the commissioner of education, may reduce the amount of the employer contributions required under Section 825.4092 for a school district that demonstrates that the district has a severe shortage of available qualified teachers or administrators, as determined under the rules.

(b) A school district is not eligible for a reduction in contributions under this section unless the school district boundaries are at least:

(1) 60 miles from the corporate limits of the nearest municipality with a population of 100,000 or more; and

(2) 30 miles from the corporate limits of the nearest municipality with a population of 50,000 or more.

(c) A school district that qualifies for a reduced contribution under this section shall pay an amount equal to one-half of the contributions otherwise required under Sections 825.4092(b) and (c).

The amendment to **CSHB 1579** was read and was adopted by the following vote: Yeas 23, Nays 5.

Yeas: Armbrister, Averitt, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Seliger, Shapiro, Staples, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Barrientos, Eltife, Gallegos, Ogden, Shapleigh.

Absent: Brimer, Janek, Williams.

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

**CSHB 1579** 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: Barrientos, Ellis, Eltife, Gallegos, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

**MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
HOUSE BILL 1579 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1579** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 10. (Not receiving four-fifths vote of Members present)

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 823 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 823** at this time on its second reading:

**CSHB 823**, Relating to the applicability of the offense of unlawful carrying of weapons to certain persons and to the consequence of certain presumptions in the prosecution of a criminal offense.

The motion prevailed.

Senators Barrientos and Zaffirini 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 **CSHB 823** (Senate committee printing), in SECTION 1 of the bill, in proposed Subsection (i), Section 46.15, Penal Code, as follows:

(1) On page 1, at the end of line 23, strike "and".

(2) On page 1, immediately preceding the period at the end of line 25, insert:

; and

(5) not carrying a handgun in plain view

The amendment to **CSHB 823** 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 Hinojosa and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 823** 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: Barrientos, Zaffirini.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 823 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 823** be placed on its third reading and final passage.

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

Yeas: Armbrister, Averitt, 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, Wentworth, West, Whitmire, Williams.

Nays: Barrientos, Zaffirini.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2233 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2233** at this time on its second reading:

**CSHB 2233**, Relating to state and certain local fiscal matters; providing a penalty.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2233** as follows:

1. Amend Section 13 of **CSHB 2233** as follows:
  - a. Page 3, line 18, strike "Subsection (c)" and replace with "Section 2107.004"
  - b. Page 3, line 30, after the word "with" strike "a person" and replace with "one or more persons"
  - c. Page 3, line 51, after the word "any" insert "penalty and"
  - d. Page 3, line 54, strike "may not exceed" and insert "shall be equal to"
  - e. Page 3, line 60, strike "in the name of this state"
  - f. Page 3, line 63, after "court" insert "brought by a contractor"
2. Strike SECTION 16 of C.S.H.B. 2233 on page 5, lines 24-31 and replace it with the following:

SECTION 16. Section 403.074(d), Government Code, is amended to read as follows:

(d) Except as provided by Subsection (g), or Article 26.051, Code of Criminal Procedure, the comptroller may not pay under this section a single claim in excess of \$25,000, or an aggregate of claims by a single claimant during a biennium in excess of \$25,000. For the purposes of this subsection, all claims that were originally held by one person are considered held by a single claimant regardless of whether those claims were later transferred.

3. Strike Section 20 and Section 21, page 5, line 68 through page 6, line 27.

4. Amend Section 49 as follows:

a. On page 14, lines 21-36, strike Section 49 and renumber subsequent sections accordingly;

b. On page 15, lines 3-6, strike subparagraph (d) and insert the following:

(d) For 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.

5. Amend Section 73, page 19, on line 30, between the word "section" and "does" insert the following:

"as it relates to institutes of higher education."

6. Amend Section 85, page 22, after line 57, by adding three new subsections as follows:

(d) Provided, that for the purpose of the notices required under this section, any person required to collect and remit sales tax may designate a contact address to which the notice must be sent before the penalty provided for in this section may be assessed.

(e) The Comptroller of Public Accounts shall adopt rules relating to the administration of this section which shall include a safe harbor from the penalties imposed by this section where the person acted in good faith and the over-collection of the tax was not the result of a willful disregard of the Comptroller's rules.

(f) Over collections subject to the penalties provided in this section shall not constitute grounds for any cause of action by any person or group of similarly situated persons where the person making the over collection remitted the tax to the Comptroller and assigns the right to refund to the consumer who paid the tax.

(g) Businesses which may be regarded as retailers under 151.024 who pre-collect sales tax prior to the final retail sale are not responsible for civil penalties under this section."

7. In Section 111, page 39, strike lines 34-36.

8. In SECTION 112, following proposed Subsection (a), Section 161.0821, Health and Safety Code (page 39, between lines 53 and 54) following the period, insert the following new subsections and reletter accordingly:

"(b) It is an exception to the application of this section that the person younger than 18 years of age is participating in an investigation or compliance inspection in accordance with Section 161.088 on behalf of the comptroller or a local law enforcement agency.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision."

9. In Section 129, page 45, line 21, strike "and 351.102(c)" and add the following appropriately numbered section and renumber accordingly:

"SECTION \_\_. Section 351.102, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) As soon as practicable after each state fiscal year, the comptroller shall report to the legislature for that fiscal year the amount of state funds paid under Subsection (c)."

The amendment to **CSHB 2233** 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 Duncan offered the following amendment to the bill:

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

Amend **CSHB 2233** as follows:

(1) Strike SECTIONS 86 - 103 of the bill (page 22, line 64 through page 28, line 8).

(2) Add the following appropriately numbered SECTIONS to read as follows and renumber subsequent SECTIONS accordingly:

SECTION \_\_. Section 162.001, Tax Code, is amended by amending Subdivisions (9), (19), (20), (42), (43), and (55) and adding Subdivision (22-a) to read as follows:

(9) "Blending" means the mixing together of one or more [~~petroleum~~] products with other products [~~another product~~], regardless of the original character of the product blended, to produce a product that is offered for sale, sold, or used as a motor fuel or [~~if the product obtained by the blending~~] is capable of use in the generation of power for the propulsion of a motor vehicle. The term does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the commingling of products during transportation in a pipeline.

(19) "Diesel fuel" means kerosene or another liquid, or a combination of liquids blended together, offered for sale, sold, [~~that is suitable for~~] or used as a fuel for a [~~for the propulsion of~~] diesel-powered engine [~~motor vehicles~~]. The term includes products commonly referred to as kerosene, light cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel, aviation jet fuel, biodiesel, distillate fuel, cutter stock, or heating oil, but does not include gasoline, aviation gasoline, or liquefied gas.

(20) "Distributor" means a person who acquires motor fuel, [~~from a licensed supplier, permissive supplier, or another licensed distributor and~~] who makes sales at wholesale, and whose activities may also include sales at retail. The term includes a person engaged in the tax-free sale of dyed diesel fuel that is delivered into the fuel supply tanks of marine vessels.



(22-a) "Dyed diesel fuel dealer" means a dealer who acquires dyed diesel fuel from a licensed supplier, permissive supplier, or distributor for resale and delivery by the dealer into the fuel supply tanks of motorboats, refrigeration units, or other off-highway equipment at a retail location.

(42) "Motor fuel" means gasoline, diesel fuel, liquefied gas, and other products that are offered for sale, sold, or [can be] used as propellants for [to propel] a motor vehicle.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, ~~or~~ gasoline blended fuel, or other motor fuel to which the person does not own title outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

(55) "Shipping document" means a delivery document issued ~~[by a terminal or bulk plant operator]~~ in conjunction with the sale, transfer, or transport [removal] of motor fuel ~~[from the terminal or bulk plant]~~. A shipping document issued by a terminal operator shall be machine printed. All other shipping documents [A shipping document issued by a bulk plant] shall be typed or handwritten on a preprinted form or machine printed.

SECTION \_\_. Section 162.004, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (h) to read as follows:

(a) A person may not transport in this state any motor fuel by barge, vessel, railroad tank car, or transport vehicle unless the person has a shipping document for the motor fuel that complies with this section.

(a-1) A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) A [The] shipping document ~~[issued by the terminal operator or operator of a bulk plant]~~ shall contain the following information and any other information required by the comptroller:

- (1) the terminal control number of the terminal or physical address of the bulk plant from which the motor fuel was received;
- (2) the name ~~[and license number]~~ of the purchaser;
- (3) the date the motor fuel was loaded;
- (4) the net gallons loaded, or the gross gallons loaded if the fuel was purchased from a bulk plant;
- (5) the destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent; and
- (6) a description of the product being transported.

(h) This section does not apply to motor fuel that is delivered into the fuel supply tank of a motor vehicle.

SECTION \_\_. Sections 162.016(a), (b), (d), and (e), Tax Code, are amended to read as follows:

(a) A person may not import motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel ~~[created by the terminal or bulk plant at which the fuel was received]~~. The shipping document must include:

(1) the name and physical address of the terminal or bulk plant from which the motor fuel was received for import or export;

(2) the name [~~and federal employer identification number, or the social security number if the employer identification number is not available,~~] of the carrier transporting the motor fuel;

(3) the date the motor fuel was loaded;

(4) the type of motor fuel;

(5) the number of gallons:

(A) in temperature-adjusted gallons if purchased from a terminal for export or import; or

(B) in temperature-adjusted gallons or in gross gallons if purchased from a bulk plant;

(6) the destination of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered, if delivery is to only one state;

(7) the name [~~federal employer identification number, license number, and physical address~~] of the purchaser of the motor fuel;

(8) the name of the person responsible for paying the tax imposed by this chapter, as given to the terminal by the purchaser if different from the licensed supplier or distributor; [~~and~~]

(9) the destination state of each portion of a split load of motor fuel if the motor fuel is to be delivered to more than one state; and

(10) any other information that, in the opinion of the comptroller, is necessary for the proper administration of this chapter.

(b) The [~~terminal or bulk plant shall provide the~~] shipping documents shall be provided to the importer or exporter.

(d) A seller, transporter, or receiver of [~~terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the~~] motor fuel shall:

(1) retain a copy of the shipping document until at least the fourth anniversary of the date the fuel is received; and

(2) provide a copy of the document to the comptroller or any law enforcement officer not later than the 10th working day after the date a request for the copy is received.

(e) An importer or exporter shall keep in the person's possession the shipping document [~~issued by the terminal or bulk plant~~] when transporting motor fuel imported into this state or for export from this state. The importer or exporter shall show the document to the comptroller or a peace officer on request. The comptroller may delegate authority to inspect the document to other governmental agencies. The importer or exporter shall provide a copy of the shipping document to the person that receives the fuel when it is delivered.

SECTION \_\_. Sections 162.101(b) and (c), Tax Code, are amended to read as follows:

(b) A tax is imposed at the time gasoline is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who imports the gasoline into this state. If the seller is not a supplier or permissive supplier, then the person who imports the gasoline into this state shall pay the tax.

(c) A tax is imposed on the removal [~~sale or transfer~~] of gasoline from [~~in~~] the bulk transfer/terminal system in this state [~~by a supplier to a person who does not hold a supplier's license~~]. The supplier shall collect the tax imposed by this subchapter from the person who orders the removal from [~~sale or transfer in~~] the bulk transfer terminal system.

SECTION \_\_. Section 162.103(d), Tax Code, is amended to read as follows:

(d) A person who sells gasoline in this state, other than by a bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104 shall at the time of sale collect the tax from the purchaser or recipient of gasoline in addition to the selling price and is liable to this state for the taxes imposed [~~collected at the time and~~] in the manner provided by this chapter.

SECTION \_\_. Section 162.113(d), Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier shall [~~has the right~~], after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, [~~to~~] terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

SECTION \_\_. Section 162.115, Tax Code, is amended by adding Subsection (m-1) to read as follows:

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION \_\_. Sections 162.116(a) and (d), Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) [~~the number of net gallons of gasoline received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

[(2)] the number of net gallons of gasoline removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(2) [(3)] the number of net gallons of gasoline removed during the month for export, sorted by product code, person receiving the gasoline, terminal code, destination state, and carrier;

(3) ~~(4)~~ the number of net gallons of gasoline removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(4) ~~(5)~~ the number of net gallons of gasoline the supplier or permissive supplier sold during the month in transactions exempt under Section 162.104, sorted by ~~[product code, carrier,]~~ purchaser~~], and terminal code;~~

~~(6) the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license]; and~~

(5) ~~(7)~~ any other information required by the comptroller.

(d) For purposes of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION \_\_. Section 162.118, Tax Code, is amended to read as follows:

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the distributor during the month, sorted by product code and~~],~~ seller~~], point of origin, destination state, carrier, and receipt date];~~

(2) the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code~~], and carrier];~~

(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of gasoline removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of gasoline the distributor sold during the month in transactions exempt under Section 162.104, sorted by product code and purchaser; and

(6) any other information required by the comptroller.

SECTION \_\_. Section 162.127, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date a valid refund claim is filed with the comptroller. If the comptroller does not issue the refund warrant by that date, the amount of the refund

draws interest at the rate provided by Section 111.064 beginning on the 61st day after the date the valid refund claim is filed and ending on a date not more than 10 days before the date of the refund warrant.

SECTION \_\_. Section 162.128(d), Tax Code, is amended to read as follows:

(d) A supplier, ~~[or]~~ permissive supplier, distributor, importer, exporter, or blender that determines taxes were erroneously reported and remitted or that paid more taxes than were due this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

SECTION \_\_. Sections 162.201(b) and (c), Tax Code, are amended to read as follows:

(b) A tax is imposed at the time diesel fuel is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who imports the diesel fuel into this state. If the seller is not a supplier or permissive supplier, the person who imports the diesel fuel into this state shall pay the tax.

(c) A tax is imposed on the removal ~~[sale or transfer]~~ of diesel fuel from ~~[in]~~ the bulk transfer/terminal system ~~[in this state by a supplier to a person who does not hold a supplier's license]~~. The supplier shall collect the tax imposed by this subchapter from the person who orders the removal from ~~[sale or transfer in]~~ the bulk transfer/terminal system.

SECTION \_\_. Section 162.203(d), Tax Code, is amended to read as follows:

(d) A person who sells diesel fuel in this state, other than by a bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 shall at the time of sale collect the tax from the purchaser or recipient of diesel fuel in addition to the selling price and is liable to this state for the taxes imposed ~~[collected at the time and]~~ in the manner provided by this chapter.

SECTION \_\_. Section 162.204(a), Tax Code, is amended to read as follows:

(a) The tax imposed by this subchapter does not apply to:

(1) diesel fuel sold to the United States for its exclusive use, provided that the exemption does not apply to diesel fuel sold or delivered to a person operating under a contract with the United States;

(2) diesel fuel sold to a public school district in this state for the district's exclusive use;

(3) diesel fuel sold to a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel only to provide those services;

(4) diesel fuel exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) for diesel fuel in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or

(B) for diesel fuel in a situation described by Subsection (e), the bill of lading indicates the destination state, the diesel fuel is subsequently exported, and the exporter is licensed in the destination state to pay that state's tax and has an exporter's license issued under this subchapter;

(5) diesel fuel moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the diesel fuel removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the tax imposed by this subchapter;

(6) diesel fuel delivered or sold into a storage facility of a licensed aviation fuel dealer from which the diesel fuel will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment;

(7) diesel fuel exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country;

(8) dyed diesel fuel sold or delivered by a supplier to another supplier and dyed diesel fuel sold or delivered by a supplier or distributor into the bulk storage facility of a dyed diesel fuel dealer or dyed diesel fuel bonded user or to a purchaser who provides a signed statement as provided by Section 162.206;

(9) the volume of water, fuel ethanol, biodiesel, or mixtures thereof that are blended together with taxable diesel fuel when the finished product sold or used is clearly identified on the retail pump, storage tank, and sales invoice as a combination of diesel fuel and water, fuel ethanol, biodiesel, or mixtures thereof;

(10) dyed diesel fuel sold by a supplier or permissive supplier to a distributor, or by a distributor to another distributor;

(11) dyed diesel fuel delivered by a license holder into the fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(12) dyed kerosene when delivered by a supplier, distributor, or importer into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; or

(13) diesel fuel used by a person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle as defined by Section 548.001, Transportation Code, if the fuel:

(A) is delivered exclusively into the fuel supply tank of the commercial motor vehicle; and

(B) is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule.

SECTION \_\_. Section 162.205(a), Tax Code, is amended to read as follows:

(a) A person shall obtain the appropriate license or licenses issued by the comptroller before conducting the activities of:

(1) a supplier, who may also act as a distributor, importer, exporter, blender, dyed diesel fuel dealer, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(2) a permissive supplier, who may also act as a distributor, importer, exporter, blender, dyed diesel fuel dealer, motor fuel transporter, or aviation fuel dealer without securing a separate license but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(3) a distributor, who may also act as an importer, exporter, blender, dyed diesel fuel dealer, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(4) an importer, who may also act as an exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(5) a terminal operator;

(6) an exporter;

(7) a blender;

(8) a motor fuel transporter;

(9) an aviation fuel dealer;

(10) an interstate trucker; ~~[or]~~

(11) a dyed diesel fuel bonded user; or

(12) a dyed diesel fuel dealer.

SECTION \_\_. Section 162.206, Tax Code, is amended by amending Subsection (c) and adding Subsections (c-1), (g-1), and (k) to read as follows:

(c) A person may not make a tax-free purchase and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement for the first sale or purchase and for any subsequent sale or purchase~~[-~~

~~[(1) for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery; or~~

~~[(2) in a calendar month for [in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser] more than:~~

~~(1) [(A)] 10,000 gallons of dyed diesel fuel;~~

~~(2) [(B)] 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in the original production of, or to increase the production of, oil or gas and furnishes the supplier with a letter of exception issued by the comptroller; or~~

~~(3) [(C)] 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.~~

(c-1) The monthly limitations prescribed by Subsection (c) apply regardless of whether the dyed diesel fuel is purchased in a single transaction during that month or in multiple transactions during that month.

(g-1) For purposes of this section, the purchaser is considered to have furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end user number issued by the comptroller. The licensed supplier or distributor shall use the comptroller's Internet website or other materials provided or produced by the comptroller to verify this information.

(k) Properly completed signed statements should be in the possession of the licensed supplier or distributor at the time the sale of dyed diesel fuel occurs. If the licensed supplier or distributor is not in possession of the signed statements within 60 days after the date written notice requiring possession of them is given to the licensed supplier or distributor by the comptroller, exempt sales claimed by the licensed supplier or distributor that require delivery of the signed statements shall be disallowed. If the licensed supplier or distributor delivers the signed statements to the comptroller within the 60-day period, the comptroller may verify the reason or basis for the signed statements before allowing the exempt sales. An exempt sale may not be granted on the basis of signed statements delivered to the comptroller after the 60-day period.

SECTION \_\_. Section 162.211(b), Tax Code, is amended to read as follows:

(b) The license issued to an aviation fuel dealer or dyed diesel fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

SECTION \_\_. Section 162.213, Tax Code, is amended to read as follows:

Sec. 162.213. LICENSE HOLDER STATUS LIST. (a) The comptroller, on or before December 20 of each year, shall make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, terminal operators, dyed diesel fuel dealers, and dyed diesel fuel bonded users. A supplemental list of additions and deletions shall be made available to the license holders each month. A current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) A licensed supplier or permissive supplier who sells diesel fuel tax-free to a supplier, ~~or~~ permissive supplier, or aviation fuel dealer whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a distributor, dyed diesel fuel dealer, or dyed diesel fuel bonded user whose license has been canceled or revoked under this chapter, is liable for any tax due on diesel fuel sold after receiving notice of the cancellation or revocation.

(c) The comptroller shall notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Sales to a supplier, permissive supplier, distributor, aviation fuel dealer, dyed diesel fuel dealer, or dyed diesel fuel bonded user after the effective date of the reinstatement may be made tax-free.

SECTION \_\_. Section 162.214(d), Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier shall ~~has the right~~, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, ~~to~~ terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

SECTION \_\_. Section 162.215(d), Tax Code, is amended to read as follows:



(d) An aviation fuel dealer and a dyed diesel fuel dealer are ~~is~~ not required to file a return.

SECTION \_\_. Section 162.216, Tax Code, is amended by adding Subsections (l-1) and (m-1) to read as follows:

(l-1) A dyed diesel fuel dealer shall keep:

(1) a record showing the number of gallons of:

(A) dyed and undyed diesel fuel inventories on hand at the first of each month;

(B) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(C) dyed and undyed diesel fuel sold or used, showing the date of the sale or use; and

(D) dyed and undyed diesel fuel lost by fire, theft, or accident; and

(2) for dyed diesel fuel an invoice containing:

(A) the stamped or preprinted name and address of the seller;

(B) the name of the purchaser;

(C) the date of delivery of the dyed diesel fuel;

(D) the number of gallons of dyed diesel fuel delivered;

(E) the type or description of the off-highway equipment into which the dyed diesel fuel is delivered; and

(F) a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE."

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION \_\_. Sections 162.217(a) and (d), Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

~~(1) [the number of net gallons of diesel fuel received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

~~(2)]~~ (2) the number of net gallons of diesel fuel removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

~~(3)]~~ (3) the number of net gallons of diesel fuel removed during the month for export, sorted by product code, person receiving the diesel fuel, terminal code, destination state, and carrier;

~~(4)]~~ (4) the number of net gallons of diesel fuel removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

~~(5)]~~ (5) the number of net gallons of diesel fuel the supplier or permissive supplier sold during the month in transactions exempt under Section 162.204, sorted by ~~product code, carrier,~~ purchaser~~, and terminal code;~~

~~[(6) the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license]; and~~

~~(5) [(7)] any other information required by the comptroller.~~

(d) For the purpose of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION \_\_. Section 162.219, Tax Code, is amended to read as follows:

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN.

The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code and[;] seller[, ~~point of origin, destination state, carrier, and receipt date~~];

(2) the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code[, ~~and carrier~~];

(3) the number of net gallons of diesel fuel removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, sorted by product code and by the entity receiving the diesel fuel;

~~(6) the number of net gallons of~~[;] dyed diesel fuel sold to a purchaser under a signed statement[;] or dyed diesel fuel sold to a dyed diesel fuel bonded user, sorted by product code and by the entity receiving the diesel fuel; and

~~(7) [(6)] any other information required by the comptroller.~~

SECTION \_\_. Section 162.229, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date a valid refund claim is filed with the comptroller. If the comptroller does not issue the refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.064 beginning on the 61st day after the date the valid refund claim is filed and ending on a date not more than 10 days before the date of the refund warrant.

SECTION \_\_. Section 162.230(d), Tax Code, is amended to read as follows:

(d) A supplier, ~~[or]~~ permissive supplier, distributor, importer, exporter, or blender that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

SECTION \_\_. Section 162.402(d), Tax Code, is amended to read as follows:

(d) A person ~~[operating a bulk plant or terminal]~~ who issues a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(e) A person operating a terminal or bulk plant who does not post notice as required by Section 162.016 ~~(h)~~ (h) is liable to this state for a civil penalty of \$100 for each day the notice is not posted as required by Section 162.016 ~~(h)~~ (h).

SECTION \_\_. Sections 162.404(c) and (d), Tax Code, are amended to read as follows:

(c) The prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(a)(1) ~~[+62.204(1)]~~, (2), or (3).

(d) The prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(a)(1) ~~[+62.104(1)]~~, (2), or (3).

SECTION \_\_. The heading to Section 162.409, Tax Code, is amended to read as follows:

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR, ~~[OR]~~ LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

SECTION \_\_. Sections 162.409(a) and (d), Tax Code, are amended to read as follows:

(a) A person commits an offense if:

(1) the person issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance;

(2) the payee on the check or order is a licensed distributor, ~~[or]~~ licensed supplier, or permissive supplier; and

(3) the payment is for an obligation or debt that includes a tax under this chapter to be collected by the licensed distributor, ~~[or]~~ licensed supplier, or permissive supplier.

(d) A person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a licensed distributor, ~~[or]~~ licensed supplier, or permissive supplier may be held liable for a penalty equal to the total amount of tax not paid to the licensed distributor, ~~[or]~~ licensed supplier, or permissive supplier.

SECTION \_\_. Subchapter E, Chapter 162, Tax Code, is amended by adding Section 162.410 to read as follows:

Sec. 162.410. ELECTION OF OFFENSES. If a violation of a provision of this chapter by a person constitutes a criminal offense under another law of this state, the state may elect the offense for which it will prosecute the person.

SECTION \_\_. Section 162.016(c) and Section 162.016(h), Tax Code, are repealed.

SECTION \_\_. This article applies only to taxes imposed on or after the effective date of this article. Taxes imposed before the effective date of this article are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose.

SECTION \_\_. This article takes effect September 1, 2005.

The amendment to **CSHB 2233** 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.

Senator Duncan offered the following amendment to the bill:

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

Amend **CSHB 2233** by adding the following section to the bill, appropriately numbered, and renumbering existing sections accordingly:

SECTION \_\_. (a) Section 21.02, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections [Subsection] (b) and (d) and by Sections 21.021, 21.04, and 21.05, tangible personal property is taxable by a taxing unit if:

(1) it is located in the unit on January 1 for more than a temporary period;

(2) it normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily;

(3) it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period; or

(4) the owner resides (for property not used for business purposes) or maintains the owner's ~~his~~ principal place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this section.

(d) This subsection does not apply to a drilling rig designed for offshore drilling or exploration operations. A mobile portable drilling rig, and equipment associated with the drilling rig, is taxable by the taxing unit in which the rig is located on January 1 if the rig was located in the unit for the preceding 365 consecutive days. If the rig and associated equipment was not located at its January 1 location for the preceding 365 days, it is taxable by the taxing unit in which the owner's principal place of business in this state is located on January 1.

(b) Section 21.02, Tax Code, as amended by Subsection (a) of this section, applies only to an ad valorem tax year that begins on or after January 1, 2006.

(c) This section takes effect January 1, 2006.

The amendment to **CSHB 2233** 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. 3.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 2233** by adding the following SECTION to the bill, appropriately numbered, and renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_. Chapter 205, Alcoholic Beverage Code, is amended by adding Section 205.03 to read as follows:

Sec. 205.03. EXCEPTION FOR CERTAIN WINE-RELATED REVENUE.

(a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding Section 205.02, the following revenue may be appropriated for each state fiscal year only as specified by this section:

(1) the lesser of:

(A) the amount, if any, by which the amount of revenue derived from excise taxes on wine produced in a state other than Texas and any sales taxes collected from holders of out-of-state winery direct shipper's permits as a result of the passage of Senate Bill No. 877 by the 79th Legislature, Regular Session, 2005, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) \$1 million; and

(2) the lesser of:

(A) the amount, if any, by which revenue derived from excise taxes on wine produced in this state and sales taxes remitted by holders of winery permits in this state, according to the most recent projection, as of the beginning of the fiscal year, by the comptroller for the fiscal year exceeds the amount of revenue from those sources for fiscal year 2004, compounded annually for fiscal years 2005-2015 by the average percentage by which revenue from those sources increased from one fiscal year to the next between September 1, 1999, and August 31, 2003; or

(B) \$1 million.

(c) Out of the amounts available under Subsections (b)(1) and (2) for a fiscal year, the lesser of \$50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Cooperative Extension for extension viticulture operations.

(d) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds \$50,000, the lesser of \$50,000 or the total amount available under those subdivisions may be appropriated only to the Texas Agricultural Experiment Station for viticulture research.

(e) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds \$100,000, the lesser of the amount remaining under Subsection (b)(2) or \$65,000 may be appropriated only to the Texas Wine Marketing Research Institute at Texas Tech University.

(f) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c), (d), and (e), the lesser of the amount remaining under Subsections (b)(1) and (2) or \$280,000 may be appropriated only to the Department of Agriculture for distribution as provided by Subsections (g), (h), and (i).

(g) Except as provided by Subsections (h) and (i), money appropriated to the Department of Agriculture under Subsection (f) may be distributed only as follows:

(1) the lesser of the total amount appropriated to the department under Subsection (f) or \$50,000 shall be distributed to an appropriate institution of higher education to fund a new part-time extension faculty position in enology;

(2) if the amount appropriated under Subsection (f) exceeds \$50,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education for extension enology operations;

(3) if the amount appropriated under Subsection (f) exceeds \$100,000, the lesser of the remaining amount or \$50,000 shall be distributed to the institution of higher education designated under Subdivision (1) to fund a new part-time faculty position in enology research;

(4) if the amount appropriated under Subsection (f) exceeds \$150,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education to fund enology research program operations;

(5) if the amount appropriated under Subsection (f) exceeds \$200,000, the lesser of the remaining amount or \$30,000 shall be distributed to an appropriate institution of higher education for technical support personnel for enology research; and

(6) if the amount appropriated under Subsection (f) exceeds \$230,000, the lesser of the remaining amount or \$50,000 shall be distributed to an appropriate institution of higher education to fund two graduate internships in enology.

(h) If the maximum amount that may be distributed for a purpose provided by Subsection (g) is not available and the commissioner of agriculture determines that the amount available for that purpose is insufficient to achieve that purpose, the commissioner of agriculture may deposit the lesser amount into the wine industry development fund to be used for a purpose described by Subsection (l).

(i) Money appropriated under Subsection (f) derived from Subsection (b)(1) may be used only for a purpose described by Subsection (m).

(j) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(g), the lesser of the amount remaining under Subsections (b)(1) and (2) or \$50,000 may be appropriated only for distribution to the T. V. Munson Viticulture and Enology Center at Grayson Community College to fund the associate degree program at the center.

(k) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amount that may be appropriated under Subsections (c)-(j):

(1) the lesser of the amount remaining under Subsection (b)(2) or \$250,000 may be appropriated only to the commission; and

(2) the commission shall reduce the amount of the surcharge imposed during the following fiscal year under Section 5.55, as added Chapter 101, Acts of the 78th Legislature, Regular Session, 2003, on permit and license holders who are not authorized to sell wine by an amount that will reduce the total amount collected under that section by the amount appropriated to the commission under Subdivision (1).

(l) If the amount available for a fiscal year under Subsections (b)(1) and (2) exceeds the amounts that may be appropriated under Subsections (c)-(k), the remaining amount shall be deposited in the general revenue fund to the credit of the wine industry development fund and may be appropriated only to the Department of Agriculture. Money appropriated under this subsection may be used only for the purpose of providing funding to public or private entities to conduct surveys, research, and other projects related to a purpose described by Subsection (m) or (n).

(m) Revenue derived under Subsection (b)(1) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purpose of:

(1) developing viticulture-related and enology-related education programs;

(2) eliminating and eradicating Pierce's disease, the glassy-winged sharpshooter, and other diseases and pests that negatively impact the production of grapes and wine in the United States; or

(3) developing technologies, strategies, or practices that could benefit the production of grapes and wine in the United States.

(n) Revenue derived under Subsection (b)(2) and not otherwise appropriated under Subsections (c)-(k) may be appropriated only for the purposes of increasing the economic impact of the Texas wine producing industry on the state.

(o) The comptroller shall provide the Department of Agriculture information necessary to allow the department to identify the amount of revenue appropriated to the department that is derived under Subsection (b)(1) and the amount of that revenue that is derived under Subsection (b)(2) so that the department may distribute the revenue in accordance with this section.

(p) This section expires September 1, 2015.

The amendment to **CSHB 2233** 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. 4.

Senator Ellis offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSHB 2233** by adding a new Section \_\_\_\_ to read as follows and renumbering the subsequent sections accordingly:

SECTION \_\_. Section 103.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 103.002. CHOICE OF COMPENSATION METHOD; DOUBLE RECOVERY PROHIBITED. (a) A person entitled to compensation under Section 103.001 may proceed by following the provisions for administratively awarded compensation under Subchapter B<sub>2</sub>, ~~or~~ by filing suit under Subchapter C, or by proceeding [~~but a person may not seek compensation~~] under both Subchapters B and C.

(b) The court shall reduce the amount of compensation that a person is awarded under Subchapter C by the amount of any compensation that, before the date of the court award, was paid or was scheduled to be paid to the person under Subchapter B for the same wrongful imprisonment.

(c) The comptroller shall reduce the amount of compensation that a person is awarded under Subchapter B by the amount of any compensation that, before the date of the administrative award, was paid or was scheduled to be paid to the person as a result of an award or settlement in a suit filed under Subchapter C for the same wrongful imprisonment.

(d) If under Subsection (b) or (c) the amount of the reduction is equal to or greater than the amount of the compensation being reduced, the court or the comptroller, as applicable, may not award additional compensation.

SECTION \_\_. Section 103.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 103.003. LIMITATION ON TIME TO FILE. (a) Not later than the third anniversary of the date the person received the pardon or was found not guilty as required by Section 103.001, a person seeking compensation under this chapter must:

(1) file an application with the comptroller for compensation under Subchapter B; or

(2) file suit against the state for compensation under Subchapter C.

(b) The filing of an application for compensation under Subchapter B tolls the limitation period that is provided by Subsection (a)(2) and that is applicable to a suit filed under Subchapter C by the same person for the same wrongful imprisonment until the date the comptroller makes a determination under Section 103.051(c).

SECTION \_\_. Section 103.052, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), a [A] person who meets the requirements of Section 103.001 is entitled to compensation in an amount equal to \$50,000[:

(1) ~~\$25,000~~ multiplied by the number of years served in prison, expressed as a fraction to reflect partial years[, if the time served is less than 20 years; or

(2) ~~\$500,000 if the time served is 20 years or more~~.

(a-1) A person sentenced to death who meets the requirements of Section 103.001 is entitled to compensation in an amount equal to \$100,000 multiplied by the number of years served in prison, expressed as a fraction to reflect partial years.

SECTION \_\_. Subsection (b), Section 103.153, Civil Practice and Remedies Code, is amended to read as follows:

(b) Except as provided by Section 103.002, a [A] person who receives compensation under this chapter may not bring any action involving the same subject matter, including an action involving the person's arrest, conviction, or length of confinement, against any governmental unit or an employee of any governmental unit.

SECTION \_\_. Subsection (c), Section 103.105, Civil Practice and Remedies Code, is repealed.

SECTION \_\_. (a) The change in law made by this Act to Section 103.052, Civil Practice and Remedies Code, applies to an administrative proceeding for compensation for wrongful imprisonment for which the application is filed on or after



the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date of the filing, and that law is continued in effect for that purpose.

(b) The change in law made by this Act to Section 103.105, Civil Practice and Remedies Code, applies to an action:

(1) commenced on or after the effective date of this Act; or

(2) pending on that effective date and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after that effective date.

(c) In an action commenced before the effective date of this Act, a trial, new trial, or retrial that is in progress on the effective date is governed by the law applicable to the trial, new trial, or retrial immediately before the effective date, and that law is continued in effect for that purpose.

SECTION \_\_. The changes in law made by this Act to Sections 103.002 and 103.003, Civil Practice and Remedies Code, apply without regard to whether a person has filed an application under Subchapter B, Chapter 103, Civil Practice and Remedies Code, or has commenced an action under Subchapter C, Chapter 103, Civil Practice and Remedies Code, before the effective date of this Act.

SECTION \_\_. The changes to Section 103 of the Civil Practices and Remedies Code in this Act take effect September 1, 2007.

The amendment was read.

### **POINT OF ORDER**

Senator Harris raised a point of order that Floor Amendment No. 5 was not germane to the body of the bill.

### **POINT OF ORDER WITHDRAWN**

Senator Harris withdrew the point of order.

Question recurring on the adoption of Floor Amendment No. 5 to **CSHB 2233**, the amendment failed of adoption by the following vote: Yeas 12, Nays 18.

Yeas: Barrientos, Ellis, Eltife, Gallegos, Lucio, Nelson, Seliger, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Ogden, Shapiro, Staples, Wentworth, Williams.

Absent: Hinojosa.

Senator Ellis offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 2233** by adding the following SECTIONS to the bill, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 52.006, Property Code, is amended to read as follows:

Sec. 52.006. DURATION OF LIEN. (a) Except as provided by Subsection (b), a [A] judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

(b) Notwithstanding Section 34.001, Civil Practice and Remedies Code, a judgment in favor of the state or a state agency, as that term is defined by Section 403.055, Government Code, does not become dormant. A properly filed abstract of the judgment continues to constitute a lien under Section 52.001 until the earlier of the 20th anniversary of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released. The judgment lien may be renewed for one additional 20-year period by filing, before the expiration of the initial 20-year period, a renewed abstract of judgment in the same manner as the original abstract of judgment is filed. The renewed judgment lien relates back to the date the original abstract of judgment was filed.

Section \_\_\_\_\_. The change in law made by this Act by amending Section 52.006, Property Code, applies to:

(1) a judgment, if the judgment is not then dormant, that exists on the effective date of this Act;

(2) a judgment lien on record before the effective date of this Act; or

(3) a judgment entered or abstract of judgment recorded and indexed on or after the effective date of this Act.

The amendment to **CSHB 2233** 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. 6.

Senator Seliger offered the following amendment to the bill:

### **Floor Amendment No. 7**

Amend **CSHB 2233** by adding the following SECTIONS:

On page 3, line 3 (Senate committee printing) by adding new SECTION 12 and renumbering subsequent SECTIONS accordingly:

SECTION 12. Chapter 401, Government Code, is amended by adding Subchapter G to read as follows:

#### SUBCHAPTER G. TEXAS MENTORING INITIATIVE

Sec. 401.151. ESTABLISHMENT AND PURPOSE OF TEXAS MENTORING INITIATIVE. (a) The office of the governor shall establish the Texas mentoring initiative to fund activities that:

(1) create or expand mentoring opportunities in this state;

(2) promote responsible fatherhood and healthy marriages; and

(3) increase the capacity of faith- and community-based organizations, as defined by Section 535.001, to provide mentoring and other charitable services to persons in this state.

(b) The office of the governor shall administer the Texas mentoring initiative subject to the availability of funds appropriated for that purpose.

Sec. 401.152. GRANTS. The office of the governor shall provide grants through the Texas mentoring initiative to support:

- (1) activities described in Sec. 401.151
- (2) the renewing our communities account under Chapter 535.

On page 3, line 14 (Senate committee printing) by adding new SECTION 14 and renumbering subsequent SECTIONS accordingly:

SECTION 14. Subtitle I, Title 4, Government Code, is amended by adding Chapter 535 to read as follows:

CHAPTER 535. RENEWING OUR COMMUNITIES ACCOUNT

Sec. 535.001. DEFINITIONS. In this chapter:

- (1) "account" means the renewing our communities account.
- (2) "Community-based organization" means a nonprofit corporation or association that is located in close proximity to the population the organization serves.
- (3) "Faith-based organization" means a nonprofit corporation or association that:

(A) is operated through a religious or denominational organization, including an organization that is operated for religious, educational, or charitable purposes and that is operated, supervised, or controlled, wholly or partly, by or in connection with a religious organization; or

(B) clearly demonstrates through the organization's mission statement, policies, or practices that the organization is guided or motivated by religion.

Sec. 535.002. CONSTRUCTION. This chapter may not be construed to:

- (1) exempt a faith- or community-based organization from any applicable state or federal law; or
- (2) be an endorsement or sponsorship by this state of the religious character, expression, beliefs, doctrines, or practices of a faith-based organization.

Sec. 535.003. APPLICABILITY OF CERTAIN FEDERAL LAW. A power authorized or duty imposed under this chapter must be performed in a manner that is consistent with 42 U.S.C. Section 604a.

Sec. 535.004. RENEWING OUR COMMUNITIES ACCOUNT. (a) The renewing our communities account is an account in the general revenue fund that may be appropriated only to the commission for the purposes and activities authorized by this chapter and for reasonable administrative expenses under this chapter.

(b) The account consists of:

- (1) all money appropriated for the purposes of this chapter;
- (2) any gifts, grants, or donations received for the purposes of this chapter;

and

(3) interest earned on money in the account.

(c) The account is exempt from the application of Section 403.095.

(d) The purposes of the account are to:

(1) increase the capacity of and strengthen faith- and community-based organizations to provide charitable services to persons in this state who are in need of those services;

(2) assist local governmental entities in establishing local offices for faith- and community-based initiatives;

(3) foster better partnerships between state government and faith- and community-based organizations to provide charitable services to persons in this state;  
and

(4) leverage state and local resources to acquire federal or private grant funds to provide charitable services in this state.

Sec. 535.005. POWERS AND DUTIES REGARDING ACCOUNT. (a) The commission shall:

(1) develop and implement a competitive process for awarding grants from the account that is consistent with state law and includes objective selection criteria;

(2) oversee the delivery of training and other assistance activities under this chapter;

(3) develop criteria limiting awards of grants under Subsection (b)(1) to small and medium-sized faith- and community-based organizations that provide charitable services to persons in this state;

(4) establish general state priorities for the account; and

(5) establish and monitor performance and outcome measures for persons to whom grants are awarded under this chapter.

(b) The commission may:

(1) award grants from the account to faith- and community-based organizations that provide charitable services to persons in this state for capacity-building purposes;

(2) directly, or through agreements with one or more entities that serve faith- and community-based organizations that provide charitable services to persons in this state:

(A) assist faith- and community-based organizations with:

(i) writing or managing grants through workshops or other forms of guidance;

(ii) obtaining legal assistance related to forming a corporation or obtaining an exemption from taxation under the Internal Revenue Code; and

(iii) obtaining information about or referrals to entities that provide expertise in accounting, legal, or tax issues, program development matters, or other organizational topics;

(B) provide information or assistance to faith- and community-based organizations related to building the organizations' capacity for providing services;

(C) facilitate the formation of networks, the coordination of services, and the sharing of resources among faith- and community-based organizations;

(D) in cooperation with existing efforts, if possible, conduct needs assessments to identify gaps in services in a community that present a need for developing or expanding services;

(E) work with faith- and community-based organizations to identify the organizations' needs for improvements in their internal capacity for providing services; and

(F) provide faith- and community-based organizations with information on and assistance in identifying or using best practices for delivering charitable services to persons, families, and communities and in replicating charitable services programs that have demonstrated effectiveness;

(3) award grants from the account to local governmental entities to provide seed money for local offices for faith- and community-based initiatives;

(4) assist a local governmental entity in creating a better partnership between government and faith- and community-based organizations to provide charitable services to persons in this state;

(5) use the account to provide matching money for federal or private grant programs that further the purposes of the account as described by Section 535.004(d); and

(6) contract with the governor's office of faith-based and community initiatives to administer programs or perform duties or activities under this chapter.

Sec. 535.006. FAITH- AND COMMUNITY-BASED INITIATIVES ADVISORY COMMITTEE. (a) The executive commissioner shall appoint faith and community leaders in this state to serve on the faith- and community-based initiatives advisory committee. The advisory committee members must be representative of the religious and cultural diversity of this state.

(b) The advisory committee shall make recommendations to the executive commissioner regarding the executive commissioner's powers and duties with respect to the account as described by Section 535.005.

(c) Except as otherwise provided by this subsection, the advisory committee shall meet at least twice each calendar year. The advisory committee is not required to meet if the remaining amount appropriated from the account to the commission for the state fiscal biennium is insufficient for the performance of any duties or activities under this chapter.

(d) Chapter 2110 does not apply to the advisory committee.

(e) The advisory committee is subject to Chapter 551.

The amendment to **CSHB 2233** 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.

Senator Barrientos offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 2233** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Chapter 403, Government Code, is amended by adding Subchapter O to read as follows:

#### SUBCHAPTER O. INDIVIDUAL DEVELOPMENT ACCOUNTS FOR CERTAIN LOW-INCOME INDIVIDUALS AND HOUSEHOLDS

Sec. 403.501. DEFINITIONS. In this subchapter:

(1) "Financial institution" has the meaning assigned by Section 201.101, Finance Code.

(2) "Individual development account" means a deposit account established by a participant at a financial institution selected by a sponsoring organization.

(3) "Participant" means an individual or household that has entered into an agreement with a sponsoring organization to participate in the program.

(4) "Program" means the individual development account program established under this subchapter.

(5) "Service provider" means a person to whom a qualified expenditure from a participant's individual development account is made. The term includes:

- (A) a public or private institution of higher education;
- (B) a provider of occupational or vocational education, including a proprietary school;
- (C) a mortgage lender;
- (D) a title insurance company;
- (E) the lessor or vendor of office supplies or equipment or retail space, office space, or other business space; and
- (F) any other provider of goods or services used for the commencement of a business.

(6) "Sponsoring organization":

- (A) means a nonprofit organization that is:
  - (i) exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code; and
  - (ii) selected by the comptroller to establish and administer individual development accounts under the program; and
- (B) includes an Indian tribe, as defined by Section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. Section 4103(12)), including any tribal subsidiary, division, or other wholly owned tribal entity of an Indian tribe.

Sec. 403.502. ESTABLISHMENT OF PROGRAM; RULES. (a) The comptroller by rule shall develop and implement a program under which:

- (1) individual development accounts are facilitated and administered by sponsoring organizations for eligible low-income individuals and households to provide those individuals and households with an opportunity to accumulate assets and to facilitate and mobilize savings; and
- (2) sponsoring organizations are provided grant funds for use in administering the program and matching qualified expenditures made by program participants. At least 85 percent of the grant funds must be used by the sponsoring organization for matching qualified expenditures.

(b) The comptroller shall contract with sponsoring organizations to facilitate the establishment of and to administer the individual development accounts in accordance with the rules adopted by the comptroller. The comptroller's rules promulgated to implement this subchapter shall include guidelines for contract monitoring, reporting, and termination of grant recipients.

(c) In adopting rules under the program, the comptroller shall state the selection criteria for sponsoring organizations. The comptroller shall give priority to organizations that have demonstrated:

- (1) a capacity to administer individual account programs; and
- (2) a commitment to serve areas of the state that currently do not have individual development account programs available.

Sec. 403.503. PARTICIPANT ELIGIBILITY. (a) The comptroller by rule shall establish eligibility criteria for participants in the program.

(b) The eligibility criteria established by the comptroller must:

(1) require an eligible individual or member of an eligible household, other than an eligible individual or member of an eligible household receiving supplemental security income or other public disability payments, to agree to make regular contributions to the individual's or household's individual development account from the individual's or household's earned income;

(2) provide that the annual income of an eligible individual or household may not exceed 200 percent of the poverty level according to the federal Office of Management and Budget poverty index;

(3) establish the rate at which a participant's contributions to the individual development account may be matched, not to exceed the match rate established by the federal Assets for Independence Act (Pub. L. No. 105-285); and

(4) establish limits on the amount of matching funds a participant is eligible to receive, not to exceed the limit on federal matching funds established by the federal Assets for Independence Act.

Sec. 403.504. CONTRIBUTIONS AND EXPENDITURES BY PARTICIPANT.

(a) A participant may contribute to the participant's individual development account.

(b) A participant's contributions to the participant's individual development account shall accrue interest.

(c) A participant may withdraw money from the participant's account only to pay for the following qualified expenditures:

(1) postsecondary educational or training expenses for the adult account holder and dependent children;

(2) the expenses of purchasing or financing a home for the adult account holder for the first time;

(3) the expenses of a self-employment enterprise; and

(4) start-up business expenses for the adult account holder.

Sec. 403.505. DUTIES OF SPONSORING ORGANIZATIONS. (a) The comptroller shall promulgate rules that establish the duties of sponsoring organizations that shall include recruiting requirements, standards for determination of eligibility of participants, education of participants, operations and account management, solicitation of matching funds and such other subjects as may be deemed necessary by the comptroller to carry out the purposes and objectives of this subchapter.

(b) Each sponsoring organization shall provide to the comptroller any information necessary to evaluate the sponsoring organization's performance in fulfilling the duties outlined in Subsection (a).

Sec. 403.506. MATCHING FUNDS; LIMITATIONS ON AMOUNT AND AVAILABILITY. (a) At the time a participant in the program makes a withdrawal for a qualified expenditure described by Section 403.504(c) from the participant's individual development account, the participant shall receive matching funds from the sponsoring organization, payable directly to the service provider.

(b) If federal Assets for Independence Act money is used as matching funds, the amount of federal matching funds spent for each individual development account may not exceed the limits established by the federal Assets for Independence Act. If money

other than federal Assets for Independence Act money is used as matching funds, the comptroller by rule may set a different limit on the amount of matching funds that may be spent for each account.

(c) This subchapter may not be construed to create an entitlement of a participant to receive matching funds. The number of participants who receive matching funds under the program in any year is limited by the amount of funds available for that purpose in that year.

Sec. 403.507. TERMINATION OF ACCOUNT FOR UNQUALIFIED WITHDRAWALS. (a) The comptroller by rule shall establish guidelines to ensure that a participant does not withdraw funds in the individual development account, except for a qualified expenditure described by Section 403.504(c). These guidelines shall:

(1) include a requirement that a sponsoring organization approve a participant's request to make a withdrawal from an individual development account in writing;

(2) provide that no participant may withdraw funds from an individual development account earlier than six months after the date on which the participant first deposits funds in the account; and

(3) require a participant to reimburse the individual development account for any funds withdrawn for a purpose other than for a qualified expenditure described by Section 403.504(c).

(b) The sponsoring organization shall instruct the financial institution to terminate the participant's account if the participant does not comply with the guidelines established under Subsection (a).

(c) A participant whose individual development account is terminated under this section is entitled to withdraw from the participant's account the amount of money the participant contributed to the account and any interest that has accrued on that amount.

Sec. 403.508. FUNDING. (a) The legislature may appropriate money for the purposes of this subchapter.

(b) The comptroller may accept gifts, grants, and donations from any public or private source for the purposes of this subchapter.

Sec. 403.509. INTERAGENCY CONTRACTS. The comptroller may enter into interagency contracts with other state agencies to facilitate the effective administration of this subchapter.

The amendment to **CSHB 2233** 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.

Senator Shapleigh offered the following amendment to the bill:

### **Floor Amendment No. 9**

Amend **CSHB 2233** by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Subchapter G, Chapter 2303, Government Code, is amended by adding Section 2303.5056 to read as follows:



Sec. 2303.5056. REFUND, REBATE, OR PAYMENT OF TAX PROCEEDS TO CONVENTION CENTER HOTEL PROJECT. (a) In this section, "eligible taxable proceeds" means taxable proceeds generated, paid, or collected by a hotel described by Subsection (b) or a business at that hotel, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(b) This section applies only to a hotel proposed to be constructed, remodeled, or rehabilitated by a municipality or a nonprofit municipally sponsored local government corporation created under Chapter 431, Transportation Code, that is within 3,000 feet of the property line of a convention center owned by a municipality having a population of more than 500,000 and that borders the United Mexican States.

(c) For a period that may not exceed 10 years, a governmental body, including a municipality, county, or political subdivision, may agree to rebate, refund, or pay eligible taxable proceeds of the governmental body to the owner of a hotel described by Subsection (b) at which the eligible taxable proceeds were generated.

(d) A municipality in which a hotel described by Subsection (b) is located may agree to guarantee from hotel occupancy taxes the bonds or other obligations of a municipally sponsored local government corporation created under Chapter 431, Transportation Code, that were issued or incurred to pay the cost of construction, remodeling, or rehabilitation of a convention center hotel project.

(e) An agreement under this section must be in writing, contain an expiration date, and require the beneficiary to provide documentation necessary to support a claim.

(f) A governmental body that makes an agreement under this section shall make the rebate, refund, or payment directly to the beneficiary.

SECTION \_\_. Section 351.001(2), Tax Code, is amended to read as follows:

(2) "Convention center facilities" or "convention center complex" means facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. In a municipality with a population of 1.5 million or more, "convention center facilities" or "convention center complex" means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in part by the municipality, hotels owned by the municipality or a nonprofit municipally sponsored local government corporation created under Chapter 431, Transportation Code, within 1,000 feet of a convention center owned by the municipality, or a historic hotel owned by the municipality or a nonprofit municipally sponsored local government corporation created under Chapter 431, Transportation Code, within one mile of a convention center owned by the municipality. The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities. The term also includes a hotel owned by or located on land that is owned by an eligible central municipality or by a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality. The term also includes a hotel proposed to be constructed, remodeled, or rehabilitated by a municipality or a nonprofit municipally sponsored

local government corporation created under Chapter 431, Transportation Code, that is within 3,000 feet of the property line of a convention center owned by a municipality having a population of more than 500,000 and that borders the United Mexican States.

SECTION \_\_. Section 351.102(a), Tax Code, is amended to read as follows:

(a) Subject to the limitations provided by this subchapter, a municipality may pledge the revenue derived from the tax imposed under this chapter for the payment of bonds that are issued under Section 1504.002(a), Government Code, for one or more of the purposes provided by Section 351.101 or, in the case of a municipality of 1,500,000 or more or a municipality having a population of more than 500,000 and that borders the United Mexican States, for the payment of principal of or interest on bonds or other obligations of a municipally sponsored local government corporation created under Chapter 431, Transportation Code, that were issued to pay the cost of the acquisition and construction of a convention center hotel or the cost of acquisition, remodeling, or rehabilitation of a historic hotel structure; provided, however, such pledge may only be that portion of the tax collected at such hotel.

The amendment to **CSHB 2233** 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 Madla offered the following amendment to the bill:

#### **Floor Amendment No. 10**

Amend **CSHB 2233** by adding the following appropriately numbered Section to the bill and renumbering subsequent Sections of the bill accordingly:

SECTION \_\_\_\_. Section 403.016, Government Code, subsection (k) is amended to add subsection (k) as follows:

(k) Notwithstanding other provisions of the law, the comptroller of public accounts is authorized to enter into an interagency agreement with the Health and Human Services Commission to implement a method of salary payment using electronic paycards for employees of health and human services agencies.

(1) The comptroller may solicit proposals to implement the electronic paycards with a private vendor.

(2) If cost effective, the comptroller may replace warrants with the electronic paycard.

(3) Employees may not be charged for the electronic paycard or the receipt of salary payment on the electronic paycard.

(4) The comptroller may adopt rules as necessary to implement this section.

The amendment to **CSHB 2233** 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. 10.

Senator Barrientos offered the following amendment to the bill:

#### **Floor Amendment No. 11**

Amend **CSHB 2233** by adding the following SECTIONS and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Section 11.18(d), Tax Code, is amended to read as follows:

(d) A charitable organization must be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsections (h) and (l), engage exclusively in performing one or more of the following charitable functions:

(1) providing medical care without regard to the beneficiaries' ability to pay, which in the case of a nonprofit hospital or hospital system means providing charity care and community benefits in accordance with Section 11.1801;

(2) providing support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(3) providing support to elderly persons, including the provision of recreational or social activities and facilities designed to address the special needs of elderly persons, or to the handicapped, without regard to the beneficiaries' ability to pay;

(4) preserving a historical landmark or site;

(5) promoting or operating a museum, zoo, library, theater of the dramatic or performing arts, or symphony orchestra or choir;

(6) promoting or providing humane treatment of animals;

(7) acquiring, storing, transporting, selling, or distributing water for public use;

(8) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(9) promoting the athletic development of boys or girls under the age of 18 years;

(10) preserving or conserving wildlife;

(11) promoting educational development through loans or scholarships to students;

(12) providing halfway house services pursuant to a certification as a halfway house by the pardons and paroles division of the Texas Department of Criminal Justice;

(13) providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay;

(14) promoting or operating an art gallery, museum, or collection, in a permanent location or on tour, that is open to the public;

(15) providing for the organized solicitation and collection for distributions through gifts, grants, and agreements to nonprofit charitable, education, religious, and youth organizations that provide direct human, health, and welfare services;

(16) performing biomedical or scientific research or biomedical or scientific education for the benefit of the public;

(17) operating a television station that produces or broadcasts educational, cultural, or other public interest programming and that receives grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396, as amended;

(18) providing housing for low-income and moderate-income families, for unmarried individuals 62 years of age or older, for handicapped individuals, and for families displaced by urban renewal, through the use of trust assets that are irrevocably and, pursuant to a contract entered into before December 31, 1972, contractually dedicated on the sale or disposition of the housing to a charitable organization that performs charitable functions described by Subdivision (9);

(19) providing housing and related services to persons who are 62 years of age or older in a retirement community, if the retirement community provides independent living services, assisted living services, and nursing services to its residents on a single campus:

(A) without regard to the residents' ability to pay; or

(B) in which at least four percent of the retirement community's combined net resident revenue is provided in charitable care to its residents; ~~or~~

(20) providing housing on a cooperative basis to students of an institution of higher education if:

(A) the organization is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) membership in the organization is open to all students enrolled in the institution and is not limited to those chosen by current members of the organization;

(C) the organization is governed by its members; and

(D) the members of the organization share the responsibility for managing the housing; or

(21) operating a radio station that broadcasts educational, cultural, or other public interest programming, including classical music, and that is funded entirely through donations made by listeners or other donors.

SECTION \_\_\_\_. Section 11.18(d), Tax Code, as amended by this Act applies only to an ad valorem tax year that begins on or after January 1, 2006.

The amendment to **CSHB 2233** 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.

Senator Barrientos offered the following amendment to the bill:

### **Floor Amendment No. 12**

Amend **CSHB 2233** by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Subsection (d), Section 36.205, Water Code, is amended to read as follows:

(d) The [~~Barton Springs Edwards Aquifer Conservation District, the~~] Lone Star Groundwater Conservation District[;] and the Guadalupe County Groundwater Conservation District may not charge production fees for an annual period greater than \$1 per acre-foot for water used for agricultural use or 17 cents per thousand gallons for water used for any other purpose. [~~The Barton Springs Edwards Aquifer Conservation District may assess a water use fee against a specific municipality in an~~]

~~amount not to exceed 60 percent of the total funding of the district received from water use fees assessed against that municipality and other nonexempt users in the district.] This subsection shall take precedence over all prior enactments.~~

SECTION \_\_\_\_ . Section 2, Chapter 429, Acts of the 70th Legislature, Regular Session, 1987, is amended by amending Subsection (f)(2) and adding Subsections (g) and (h) to read as follows:

(2) The board may assess the City of Austin, as a water use fee, each year an amount not to exceed 60 [40] percent of the total funding that [of] the district expects to receive for the next fiscal year [received] from water use fees assessed against Austin and other nonexempt users. For purposes of computing water use fees under this subsection, the district shall estimate the amount of permitted pumpage for the next fiscal year by considering various factors including historical growth rates, future growth rates, the amount of permitted pumpage, historical permitted pumpage, and any pending applications for permitted pumpage. The district shall use the estimated amount of permitted pumpage and its water use fee rate to compute the water use fee to be assessed against the City of Austin for the district's next fiscal year. The district shall compute the water use fee assessed against the City of Austin at a rate of 17 cents per thousand gallons for the total amount of water permitted for any nonagricultural purpose, regardless of the rate actually imposed on or remitted by the permittee.

(g) Except as provided by this subsection, the board may not charge an annual production fee of more than \$1 per acre-foot for water permitted for agricultural use or 17 cents per thousand gallons for water permitted for any other purpose. For a permit first issued after September 1, 2005, or a permit first issued after September 9, 2004, and renewed after September 1, 2005, the board may charge an annual production fee of not more than 35 cents per thousand gallons for the amount of water permitted under the permit as issued or renewed if the water is permitted for any purpose other than agricultural use. For a permit that is materially amended after September 1, 2005, the board may charge an annual production fee of not more than 35 cents per thousand gallons for only the additional amount of water authorized by the material amendment if the water is permitted for any purpose other than agricultural use. For a permit first issued on or before September 9, 2004, that is renewed without material amendment after September 1, 2005, the board may not charge an annual production fee of more than 17 cents per thousand gallons for the amount of water permitted under the permit as renewed if the water is permitted for any purpose other than agricultural use. The board may adopt a differential rate structure for the nonagricultural production fees described by this subsection to promote alternatives to the exclusive use of groundwater resources.

(h) A material amendment under Subsection (g) of this section is an amendment to a permit that increases the amount of water permitted by more than 10 percent in one fiscal year or by more than 25 percent in any three-year period. The renewal on or after September 1, 2005, of a permit that was issued on or before September 9, 2004, is considered to be a material amendment for purposes of Subsection (g) of this section if the permit as renewed increases the amount of water permitted by an amount that exceeds the limits specified by this subsection.

SECTION \_\_\_\_\_. The legislature finds that the Barton Springs-Edwards Aquifer Conservation District benefits the sustainable use of groundwater by promoting, through fee and permitting mechanisms, alternatives to the exclusive use of groundwater resources, including the conjunctive use of groundwater and surface water resources.

The amendment to **CSHB 2233** 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. 12.

Senator Madla offered the following amendment to the bill:

### **Floor Amendment No. 13**

Amend **CSHB 2233** by adding the following appropriately numbered section to the bill, and renumber subsequent sections as appropriate:

Notwithstanding any other law, the Health and Human Services Commission and other health and human service agencies may utilize digital signatures for administrative functions and may require the use of digital signatures for business transactions, if the Commission determines that their use is cost effective.

The amendment to **CSHB 2233** 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. 13.

Senator Lucio offered the following amendment to the bill:

### **Floor Amendment No. 14**

Amend **CSHB 2233** adding the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 31.05(a), Tax Code, is amended to read as follows:

(a) The governing body of a taxing unit ~~[that collects its own taxes]~~ may adopt the discounts provided by Subsection (b) or Subsection (c) ~~[of this section]~~, or both, in the manner required by law for official action by the body. The discounts, if adopted, apply only to that taxing unit's taxes ~~[for a taxing unit for which the adopting taxing unit collects taxes if the governing body of the other unit, in the manner required by law for official action by the body, adopts the discounts or approves of their application to its taxes by the collecting unit.]~~ If a taxing unit adopts both discounts under Subsections (b) and (c) ~~[of this section]~~, the discounts adopted under Subsection (b) apply unless the ~~[unit mails its]~~ tax bills for the unit are mailed after September 30, in which case only the discounts under Subsection (c) apply. A taxing unit that collects taxes for another taxing unit that adopts the discounts may prepare and mail separate tax bills on behalf of the adopting taxing unit and may charge an additional fee for preparing and mailing the separate tax bills and for collecting the taxes imposed by the adopting taxing unit. If under an intergovernmental contract a county assessor-collector collects taxes for a taxing unit that adopts the discounts, the county assessor-collector may terminate the contract if the county has adopted a discount policy that is different from the discount policy adopted by the adopting taxing unit.

SECTION \_\_\_\_\_. (a) The change in law made in SECTION \_\_\_\_\_, amending Section 31.05(a), Tax Code, applies to the adoption of a discount by a taxing unit beginning with the 2005 tax year, except as provided by Subsection (b) of this section.

(b) If a taxing unit's tax bills for the 2005 tax year are mailed before the effective date of this Act, the change in law made to Section 31.05(a), Tax Code, applies to the adoption of a discount by the taxing unit beginning with the 2006 tax year, and the law in effect when the tax bills were mailed applies to the 2005 tax year with respect to that taxing unit.

The amendment was read.

Senator Lucio temporarily withdrew Floor Amendment No. 14.

**(Senator Brimer in Chair)**

Senator Lucio again offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend **CSHB 2233** adding the following SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 31.05(a), Tax Code, is amended to read as follows:

(a) The governing body of a taxing unit [~~that collects its own taxes~~] may adopt the discounts provided by Subsection (b) or Subsection (c) [~~of this section~~], or both, in the manner required by law for official action by the body. The discounts, if adopted, apply only to that taxing unit's taxes [~~for a taxing unit for which the adopting taxing unit collects taxes if the governing body of the other unit, in the manner required by law for official action by the body, adopts the discounts or approves of their application to its taxes by the collecting unit.~~] If a taxing unit adopts both discounts under Subsections (b) and (c) [~~of this section~~], the discounts adopted under Subsection (b) apply unless the [~~unit mails its~~] tax bills for the unit are mailed after September 30, in which case only the discounts under Subsection (c) apply. A taxing unit that collects taxes for another taxing unit that adopts the discounts may prepare and mail separate tax bills on behalf of the adopting taxing unit and may charge an additional fee for preparing and mailing the separate tax bills and for collecting the taxes imposed by the adopting taxing unit. If under an intergovernmental contract a county assessor-collector collects taxes for a taxing unit that adopts the discounts, the county assessor-collector may terminate the contract if the county has adopted a discount policy that is different from the discount policy adopted by the adopting taxing unit.

SECTION \_\_\_\_\_. (a) The change in law made in SECTION \_\_\_\_\_, amending Section 31.05(a), Tax Code, applies to the adoption of a discount by a taxing unit beginning with the 2005 tax year, except as provided by Subsection (b) of this section.

(b) If a taxing unit's tax bills for the 2005 tax year are mailed before the effective date of this Act, the change in law made to Section 31.05(a), Tax Code, applies to the adoption of a discount by the taxing unit beginning with the 2006 tax year, and the law in effect when the tax bills were mailed applies to the 2005 tax year with respect to that taxing unit.

The amendment to **CSHB 2233** 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. 14.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 15**

Amend **CSHB 2233** by adding the following new SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 533.050, Health and Safety Code, is amended to read as follows:

Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL; CONSTRUCTION AND OPERATION OF REPLACEMENT HOSPITAL. (a) The Department of State Health Services shall [~~After August 31, 2004, and before September 1, 2005, the department may~~] contract with a private service provider to finance, design, construct, and operate one or more new [a] state mental hospitals to replace an existing state mental hospital or hospitals [~~hospital owned by the department only~~] if:

(1) the executive commissioner of the Health and Human Services Commission determines that the private service provider will operate the new state mental hospital at a cost that is at least five [25] percent less than the cost to the department to operate the hospital to be replaced;

(2) the executive commissioner of the Health and Human Services Commission approves the contract;

(3) the new state mental hospital, when operated under the contract, treats a population with materially the same characteristics and acuity levels as the population treated at the replaced state mental hospital when operated by the department; [~~and~~]

(4) the private service provider is required under the contract to operate the new state mental hospital at a quality level at least equal to the quality level achieved by the department when the department operated the replaced state mental hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); and

(5) the state mental hospital to be replaced under the contract is located in a county with a population of more than 150,000.

(b) The Department of State Health Services [~~On or before April 1, 2004, the department~~] shall report to the executive commissioner of the Health and Human Services Commission regarding [~~health and human services~~] whether the department has received a proposal by a private service provider to finance, design, construct, and operate a new state mental hospital. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the new hospital under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the hospital, including costs, such as employee benefits, that are not appropriated to the department.

(c) A contract entered into under Subsection (a) must:



(1) provide that the Department of State Health Services retains the right to assume management of the new state mental hospital if contract terms are not met or if the five percent cost savings requirement is not met;

(2) provide that the private service provider must give priority consideration to each state employee employed at the state mental hospital to be replaced who wants to continue working at the new hospital and who the department determines is an employee in good standing; and

(3) establish specific goals for the provider to meet:

(A) in significantly reducing the use of restraints on patients and the seclusion of patients;

(B) in significantly reducing patient waiting lists;

(C) in significantly reducing total length of stay for patients, measured annually;

(D) in increasing access to mental health inpatient services; and

(E) in reducing recidivism.

(d) As a condition of a contract under this section, the private service provider shall:

(1) provide office space at the new state mental hospital for an organization that advocates for persons with mental illness;

(2) include that advocacy organization as a part of the service delivery process; and

(3) provide for that advocacy organization to have input regarding client care.

(e) The Department of State Health Services shall monitor care of patients at the new state hospital operated by contract. The department shall develop and maintain information on activities carried out under the contract without violating privacy or confidentiality rules. The information developed under this subsection must include:

(1) the number of incidents in which patients were restrained or secluded;

(2) the number of incidents of serious assaults in the hospital setting;

(3) the number of occurrences in the hospital setting involving contacts with law enforcement personnel;

(4) individual and average lengths of stay, including computation of lengths of stay according to the number of days a patient is in the facility during each calendar year, regardless of discharge and readmission; and

(5) client outcomes.

(f) The Department of State Health Services may not enter into a contract under this section with a private service provider unless the provider has a documented and verified successful record of:

(1) providing mental health services over a five-year period; and

(2) managing an inpatient mental health facility with a population of at least 250 patients.

(g) If the Department of State Health Services [~~department~~] contracts with a private service provider to finance, design, construct, and operate a new state mental hospital under Subsection (a), the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.

(h) [(d)] The Department of State Health Services [department] may renew a contract under this section. The conditions provided by this section [listed in Subsections (a)(1)-(3)] apply to the renewal of the contract.

(i) A contract under this section may be for a term not to exceed 25 years. The contract must provide for the department to acquire the hospital under a lease-purchase agreement with a term not to exceed 25 years and authorize the private entity to issue certificates of participation or other appropriate securities to finance the construction of the hospital. In negotiating a contract under this section, the department shall ensure that total payments to be made under the contract for operating the hospital and under the lease-purchase agreement do not exceed the projected costs of operating the hospital proposed to be replaced. Operational savings used to pay debt service payments for financing a new hospital shall be counted in calculating whether the proposal meets the five percent savings required by Subsection (a)(1).

(j) The Department of State Health Services and each private entity that contracts with the department under this section shall provide to the legislature a report on the progress of activities under the contract and performance of services under the contract. The report must be provided to the legislature not later than November 1 of each even-numbered year.

(k) Not later than October 14, 2005, the Department of State Health Services shall issue a request for proposals for a private service provider to contract with the department to finance, design, construct, and operate a new state mental hospital as authorized by this section.

The amendment was read.

On motion of Senator Duncan, Floor Amendment No. 15 to **CSHB 2233** was tabled by the following vote: Yeas 28, Nays 3.

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

Nays: Armbrister, Jackson, Janek.

Senator Armbrister offered the following amendment to the bill:

### **Floor Amendment No. 16**

Amend **CSHB 2233** as follows:

#### ARTICLE \_\_\_\_

SECTION \_\_\_\_ . The heading to Section 5.506, Water Code, is amended to read as follows:

Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.

SECTION \_\_\_\_ . Section 5.506, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action [~~suspension~~] to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) [~~this section~~]. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action [~~suspension~~] for a period of 72 hours from receipt of the notice and must consider those comments before issuing an order implementing the proposed action [~~imposing the suspension~~].

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) [~~this section~~] without notice except as required by Subsection (b).

SECTION \_\_\_\_\_. Subsection (j), Section 5.701, Water Code, is amended to read as follows:

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. A fee is not required for a water right that is [~~This fee is waived for applications for instream use water rights~~] deposited into the Texas Water Trust.

SECTION \_\_\_\_\_. Section 11.002, Water Code, is amended by adding Subdivisions (15), (16), (17), (18), and (19) to read as follows:

(15) "Environmental flow analysis" means the application of a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Flows commission" means the Environmental Flows Commission.

(19) "Science advisory committee" means the Texas Environmental Flows Science Advisory Committee.

SECTION \_\_\_\_\_. Subsection (a), Section 11.023, Water Code, is amended to read as follows:

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state [~~State~~] water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

- (3) mining and recovery of minerals;
- (4) hydroelectric power;
- (5) navigation;
- (6) recreation and pleasure;
- (7) public parks; and
- (8) game preserves.

SECTION \_\_\_\_\_. Section 11.0235, Water Code, is amended by amending Subsections (c) and (e) and adding Subsections (d-1) through (d-5), and (f) to read as follows:

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

(d-2) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the commission, a variety of market approaches, both public and private, for filling the gap must be explored and pursued.

(d-3) The legislature finds that while the state has pioneered tools to address freshwater inflow needs for bays and estuaries, there are limitations to those tools in light of both scientific and public policy evolution. To fully address bay and estuary environmental flow issues, the foundation of work accomplished by the state should be improved. While the state's instream flow studies program appears to encompass a comprehensive and scientific approach for establishing a process to assess instream flow needs for rivers and streams across the state, more extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-4) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science related to environmental flows and future changes in projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-5) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure ~~[reexamine the process for ensuring]~~ that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process ~~[to the commission]~~.

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

SECTION \_\_\_\_\_. The heading to Section 11.0236, Water Code, is amended to read as follows:

Sec. 11.0236. ~~[STUDY COMMISSION ON WATER FOR]~~ ENVIRONMENTAL FLOWS COMMISSION.

SECTION \_\_\_\_\_. Section 11.0236, Water Code, is amended by amending Subsections (a), (b), (c), (e) through (j), (n), and (o) and adding Subsection (p) to read as follows:

(a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the ~~[Study Commission on Water for]~~ Environmental Flows Commission.

(b) The ~~flows~~ ~~[study]~~ commission is composed of nine ~~[15]~~ members as follows:

(1) three ~~[two]~~ members appointed by the governor;

(2) three ~~[five]~~ members of the senate appointed by the lieutenant governor;

and

(3) three ~~[five]~~ members of the house of representatives appointed by the speaker of the house of representatives[;]

~~[(4) the presiding officer of the commission or the presiding officer's designee;~~

~~[(5) the chairman of the board or the chairman's designee; and~~

~~[(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee].~~

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board; and

(3) one member must be a member of the Parks and Wildlife Commission

~~[(b)(2):~~

~~[(1) one member must represent a river authority or municipal water supply agency or authority;~~

~~[(2) one member must represent an entity that is distinguished by its efforts in resource protection; and~~

~~[(3) three members must be members of the senate].~~

(e) Each ~~[appointed]~~ member of the flows [study] commission serves at the will of the person who appointed the member.

(f) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the flows [study] commission.

(g) A member of the flows [study] commission is not entitled to receive compensation for service on the flows [study] commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the flows [study] commission, as provided by the General Appropriations Act.

(h) The flows [study] commission may accept gifts and grants from any source to be used to carry out a function of the flows [study] commission.

(i) The commission shall provide staff support for the flows [study] commission.

(j) The flows [study] commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the flows [study] commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the flows [study] commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers [parks, game preserves], and bay and estuary systems and are high priorities in the water management [permitting] process. The flows [study] commission shall specifically address:

(1) ways that the ecological soundness of those [these] systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently [process].

(n) The flows [study] commission may [shall] adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(o) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the flows commission.

(p) Not later than December 1, 2006, and every two years thereafter, the flows commission shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the flows commission;

(2) any studies conducted by the flows commission;

(3) any legislation proposed by the flows commission;

(4) progress made in implementing Sections 11.02361 and 11.02362; and

(5) any other findings and recommendations of the flows commission [The study commission is abolished and this section expires September 1, 2005].

SECTION \_\_\_\_\_. Subchapter B, Chapter 11, Water Code, is amended by adding Sections 11.02361 and 11.02362 to read as follows:

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) The Texas Environmental Flows Science Advisory Committee consists of at least five but not more than nine members appointed by the flows commission.

(b) The flows commission shall appoint to the science advisory committee persons who will provide an objective perspective and diverse technical expertise, including expertise in hydrology, hydraulics, water resources, aquatic and terrestrial biology, geomorphology, geology, water quality, computer modeling, and other technical areas pertinent to the evaluation of environmental flows.

(c) Members of the science advisory committee serve five-year terms expiring March 1. A vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the flows commission for the unexpired term.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) The science advisory committee shall:

(1) serve as an objective scientific body to advise and make recommendations to the flows commission on issues relating to the science of environmental flow protection; and

(2) develop recommendations to help provide overall direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and estuary studies and instream flow studies;

(B) environmental flow programs at the commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science teams described in Section 11.02362.

(f) To assist the flows commission to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission, the Parks and Wildlife Department, and the board shall provide written reports to the flows commission, at intervals determined by the flows commission, that describe:

(1) the actions taken by each agency in response to each recommendation;  
and

(2) for each recommendation not implemented, the reason it was not implemented.

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) For the purposes of this section, the flows commission, not later than November 1, 2005, shall define the geographical extent of each river basin and bay system in this state for the sole purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) The flows commission shall give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, and Aransas Rivers and Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the flows commission shall appoint the basin and bay area stakeholders committee not later than November 1, 2005;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2006;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the flows commission, and the commission not later than March 1, 2007;

(4) the basin and bay area stakeholders committee shall submit to the commission its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2007; and

(5) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2008.

(d) The flows commission shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2006, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2007. The flows commission shall establish a schedule for the performance of the tasks listed in Subsections (c)(2)-(5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the flows commission with



regard to the schedule applicable to that river basin and bay system. The flows commission shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the flows commission shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The flows commission shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The flows commission may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the flows commission has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The flows commission shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The members must represent appropriate stakeholders, including representatives of:

- (1) agricultural water users;
- (2) recreational water users, including coastal recreational anglers and businesses supporting water recreation;
- (3) municipalities;
- (4) soil and water conservation districts;
- (5) industrial water users, including representatives of both the manufacturing and refining sectors;
- (6) commercial fishermen;
- (7) public interest groups;
- (8) regional water planning groups;
- (9) groundwater conservation districts;
- (10) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and
- (11) environmental interests.

(g) Members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of a basin and bay area stakeholders committee must be open to the public.

(i) Each basin and bay area stakeholders committee shall establish a basin and bay expert science team for the river basin and bay system for which the committee is established. The basin and bay expert science team must be established not later than six months after the date the basin and bay area stakeholders committee is established. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Each basin and bay expert science team must be composed of technical experts with special expertise regarding the river basin and bay system or regarding the development of environmental flow regimes. A person may serve as a member of more than one basin and bay expert science team at the same time.

(j) The members of a basin and bay expert science team serve five-year terms expiring April 1. A vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) The science advisory committee shall appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(n) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the flows commission, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the flows commission may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for

water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the flows commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the flows commission a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the flows commission, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the flows commission shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) In the event the commission, by permit or order, has established an estuary advisory council, that council may continue in full force and effect.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 11.0237, Water Code, are amended to read as follows:

(a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The [This section does not prohibit the] commission may approve [from issuing] an application to amend [amendment to] an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b), 11.042(c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION \_\_\_\_\_. Subsection (b), Section 11.082, Water Code, is amended to read as follows:

(b) The state may recover the penalties prescribed in Subsection (a) [~~of this section~~] by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred.

SECTION \_\_\_\_\_. Section 11.0841, Water Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, the Parks and Wildlife Department has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION \_\_\_\_\_. Subsection (a), Section 11.0842, Water Code, is amended to read as follows:

(a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236 [~~of this code~~], or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

SECTION \_\_\_\_\_. Subsection (a), Section 11.0843, Water Code, is amended to read as follows:

(a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, [as defined by commission rule,] may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) [~~of this section~~] and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842 [~~of this code~~].

SECTION \_\_\_\_\_. Subsection (b), Section 11.134, Water Code, is amended to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by ~~Subdivision (8)(B),~~ Section 11.002(8)(B) ~~[11.002]~~.

SECTION \_\_\_\_\_. Section 11.147, Water Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit any conditions considered necessary to maintain freshwater inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491~~[-those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system].~~

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

(1) the studies mandated by Section 16.059; and

(2) any water quality assessment performed under Section 11.150.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section 11.152.

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a provision allowing the commission to adjust the conditions

included in the permit or amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the commission to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. This subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2005. The commission shall adjust the conditions if the commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust that contribute toward meeting the environmental flow standards.

(e-2) Any water right holder making a contribution described by Subsection (e-1)(3) is entitled to appropriate credit of such benefits against adjustments of the holder's water right pursuant to Subsection (e-1)(1).

(e-3) Notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION \_\_\_\_\_. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1471 to read as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

(a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Sections 11.147(e-1) and (e-2).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the river basin and bay system adopted by the flows commission under Section 11.02362(a) and the definition and designation of the river basin by the board under Section 16.051(c);

(2) the schedule for the adoption of environmental flow standards for the river basin and bay system established by the flows commission under Section 11.02362(d) or (e), if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations regarding environmental flow standards and strategies to meet the flow standards developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o);

(5) the specific characteristics of the river basin and bay system;

(6) economic factors;

(7) the human and other competing water needs in the river basin and bay system;

(8) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(9) any other appropriate information.

(c) Environmental flow standards adopted under Subsection (a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted that is issued after the adoption of an applicable environmental flow set-aside must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the applicable work plan approved by the flows commission under Section 11.02362(p) provides for a periodic review under that section to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate.

SECTION \_\_\_\_\_. The heading to Section 11.148, Water Code, is amended to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION \_\_\_\_\_. Section 11.148, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) [of this section], it must give written notice to the Parks and Wildlife Department of the proposed action [suspension]. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action [suspension] within 72 hours from such time and the commission shall consider those comments before issuing its order implementing the proposed action [imposing the suspension].

(c) The commission may suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than the Parks and Wildlife Department as provided by Subsection (b) [of this section]. However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

SECTION \_\_\_\_\_. Subsection (a), Section 11.1491, Water Code, is amended to read as follows:

(a) The Parks and Wildlife Department and the commission shall have joint responsibility to review the studies prepared under Section 16.058 [of this code], to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for



comment to ~~both~~ the commission, ~~and~~ the Parks and Wildlife Department, the flows commission, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

SECTION \_\_\_\_\_. Subsection (g), Section 11.329, Water Code, is amended to read as follows:

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. ~~[This subsection is not intended to affect in any way the fees assessed on a water right holder by the commission under Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts shall be assessed fees at the same rate per acre foot charged to a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of more than two megawatts.]~~

SECTION \_\_\_\_\_. Subsection (e), Section 11.404, Water Code, is amended to read as follows:

(e) The court may not assess costs and expenses under this section against:

(1) a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts;  
or

(2) a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION \_\_\_\_\_. Subchapter I, Chapter 11, Water Code, is amended by adding Section 11.4531 to read as follows:

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, the executive director shall appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. A member of the advisory committee must be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. In appointing members to the advisory committee, the executive director shall consider:

(1) geographic representation;

(2) amount of water rights held;

(3) different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and

(4) experience and knowledge of water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) An advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) The advisory committee shall meet within 30 days after the date the initial appointments have been made and shall select a presiding officer to serve a one-year term. The committee shall meet regularly as necessary.

(e) The advisory committee shall:

(1) make recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights in the river basin or segment of the river basin for which the watermaster is appointed;

(2) review and comment to the executive director on the annual budget of the watermaster operation; and

(3) perform other advisory duties as requested by the executive director regarding the watermaster operation or as requested by holders of water rights and considered by the committee to benefit the administration of water rights in the river basin or segment of the river basin for which the watermaster is appointed.

SECTION \_\_\_\_\_. Section 11.454, Water Code, is amended to read as follows:

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G ~~[A watermaster as the agent of the commission and under the executive director's supervision shall:~~

~~[(1) divide the water of the streams or other sources of supply of his segment or basin in accordance with the authorized water rights;~~

~~[(2) regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his segment or basin, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled; and~~

~~[(3) perform any other duties and exercise any authority directed by the commission].~~

SECTION \_\_\_\_\_. Section 11.455, Water Code, is amended to read as follows:

Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) The executive director shall deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Money deposited under this section to the credit of the watermaster fund may be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected ~~[The commission may assess the costs of the watermaster against all persons who hold water rights in the river basin or segment of the river basin under the watermaster's jurisdiction in accordance with Section 11.329 of this code].~~

SECTION \_\_\_\_\_. Subchapter F, Chapter 15, Water Code, is amended by adding Section 15.4063 to read as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may authorize the use of money in the research and planning fund:

(1) to compensate the members of the Texas Environmental Flows Science Advisory Committee established under Section 11.02361 for attendance and participation at meetings of the committee and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act;

(2) for contracts with cooperating state and federal agencies and universities and with private entities as necessary to provide technical assistance to enable the Texas Environmental Flows Science Advisory Committee and the basin and bay expert science teams established under Section 11.02362 to perform their statutory duties;

(3) to compensate the members of the expert science teams created pursuant to Section 11.02362(i) for attendance and participation at meetings of the teams and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act; and

(4) for contracts with political subdivisions designated as representatives of stakeholder committees established pursuant to Section 11.02362 to fund all or part of the administrative expenses for conducting meetings of the stakeholder committee or the associated expert science team.

SECTION \_\_\_\_\_. Section 15.7031, Water Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) The dedication of any water rights placed in trust must be reviewed and approved by the commission, in consultation with the board, ~~and~~ the Parks and Wildlife Department, and the Environmental Flows Commission. In addition, the Department of Agriculture and the basin and bay area stakeholders committee and basin and bay expert science team established under Section 11.02362 for the river basin and bay system to which the water right pertains may provide input to the commission, as appropriate, during the review and approval process for dedication of water rights.

(e) While a water right is held in the trust, the water authorized for beneficial use under the terms of the water right is considered to be held for instream flows, water quality, fish and wildlife habitat, bay and estuary inflows, or other environmental uses without the need for a permit amendment. After the water right is withdrawn in whole or in part from the trust, the use of the water right or portion of the water right withdrawn must be in accordance with the terms of the water right.

SECTION \_\_\_\_\_. Subsection (h), Section 16.053, Water Code, is amended by adding Subdivisions (10), (11), (12), and (13) to read as follows:

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to a minor amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by

Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator issues a written determination that the amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. An amendment qualifies for adoption in the manner provided by this subdivision only if the amendment is a minor amendment, as defined by board rule, that will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that an amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter 551, Government Code. The amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. The public must be provided an opportunity to comment on the amendment at the meeting.

(12) Notwithstanding Subdivisions (10) and (11), a regional water planning group may revise a regional water plan approved by the board without complying with Subdivisions (1)-(9) or obtaining a determination from the executive administrator that the revision qualifies for adoption in the manner provided by Subdivision (11) if the revision consists only of substituting an alternative water management strategy previously fully evaluated in the planning process and already contained in the current regional water plan for a water management strategy recommended in the plan. The regional water planning group may adopt the revision to the regional water plan at a public meeting held in accordance with Chapter 551, Government Code.

(13) A regional water planning group that amends or revises a regional water plan under Subdivision (11) or (12) must submit the amended or revised plan to the board for review and approval to ensure that the amended or revised plan contains a full evaluation of the amendment or revision and that the plan as amended or revised complies with applicable requirements.

SECTION \_\_\_\_\_. Subsection (d), Section 16.059, Water Code, is amended to read as follows:

(d) The priority studies shall be completed not later than December 31, 2014 ~~2010~~. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

SECTION \_\_\_\_\_. Subsection (h), Section 26.0135, Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of

the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights, ~~and~~ non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that program funds are equitably apportioned among basins, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177 ~~[of this chapter]~~. The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than \$5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.

SECTION \_\_\_\_\_. Subsections (d), (k), (l), and (m), Section 11.0236, Subsection (c), Section 11.0237, and Subsection (b), Section 11.1491, Water Code, are repealed.

SECTION \_\_\_\_\_. The Study Commission on Water for Environmental Flows is abolished on the effective date of this Act.

SECTION \_\_\_\_\_. (a) The governor, lieutenant governor, and speaker of the house of representatives shall appoint the initial members of the Environmental Flows Commission as provided by Section 11.0236, Water Code, as amended by this article, as soon as practicable on or after the effective date of this Act.

(b) As soon as practicable after taking office, the initial members of the Environmental Flows Commission shall appoint the initial members of the Texas Environmental Flows Science Advisory Committee as provided by Section 11.02361, Water Code, as added by this article. The terms of the initial members of the committee expire March 1, 2010.

(c) The Environmental Flows Commission shall appoint the members of each basin and bay area stakeholders committee as provided by Section 11.02362, Water Code, as added by this article. The terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(d) Each basin and bay area stakeholders committee shall appoint the members of the basin and bay expert science team for the river basin and bay system for which the committee is established as provided by Section 11.02362, Water Code, as added by this article. The terms of the initial members of each team expire April 1 of the fifth year that begins after the year in which the initial appointments are made.

(e) The executive director of the Texas Commission on Environmental Quality shall appoint the members of the watermaster advisory committee under Section 11.4531, Water Code, as added by this article, for each river basin or segment of a river basin for which the executive director appoints a watermaster under Subchapter I, Chapter 11, Water Code. The terms of the initial members of each committee expire August 31 of the first odd-numbered year that begins after the year in which the initial appointments are made.

SECTION \_\_\_\_\_. The changes in law made by this article relating to a permit for a new appropriation of water or to an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted apply only to:

(1) water appropriated under a permit for a new appropriation of water the application for which is pending with the Texas Commission on Environmental Quality on the effective date of this article or is filed with the commission on or after that date; or

(2) the increase in the amount of water authorized to be stored, taken, or diverted under an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted and the application for which is pending with the Texas Commission on Environmental Quality on the effective date of this article or is filed with the commission on or after that date.

The amendment to **CSHB 2233** 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. 16.

Senator Armbrister offered the following amendment to the bill:

### **Floor Amendment No. 17**

Amend **CSHB 2233** as follows:

On page 45, after line 15, insert the following:

SECTION 129. Chapter 13, Water Code, is amended by adding Subchapter O to read as follows:

#### SUBCHAPTER O. STUDY CONCERNING FUNDING OF WATER INFRASTRUCTURE DEVELOPMENT

Sec. 13.551. (a) To evaluate the establishment of a fair and reasonable funding mechanism for providing for the state's future water supply and infrastructure needs, a legislative oversight committee is created to:

(1) ensure funding is available to provide for adequate water supply for the future of Texas;

(2) provide a revenue-generating mechanism that is derived from data evaluation and analysis of equitable fee structures and reporting mechanisms;

(3) evaluate public policy implications for assessing a water conservation and development fee; and

(4) provide a source of dedicated funds for water infrastructure needs for the next 50 years.

(b) In recognition of the importance of providing for the state's water infrastructure and of the need to structure a fair and reasonable funding mechanism that will fund such infrastructure, there is created the Legislative Oversight Committee on Water Financing.

(c) The oversight committee is composed of 10 members of the legislature as follows:

(1) five members of the senate appointed by the lieutenant governor, one of whom shall be the chair of the Senate Natural Resources Committee; and

(2) five members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be the chair of the House Natural Resources Committee.

(d) The position of presiding officer of the oversight committee shall alternate annually between the chair of the Senate Natural Resources Committee and the chair of the House Natural Resources Committee. The chair of the Senate Natural Resources Committee shall serve as the first presiding officer, with a term beginning on September 1, 2005.

(e) Other than the chairs of the senate and house natural resources committees, members serve at the will of the person who appointed each member.

(f) The board shall provide staff support for the oversight committee. The executive administrator of the board shall compile and analyze for the committee's use information received by the board regarding water use throughout the state, water infrastructure needs throughout the state, the adequacy of current funding for such infrastructure needs, and gaps in the ability to fund such infrastructure.

(g) The oversight committee shall conduct public hearings and study public policy implications for assessing a water conservation and development fee as a source of dedicated funds for water infrastructure development. Specifically, the oversight committee shall determine how to establish and implement the fee, including recommendations on:

(1) constitutional dedication of revenues in the water infrastructure fund;

(2) the amount of the fee and the impact of the fee on all water users;

(3) the uses upon which the fee shall be assessed; and

(4) any appropriate reservations of the fee.

(h) The oversight committee may appoint technical subcommittees, which may include persons other than the members of the oversight committee. The oversight committee shall appoint a technical advisory subcommittee composed of financial advisors and bond counsel.

(i) The oversight committee shall provide a report on or before August 31, 2006, to the governor, lieutenant governor, and speaker of the house of representatives addressing the topics included in Subsection (h) and recommending any needed legislation.

(j) The oversight committee shall adopt rules to administer this section.

(k) The oversight committee is abolished and this subchapter expires September 1, 2009.

The amendment to **CSHB 2233** 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.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 18**

Amend **CSHB 2233** as follows:

SECTION \_\_\_\_\_. Subsection (a), Section 15.407, Water Code, is amended to read as follows:

(a) In this section, "economically distressed area" and "political subdivision" have the meanings assigned by Section 17.941 [~~16.341 of this code~~].

SECTION \_\_\_\_\_. Section 17.172, Water Code, is amended to read as follows:

Sec. 17.172. APPLICABILITY. This subchapter applies to financial assistance made available from the water supply account, the water quality enhancement account, the flood control account, [~~and~~] the economically distressed areas account, and the economically distressed areas program account under Subchapters D, F, G, [~~and~~] K, and K-1 of this chapter.

SECTION 3.06. Chapter 17, Water Code, is amended by adding Subchapter K-1 to read as follows:

SUBCHAPTER K-1. STATEWIDE ASSISTANCE TO  
ECONOMICALLY DISTRESSED AREAS FOR WATER SUPPLY  
AND SEWER SERVICE PROJECTS

Sec. 17.941. DEFINITIONS. In this subchapter:

(1) "Economically distressed area" means an area in this state in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rule;

(B) financial resources are inadequate to provide water supply and sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005, as determined by the board.

(2) "Financial assistance" means the funds provided by the board to political subdivisions for water supply or sewer services under this subchapter.

(3) "Political subdivision" means a county, a municipality, a nonprofit water supply corporation created and operating under Chapter 67, or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(4) "Sewer services" and "sewer facilities" mean treatment works or individual, on-site, or cluster treatment systems such as septic tanks and include drainage facilities and other improvements for proper functioning of the sewer services and other facilities.

Sec. 17.942. FINANCIAL ASSISTANCE. The economically distressed areas program account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of water supply and sewer services, including providing money from the account for the state's participation in federal programs that provide assistance to political subdivisions. Money from the proceeds of bonds issued under the authority of Sections 49-d-7(b) or 49-d-8, Article III, Texas Constitution, may not be used to provide financial assistance under this subchapter.



Sec. 17.943. APPLICATION FOR FINANCIAL ASSISTANCE. (a) A political subdivision may apply to the board for financial assistance under this subchapter by submitting an application together with a plan for providing water supply or sewer services to an economically distressed area.

(b) The application and plan must include:

(1) the name of the political subdivision and its principal officers;

(2) a citation of the law under which the political subdivision operates and was created;

(3) a description of the existing water supply and sewer facilities located in the area to be served by the proposed project and include with the description a statement prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards;

(4) information identifying the median household income for the area to be served by the proposed project;

(5) a project plan prepared and certified by an engineer registered to practice in this state that:

(A) describes the proposed planning, design, and construction activities necessary for providing water supply and sewer services that meet minimum state standards; and

(B) identifies the households to whom the services will be provided;

(6) a budget that estimates the total cost of providing water supply and sewer services to the economically distressed area and a proposed schedule and method for repayment of financial assistance consistent with board rules and guidelines; and

(7) the total amount of assistance requested from the economically distressed areas program account.

(c) A program of water conservation for the more effective use of water is required for approval of an application for financial assistance under this section in the same manner as such a program is required for approval of an application for financial assistance under Section 17.125.

(d) Before considering the application, the board may require the applicant to:

(1) participate with the board in reviewing the applicant's managerial, financial, or technical capabilities to operate the system for which assistance is being requested;

(2) provide a written determination by the commission of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;

(3) request that the comptroller perform a financial management review of the applicant's current operations and, if the comptroller is available to perform the review, provide the board with the results of the review; or

(4) provide any other information required by the board or the executive administrator.

Sec. 17.944. CONSIDERATIONS IN PASSING ON APPLICATION. (a) In passing on an application for financial assistance, the board shall consider:

(1) the need of the economically distressed area to be served by the water supply or sewer services in relation to the need of other political subdivisions requiring financial assistance under this subchapter and the relative costs and benefits of all applications;

(2) the availability of revenue or alternative financial assistance for the area served by the project, from all sources, for the payment of the cost of the proposed project;

(3) the financing of the proposed water supply or sewer project, including consideration of:

(A) the budget and repayment schedule submitted under Section 17.943(b)(6);

(B) other items included in the application relating to financing; and

(C) other financial information and data available to the board; and

(4) the feasibility of achieving cost savings by providing a regional facility for water supply or wastewater service and the feasibility of financing the project by using money from the economically distressed areas program account or any other available financial assistance.

(b) At the time an application for financial assistance is considered, the board also must find that the area to be served by a proposed project has a median household income of not more than 75 percent of the median state household income for the most recent year for which statistics are available.

Sec. 17.945. APPROVAL OR DISAPPROVAL OF APPLICATION. After considering the matters described by Section 17.944, the board by resolution shall:

(1) approve the plan and application as submitted;

(2) approve the plan and application subject to the requirements identified by the board or commission for the applicant to obtain the managerial, financial, and technical capabilities to operate the system and any other requirements, including training under Subchapter M, the board considers appropriate;

(3) deny the application and identify the requirements or remedial steps the applicant must complete before the applicant may be reconsidered for financial assistance;

(4) if the board finds that the applicant will be unable to obtain the managerial, financial, or technical capabilities to build and operate a system, deny the application and issue a determination that a service provider other than the applicant is necessary or appropriate to undertake the proposed project; or

(5) deny the application.

Sec. 17.946. FINDINGS REGARDING PERMITS. (a) The board may not release money for the construction of that portion of a project that proposes surface water or groundwater development until the executive administrator makes a written finding:

(1) that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water that the water supply project will provide; or

(2) that an applicant proposing groundwater development has the right to use water that the water supply project will provide.

(b) The board may release money for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs before making the finding required under Subsection (a) if the executive administrator determines that a reasonable expectation exists that the finding will be made before the release of funds for construction.

(c) If an applicant includes a proposal for treatment works, the board may not deliver money for the treatment works until the applicant has received a permit for construction and operation of the treatment works and approval of the plans and specifications from the commission or unless such a permit is not required by the commission.

Sec. 17.947. METHOD OF FINANCIAL ASSISTANCE. (a) The board may provide financial assistance to political subdivisions under this subchapter by using money in the economically distressed areas program account to purchase political subdivision bonds.

(b) The board may make financial assistance available to political subdivisions in any other manner that it considers feasible, including:

(1) contracts or agreements with a political subdivision for acceptance of financial assistance that establish any repayment based on the political subdivision's ability to repay the assistance and that establish requirements for acceptance of the assistance; or

(2) contracts or agreements for providing financial assistance in any federal or federally assisted project or program.

Sec. 17.948. TERMS OF FINANCIAL ASSISTANCE. (a) The board may use money in the economically distressed areas program account to provide financial assistance under this subchapter to a political subdivision to be repaid in the form, manner, and time provided by board rules and in the agreement between the board and the political subdivision, taking into consideration the information provided by Section 17.943.

(b) In providing financial assistance to an applicant under this subchapter, the board may not provide to the applicant financial assistance for which repayment is not required in an amount that exceeds 50 percent of the total amount of the financial assistance plus interest on any amount that must be repaid, unless the Department of State Health Services issues a finding that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project. The board and the applicant shall provide to the Department of State Health Services information necessary to make a determination, and the board and the Department of State Health Services may enter into memoranda of understanding necessary to carry out this subsection.

(c) The total amount of financial assistance provided by the board to political subdivisions under this subchapter from state-issued bonds for which repayment is not required may not exceed at any time 90 percent of the total principal amount of issued and unissued bonds authorized for purposes of this subchapter.

(d) In determining the amount and form of financial assistance and the amount and form of repayment, if any, the board shall consider:

(1) rates, fees, and charges that the average customer to be served by the project will be able to pay based on a comparison of what other families of similar income who are similarly situated pay for comparable services;

(2) sources of funding available to the political subdivision from federal and private money and from other state money;

(3) any local money of the political subdivision to be served by the project if the economically distressed area to be served by the board's financial assistance is within the boundary of the political subdivision; and

(4) the just, fair, and reasonable charges for water and wastewater service as provided by this code.

(e) In making its determination under Subsection (d)(1), the board may consider any study, survey, data, criteria, or standard developed or prepared by any federal, state, or local agency, private foundation, banking or financial institution, or other reliable source of statistical or financial data or information.

SECTION \_\_\_\_\_. Subsection (c), Section 17.958, Water Code, is amended to read as follows:

(c) Money on deposit in the economically distressed areas program account may be used by the board for purposes provided by Subchapter K or K-1 in the manner that the board determines necessary for the administration of the fund.

SECTION \_\_\_\_\_. Subsection (i), Section 15.407, and Subsection (b), Section 15.974, Water Code, are repealed.

The amendment was read.

Senator Duncan moved to table Floor Amendment No. 18 to **CSHB 2233**.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Janek, Lindsay, Nelson, Ogden, Shapiro, Wentworth, Williams.

Nays: Armbrister, Barrientos, Ellis, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lucio, Madla, Seliger, Shapleigh, Staples, Van de Putte, West, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 18 to **CSHB 2233**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 18.

Senator Armbrister offered the following amendment to the bill:

### **Floor Amendment No. 19**

Amend **CSHB 2233** by adding new sections as follows, and numbering accordingly:

SECTION \_\_\_\_\_. Subsection (f), Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(f) The authority may own, finance, design, ~~[contract with a person who uses water from the aquifer for the authority or that person to]~~ construct, operate, or ~~[own, finance, and]~~ maintain recharge ~~[water supply]~~ facilities or contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate or maintain recharge facilities. ~~[Management fees or special fees~~

~~may not be used for purchasing or operating these facilities.]~~ For the purpose of this subsection, "recharge [water supply] facility" means [includes] a dam, reservoir, ~~[treatment facility, transmission facility,]~~ or other method of recharge project and associated facilities, structures, or works.

SECTION \_\_\_\_\_. Subsections (a), (c), (f), and (h), Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act shall be limited in accordance with this section to:

- (1) protect the water quality of the aquifer;
- (2) protect the water quality of the surface streams to which the aquifer provides springflow;
- (3) achieve water conservation;
- (4) maximize the beneficial use of water available for withdrawal from the aquifer;

(5) recognize the hydro-geologic connection and interaction between surface and groundwater;

(6) protect aquatic and wildlife habitat;

(7) ~~(6)~~ protect species that are designated as threatened or endangered under applicable federal or state law; and

(8) ~~(7)~~ provide for instream uses, bays, and estuaries.

(c) Except as provided by Subsections ~~(d)~~, (f) and (h) of this section ~~[and Section 1.26 of this article,]~~ for the period beginning January 1, 2005 ~~[2008]~~, the amount of permitted withdrawals from the aquifer may not exceed the sum of all regular permits issued or for which an application has been filed and issuance is pending action by the authority as of January 1, 2005. If annexation occurs, the amount of permitted withdrawals may be adjusted to include permits issued for wells in the annexed area as of January 1, 2005 ~~[400,000 acre feet of water for each calendar year]~~.

(f) If the level of the aquifer is equal to or greater than 665 ~~[650]~~ feet above mean sea level as measured at well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterrupted basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterrupted basis, of permitted amounts. In accordance with Section 1.26 of this article, the ~~[The]~~ authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(h) To accomplish the purposes of this article, ~~[by June 1, 1994,]~~ the authority, through a program, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law and to achieve other purposes provided by Subsection (a) of this section and Section 1.26 of this article. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority shall require:

(1) phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users, including the authority's critical period management plan established under Section 1.26 of this article; or

(2) implementation of alternative management practices, procedures, and methods.

SECTION \_\_\_\_\_. Subsection (c), Section 1.15, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(c) The authority may issue regular permits, term permits, and emergency permits. Except as provided in Section 1.14(f) and Section 1.26 of this article, regular permits may not be issued on an interruptible basis, and the total withdrawals authorized by all regular permits issued by the authority may not exceed the limitations provided by Section 1.14 of this article.

SECTION \_\_\_\_\_. Subsection (b), Section 1.19, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) Withdrawal of water under a term permit must be consistent with the authority's critical period management plan established under Section 1.26 of this article. A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless the level of the aquifer is higher than 675 [665] feet above sea level, as measured at Well J-17, and the flow at Comal Springs as determined by Section 1.26(c) is greater than 350 cfs.

SECTION \_\_\_\_\_. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Section 1.26 and adding Section 1.26A to read as follows:

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After review of the recommendations received, as prescribed in Section 1.26A of this article, the [The] authority shall prepare and coordinate implementation of a [plan for] critical period management plan in a manner consistent with Section 1.14(a) [on or before September 1, 1995]. The mechanisms must:

(1) distinguish between discretionary use and nondiscretionary use;  
 (2) require reductions of all discretionary use to the maximum extent feasible;

(3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities; and

(4) require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preferences:

- (A) municipal, domestic, and livestock;
- (B) industrial and crop irrigation;
- (C) residential landscape irrigation;
- (D) recreational and pleasure; and
- (E) other uses that are authorized by law.

(b) In this section, "MSL" means the elevation, measured in feet, of the surface of the water in a well above mean sea level, and "CFS" means cubic feet per second. Not later than January 1, 2006, the authority shall, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts

indicated in Tables 1 and 2 whether according to the index well levels or Comal Springs flow as may be applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 30 percent under Table 2:

TABLE 1 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION

<u>STAGES FOR THE SAN ANTONIO POOL</u>			
<u>INDEX WELL</u>	<u>COMAL SPRINGS</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL REDUCTION</u>
<u>J-17 LEVEL</u>	<u>FLOW CFS</u>	<u>STAGE</u>	<u>PERCENTAGE</u>
<u>MSL</u>	<u>N/A</u>	<u>I</u>	<u>10%</u>
<u>&lt;665</u>	<u>N/A</u>	<u>II</u>	<u>10%</u>
<u>&lt;650</u>	<u>&lt;150</u>	<u>III</u>	<u>10%</u>
<u>&lt;640</u>	<u>&lt;100</u>	<u>IV</u>	<u>10%</u>

TABLE 2 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION

<u>STAGES FOR THE UVALDE POOL</u>			
<u>INDEX WELL</u>	<u>CRITICAL PERIOD</u>	<u>WITHDRAWAL REDUCTION</u>	
<u>J-27 MSL FOR</u>	<u>STAGE</u>	<u>PERCENTAGE</u>	
<u>UVALDE POOL</u>	<u>N/A</u>	<u>N/A</u>	
<u>N/A</u>	<u>II</u>	<u>N/A</u>	
<u>&lt;845</u>	<u>III</u>	<u>15%</u>	
<u>&lt;842</u>	<u>IV</u>	<u>15%</u>	

(c) The authority shall continuously track the average daily discharge rate measured over each period of five consecutive days at Comal Springs to determine whether a reduction in withdrawals to the Stage III reduction level is required. The authority shall track the average daily discharge rate measured for any five days in a period of 10 consecutive days to determine whether a reduction in withdrawals to the Stage IV reduction level is required.

(d) Beginning September 1, 2005, the authority shall reduce the volume of permitted withdrawals to an annualized rate of 340,000 acre-feet, under critical period Stage IV. After January 1, 2012, the authority shall not allow the volume of permitted withdrawals to exceed 320,000 acre-feet, under critical period Stage IV.

(e) After January 1, 2020, the authority, after review and consideration of recommendations received by the authority under Section 1.26A of this article, shall reduce the volume of permitted withdrawals to an appropriate annualized rate under critical period Stage IV that is consistent with maintaining the protections contained in Section 1.14(a) of this article.

(f) From time to time, the authority by rule may amend the withdrawal reduction criteria of the authority's critical period management plan as set forth in Subsections (b), (c) and (e), after review and consideration of the recommendations from the Environmental Flows Commission, the Edwards Aquifer Area expert science team, and the Edwards Aquifer Area Stakeholders Committee, as prescribed in Section 1.26A of this article. The amended plan must be consistent with Section 1.14(a) of this article.

Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT. (a) The Environmental Flows Commission, as established under Section 11.0236, Water Code, shall appoint a 15-member Edwards Aquifer Area Stakeholders Committee not later than January 1, 2006. The composition of the committee will be as follows:

- (1) five Municipal Edwards Aquifer permit holders;
- (2) two Irrigation Edwards Aquifer permit holders;
- (3) three Industrial Edwards Aquifer permit holders;
- (4) four Downstream Water Rights holders in the Guadalupe River Basin;

and

(5) one representative of a public interest group related to instream flows in the Guadalupe River Basin and bay and estuary inflows from the Guadalupe River.

(b) The Edwards Aquifer Area Stakeholders Committee shall appoint a seven-member Edwards Aquifer Area expert science team not later than April 30, 2006. The expert science team must be composed of technical experts with special expertise regarding the Edwards Aquifer system, spring flows, or the development of withdrawal limitations. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science team. A member of the Texas Environmental Flows science advisory committee established in Section 11.02361, Water Code, shall serve as liaison to the Edwards Aquifer Area expert science team.

(c) The expert science team shall develop an analysis of spring discharge rates and aquifer levels as a function of withdrawal levels. Based upon this analysis and the required elements to be considered by the authority in Section 1.14 of this article, the Edwards Aquifer Area expert science team shall, through a collaborative process designed to achieve consensus, create recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and different withdrawal reduction levels and stages for critical period management rules for different pools of the aquifer and submit them to the Edwards Aquifer Area Stakeholders Committee, the Environmental Flows Commission, and the authority. The initial recommendations must be completed and submitted no later than September 30, 2006.

(d) In developing its recommendations, the Edwards Aquifer Area expert science team must consider all reasonably available science, including any Edwards Aquifer specific studies, and the recommendations must be based solely on the best science available. The Edwards Aquifer Area Stakeholders Committee may not change the recommendations of the Edwards Aquifer Area expert science team regarding the withdrawal limitations appropriate to achieve the purposes of Section 1.14 of this article.

(e) The Edwards Aquifer Area Stakeholders Committee shall review the withdrawal limitation and critical period management recommendations submitted by the expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the Edwards Aquifer Area and the required elements to be considered by the authority in Section 1.14 of this article. The stakeholders committee shall develop recommendations regarding a critical period management plan and submit its recommendations to the authority and to the Environmental Flows Commission. In developing its recommendations, the stakeholders committee shall operate on a consensus basis to the maximum extent possible. The initial recommendations must be completed and submitted no later than October 31, 2006.



(f) The Environmental Flows Commission shall submit to the authority its comments on and recommendations regarding the Edwards Aquifer Area expert science team's recommended withdrawal reduction levels and stages for critical period management needed to maintain target spring discharge and aquifer levels. The withdrawal reduction recommendations shall be based upon a combination of spring discharge rates of the San Marcos and Comal Springs and levels at the J-17 and J-27 wells.

(g) The Edwards Aquifer Area expert science team, Edwards Aquifer Area Stakeholders Committee, and the Environmental Flows Commission shall submit recommendations to the authority for use in developing its rules relative to establishing the critical period management plan.

(h) Where reasonably practicable, meetings of the Edwards Aquifer Area expert science team and Edwards Aquifer Area Stakeholders Committee must be open to the public.

(i) In recognition of the importance of critical period management to adapt to changed conditions or information, after submitting its recommendations regarding withdrawal limitations and strategies to meet the spring flow needs to the authority, the stakeholders committee, with the assistance of the expert science team, shall prepare and submit to the Environmental Flows Commission a work plan. The work plan must:

(1) establish a periodic review of the critical period management plan, to occur at least once every five years;  
(2) prescribe specific monitoring, studies, and activities; and  
(3) establish a schedule for continuing the validation or refinement of the critical period management plan adopted by the authority, and the strategies to achieve the plan.

(j) To assist the flows commission to assess the extent to which the recommendations of the Edwards Aquifer Area expert science team are considered and implemented, the authority shall provide written reports to the flows commission, at intervals determined by the flows commission, that describe:

(1) the actions taken in response to each recommendation; and  
(2) for each recommendation not implemented, the reason it was not implemented.

SECTION \_\_\_\_\_. Subsections (b) and (i), Section 1.29, Section 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 36 [52], Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

(i) The authority shall provide money as necessary, but not to exceed \$75,000, annually adjusted for changes in the consumer price index [~~five percent of the money collected under Subsection (d) of this section~~], to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

SECTION \_\_\_\_\_. Subsection (a), Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The authority may own, finance, design, construct, [build or] operate, and maintain recharge dams and associated facilities, structures, or works in the contributing or recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights.

SECTION \_\_\_\_\_. The following sections of Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are repealed:

- (1) Subsections (b) and (d), Section 1.14;
- (2) Section 1.18;
- (2) Section 1.21; and
- (3) Subsections (a), (c), (d), and (h), Section 1.29.

SECTION \_\_\_\_\_. Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 is amended by adding Subsection (j) to read as follows:

(j) BUDGETARY ADVISORY COMMITTEE. The authority shall appoint a budgetary advisory committee no later than September 30, 2005 to consult and advise the authority on the following prior to its submission to the authority's board:

- (1) Issuance of bonds;
- (2) The authority's annual budget; and
- (3) The authority's annual audit.

Each voting member of the authority board shall appoint one member of the committee.

The amendment was read.

Senator Armbrister withdrew Floor Amendment No. 19.

Senator Duncan offered the following amendment to the bill:

### **Floor Amendment No. 20**

Amend **CSHB 2233** by adding the following sections and renumbering accordingly:

SECTION \_\_\_\_\_. Section 401.003, Health and Safety Code, is amended by amending Subdivisions (2), (4), (5), (6), and (15) and by adding Subdivision (12-1) to read as follows:

(2) "Board" means the executive commissioner of the Health and Human Services Commission [~~Texas Board of Health~~].

(4) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state [~~public~~] health services.

(6) "Department" means the ~~[Texas]~~ Department of State Health Services or other department designated by the executive commissioner of the Health and Human Services Commission.

(12-1) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's operations in Texas related to disposal including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for extraordinary capital reimbursements, bona fide storage and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract. The commission may promulgate rules in establishing the criteria for determining gross receipts consistent with the parameters of this definition.

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which a nuclear or radioactive substance ~~[material]~~ is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

SECTION \_\_\_\_. Subsections (a) and (b), Section 401.011, Health and Safety Code, are amended to read as follows:

(a) The department is the Texas Radiation Control Agency. The department has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b) and Subchapters E, F, G, and K.

(b) The commission has jurisdiction to regulate and license:

(1) the disposal of radioactive substances;

(2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons, except oil and gas NORM;

(3) the recovery or processing of source material in accordance with Subchapter G;

(4) the processing of by-product material as defined by Section 401.003(3)(B); and

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

(C) naturally occurring radioactive material waste ~~[except by-product material defined by Section 401.003(3)(B)].~~

SECTION \_\_\_\_. Section 401.054, Health and Safety Code, is amended to read as follows:

Sec. 401.054. NOTICE AND HEARING. (a) The department or commission shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, unless otherwise required by this chapter, on written request of a person affected by any of the following procedures:

(1) the denial, suspension, or revocation by the department or commission of a license or registration;

(2) the determination by the department or commission of compliance with or the grant of exemptions from a department or commission rule or order; or

(3) the grant or amendment by the department or commission of a specific license.

(b) A contested case hearing shall be conducted according to Section 401.239 [~~This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter.~~].

(c) The commission may hold a contested case hearing on an application for the renewal of a license issued under this chapter provided that the change being requested would constitute a major change to the license.

SECTION \_\_\_\_. Section 401.104, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive substances [~~material except for the disposal of by product material defined by Section 401.003(3)(B). The department by rule shall provide for licensing the disposal of by product material defined by Section 401.003(3)(B).~~].

(f) A separate commercial storage and processing license may be issued at a site also licensed for disposal under this chapter.

SECTION \_\_\_\_. Subsection (a), Section 401.106, Health and Safety Code, is amended to read as follows:

(a) The board or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the board or commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

SECTION \_\_\_\_. Subsection (c), Section 401.108, Health and Safety Code, is amended to read as follows:

(c) The [~~department or~~] commission shall reevaluate every five years the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

SECTION \_\_\_\_. Subsection (b), Section 401.109, Health and Safety Code, is amended to read as follows:

(b) The [~~department or~~] commission shall require a holder of a license that authorizes the disposal of radioactive substances [~~low level radioactive waste as provided by Subchapter F~~] to provide security acceptable to the commission [~~agency~~] to assure performance of the license holder's obligations under this chapter.

SECTION \_\_\_\_ . Section 401.111, Health and Safety Code, is amended to read as follows:

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES.

(a) The ~~[board and]~~ commission ~~[each]~~, in adopting rules for the issuance of licenses under the commission's jurisdiction ~~[their respective jurisdictions]~~ for new sites for processing or disposal of radioactive substances ~~[low level radioactive waste]~~ from other persons, shall adopt criteria for the designation of unsuitable sites, including:

- (1) flood hazard areas;
- (2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or
- (3) areas in which soil conditions make spill cleanup impracticable.

(b) The ~~[board and]~~ commission ~~[each]~~ shall consult with the advisory board and with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The ~~[board and]~~ commission ~~[each]~~ by rule shall:

- (1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and
- (2) prohibit issuance of licenses for unsuitable sites as defined by the rules.

SECTION \_\_\_\_ . Section 401.112, Health and Safety Code, is amended to read as follows:

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The ~~[department or]~~ commission~~[-, within its jurisdiction]~~, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural ~~[natural]~~ hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;
- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including financial and technical qualifications and compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission ~~[or the requirements of Section 401.110(b) for an application to the department]~~;
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;

(12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the commission [~~issuing agency~~] to consider the factors under Subsection (a).

(c) The [~~board and~~] commission [~~each within its jurisdiction~~] by rule shall provide specific criteria for the different types of licensed low-level radioactive waste activities for the listed factors and may include additional factors and criteria that the [~~board or~~] commission [~~as appropriate,~~] determines necessary for full consideration of a license.

SECTION \_\_\_\_. Subsections (a) and (b), Section 401.113, Health and Safety Code, are amended to read as follows:

(a) Before a hearing under Section 401.114 begins, the commission [~~agency holding the hearing~~] shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the commission [~~agency~~] determines has a significant effect on the human environment.

(b) The commission [~~agency~~] shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

SECTION \_\_\_\_. Section 401.114, Health and Safety Code, is amended to read as follows:

Sec. 401.114. NOTICE AND HEARING. (a) Before the [~~department or~~] commission [~~within its jurisdiction,~~] grants or renews a license to process or dispose of low-level radioactive waste from other persons, the commission [~~agency~~] shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's [~~agency's~~] formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission [~~agency~~] shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The commission [~~agency~~] shall mail, by certified mail in the manner provided by the commission's [~~agency's~~] rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the commission [~~agency~~] or the applicant must certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

SECTION \_\_\_\_. Section 401.116, Health and Safety Code, is amended to read as follows:

Sec. 401.116. LICENSE AMENDMENT. The commission shall adopt rules to establish requirements for public notice of and public participation in the amendment of a license issued under this subchapter, including both minor and major amendments ~~[(a) An amendment to a license to process or dispose of low level radioactive waste from other persons may take effect immediately.~~

~~[(b) The department or commission, as appropriate, shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.~~

~~[(c) Notice under this section must include:~~

~~[(1) the identity of the license holder;~~

~~[(2) identification of the license; and~~

~~[(3) a short and plain statement of the license amendment's substance.~~

~~[(d) The agency shall give notice and hold a hearing to consider the license amendment if a person affected files a written complaint with the agency before the 31st day after the date on which notice is published under Subsection (b). The agency shall give notice of the hearing as provided by Section 401.114].~~

SECTION \_\_\_\_ . Section 401.117, Health and Safety Code, is amended to read as follows:

Sec. 401.117. CONSTRUCTION LIMITATION. The ~~[department or]~~ commission shall prohibit major construction relating to activities to be permitted under a license issued by the commission ~~[agency]~~ to process or dispose of low-level radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed.

SECTION \_\_\_\_ . Subchapter D, Chapter 401, Health and Safety Code, is amended by adding Section 401.120 to read as follows:

Sec. 401.120. LIMITATION ON RADIOACTIVE SUBSTANCE STORAGE.

(a) The commission may impose as a condition of each license that authorizes the storage of a radioactive substance from another person a maximum length of time that the radioactive substance may be stored under the license.

(b) The commission may impose an administrative penalty or bring an action for a civil penalty for a violation of a license condition imposed under Subsection (a).

(c) An administrative penalty imposed under Subsection (b) may not exceed \$10,000 for a violation. Each day of a continuing violation constitutes a separate violation subject to the penalty.

(d) A civil penalty imposed under Subsection (b) may not exceed \$25,000 for a violation. Each day of a continuing violation constitutes a separate violation subject to the penalty.

SECTION \_\_\_\_ . Subsection (a), Section 401.202, Health and Safety Code, is amended to read as follows:

(a) The commission ~~[or department, within its respective jurisdiction,]~~ may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

SECTION \_\_\_\_ . Subsections (a) and (b), Section 401.241, Health and Safety Code, are amended to read as follows:

(a) In determining the amount of security required of a [~~compact waste disposal facility license~~] holder of a license to dispose of radioactive substances under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the radioactive substances [~~compact waste~~] disposal facility [~~or a federal facility waste disposal facility licensed under Section 401.216~~].

(b) The amount of security required of a compact waste disposal facility license holder under this section may not be less than \$20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

- (1) the amount of low-level radioactive waste received at the site;
- (2) the long-term risk to health, safety, and the environment posed by the waste; and
- (3) the need to address and prevent unplanned events that pose a risk to public health and safety.

SECTION \_\_\_\_. Section 401.262, Health and Safety Code, is amended to read as follows:

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission [~~department~~] has sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with:

- (1) the federal commission's applicable standards; and
- (2) closure criteria the federal commission and the United States Environmental Protection Agency have determined are protective of human health and safety and the environment.

SECTION \_\_\_\_. Section 401.2625, Health and Safety Code, is amended to read as follows:

Sec. 401.2625. LICENSING AUTHORITY. The commission [~~commissioner~~] has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material recovery and processing or for storage, processing, or disposal of by-product material.

SECTION \_\_\_\_. Subsections (a), (c), (d), (e), and (f), Section 401.263, Health and Safety Code, are amended to read as follows:

(a) If the commission [~~department~~] is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of by-product material and the commission [~~department~~] determines that the licensed activity will have a significant impact on the human environment, the commission [~~department~~] shall prepare or have prepared a written environmental analysis.

(c) The commission [~~department~~] shall give notice of the analysis as provided by commission [~~board~~] rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.



(d) After notice is given, the commission [~~department~~] shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the commission's [~~department's~~] proceedings.

(f) The commission [~~board~~] by rule shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

SECTION \_\_\_\_. Subsections (a), (c), and (d), Section 401.264, Health and Safety Code, are amended to read as follows:

(a) The commission [~~department~~] on its own motion may or on the written request of a person affected shall provide an opportunity for a public hearing on an application over which the commission [~~department~~] has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(c) The commission [~~department~~] shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The commission [~~department~~] shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission [~~department~~] and include findings. The written determination is available to the public.

SECTION \_\_\_\_. Section 401.265, Health and Safety Code, is amended to read as follows:

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission [~~department~~] shall prescribe conditions in a radioactive substances [~~material~~] license issued, renewed, or amended for an activity that results in production of by-product material to minimize or, if possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the commission [~~board~~] and that are compatible with the federal commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, licensed on-site waste disposal associated with a licensed in situ leach uranium recovery facility, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material.

SECTION \_\_\_\_\_. Subsection (a), Section 401.266, Health and Safety Code, is amended to read as follows:

(a) The commission [~~board~~] by rule or [~~order or the department by~~] order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the federal commission determines before the license terminates that the transfer of title to the land and the by-product material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

SECTION \_\_\_\_\_. Section 401.267, Health and Safety Code, is amended to read as follows:

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission [~~department~~] may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with protecting public health, safety, and the environment.

(b) The commission [~~department~~] may sell land acquired under this section at the land's fair market value after the commission [~~department~~] has taken corrective action to restore the land to a condition that does not compromise the public health or safety or the environment. The General Land Office shall negotiate and close a transaction under this subsection on behalf of the commission [~~department~~] using procedures under Section 31.158(c), Natural Resources Code. Proceeds from the transaction shall be deposited in the Texas capital trust fund.

SECTION \_\_\_\_\_. Section 401.269, Health and Safety Code, is amended to read as follows:

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The commission [~~department~~] may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section 401.267 that are necessary to protect the public health and safety and the environment.

(b) The commission [~~department~~] shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment.

SECTION \_\_\_\_\_. Subsections (a), (b), (e), and (f), Section 401.270, Health and Safety Code, are amended to read as follows:

(a) If the commission [~~department~~] finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or the environment, the commission [~~department~~] by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The commission [~~department~~] may issue an emergency order to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of by-product material if it appears that there is an actual or threatened release of source material or by-product material that presents an imminent and substantial danger to the public health and safety or the environment, regardless of whether the activity was lawful at the time. The emergency order may be issued without notice or hearing.

(e) The commission [~~department~~] shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The commission [~~department~~] shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the licensee;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the perpetual care account the amount necessary to pay the costs.

(f) If an order issued by the commission [~~department~~] under this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency order, and a place for a hearing to be held in accordance with the rules of the commission [~~board~~]. As a result of this hearing, the commission [~~department~~] shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission [~~department~~].

SECTION \_\_\_\_\_. Subchapter G, Chapter 401, Health and Safety Code, is amended by adding Sections 401.271 and 401.272 to read as follows:

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall transfer each quarter an amount equal to 10 percent of the license holder's gross receipts received from operations under the license for disposal occurring after the effective date of the Act enacting this section as follows:

- (1) eight percent shall be transferred to the state general revenue fund; and
- (2) two percent shall be transferred to the host county in accordance with

Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to compact waste as defined by Section 401.2005(1) or federal facility waste as defined in Section 401.2005(4).

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter is accurately paid. The license holder shall comply with the commission's audit related requests for information.

SECTION \_\_\_\_\_. Section 401.301, Health and Safety Code, is amended to read as follows:

Sec. 401.301. LICENSE AND REGISTRATION FEES [~~COLLECTED BY DEPARTMENT~~]. (a) The commission and department may collect a fee for each license and registration the agency [#] issues.

(b) The commission and the board each by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

- (1) process applications for licenses or registrations;
- (2) amend or renew licenses or registrations;
- (3) make inspections of license holders and registrants; and
- (4) enforce this chapter and rules, orders, licenses, and registrations under this chapter.

(c) The commission and department may collect a fee, in addition to the annual license and registration fee, of not less than 20 percent of the amount of the annual license and registration fee nor more than \$10,000 per annum from each licensee or registrant who fails to pay the fees authorized by this section.

(d) The commission and department may require that each person who holds a specific license issued by the agency [~~department~~] annually pay to the agency [~~department~~] an additional five percent of the appropriate annual fee set under Subsection (b). Fees collected under this subsection shall be deposited to the credit of the perpetual care account. The fees are not refundable.

(e) The commission and department shall suspend assessment of a fee imposed under Subsection (d) if the amount of fees collected under that subsection reaches \$500,000. If the balance of fees collected subsequently is reduced to \$350,000 or less, the commission and department shall reinstitute assessment of the fee until the balance reaches \$500,000.

(f) The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application.

SECTION \_\_\_\_. Subsection (a), Section 401.302, Health and Safety Code, is amended to read as follows:

(a) The department, in coordination with the commission, may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

SECTION \_\_\_\_. Subsections (c), (e), (f), and (g), Section 401.305, Health and Safety Code, are amended to read as follows:

(c) Money and security in the perpetual care account may be administered by the department or commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances [~~material~~] for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(e) The department or commission may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances [~~materials~~], default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department or commission to meet the requirements of this chapter or of department or commission rules; and

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation.

(f) The department or commission may provide, by the terms of a contract or lease entered into between the department or commission and any person or by the terms of a license issued by the department or commission to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department or commission jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department or commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances [~~material~~] arising from a license holder's abandonment of radioactive substances [~~material~~], default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department or commission rules.

SECTION \_\_\_\_ . Section 401.343, Health and Safety Code, is amended to read as follows:

Sec. 401.343. RECOVERY OF SECURITY. (a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the [~~department's~~] request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances [~~material~~] resulting from a violation of this chapter relating to an activity under the [~~department's~~] jurisdiction of the department or commission or a violation of a rule, license, registration, or order adopted or issued by the department or commission under this chapter.

(b) On request by the department or commission, the attorney general shall file suit to recover security under this section.

SECTION \_\_\_\_ . The heading to Subchapter K, Chapter 401, Health and Safety Code, is amended to read as follows:

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS  
~~[NATURAL RESOURCE CONSERVATION]~~ COMMISSION  
ON ENVIRONMENTAL QUALITY AND  
 THE RAILROAD COMMISSION OF TEXAS

SECTION \_\_\_\_ . Subsections (a) and (b), Section 401.412, Health and Safety Code, are amended to read as follows:

(a) Notwithstanding any other provision of this chapter and subject to Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances. [~~In this subsection, "radioactive substance" does not include by-product material as defined by Section 401.003(3)(B).]~~

(b) Notwithstanding any other provision of this chapter, the commission [~~commissioner~~] has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or disposal of by-product material under Subchapter G.

SECTION \_\_\_\_ . Section 401.413, Health and Safety Code, is amended to read as follows:

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the commission and not from the department. ~~[This section does not apply to a person required to obtain a license for recovery or processing of source material or for recovery, processing, or disposal of by-product material as defined by Section 401.003(3)(B).]~~

SECTION \_\_\_\_\_. Section 401.414, Health and Safety Code, is amended to read as follows:

Sec. 401.414. MEMORANDA ~~[MEMORANDUM]~~ OF UNDERSTANDING. The Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality, the Health and Human Services Commission, the Railroad Commission of Texas, and the board of health by rule shall adopt memoranda ~~[a memorandum]~~ of understanding defining their respective duties under this chapter.

SECTION \_\_\_\_\_. Section 401.415, Health and Safety Code, is amended by amending Subsections (a), (d), and (e) and adding Subsection (f) to read as follows:

(a) Notwithstanding any other provision of this chapter, the Railroad Commission of Texas:

(1) has sole authority to regulate and issue licenses, permits, and orders, and establish fees to pay for costs to regulate the processing, storage, and disposal of oil and gas NORM waste and the decontamination and maintenance of oil-field equipment; and

(2) may, in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to:

(A) determine whether the equipment contains or is contaminated with oil and gas NORM waste; and

(B) identify any equipment determined to contain or be contaminated with oil and gas NORM.

(d) The Railroad Commission of Texas shall consult with the department and the commission ~~[Texas Natural Resource Conservation Commission]~~ as appropriate regarding administration of this section.

(e) To ensure that the State of Texas retains its Agreement Status with the U.S. Nuclear Regulatory Commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste, including rules governing processing, storage, and disposal of the waste, decontamination and maintenance of oil-field equipment, and fees established pursuant to Subsection (a). In developing those rules, the railroad commission ~~[and in so doing]~~ shall consult with the commission ~~[Texas Natural Resource Conservation Commission]~~ and the department ~~[Department of Health]~~ regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules of the commission applicable to processing, storage, and disposal of other NORM wastes having similar properties, quantities, and distribution ~~[although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes].~~

(f) In adopting a fee structure, the Railroad Commission of Texas may consider any factors necessary to provide for the equitable allocation among NORM operators of the costs of administering the railroad commission's oil and gas NORM program under this section. The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the estimated costs of administering the railroad commission's oil and gas NORM program under this section.

SECTION \_\_\_\_\_. Section 361.015, Health and Safety Code, is amended to read as follows:

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The commission is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government.

(b) Except as provided by Subsection (a), the Health and Human Services Commission, acting through the Department of State Health Services or other department as designated by the executive commissioner of the Health and Human Services Commission, [The Texas Department of Health] is the state agency under Chapter 401 that regulates radioactive waste activities[~~, excluding disposal,~~] not preemptively regulated by the federal government.

(c) The Railroad Commission of Texas is the state agency that licenses and regulates the possession, storage, processing, handling, and disposal of oil and gas NORM waste and the decontamination and maintenance of oil-field equipment.

SECTION \_\_\_\_\_. Subchapter B, Chapter 27, Water Code, is amended by adding Section 27.022 to read as follows:

Sec. 27.022. AUTHORIZATION FOR AREA-WIDE IN SITU MINING OF RADIOACTIVE SUBSTANCES. (a) As a component of an injection well permit, the commission may issue an authorization for in situ mining of radioactive substances in a specified production area. The authorization may not contain a provision that requires any additional approval of the commission or any additional hearing for the permit holder to conduct minor in situ mining in the production area. The commission shall by rule define the difference between major and minor in situ mining. Notwithstanding any other provision in this chapter, authorization to mine or resume mining in a production area under an existing injection well permit that does not amend a previously approved restoration table, shall not be considered a major amendment.

(b) A rule or provision of a permit or order of the commission that requires additional approval of the commission or an additional hearing for the permit holder to conduct minor in situ mining in the production area specified in an injection well permit shall no longer be required after the effective date of the Act enacting this section. Notwithstanding any provision of this code or a commission rule or order, an application for minor in situ authorization is not subject to a contested case hearing, regardless of when the application is submitted.

(c) This section does not affect the authority of the commission to:

(1) revoke, suspend, or amend a permit issued under this chapter;

(2) investigate a permit holder or an action taken under or in violation of a permit issued under this chapter; or

(3) enforce a provision of a permit issued under this chapter.

(d) The change in law made by this section does not affect any matter that is a subject of litigation on or before September 1, 2005. An administrative law judge presiding over a licensure proceeding under this section shall expedite the procedures necessary to complete the hearing in a timely manner.

SECTION \_\_\_\_ . (a) On the earlier of the 31st day after the effective date of this Act or September 1, 2005, the following rights, powers, duties, obligations, functions, activities, property, programs, and appropriations are transferred to the Texas Commission on Environmental Quality:

(1) all rights, powers, duties, obligations, functions, and activities:

(A) that Chapter 401, Health and Safety Code, assigns to the Texas Department of Health, the Texas Board of Health, or their successor agencies or to the governing body, officers, or employees of that department, that board, or their successor agencies, including the Health and Human Services Commission and the Department of State Health Services; and

(B) that are related to licensing and regulation of:

(i) radioactive substances recovery, storage, processing, and disposal; or  
(ii) long-term care of decommissioned sites for disposal of by-product material;

(2) all equipment, information, documents, facilities, and other property of the Health and Human Services Commission or the Department of State Health Services pertaining to licensing and regulation of:

(A) radioactive substances recovery, storage, processing, and disposal under the jurisdiction of the Texas Commission on Environmental Quality as provided by Subsection (b), Section 401.011, Health and Safety Code, as amended by this Act; or

(B) long-term care of decommissioned sites for disposal of by-product material;

(3) all appropriations for the state fiscal biennium that begins September 1, 2005, made to the Health and Human Services Commission or the Department of State Health Services for activities related to licensing and regulation of:

(A) radioactive substances recovery, storage, processing, and disposal under the jurisdiction of the Texas Commission on Environmental Quality as provided by Subsection (b), Section 401.011, Health and Safety Code, as amended by this Act; or

(B) long-term care of decommissioned sites for disposal of by-product material; and

(4) the unexpended and unobligated portions of the appropriations for the state fiscal biennium beginning September 1, 2003, made to the Health and Human Services Commission or the Department of State Health Services for activities described by Subdivision (3) of this subsection.

(b) Appropriations transferred under Subdivision (4), Subsection (a) of this section, are transferred for the remainder of that state fiscal biennium.



(c) The Texas Commission on Environmental Quality, as of the date of the transfer prescribed by Subsection (a) of this section, has full responsibility for the administration and enforcement of laws related to licensing or regulation of radioactive substances recovery, storage, processing, and disposal under the jurisdiction of the commission as provided by Subsection (b), Section 401.011, Health and Safety Code, as amended by this Act, and licensing or regulation of long-term care of decommissioned sites for the disposal of by-product material. The Texas Commission on Environmental Quality shall carry out all related duties, responsibilities, functions, and activities as provided by law, including those assigned by any other Acts of the 79th Legislature, Regular Session, 2005.

(d) The transfer of rights, powers, duties, obligations, functions, activities, property, and programs of the Health and Human Services Commission or the Department of State Health Services to the Texas Commission on Environmental Quality made by this Act does not affect or impair any act done or obligation, right, license, permit, requirement, or penalty accrued or existing under the former law; that law remains in effect for the purposes of any action concerning such an act done or obligation, right, license, permit, requirement, or penalty. The Texas Commission on Environmental Quality shall continue a proceeding of the Health and Human Services Commission or the Department of State Health Services that is related to a responsibility, duty, activity, function, or program transferred by this Act, including processing an application for a license or other authorization and including enforcing the requirements of Chapter 401, Health and Safety Code, or a rule adopted under that chapter. A rule of the Health and Human Services Commission or the Department of State Health Services related to a responsibility, duty, activity, function, or program transferred by this Act is enforceable as a rule of the Texas Commission on Environmental Quality until that commission adopts other rules.

(e) Control of and title to all property and material acquired by this state or an agency of this state under Section 401.267, Health and Safety Code, before the effective date of this Act shall be transferred to the Texas Commission on Environmental Quality on this state's behalf as soon as practicable. This section does not apply to property or material sold by the state under Subsection (b) of that section before the effective date of this Act.

(f) The Texas Commission on Environmental Quality shall provide an opportunity for employees of the Health and Human Services Commission or the Department of State Health Services who have performed duties related to a right, power, duty, obligation, responsibility, function, activity, or program transferred by this Act to request a transfer to commission employment. In making employment decisions under this subsection, the Texas Commission on Environmental Quality shall:

(1) ensure that state and federal requirements are met by commission employees; and

(2) consider the value of maintaining continuity in the personnel staffing relevant programs.

(g) The Texas Commission on Environmental Quality, the Health and Human Services Commission, and the Department of State Health Services by interagency agreement or contract shall cooperate in preventing any delay that may be caused by or may occur in the transfer of property or personnel or a right, power, duty, obligation, responsibility, function, activity, or program made by this Act.

(h) The transfers made by this Act do not affect any matter that is the subject of litigation pending on the effective date of this Act.

(i) The Texas Commission on Environmental Quality shall continue any applications review or processing and any hearings that concern a matter subject to transfer under Subsection (a) of this section that, on the date of the transfer, is being conducted by the Health and Human Services Commission or the Department of State Health Services or their successor agencies. The agencies shall cooperate and consult with each other to ensure that any delay necessitated by the transfer is minimized to the greatest extent possible. The Texas Commission on Environmental Quality shall utilize progress made on any technical review or environmental analysis conducted by the department prior to the effective date of this Act.

(j) An application for the renewal or amendment of a license to recover or process source material and to dispose of the associated by-product material that is pending with the Department of State Health Services, and was received prior to January 1, 2005, on the earlier of the 31st day after the effective date of this Act or September 30, 2005, is considered, based on federal requirements, approved by the department on the earlier of the 90th day after the effective date of this Act or October 31, 2005, unless the department or the Texas Commission on Environmental Quality before that date determines that the application should not be approved because of a health or safety emergency or because the applicant substantially fails to meet application requirements.

(k) On or before the earlier of the 31st day after the effective date of this Act or September 30, 2005, the Department of State Health Services shall:

(1) approve any pending remediation plan that is subject to the transfer required under this section, according to federal requirements;

(2) inspect the related remediation sites to ensure that remedial actions have been completed according to the approved plan; and

(3) report to the federal Nuclear Regulatory Commission the department's approval of the plan and the results of the inspection under Subdivisions (1) and (2) of this subsection.

(l) A remediation plan that is subject to the transfer required under this section the approval of which is pending with the Department of State Health Services on the earlier of the 31st day after the effective date of this Act or September 30, 2005, is considered, based on federal requirements, approved by the department on the earlier of the 90th day after the effective date of this Act or October 31, 2005, unless the department or the Texas Commission on Environmental Quality before that date determines that the plan should not be approved because of a health or safety emergency or because the plan substantially fails to meet requirements for approval.

(m) Notwithstanding the changes to Chapter 401, Health and Safety Code, made by this Act, the Department of State Health Services shall retain jurisdiction over, and render a final decision on, an application for an amended license to store or process

radioactive substances that was filed with the department on or before January 1, 2005, and that has been referred to the State Office of Administrative Hearings by the department before the effective date of this Act. A license application subject to this subsection shall be governed only by the laws of the state and the rules and regulations of the department effective at the time such application was filed. Once a final decision is rendered by the department, jurisdiction over any license issued shall be transferred to the Texas Commission on Environmental Quality.

(n) An application for a new license to dispose of by-product material that is filed with the Department of State Health Services on or before January 1, 2005, and that has not been referred to the State Office of Administrative Hearings by the department before the effective date of this Act shall be processed by the Texas Commission on Environmental Quality following the effective date of this Act as follows:

(1) a license application subject to this subsection shall be governed only by the rules and regulations of the department effective at the time such application was filed;

(2) if this Act takes effect immediately, the commission shall complete any technical review of a license application subject to this subsection and issue a draft permit no later than March 1, 2006. If this Act takes effect on September 1, 2005, the commission shall complete any technical review of a license application subject to this subsection and issue a draft permit no later than June 1, 2006. The commission shall utilize progress made on any technical review or environmental analysis conducted by the department prior to the effective date of this Act. In order to meet the applicable deadline above, the commission may contract with the department or other entities for completion of any portion of the technical review that has not been completed upon the effective date of this Act. The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for technical review of a license application subject to this subsection;

(3) if this Act takes effect immediately, the commission shall render a final decision on a license application subject to this subsection no later than March 1, 2007. If this Act takes effect on September 1, 2005, the commission shall render a final decision on a license application subject to this subsection no later than June 1, 2007; and

(4) a contested case hearing held on a license application subject to this subsection that was filed with the department on or before January 1, 2005, shall not exceed one year in duration, measured from the date of referral by the commission of the application to the State Office of Administrative Hearings until the commission makes a final decision on the application. Discovery in such a hearing shall be limited to not more than 60 days in order to meet this limitation. Notice of hearing shall be provided to the applicant, the office of public interest counsel, the executive director and the person who timely requested a contested case hearing by mail at least 10 days in advance of the hearing.

SECTION \_\_\_\_ . (a) In this section, "license" means a license that authorizes the license holder to receive, process, store, and transfer by-product material, as defined by Paragraph (B), Subdivision (3), Section 401.003, Health and Safety Code.

(b) On the effective date of this Act, a condition of a license that would subject the license holder to a civil or administrative penalty for the license holder's failure to transfer by-product material to certain disposal sites by a certain date is void.

(c) This section does not impair the authority of the Texas Commission on Environmental Quality to impose a license condition under Section 401.120, Health and Safety Code, as added by this Act.

SECTION \_\_\_\_. (a) This Act does not impair, delay, or affect the priority established by law for processing and review of the application for a license to dispose of low-level radioactive waste that was filed with the Texas Commission on Environmental Quality before January 1, 2005.

(b) The Texas Commission on Environmental Quality shall give priority to the processing and review of a license application described by Subsection (a) of this section over all other applications that pertain to radioactive substances or radioactive waste pending before the commission except for those applications the executive director of the Texas Commission on Environmental Quality determines are necessarily of a higher priority to avert or address an emergency concerning the public health or safety.

(c) Subject to the priority given under Subsection (b) of this section to the application, the Texas Commission on Environmental Quality shall give priority to the review and processing of:

- (1) an application for the commercial disposal of by-product material;
- (2) an application for termination of a license to recover or process source material and dispose of associated by-product material generated in this state; and
- (3) a new application for a permit to recover or process source material and dispose of associated by-product material generated in this state.

SECTION \_\_\_\_. Notwithstanding other law or any rule on the subject of timeliness of an applicant proving information pertaining to an application for a license from the Texas Commission on Environmental Quality, the applicant for a license shall assist the commission in meeting any deadlines imposed by Chapter 401, Health and Safety Code, by submitting to the commission any information the commission requires regarding the application in a prompt and timely manner.

SECTION \_\_\_\_. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **CSHB 2233** 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. 20.

Senator Williams offered the following amendment to the bill:

### **Floor Amendment No. 21**

Amend **CSHB 2233** by adding the following language to the bill:

SECTION \_\_\_\_. (a) Subchapters A and C, Chapter 2108, Government Code, are repealed.

(b) The heading to Subchapter B, Chapter 2108, Government Code, is repealed.

(c) Sections 2108.0235, 2108.025 through 2108.036, and 2108.039, Government Code, are repealed.

SECTION \_\_. The Texas Incentive and Productivity Commission established under Subchapter A, Chapter 2108, Government Code, as that subchapter existed prior to repeal by this Act, is abolished on the effective date of this Act.

The amendment to **CSHB 2233** 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. 21.

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

**CSHB 2233** 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.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 25, 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 CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 137** (non-record vote)

**HB 833** (139 Yeas, 0 Nays, 1 Present, not voting)

**HB 1038** (non-record vote)

**HB 1044** (140 Yeas, 0 Nays, 1 Present, not voting)

**HB 1480** (non-record vote)

**HB 1609** (non-record vote)

**HB 1708** (non-record vote)

**HB 1763** (non-record vote)

**HB 3147** (140 Yeas, 2 Nays, 1 Present, not voting)

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

**HB 268** (non-record vote)

House Conferees: Keel - Chair/Hodge/Denny/Pena/Reyna

**HB 283** (non-record vote)

House Conferees: Hope - Chair/Dutton/Goodman/Goolsby/Thompson

**HB 585** (non-record vote)

House Conferees: Corte - Chair/Cook, Robby/Hilderbran/Leibowitz/Mowery

**HB 1048** (non-record vote)

House Conferees: Chisum - Chair/Blake/Jackson, Jim/Leibowitz/Vo

**HB 2614** (non-record vote)

House Conferees: Eiland - Chair/Keffer, Bill/Smithee/Thompson/Van Arsdale

**HB 2678** (non-record vote)

House Conferees: Smithee - Chair/Eiland/Rose/Seaman/Taylor

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

**SB 334** (non-record vote)

House Conferees: Keffer, Bill - Chair/Nixon/Paxton/Rose/Van Arsdale

**SB 368** (non-record vote)

House Conferees: Hartnett - Chair/Crabb/Dutton/Hughes/Luna

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2955 ON SECOND READING**

Senator Lindsay moved to suspend the regular order of business to take up for consideration **CSHB 2955** at this time on its second reading:

**CSHB 2955**, Relating to the operation of a motor vehicle.

The motion prevailed.

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

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2955** by adding the following appropriately numbered SECTION to the bill and renumbering the other SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 284.0701(d), Transportation Code, is repealed.

(b) This section takes effect September 1, 2005.

(c) The change in law made by this section applies only to an offense committed on or after September 1, 2005.

(d) An offense committed before September 1, 2005, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

The amendment to **CSHB 2955** 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 Armbrister offered the following amendment to the bill:

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

Amend **CSHB 2955** by adding the following section numbered accordingly and renumbering additional sections where necessary.

Sec. \_\_ **RIGHTS OF OWNER OF CERTAIN SIGNS.** The rights associated with an off-premise sign that is lawfully in existence but no longer complies with current applicable laws and regulations, including laws and regulations promulgated under Chapters 391 and 394, Transportation Code, and Chapter 216, Local Government Code, vest in the owner of the non-conforming off-premise sign.

The amendment was read.

### **POINT OF ORDER**

Senator Nelson raised a point of order that Floor Amendment No. 2 was not germane to the body of the bill.

### **POINT OF ORDER RULING**

The Presiding Officer, Senator Brimer in Chair, ruled that the point of order was well-taken and sustained.

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

**CSHB 2955** 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.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2955 ON THIRD READING**

Senator Lindsay moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2955** be placed on its third reading and final passage.

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

Nays: Estes.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2808 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2808** at this time on its second reading:

**CSHB 2808**, Relating to the P-16 Council and to the functioning of certain educational programs.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2808** (Senate committee printing) in Section 1 of the bill, in added Subsection (c), Section 61.076, Education Code (page 1, line 36), between "education professionals," and "business representatives" by inserting "agency representatives,".

The amendment to **CSHB 2808** 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.

**CSHB 2808** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2808 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 **CSHB 2808** be placed on its third reading and final passage.

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

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

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1050**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 21, 2005

Honorable David Dewhurst  
President of the Senate



Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1050** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

VAN DE PUTTE  
JACKSON  
GALLEGOS  
BRIMER

On the part of the Senate

BAILEY  
TALTON  
HARPER-BROWN  
MENEDEZ

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the promotional system for municipal civil service fire fighters.

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

SECTION 1. Subchapter A, Chapter 143, Local Government Code, is amended by adding Section 143.0051 to read as follows:

Sec. 143.0051. STATUS OF EMPLOYEES IN CERTAIN FIRE DEPARTMENTS. (a) This section applies only to a fire department employee employed by a municipality with a population of 150,000 or more and with a governing body of five or fewer members.

(b) Notwithstanding any other provision of this chapter, a previously nonclassified fire department employee who serves in a position described by Section 143.003(4)(B), (D), (G), or (J) has the status of a civil service employee and is not required to take a competitive examination to remain in the employee's position if:

(1) the employee was appointed to that position on or before May 1, 2005, and was serving in that position on the date described by Subsection (c); and

(2) the municipality's governing body by ordinance amends the municipality's existing classification of fire department employees to include the employee's position as provided by Section 143.021.

(c) The civil service status of an employee to which Subsection (b) applies is effective on the date that the ordinance amending the municipality's classification system to include the employee's position takes effect.

(d) A fire department employee who has civil service status under Subsection (b) may be promoted only:

(1) by competitive examination in accordance with the competitive civil service procedures prescribed in this chapter; and

(2) within the employee's existing division.

(e) A fire department employee who has civil service status under Subsection (b) may not:

(1) supervise or evaluate classified civil service personnel assigned to fire suppression or emergency medical operations; or

(2) laterally transfer to fire suppression or emergency medical operations.

(f) If a fire department employee who has civil service status under Subsection (b) leaves the employee's position for any reason, a person selected to fill that position must be selected in accordance with the competitive civil service procedures prescribed in this chapter.

SECTION 2. Subsection (a), Section 143.027, Local Government Code, is amended to read as follows:

(a) A person appointed to a beginning position in the fire or police department must serve a probationary period of one year beginning on that person's date of employment as a fire fighter, police officer, or academy trainee. In a municipality with a population of less than 1.9 million, the commission by rule may extend the probationary period by not more than six months for a person who:

(1) is not employed by a department currently or previously covered by a collective bargaining agreement or a meet-and-confer agreement; and

(2) is required to attend a basic training academy for initial certification by the Texas Commission on Fire Protection or the Commission on Law Enforcement Officer Standards and Education.

SECTION 3. Subsection (c), Section 143.033, Local Government Code, is amended to read as follows:

(c) Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but for a fire fighter applicant only if the applicant scores a passing grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. The passing grade [score] in a municipality with a population of 1.5 million or more is prescribed by Section 143.108. In a municipality with a population of less than 1.5 million, all police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination and all fire fighter applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

SECTION 4. Subsections (a) and (f), Section 143.036, Local Government Code, are amended to read as follows:

(a) When a vacancy occurs in a nonentry position that is not appointed by the department head as provided by Sections 143.014 and 143.102, the vacancy shall be filled as prescribed by this section and Section 143.108, as applicable. A vacancy in a fire fighter position described by this subsection occurs on the date the position is vacated by:

(1) resignation;

(2) retirement;

(3) death;

(4) promotion; or

(5) issuance of an indefinite suspension in accordance with Section 143.052(b).

(f) Unless the department head has a valid reason for not appointing the person, the department head shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the department head has a valid reason for not appointing the eligible promotional candidate having the highest grade, the department head shall personally discuss the reason with the person being bypassed before appointing another person. The department head shall also file the reason in writing with the commission and shall provide the person with a copy of the written notice. On application of the bypassed eligible promotional candidate, the reason the department head did not appoint that person is subject to review by the commission or, on the written request of the person being bypassed, by an independent third party hearing examiner under Section 143.057.

SECTION 5. Subsection (a), Section 143.057, Local Government Code, is amended to read as follows:

(a) In addition to the other notice requirements prescribed by this chapter, the written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass [~~passover~~], or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

SECTION 6. (a) The change in law made by this Act to Section 143.033, Local Government Code, applies only in relation to a promotional examination given on or after the effective date of this Act. A promotional examination given before the effective date of this Act and matters dependent on the promotional examination are governed by the law in effect at the time the examination was given, and the prior law is continued in effect for this purpose.

(b) The changes in law made by this Act to Sections 143.036 and 143.057, Local Government Code, apply only in relation to a promotional bypass that occurs on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2005.

The Conference Committee Report on **SB 1050** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 225

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2005

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 225** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL  
SELIGER  
STAPLES  
HINOJOSA  
WILLIAMS

DRIVER  
ISETT  
FROST  
HUPP  
HEGAR

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 225** was filed with the Secretary of the Senate.

### RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

#### Memorial Resolutions

**SR 994** by Lucio, In memory of Rachel S. Alaniz of Kingsville.

**SR 1014** by Van de Putte, In memory of Sister Agnes Marie Jouvence of San Antonio.

**SR 1015** by Van de Putte, In memory of Domingo M. Ortiz, Sr., of San Antonio.

**SR 1017** by West, In memory of C. C. McNealy, Jr., of Dallas.

**HCR 195** (Hinojosa), Honoring the life of Jeramie Espinoza.

#### Congratulatory Resolutions

**SR 989** by Whitmire, Commending Katie and Robert Delaney for their care and devotion to their family.

**SR 990** by Zaffirini, Recognizing the Laredo Chamber of Commerce on the occasion of its 90th anniversary.

**SR 991** by Zaffirini, Recognizing Cecilia Moresi Giancaterino on the occasion of her 90th birthday.

**SR 992** by Hinojosa, Recognizing Dori Contreras Garza for her selection as Mother of the Year 2005 by AVANCE-Rio Grande Valley.

**SR 998** by West, Recognizing Arlene Davis on the occasion of her retirement.

**SR 1000** by Madla, Recognizing Medina Valley High School for its success in the 2005 University Interscholastic League academic competitions.

**SR 1001** by Barrientos, Recognizing Garvin Anderson on the occasion of his retirement.

**SR 1002** by Barrientos, Recognizing William Baker on the occasion of his retirement.

**SR 1003** by Barrientos, Recognizing John Henry Brown on the occasion of his retirement from the Texas Senate.

**SR 1004** by Barrientos, Recognizing Ana Martinez Jackoskie on the occasion of her retirement.

**SR 1006** by West, Recognizing Shirley Jean Brooks Barton on the occasion of her retirement.

**SR 1007** by West, Recognizing Frederick Range, Sr., on the occasion of his retirement.

**SR 1008** by Lindsay, Commending Randal James Hartsfield for achieving the rank of Eagle Scout.

**SR 1009** by Lindsay, Commending Gregory Thomas Jeffus for achieving the rank of Eagle Scout.

**SR 1010** by Lindsay, Commending Christopher Allen Borski for achieving the rank of Eagle Scout.

**SR 1011** by Lindsay, Commending John Joseph Cocker III for achieving the rank of Eagle Scout.

**SR 1012** by Armbrister, Recognizing Joe D. and Margaret McGill on the occasion of their 50th wedding anniversary.

**SR 1013** by Van de Putte, Commending Rajaa Khuzai for her work in behalf of the women of Iraq.

**SR 1016** by West, Recognizing James Gales on the occasion of his retirement.

### ADJOURNMENT

On motion of Senator Whitmire, the Senate at 1:45 a.m. Wednesday, May 25, 2005, adjourned, in memory of Thomas Edgar Jackson of Beaumont and Christian Dominic Chapa, until 11:00 a.m. today.

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### APPENDIX

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### COMMITTEE REPORTS

The following committee report was received by the Secretary of the Senate:

May 24, 2005

INTERGOVERNMENTAL RELATIONS — **CSHB 2051**

### SENT TO GOVERNOR

May 24, 2005

**SB 255, SB 310, SB 396, SB 555, SB 579, SB 611, SB 619, SB 665, SB 690, SB 709, SB 792, SB 804, SB 812, SB 828, SB 839, SB 883, SB 884, SB 885, SB 887, SB 889, SB 891, SB 1017, SB 1018, SB 1026, SB 1032, SB 1193, SB 1203,**

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**SB 1258, SB 1354, SB 1424, SB 1425, SB 1434, SB 1435, SB 1437, SB 1469, SB 1480, SB 1485, SB 1518, SB 1555, SB 1587, SB 1713, SB 1786, SB 1799, SB 1806, SB 1813, SB 1847, SB 1848, SB 1851, SCR 2, SCR 6, SCR 8, SCR 9, SCR 22**

**In Memory**  
**of**  
**Thomas Edgar Jackson**  
**Senate Resolution 985**

WHEREAS, The Texas Senate joins the citizens of Beaumont in mourning the loss of Thomas Edgar Jackson, who died March 27, 2005, at the age of 52; and

WHEREAS, Tom Jackson was born April 4, 1952; he was a fifth-generation Texan and a lifelong resident of Beaumont; after graduating from Lamar University, he began a career in farming and ranching, which included managing a 1000-acre rice, soybean, and cattle operation; he was the general manager of the Jefferson County Waterway and Navigation District; and

WHEREAS, He was an active member of his community and a longtime advocate for navigational improvements of the Sabine-Neches Ship Channel; he was chairman of the Sabine Neches Waterway Safety Advisory Council and served on key waterway committees of the United States Coast Guard and the United States Army Corps of Engineers; and

WHEREAS, Tom began working to develop water districts as early as 1982, when he served as president of the board of directors of the Meeker Municipal Water District; he was also active with the Jefferson County Independent Cattleman's Association and served as president of its board of directors; and

WHEREAS, He was a member of the board of the Beaumont Production Credit Association and was instrumental in the merger of the association with the East Texas association; from 1991 to 1995, he was Legislative Affairs representative for the Farm Credit Administration's 10th Farm District; in 1992, he was one of five rice producers selected nationwide to participate in the USA Rice Council Leadership Program; and

WHEREAS, Tom Jackson had a positive impact on the lives of many citizens in the Beaumont community, but he is best known as a dedicated family man; the father of three children, he was deeply involved with their education and athletic pursuits; he served on parent-teacher association boards and worked with youth sports organizations; his greatest joy was coaching his sons' baseball teams; and

WHEREAS, A visionary leader and a highly respected gentleman, Tom Jackson was noted for his reliability, his dedication to any project he began, and his enthusiasm for life; he was a devoted husband, father, and son, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby extend sincere condolences to the bereaved family of Thomas Edgar Jackson: his wife, Kathleen Jackson; his children, Tommy, Kit, and Thea Jackson; his mother, Marta Sue Stagg; and his twin sister, Susan Myers; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Tom Jackson.

WILLIAMS