

# SEVENTY-EIGHTH DAY

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WEDNESDAY, MAY 25, 2005

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## PROCEEDINGS

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

The roll was called and the following Senators were present: Armbrister, Averitt, 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 President announced that a quorum of the Senate was present.

Rabbi Steven Morgen, Congregation Beth Yeshurun, Houston, offered the invocation as follows:

O God, source of life, of goodness, and of hope, we ask Your blessings for this great State of Texas, and for this noble assembly of government leaders of our state. Grant them wisdom and insight that they may administer all their business fairly and justly for the safety, happiness, and prosperity of all our citizens. May their deliberations be inspired by Your will, that differences of opinion may be expressed in an atmosphere of sincerity, courtesy, and mutual respect, and that debate and discussion may lead to inspired, creative, and fruitful plans and decisions which further enhance the quality of life for our citizens. Creator of all flesh, bless all the inhabitants of our state with Your spirit. May its citizens of all races and creeds forge a common bond to true harmony, to banish hatred and bigotry, and to safeguard the ideals and free institutions that are the pride and glory of our country and our state. May Your spirit never depart from our midst, and may we always recognize the many wondrous blessings that You have bestowed upon us, our state, and our country. And let us all say, amen.

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

The motion prevailed without objection.

### **CO-AUTHOR OF SENATE BILL 934**

On motion of Senator Wentworth, Senator West will be shown as Co-author of **SB 934**.

**CO-SPONSOR OF HOUSE BILL 1546**

On motion of Senator Staples, Senator Shapleigh will be shown as Co-sponsor of **HB 1546**.

**CO-SPONSOR OF HOUSE JOINT RESOLUTION 54**

On motion of Senator Staples, Senator Shapleigh will be shown as Co-sponsor of **HJR 54**.

**SENATE RESOLUTION 1021**

Senator Ogden offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Major General Joseph F. Weber for his outstanding service to his country in the United States Marine Corps; and

WHEREAS, General Weber graduated from Texas A&M University as a member of the Corps of Cadets and was commissioned a second lieutenant in 1972; rising rapidly through the ranks, he served as a major on the staff of the Commandant of Midshipmen at the United States Naval Academy from 1983 to 1985; and

WHEREAS, He reported to The University of Texas at Austin in 1986 and earned a master's degree from the Lyndon B. Johnson School of Public Affairs; by 1993, he had been promoted to the rank of colonel, and in May of 1996, he assumed the duties as the commanding officer of the 11th Marine Regiment, Camp Pendleton, California; and

WHEREAS, He was promoted to the rank of brigadier general in 1998; in 2002, General Weber became commanding general of the Third Marine Division in Okinawa, Japan; and

WHEREAS, He was authorized to assume the title of major general in 2002, and he reported to Iraq in 2004 and served as chief of staff for the Multi-National Force-Iraq for 14 months; he received the Bronze Star for his participation in Operation Iraqi Freedom; and

WHEREAS, General Weber has been nominated to the rank of lieutenant general by Secretary of Defense Donald Rumsfeld; upon approval by the United States Senate, he will assume command of the III Marine Expeditionary Force; and

WHEREAS, The general and his wife, Brenda, have two children; their son, Clint, is a captain in the United States Marine Corps stationed in Beaufort, South Carolina, where he flies F-18s; their daughter, Julie, is earning a master's degree in social work at The University of Texas at Austin; and

WHEREAS, In General Weber's earliest days in Abilene, Texas, his friends called him "Jumbo", and they still greatly admire him today for his extraordinary service; he is truly a distinguished Texas patriot whose service to our country has been invaluable; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Major General Joseph F. Weber for his lifelong achievements and his many years of meritorious service to the nation; and, be it further

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

**SR 1021** was read.

On motion of Senator Gallegos and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Ogden, the resolution was adopted without objection.

### GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate Major General Joseph F. Weber, United States Marine Corps, accompanied by his family and Captain Michael Ogden, son of Senator Ogden, along with other friends.

The Senate welcomed its guests.

### 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 PASSED THE FOLLOWING MEASURES:

**HCR 213**, Honoring Carroll Hall Shelby for his lifetime achievements.

**SCR 40**, Commending the citizens of Terrell County for their many contributions to Texas and the nation and extending best wishes for a joyous Centennial Celebration.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### SENATE RESOLUTION 997

Senator Carona offered the following resolution:

WHEREAS, Norman Brinker of Dallas has achieved extraordinary success in the restaurant business, and he is indeed worthy of special commendation for his myriad achievements; and

WHEREAS, Mr. Brinker demonstrated his drive and determination at a young age, working his way through school at the New Mexico Military Institute; after serving in the U.S. Navy, he earned a place on the 1952 U.S. Olympic equestrian team as well as the opportunity to compete in the 1954 Modern Pentathlon World Championships in Budapest; and

WHEREAS, Mr. Brinker subsequently enrolled in the marketing program at San Diego State University, again financing his own education; his 1957 graduation with honors heralded a new chapter in his life, one that would soon encounter great success

in a business relationship with Jack-In-The-Box restaurants; rising through the ranks, he quickly became a major partner in the business, helping it become the popular fast-food chain it is today; and

WHEREAS, While his success at Jack-In-The-Box certainly proved his business acumen, it was his own venture that would cement his place as a leader in the restaurant industry; seeking to fill a niche for patrons between fast food and fine dining, he founded Steak & Ale restaurants and introduced a new concept now featured in restaurants around the globe, the salad bar; under Mr. Brinker's leadership, Steak & Ale thrived and boasted more than 100 outlets, including Bennigan's, by the time it merged with the Pillsbury Restaurant Group in 1976; and

WHEREAS, In 1982, Mr. Brinker continued his pursuit of new leadership opportunities, leaving Pillsbury to join Chili's, then a budding restaurant chain of 28 locations; within a year, he took the company public, beginning two decades of remarkable growth; today Brinker International is a Fortune 500 company traded on the New York Stock Exchange, with five distinct restaurant concepts and more than 1,500 locations in 49 states, the District of Columbia, and 24 countries; although he retired in 2000, Mr. Brinker continues to serve as chairman emeritus of the company; and

WHEREAS, Mr. Brinker's legacy is marked not only by the popular brands his company has grown, but also by the many people he has mentored and inspired in his more than 40 years in the restaurant business, including Chris Sullivan and Bob Basham of Outback Steakhouse, Wally Doolin of Buca di Beppo, Rick Federico of P.F. Chang's China Bistro, Dick Rivera, formerly of Darden Restaurants, Creed Ford of Austin-based Fired Up, Inc., and of course, current Brinker CEO Doug Brooks; and

WHEREAS, A deserving recipient of the Horatio Alger Award, Norman Brinker is truly an admirable role model for young Texans everywhere, and the story of his remarkable journey from humble beginnings to prosperity may serve to encourage others to pursue their dreams and ambitions; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby congratulate Norman Brinker on his many successes and extend to him sincere best wishes for continued achievement; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Mr. Brinker as an expression of high regard by the Texas Senate.

**SR 997** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Carona was recognized and introduced to the Senate Norman Brinker and his wife, Toni Brinker, accompanied by Joe Taylor, Vice-president, Corporate Affairs, Brinker International, and Kevan Fenderson, Director of Government Relations, Brinker International.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate United States Air Force Colonel Walter Creswell, Jr., (Retired) of Universal City.

Senator Zaffirini also introduced a group of high school seniors from Benavides.

The Senate welcomed its guests.

### PHYSICIAN OF THE DAY

Senator Janek was recognized and presented Dr. Daniel Voss of Georgetown as the Physician of the Day.

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

### SENATE RESOLUTION 993

Senator Hinojosa offered the following resolution:

WHEREAS, Proud citizens of Corpus Christi are visiting the State Capitol on May 25, 2005, to celebrate the notable history and bright future of this South Texas city; and

WHEREAS, Corpus Christi traces its roots to a trading post established in 1839 on the western shore of Corpus Christi Bay; in 1846, the settlement that had grown up around the post became the county seat of the newly created Nueces County; and

WHEREAS, The city's growth was propelled in the 1870s by a flourishing wool trade, a booming cattle industry, and the arrival of the railroad; by 1914 Corpus Christi had four railroads, which promoted the area extensively to farmers and tourists; and

WHEREAS, Development was further boosted by the opening of a deepwater port in 1926 and by the discovery of oil in the county in 1930; the Port of Corpus Christi is now the fifth largest in the nation in terms of tonnage, and the petroleum and natural gas industries remain important pillars of the city's economy; another significant stimulus is the city's location within the new I-69 corridor, which links the United States with its two largest trading partners, Canada and Mexico; and

WHEREAS, The United States military maintains several nearby facilities—Naval Station Ingleside and Naval Air Station Corpus Christi; in addition to serving as a training field for pilots, the latter base is also home to the Coast Guard Air Station and the Corpus Christi Army Depot; and

WHEREAS, Two institutions of higher learning, Texas A&M University—Corpus Christi and Del Mar College, together enroll almost 20,000 students; other outstanding cultural and educational resources include the Art Museum of South Texas, the Corpus Christi Botanical Gardens, the Texas State Aquarium, and the Corpus Christi Museum of Science and History; visitors can also tour the USS *Lexington*, a record-holding World War II aircraft carrier, and replicas of the *Niña*, the *Pinta*, and the *Santa María*; and

WHEREAS, A favored destination for outdoors enthusiasts, the "Sparkling City by the Sea" is close to Mustang Island State Park and Padre Island National Seashore, which has a 68-mile beach that constitutes the longest undeveloped shoreline in the country; and

WHEREAS, The citizens of Corpus Christi are continuing to build a dynamic, forward-looking community, one that combines the friendliness of a small town with the amenities of a modern city, and it is indeed a pleasure to recognize their achievements and public spirit; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby recognize May 25, 2005, as Corpus Christi Day at the State Capitol and extend to all those visiting today sincere best wishes for an enjoyable and memorable visit.

**SR 993** was read and was adopted without objection.

### GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate a delegation of citizens from Corpus Christi, representing Corpus Christi Day at the State Capitol.

The Senate welcomed its guests.

**(Senator Carona in Chair)**

### 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:

**SB 261, SB 736, SB 833, SB 863, SB 1214, SB 1792, SB 1800, SB 1801, SB 1802, SB 1803, SB 1804, SB 1805, SB 1808, SB 1810, SB 1855, SCR 40, SCR 41.**

### SENATE BILL 409 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 409** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 409** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Office of Public Utility Counsel.

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

SECTION 1. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2011 [2005].

SECTION 2. Sections 13.003(a) and (c), Utilities Code, are amended to read as follows:

(a) The office:

(1) shall assess the effect of [utility] rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counselor [counselor] to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding in which the counselor determines that residential consumers are in need of representation ~~[before the commission]~~, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counselor ~~[counselor]~~ determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counselor ~~[counselor]~~ is authorized to appear; or

(B) in which the counselor ~~[counselor]~~ determines that residential ~~[electricity]~~ consumers or small commercial ~~[electricity]~~ consumers are in need of representation;

(5) is entitled to the same access as a party, other than commission staff, to records gathered by the commission under Section 14.204;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the commission;

(7) may represent ~~[an individual]~~ residential or small commercial consumers, individually or as a class, ~~[consumer]~~ with respect to any ~~[the consumer's disputed]~~ complaint concerning electric or telecommunications ~~[utility]~~ services that is unresolved before the commission; ~~[and]~~

(8) may represent residential and small commercial consumers, as a group or as a class, in any federal bankruptcy case in which the counselor determines that electric or telecommunications consumers in this state are in need of representation; and

(9) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(c) The appearance of the counselor ~~[counselor]~~ in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counselor ~~[counselor]~~ may not be grouped with any other party.

SECTION 3. Subchapter A, Chapter 13, Utilities Code, is amended by adding Sections 13.004, 13.005, and 13.006 to read as follows:

Sec. 13.004. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The counselor shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal disputes under the office's jurisdiction.

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

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

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

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

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

Sec. 13.005. TECHNOLOGY POLICY. The counselor shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Sec. 13.006. MANAGEMENT AUDIT. (a) The state auditor, in coordination with the Legislative Budget Board, shall conduct a management audit of the office to evaluate the office's performance measures to determine the accuracy of calculations and whether the measures accurately depict the impact of the office. The audit must include an estimation of savings to residential and small commercial consumers directly attributable to office participation in proceedings.

(b) The state auditor must complete the audit required by this section and deliver a report on the audit to the governor, lieutenant governor, and speaker of the house of representatives not later than August 1, 2006.

(c) This section expires September 1, 2006.

SECTION 4. Section 13.021, Utilities Code, is amended to read as follows:

Sec. 13.021. APPOINTMENT; TERM. (a) The chief executive of the office is the counselor [~~counselor~~].

(b) The counselor [~~counselor~~] is appointed by the governor with the advice and consent of the senate.

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

(d) The counselor [~~counselor~~] serves a two-year term that expires on February 1 of the final year of the term.

SECTION 5. Section 13.022, Utilities Code, is amended to read as follows:

Sec. 13.022. QUALIFICATIONS. (a) The counselor [~~counselor~~] must:

(1) be licensed to practice law in this state;

(2) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public; and

(3) possess the knowledge and experience necessary to practice effectively in utility proceedings.

(b) A person is not eligible for appointment as counselor [~~counselor~~] if:

(1) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the commission;

(B) directly or indirectly owns or controls more than a 10 percent interest or a pecuniary interest with a value exceeding \$10,000 in:

(i) a business entity or other organization that is regulated by or receives funds from the commission or the office; or

(ii) a utility competitor, utility supplier, or other entity affected by a commission decision in a manner other than by the setting of rates for that class of customer;

(C) uses or receives a substantial amount of tangible goods, services, or funds from the commission or the office, other than compensation or reimbursement authorized by law for service as counselor [~~counsellor~~] or for commission membership, attendance, or expenses; or

(D) notwithstanding Paragraph (B), has an interest in a mutual fund or retirement fund in which more than 10 percent of the fund's holdings is in a single utility, utility competitor, or utility supplier in this state and the person does not disclose this information to the governor, senate, or other entity, as appropriate; or

(2) the person is not qualified to serve under Section 13.042.

(c) ~~[A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission or the office may not serve as counsellor.~~

~~(d)~~ A person otherwise ineligible because of Subsection (b)(1)(B) may be appointed and serve as counselor [~~counsellor~~] if the person:

(1) notifies the attorney general and commission that the person is ineligible because of Subsection (b)(1)(B); and

(2) divests the person or the person's spouse of the ownership or control:

(A) before beginning service; or

(B) if the person is already serving, within a reasonable time.

SECTION 6. Section 13.023, Utilities Code, is amended to read as follows:

Sec. 13.023. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office if the counselor [~~counsellor~~]:

(1) does not have at the time of taking office [~~appointment~~] or maintain during service as counselor [~~counsellor~~] the qualifications required by Section 13.022;

(2) is ineligible for service as counselor under [~~violates a prohibition provided by~~] Section 13.022, 13.042, or 13.043; or

(3) cannot discharge the counselor's [~~counsellor's~~] duties for a substantial part of the term for which the counselor [~~counsellor~~] is appointed because of illness or disability.

(b) The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the counselor [~~counsellor~~] exists.

(c) If an employee has knowledge that a potential ground for removal of the counselor exists, the employee shall notify the next highest ranking employee of the office, other than the counselor, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 7. Section 13.024, Utilities Code, is amended to read as follows:

Sec. 13.024. PROHIBITED ACTS. (a) The counselor [~~counsellor~~] may not have a direct or indirect interest in a utility company regulated under this title, its parent, or its subsidiary companies, corporations, or cooperatives or a utility competitor, utility supplier, or other entity affected in a manner other than by the setting of rates for that class of customer.

(b) The prohibition under Subsection (a) applies during the period of the counselor's [~~counsellor's~~] service.

SECTION 8. Section 13.041(a), Utilities Code, is amended to read as follows:

(a) The counselor [~~counselor~~] may employ lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as the counselor [~~counselor~~] considers necessary to carry out this chapter.

SECTION 9. Section 13.042, Utilities Code, is amended to read as follows:

Sec. 13.042. CONFLICT OF INTEREST [~~RELATIONSHIP WITH TRADE ASSOCIATION~~]. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as counselor [~~counselor~~] or be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule~~] if the person is:

(1) an officer, employee, or paid consultant of a Texas trade association in the field of utilities; or

(2) the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of utilities.

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

SECTION 10. Section 13.044, Utilities Code, is amended to read as follows:

Sec. 13.044. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS; MERIT PAY. (a) The counselor [~~counselor~~] or the counselor's [~~counselor's~~] designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for office employees. The program shall require intra-agency postings of each position concurrently with any public posting.

(b) The counselor [~~counselor~~] or the counselor's [~~counselor's~~] designee shall develop a system of annual performance evaluations that are based on documented employee performance. Merit pay for office employees must be based on the system established under this subsection.

SECTION 11. Section 13.045(a), Utilities Code, is amended to read as follows:

(a) The counselor [~~counselor~~] or the counselor's [~~counselor's~~] designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

SECTION 12. Section 13.063, Utilities Code, is amended to read as follows:

Sec. 13.063. ANNUAL REPORTS [~~REPORT~~]. (a) The office shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting in the General Appropriations Act.

(b) The office shall prepare annually a report on the office's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over the office, the house appropriations committee, the senate finance committee, and the Sunset Advisory Commission. At a minimum, the report must include:

(1) a list of the types of activities conducted by the office and the time spent by the office on each activity;

(2) the number of hours billed by the office for representing residential or small commercial consumers in proceedings;

(3) the number of staff positions and the type of work performed by each position; and

(4) the office's rate of success in representing residential or small commercial consumers in appealing commission decisions.

SECTION 13. Subchapter D, Chapter 13, Utilities Code, is amended by adding Section 13.064 to read as follows:

Sec. 13.064. PUBLIC HEARING. (a) The office annually shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers, an opportunity to comment on the office's functions and effectiveness.

(b) A public hearing held under this section is not subject to Chapter 551, Government Code.

(c) The office shall file notice of a public hearing held under this section with the secretary of state for publication in the Texas Register.

SECTION 14. Section 33.123(d), Utilities Code, is amended to read as follows:

(d) Not later than the 120th day after the date the commission enters its final order, the municipality shall assess a onetime surcharge on a per capita basis among residential ratepayers who reside outside the municipality to pay the reasonable consultant and legal costs approved by the counselor [~~counselor~~]. The municipality shall reimburse the appellants for incurred costs not later than the 90th day after the date the commission enters its final order.

SECTION 15. The change in law made by this Act relating to qualifications and eligibility to serve as chief executive of or to be employed with the office of public utility counsel applies only to a person appointed or employed after the effective date of this Act. The chief executive or an employee of the office of public utility counsel who is serving or employed on the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 16. This Act takes effect September 1, 2005.

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

Amend **CSSB 409** on page 4, between lines 21 and 22, add a new Section 13.007 to read as follows:

Sec. 13.007. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that the office has the authority to resolve. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 409** on third reading by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Section 5.273(a), Water Code, is amended to read as follows:

(a) The counsel shall represent the public interest and be a party to all proceedings before the commission, other than a proceeding under Chapter 13.

SECTION \_\_. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL. (a) In this section, "counselor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office may represent the interests of residential and small commercial consumers under this chapter. In representing residential and small commercial consumers under this chapter, the office has the same powers and duties in relation to water issues that the office has under Chapter 13, Utilities Code, in relation to electricity and telecommunications issues, including the powers and duties prescribed by Section 13.003, Utilities Code.

(c) This section does not limit the authority of the commission to represent residential or small commercial consumers.

(d) The appearance of the counselor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counselor may not be grouped with any other party.

SECTION \_\_. (a) Not later than January 1, 2006, the following are transferred from the Office of Public Interest Counsel to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the Office of Public Interest Counsel relating to water and sewer services regulated under Chapter 13, Water Code;

(2) all obligations and contracts of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under this subsection; and

(3) all property and records in the custody of the Office of Public Interest Counsel that are related to a power, duty, function, program, or activity transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) A rule or form adopted by the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Office of Public Utility Counsel and remains in effect until altered by the Office of Public Utility Counsel.

(c) A reference in law to the Office of Public Interest Counsel that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Office of Public Utility Counsel.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 409** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Fraser, Eltife, Estes, and Harris.

### **SENATE BILL 419 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 419** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 419** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners and the regulation of health care professions regulated by those state agencies; providing administrative penalties.

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

#### ARTICLE 1. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF MEDICAL EXAMINERS

SECTION 1.01. Sections 151.002(a)(1) and (7), Occupations Code, are amended to read as follows:

(1) "Board" means the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care practitioner;

(D) report made to a medical peer review committee concerning activities under the committee's review authority;

(E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and

(F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

SECTION 1.02. Section 151.004, Occupations Code, is amended to read as follows:

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical [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, 2017 [2005].

SECTION 1.03. Section 152.001, Occupations Code, is amended to read as follows:

Sec. 152.001. TEXAS MEDICAL [STATE] BOARD [~~OF MEDICAL EXAMINERS~~]. (a) The Texas Medical [State] Board [~~of Medical Examiners~~] is an agency of the executive branch of state government with the power to regulate the practice of medicine.

(b) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

SECTION 1.04. Section 152.003(b), Occupations Code, is amended to read as follows:

(b) A person may not be a public member of the board if the person or the person's spouse [may not be]:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care [licensed to practice medicine];

(2) is employed by or participates in the management of a business entity or other [financially involved in any] organization regulated by or receiving money from [subject to regulation by] the board; [or]

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board;

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(5) is a provider of health care.

SECTION 1.05. Sections 152.004(a)-(e), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade [~~or professional~~] association" means a [~~nonprofit,~~] cooperative[;] and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder[~~, paid full time faculty member,~~] or a member of the board of trustees of a medical school.

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

~~(1) the person is an [serving as the president, vice president, secretary, or treasurer of a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine, or is an employee of such an organization.~~

~~[(d) An] officer, employee, or paid consultant of a Texas trade [or professional] association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or~~

~~(2) the person's [may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.~~

~~[(e) A person who is the] spouse is [of] an officer, manager, or paid consultant of a Texas trade [or professional] association in the field of health care [may not be a board member or employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].~~

SECTION 1.06. Subchapter A, Chapter 152, Occupations Code, is amended by adding Section 152.0041 to read as follows:

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access solely by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

SECTION 1.07. Sections 152.006(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 152.002;

(2) does not maintain during service on the board the qualifications required by Section 152.002;

(3) is ineligible for membership under Sections 152.003 and ~~[violates a prohibition established by Section]~~ 152.004;

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

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

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

SECTION 1.08. Section 152.008, Occupations Code, is amended to read as follows:

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

SECTION 1.09. Sections 152.010(a)-(c), Occupations Code, are amended to read as follows:

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes ~~[Before a board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of]~~ a training program that complies with ~~[established by the board under]~~ this section.

(b) The training program must ~~[shall]~~ provide the person with information ~~[to a participant]~~ regarding:

- (1) this subtitle;
- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest ~~[Chapters 551, 552, 2001, and 2002, Government Code]; and~~

(8) ~~[the requirements of the conflict of interest laws and other laws relating to public officials; and~~

~~[(9)]~~ any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. ~~[In developing the training program, the board shall consult with the governor, the attorney general, and the Texas Ethics Commission.]~~

SECTION 1.10. Section 152.056, Occupations Code, is amended to read as follows:

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [define] the policy-making [respective] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 1.11. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0015 to read as follows:

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction, including input from the Texas State Board of Physician Assistant Examiners and the Texas State Board of Acupuncture Examiners. The guidelines must provide an opportunity for those individuals and groups to provide input before the board provides notice of the proposed rule under Section 2001.023, Government Code.

(b) The guidelines adopted under this section shall also include procedures for the board to receive comments on rules recommended by the physician assistant board or acupuncture board for adoption by the board.

(c) A rule adopted by the board may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

SECTION 1.12. Subchapter A, Chapter 153, Occupations Code, is amended by adding Section 153.0045 to read as follows:

Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

SECTION 1.13. Subchapter B, Chapter 153, Occupations Code, is amended by adding Sections 153.057 and 153.058 to read as follows:

Sec. 153.057. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

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

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

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

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

- (a);
- (1) coordinate the implementation of the policy adopted under Subsection
- (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 1.14. Section 154.003, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) Except as provided by this subsection, the board shall publish information regarding errors in and reversals of disciplinary actions taken by the board. The information to be published under this subsection includes instances in which a disciplinary action initiated by the board is overturned by a court. The board shall disseminate the information under this subsection in the same format, size, style, and manner as the information regarding the original action by the board was disseminated. The board may not publish information under this subsection if the physician who was the subject of the disciplinary action requests that the information not be published.

SECTION 1.15. Section 154.052, Occupations Code, is amended to read as follows:

Sec. 154.052. RECORDS OF COMPLAINTS. The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain ~~[keep an]~~ information ~~[file]~~ about ~~[each complaint filed with the board. The information file must be kept current and contain a record for each complaint of]:~~

- (1) the parties to the complaint;
- (2) the subject matter of the complaint;
- (3) a summary of the results of the review or investigation of the complaint;
- and
- (4) the disposition of the complaint ~~[each potential witness contacted in relation to the complaint;~~
- ~~[(2) a summary of findings made at each step of the complaint process;~~
- ~~[(3) an explanation of the legal basis and reason for the dismissal of a complaint;~~
- ~~[(4) the schedule for the disposition of the complaint prepared as required under Section 154.056 and a notation of any change in the schedule; and~~
- ~~[(5) other relevant information].~~

SECTION 1.16. Section 154.053(c), Occupations Code, is amended to read as follows:

(c) The board shall periodically ~~[If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall]~~ notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

SECTION 1.17. Section 154.056(e), Occupations Code, is amended to read as follows:

(e) The board by rule shall provide for an expert physician panel appointed by the board to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers. Each member of the [am] expert physician panel must be licensed to practice medicine in this state. The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected physician and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel. The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The board's rules governing appointment of expert physician panel members to act as expert physician reviewers must include a requirement that the board randomly select, to the extent permitted by Section 154.058(b) and the conflict of interest provisions adopted under this subsection, panel members to review a complaint.

SECTION 1.18. Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0561 to read as follows:

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW. (a) A physician on the expert physician panel authorized by Section 154.056(e) who is selected to review a complaint shall:

(1) determine whether the physician who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert physician reviewer shall review the first physician's preliminary report and other information associated with the complaint. If the second expert physician agrees with the first expert physician, the first physician shall issue a final written report on the matter.

(c) If the second expert physician does not agree with the conclusions of the first expert physician, a third expert physician reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two expert physicians. The final written report shall be issued by the third physician or the physician with whom the third physician concurs.

(d) In reviewing a complaint, the expert physician reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

SECTION 1.19. Section 154.057(b), Occupations Code, is amended to read as follows:

(b) The board shall complete [make] a preliminary investigation of the complaint not later than the 30th day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

SECTION 1.20. Section 155.002, Occupations Code, is amended to read as follows:

Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

- (1) submits to the board a license application as required by this chapter;
- (2) presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and
- (3) satisfies the examination requirements of Section 155.051.

(b) The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this subsection does not require formal board approval.

SECTION 1.21. Section 155.003(a), Occupations Code, is amended to read as follows:

(a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

- (1) is at least 21 years of age;
- (2) is of good professional character and has not violated Section 164.051, 164.052, or 164.053;
- (3) has completed:

(A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(B) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(C) substantially equivalent courses as determined by board rule;

(4) is a graduate of a medical school located in the United States or Canada and approved by the board;

(5) has either:

(A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or

(B) graduated from a medical school located outside the United States or Canada and has successfully completed three years of graduate medical training approved by the board in the United States or Canada;

(6) has passed [~~within three attempts~~] an examination accepted or administered by the board, [~~except as provided by Section 155.056~~]; and

(7) has passed a Texas medical jurisprudence examination as determined by board rule.

SECTION 1.22. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.006 to read as follows:

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M. D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

(1) academic appointments;

(2) length of time in a profession;

(3) scholarly publications; and

(4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for that license.

SECTION 1.23. Subchapter A, Chapter 155, Occupations Code, is amended by adding Section 155.009 to read as follows:

Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the issuance of a license that limits the license holder to the practice of administrative medicine. The board's rules under this section must include provisions for eligibility for the license, issuance and renewal of the license, the fees applicable to the license, continuing education requirements, and the scope of practice of a person who holds the license.

(b) An applicant for a license under this section must meet all of the requirements for issuance of a license under Section 155.002.

(c) A license holder under this section who seeks to practice medicine under an unrestricted license that is not limited to the practice of administrative medicine must provide proof to the board that the license holder has the clinical competence to practice medicine under that license and must meet all applicable eligibility requirements for that license. The board may require the license holder to pass any examination the board determines necessary.

SECTION 1.24. Section 155.056, Occupations Code, is amended to read as follows:

Sec. 155.056. EXAMINATION ATTEMPT LIMITS [REEXAMINATION]. (a) An applicant must pass each part of an examination within three attempts~~[-except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time].~~

(b) The board shall adopt rules that prescribe how the limit on the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license and who attempts more than one type of examination. ~~[Notwithstanding Subsection (a), an applicant is considered to have satisfied the requirements of this section if the applicant:~~

~~[(1) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;~~

~~[(2) is specialty board certified by a specialty board that:~~

~~[(A) is a member of the American Board of Medical Specialties; or~~

~~[(B) is approved by the American Osteopathic Association; and~~

~~[(3) completed in this state an additional two years of postgraduate medical training approved by the board.]~~

SECTION 1.25. Section 155.104, Occupations Code, is amended to read as follows:

Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. The board by rule shall set a time limit for the term of a temporary license.

(b) The board may issue a faculty temporary license to practice medicine to a physician appointed by a medical school in this state as provided by this section. The physician:

(1) must hold a current medical license that is unrestricted and not subject to a disciplinary order or probation in another state or Canadian province or have completed at least three years of postgraduate residency;

(2) may not hold a medical license in another state or a Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the Texas medical jurisprudence examination; and

(4) must hold a salaried faculty position of at least the level of assistant professor and be working full-time at one of the following institutions:

(A) The University of Texas Medical Branch at Galveston;

(B) The University of Texas Southwestern Medical Center at Dallas;

(C) The University of Texas Health Science Center at Houston;

(D) The University of Texas Health Science Center at San Antonio;

(E) The University of Texas Health Center at Tyler;

(F) The University of Texas M. D. Anderson Cancer Center;

(G) Texas A&M University College of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) the University of North Texas Health Science Center at Fort Worth.

(c) A physician is eligible for a temporary license under Subsection (b) if the physician holds a faculty position of at least the level of assistant professor and works at least part-time at an institution listed in Subsection (b)(4) and:

(1) the physician is on active duty in the United States armed forces; and

(2) the physician's practice under the temporary license will fulfill critical needs of the citizens of this state.

(d) A physician who is issued a temporary license under Subsection (b) must sign an oath on a form prescribed by the board swearing that the physician:

(1) has read and is familiar with this subtitle and board rules;

(2) will abide by the requirements of this subtitle and board rules while practicing under the physician's temporary license; and

(3) will be subject to the disciplinary procedures of the board.

(e) A physician holding a temporary license under Subsection (b) and the physician's medical school must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the medical activities of the physician.

(f) A temporary license issued under Subsection (b) is valid for one year.

(g) The holder of a temporary license issued under Subsection (b) is limited to the teaching confines of the applying medical school as a part of the physician's duties and responsibilities assigned by the school and may not practice medicine outside of the setting of the medical school or an affiliate of the medical school. The physician

may participate in the full activities of the department of any hospital for which the physician's medical school has full responsibility for clinical, patient care, and teaching activities.

(h) The application for a temporary license under Subsection (b) must be made by the chairman of the department of the medical school in which the physician teaches and must contain the information and documentation requested by the department. The application must be endorsed by the dean of the medical school or the president of the institution.

(i) Three years in a teaching faculty position at an institution listed in Subsection (b)(4) may be treated as equivalent to three years of an approved postgraduate residency program if, at the conclusion of the three-year period, the physician presents recommendations on the physician's behalf from the chief administrative officer and the president of the institution.

(j) A physician who holds a temporary license issued under Subsection (b) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent unrestricted license, including any examination requirements.

SECTION 1.26. Section 156.001(a), Occupations Code, is amended to read as follows:

(a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license ~~[and expires on the last day of the birth month of the license holder].~~ The board by rule may adopt a system under which licenses expire on various dates during the year.

SECTION 1.27. Section 157.051(2), Occupations Code, is amended to read as follows:

(2) "Carrying out or signing a prescription drug order" means completing a prescription drug order presigned by the delegating physician, or the signing of a prescription by a registered nurse or physician assistant ~~[after that person has been designated to the board by the delegating physician as a person delegated to sign a prescription].~~

SECTION 1.28. Section 157.0511, Occupations Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The board shall adopt rules that require a physician who delegates the carrying out or signing of a prescription drug order under this subchapter to maintain records that show when and to whom a delegation is made. The board may access the physician's records under this subsection as necessary for an investigation.

SECTION 1.29. Section 160.006, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) and (e) to read as follows:

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

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

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

(3) under a court order;

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

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

(c) A record or report disclosed by the board under this subchapter, ~~and~~ a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages, including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Medical peer review documents remain confidential at the board and at the State Office of Administrative Hearings. If medical peer review documents are admitted into evidence for any purpose at a proceeding before the State Office of Administrative Hearings, the documents must be admitted under seal to protect the confidentiality of the records as provided by this section and Section 160.007.

(e) The confidentiality requirements of this section do not apply to records used by a medical peer review committee, including a patient's medical records, if the records are available to the board through a means other than a medical peer review committee's records.

SECTION 1.30. Section 160.010, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency case. The attorney general shall represent a member of an expert panel or consultant in any suit resulting from a duty provided by the person in good faith to the board.

SECTION 1.31. Section 162.103, Occupations Code, is amended to read as follows:

Sec. 162.103. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) ~~[an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life preserving protective reflexes;~~

~~(3)~~ a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;

(3) ~~(4)~~ a licensed ambulatory surgical center;

(4) ~~(5)~~ a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

(5) ~~(6)~~ a facility maintained or operated by a state or local governmental entity;

(6) ~~(7)~~ a clinic directly maintained or operated by the United States; or

(7) ~~(8)~~ an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

SECTION 1.32. Sections 163.003(a) and (f), Occupations Code, are amended to read as follows:

(a) A committee consists of seven ~~five~~ members appointed by the governor, as follows:

(1) three physician members who are doctors of medicine (M.D.);

(2) one physician member who is a doctor of osteopathic medicine (D.O.);

and

(3) three ~~one~~ public members ~~member~~.

(f) A member of a committee is subject to law and the rules of the board, including Sections 152.004, 152.006, and 152.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 152.010 shall be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

SECTION 1.33. Chapter 163, Occupations Code, is amended by adding Section 163.0045 to read as follows:

Sec. 163.0045. ASSISTANCE TO BOARD. The board may request members of a committee to participate in an informal meeting under Section 164.003. A physician committee member who participates in an informal meeting on a complaint relating to medical competency must have the qualifications of a member of an expert panel under Section 154.056(e).

SECTION 1.34. Section 164.001, Occupations Code, is amended by adding Subsection (j) to read as follows:

(j) In determining the appropriate disciplinary action, including the amount of any administrative penalty to impose, the board shall consider whether the violation relates directly to patient care or involves only an administrative violation.

SECTION 1.35. Section 164.002, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) The board may not dismiss a complaint solely on the grounds that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

SECTION 1.36. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0025 to read as follows:

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 164.003 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected physician requests that the complaint be referred for informal proceedings.

SECTION 1.37. Section 164.003, Occupations Code, is amended by amending Subsection (b) and adding Subsections (f), (g), and (h) to read as follows:

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced as provided by ~~[filed with the board under]~~ Section 154.057(b) [+54.054], unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and

(6) [~~5~~] a member of the board's staff be at the meeting to present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the informal meeting. If the complaint includes an allegation that the license holder has violated the standard of care, the notice must include a copy of the report by the expert physician reviewer. The license holder must provide to the board the license holder's rebuttal at least five business days before the date of the meeting in order for the information to be considered at the meeting.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including the extended illness of a board investigator and an expert physician reviewer's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section.

SECTION 1.38. Subchapter A, Chapter 164, Occupations Code, is amended by adding Sections 164.0031 and 164.0032 to read as follows:

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b)(4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the affected physician and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the affected physician have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician, the physician's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute or board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

(h) If the board rejects the panel's recommendation for settlement or dismissal, the board shall notify the physician and state in the board's minutes the reason for rejecting the recommendation and specify further action to be considered. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter.

SECTION 1.39. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0036 to read as follows:

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) If an informal meeting is not scheduled for a complaint before the 180th day after the date the board's official investigation of the complaint is commenced under Section 154.057(b), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal meeting has not been scheduled. The notice under this subsection is not required if the notice would jeopardize an investigation.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

SECTION 1.40. Section 164.007, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The board may change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge only if the board makes a determination required by Section 2001.058(e), Government Code.

SECTION 1.41. Subchapter A, Chapter 164, Occupations Code, is amended by adding Section 164.0071 to read as follows:

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board.

(c) A member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a formal hearing.

SECTION 1.42. Section 164.056, Occupations Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which a physician or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(d) The board shall refer a physician or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(e) The guidelines adopted under this section do not impair or remove the board's power to make an independent licensing decision.

SECTION 1.43. Section 164.202, Occupations Code, is amended to read as follows:

Sec. 164.202. REHABILITATION ORDER. (a) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder, based on:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) self-reported intemperate use of drugs or alcohol during the five years preceding the report that could adversely affect the reporter's ability to practice medicine safely, if:

(A) the reporting individual has not previously been the subject of a substance abuse-related order of the board; and

(B) the applicant or license holder has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the applicant or license holder is of unsound mind;

(4) a determination of impairment based on a mental or physical examination offered to establish the impairment in an evidentiary hearing before the board in which the applicant or license holder was provided an opportunity to respond; or

(5) an admission by the applicant or license holder indicating that the applicant or license holder suffers from a potentially dangerous limitation or an inability to practice medicine with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The board may disclose a rehabilitation order to a local or statewide private medical association only as provided by Section 164.205.

SECTION 1.44. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.205 to read as follows:

Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 164.202 requires a license holder to participate in activities or programs provided by a local or statewide private medical association, the board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation.

(b) The board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board.

SECTION 1.45. Subchapter E, Chapter 164, Occupations Code, is amended by adding Section 164.206 to read as follows:

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

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

SECTION 1.46. The heading to Subchapter B, Chapter 165, Occupations Code, is amended to read as follows:

SUBCHAPTER B. INJUNCTIVE RELIEF AND  
OTHER ENFORCEMENT PROVISIONS

SECTION 1.47. Subchapter B, Chapter 165, Occupations Code, is amended by adding Section 165.052 to read as follows:

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION 1.48. The following laws are repealed:

- (1) Section 152.010(d), Occupations Code; and
- (2) Sections 157.0542(d)-(h), Occupations Code.

SECTION 1.49. Not later than January 1, 2006, the Texas Medical Board shall:

- (1) adopt the policies required by Sections 153.057 and 153.058, Occupations Code, as added by this article; and
- (2) adopt the rules required by Subtitle B, Title 3, Occupations Code, as amended by this article.

SECTION 1.50. (a) The changes in law made by Sections 152.003, 152.006, and 152.010, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the Texas Medical Board do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The Texas Medical Board shall adopt rules necessary to implement the requirements of Section 155.006, Occupations Code, as added by this article, not later than March 1, 2006.

(c) The changes in law made by this article related to the filing, investigation, or disposition of a complaint under Subtitle B, Title 3, Occupations Code, as amended by this article, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(d) The changes in law made by this article governing the eligibility of a person for a license under Subtitle B, Title 3, Occupations Code, apply only to an application for a license filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(e) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 1.51. MEDICAL PEER REVIEW STUDY. (a) The presiding officer of each house of the legislature shall appoint a joint interim committee to study the medical peer review process in hospitals and other health care entities in this state. The study shall include an examination of:

(1) the use of medical peer review in identifying and reporting to the Texas Medical Board the conduct of or the quality of care provided by physicians who are members of the medical staffs of hospitals and other health care entities;

(2) the use of medical peer review in disciplining a physician based on the conduct or quality of care provided by the physician as a member of the medical staff of a hospital or other health care entity;

(3) the appropriate level of immunity protections for hospitals and other health care entities, medical peer review committees, and individuals who participate on those committees in health care liability claims brought by patients alleging bad faith physician credentialing; and

(4) whether there are adequate mechanisms in state law to ensure appropriate regulatory supervision of the appropriateness and effectiveness of medical peer review in hospitals and other health care entities.

(b) As part of the joint interim committee's study, the committee shall investigate:

(1) the adequacy of the Texas Medical Board's oversight and investigation of physician claims that the medical peer review process is misused, including whether the board's oversight and investigation powers should be strengthened and how other states investigate claims of misuse of the medical peer review process;

(2) the state regulatory reporting mechanisms relating to the appropriateness and effectiveness of medical peer review in hospitals and other health care entities and the oversight and authority of the state to ensure good faith medical peer review in hospitals and other health care entities in this state;

(3) the potentially negative impact on medical peer review in this state that could result from potential changes to:

(A) immunity protections; or

(B) the oversight and investigation of physician claims of misuse of the medical peer review process;

(4) how the laws of other states address immunity protections for medical peer review; and

(5) any other matter relevant to the medical peer review process, including how state and federal law identifies physician conduct that is considered to be unprofessional or unsafe by a medical peer review committee.

(c) The Department of State Health Services and the Texas Medical Board shall provide information and assistance to the joint interim committee in conducting the investigation required by this section on the committee's request.

(d) Not later than January 1, 2007, the joint interim committee shall report the committee's findings to the governor, lieutenant governor, and speaker of the house of representatives.

(e) This section expires September 1, 2007.

ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE  
BOARD OF PHYSICIAN ASSISTANT EXAMINERS

SECTION 2.01. Section 204.002(1), Occupations Code, is amended to read as follows:

(1) "Medical board" means the Texas [~~State Board of~~ Medical Board ~~Examiners~~].

SECTION 2.02. Section 204.052, Occupations Code, is amended to read as follows:

Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician assistant board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three practicing physician assistant members who each have at least five years of clinical experience as a physician assistant;

(2) three physician members who are licensed in this state and who supervise physician assistants; and

(3) three public members who are not licensed as a physician or physician assistant.

(b) Appointments to the physician assistant board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 2.03. Section 204.053, Occupations Code, is amended to read as follows:

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or profession problems and in promoting their common interest.

(b) A person may not be [is not eligible for appointment as] a public member of the physician assistant board if the person or the person's spouse:

(1) is registered, certified, or licensed by a [an occupational] regulatory agency in the field of health care; [or]

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board or physician assistant board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the medical board or physician assistant board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or physician assistant board other than compensation or reimbursement authorized by law for physician assistant board membership, attendance, or expenses [that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the physician assistant board or act as the general counsel to the physician assistant board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or physician assistant board.

SECTION 2.04. Section 204.055, Occupations Code, is amended to read as follows:

Sec. 204.055. OFFICERS. The governor shall designate a member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The physician assistant board shall select from its membership a ~~[presiding officer and a]~~ secretary to serve a one-year ~~term~~ term.

SECTION 2.05. Section 204.056, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) It is a ground for removal from the physician assistant board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Sections 204.052 and 204.053 ~~[this subchapter for appointment to the board];~~

(2) does not maintain during ~~[the]~~ service on the physician assistant board the qualifications required by Sections 204.052 and 204.053 ~~[this subchapter for appointment to the board];~~ ~~[or]~~

(3) is ineligible for membership under Section 204.053;

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

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

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

SECTION 2.06. Subchapter B, Chapter 204, Occupations Code, is amended by adding Section 204.059 to read as follows:

Sec. 204.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the physician assistant board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) this chapter and the physician assistant board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the physician assistant board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the physician assistant board or the Texas Ethics Commission.

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

SECTION 2.07. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.1015 to read as follows:

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The physician assistant board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the physician assistant board submits the rule to the medical board for approval.

(b) A rule adopted by the medical board may not be challenged on the grounds that the physician assistant board did not comply with this section. If the physician assistant board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the physician assistant board shall state in writing the reasons why the physician assistant board was unable to do so.

SECTION 2.08. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.105 to read as follows:

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The physician assistant board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

SECTION 2.09. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.106 to read as follows:

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that clearly separate the policy-making responsibilities of the physician assistant board and the management responsibilities of the executive director and the staff of the medical board.

SECTION 2.10. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.107 to read as follows:

Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the physician assistant board and to speak on any issue under the jurisdiction of the physician assistant board.

SECTION 2.11. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.108 to read as follows:

Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician assistant board shall maintain a system to promptly and efficiently act on complaints filed with the physician assistant board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

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

(3) information about the disposition of the complaint.

(b) The physician assistant board shall make information available describing its procedures for complaint investigation and resolution.

(c) The physician assistant board shall periodically notify the parties of the status of the complaint until final disposition of the complaint, unless the notice would jeopardize an investigation.

SECTION 2.12. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.109 to read as follows:

Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the physician assistant board shall implement a policy requiring the physician assistant board to use appropriate technological solutions to improve the physician assistant board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

SECTION 2.13. Subchapter C, Chapter 204, Occupations Code, is amended by adding Section 204.110 to read as follows:

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 2.14. Section 204.152, Occupations Code, is amended to read as follows:

Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician assistant board shall issue a license to an applicant who:

- (1) meets the eligibility requirements of Section 204.153;
- (2) submits an application on a form prescribed by the board;
- (3) pays the required application fee;
- (4) certifies that the applicant is mentally and physically able to function safely as a physician assistant; and
- (5) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) The physician assistant board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the physician assistant board. A license issued under this subsection does not require formal physician assistant board approval.

SECTION 2.15. Section 204.153, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

- (a) To be eligible for a license under this chapter, an applicant must:
- (1) successfully complete an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;
  - (2) pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;
  - (3) hold a certificate issued by the National Commission on Certification of Physician Assistants;
  - (4) be of good moral character; ~~and~~
  - (5) meet any other requirement established by board rule; and
  - (6) pass a jurisprudence examination approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a)(6) regarding:

- (1) the development of the examination;
- (2) applicable fees;
- (3) administration of the examination;
- (4) reexamination procedures;
- (5) grading procedures; and
- (6) notice of results.

SECTION 2.16. Section 204.156, Occupations Code, is amended to read as follows:

Sec. 204.156. LICENSE RENEWAL. (a) On notification from the physician assistant board, a person who holds a license under this chapter may renew the license by:

- (1) paying the required renewal fee;
- (2) submitting the appropriate form; and
- (3) meeting any other requirement established by board rule.

(b) The physician assistant board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the physician assistant board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the physician assistant board a fee that is equal to 1-1/2 times the renewal fee for the license.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the physician assistant board a fee equal to two times the renewal fee for the license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of the application may obtain a new license without reexamination. The person must pay to the physician assistant board a fee that is equal to two times the normally required renewal fee for the license.

SECTION 2.17. Subchapter D, Chapter 204, Occupations Code, is amended by adding Section 204.1562 to read as follows:

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

(a) The physician assistant board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The physician assistant board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the physician assistant board determines appropriate as a prerequisite to the renewal of a license under this chapter;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be approved by the physician assistant board; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) The physician assistant board may require that a specified number of continuing medical education hours be completed informally, including through self-study and self-directed education.

SECTION 2.18. Section 204.157, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) A person whose license is on inactive status under this section may return the person's license to active status by:

- (1) applying to the physician assistant board; ~~and~~

(2) satisfying the requirements of Section 204.156; and

(3) paying the fee established by the physician assistant board for returning a license to active status.

(d) The physician assistant board by rule shall establish a limit on the length of time a physician assistant's license may remain on inactive status.

SECTION 2.19. Subchapter F, Chapter 204, Occupations Code, is amended by adding Section 204.2511 to read as follows:

Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician assistant board shall complete a preliminary investigation of a complaint filed with the physician assistant board not later than the 30th day after the date of receiving the complaint. The physician assistant board shall first determine whether the physician assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the physician assistant board shall determine whether to officially proceed on the complaint. If the physician assistant board fails to complete the preliminary investigation in the time required by this section, the physician assistant board's official investigation of the complaint is considered to commence on that date.

SECTION 2.20. Section 204.301(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Section 204.305, on a determination that an applicant or license holder committed an act described in Section 204.302, 204.303, or 204.304, the physician assistant board by order shall take any of the following actions:

(1) deny the person's application for a license [~~application~~] or license renewal or revoke the person's license or other authorization;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the physician assistant board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant; or

(B) stipulating periodic physician assistant board review;

(6) assess an administrative penalty against the person under Section 204.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

SECTION 2.21. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3011 to read as follows:

Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The physician assistant board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the physician assistant board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 204.312 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected physician assistant requests that the complaint be referred for informal proceedings.

SECTION 2.22. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3045 to read as follows:

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The physician assistant board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the physician assistant board to evaluate circumstances in which a physician assistant or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The physician assistant board shall refer a physician assistant or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The physician assistant board may not require a physician assistant or applicant to submit to an examination by a physician having a specialty specified by the physician assistant board unless medically indicated. The physician assistant board may not require a physician assistant or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician assistant or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the physician assistant board's power to make an independent licensing decision.

SECTION 2.23. Section 204.305, Occupations Code, is amended to read as follows:

Sec. 204.305. REHABILITATION ORDER. (a) The physician assistant board, through an agreed order or after a contested proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as a physician assistant, if the person:

(A) reported the use; ~~and~~

(B) has not previously been the subject of a substance abuse related order of the board; and

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as a physician assistant with reasonable skill and safety because of illness or any other physical or mental condition.

(b) The physician assistant board may not issue an order under this section if, before the individual signs the proposed order, the physician assistant board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The physician assistant board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The physician assistant board may disclose a rehabilitation order to a local or statewide private association of physician assistants only as provided by Section 204.3075.

SECTION 2.24. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.3075 to read as follows:

Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 204.305 requires a license holder to participate in activities or programs provided by a local or statewide private association of physician assistants, the physician assistant board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the physician assistant's rehabilitation.

(b) The physician assistant board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the physician assistant board.

SECTION 2.25. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.312 to read as follows:

Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician assistant board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the physician assistant board, unless good cause is shown by the physician assistant board for scheduling the informal meeting after that date;

(2) the physician assistant board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the physician assistant board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the physician assistant board's legal counsel or a representative of the attorney general be present to advise the physician assistant board or the medical board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the physician assistant board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected physician assistant is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician assistant reasonably believes the physician assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the physician assistant board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the physician assistant board, the physician assistant board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

SECTION 2.26. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.313 to read as follows:

Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 204.312, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 204.312(b)(4), an informal proceeding may be conducted by one panelist if the affected physician assistant waives the requirement that at least two panelists conduct the informal proceeding. If the physician assistant waives that requirement, the panelist may be any member of the physician assistant board.

(c) The panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the physician assistant board under Section 204.312, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the physician assistant board under Section 204.312 to show compliance with an order of the physician assistant board.

SECTION 2.27. Subchapter G, Chapter 204, Occupations Code, is amended by adding Sections 204.314 and 204.3145 to read as follows:

Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A physician assistant board member that serves as a panelist at an informal meeting under Section 204.312 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected physician assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A physician assistant board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the physician assistant board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected physician assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the physician assistant board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the physician assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician assistant, the physician assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician assistant has violated a statute or physician assistant board rule, the panel may recommend physician assistant board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician assistant and the physician assistant's authorized representative. The physician assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician assistant rejects the proposed settlement or does not act within the required time, the physician assistant board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The physician assistant board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 2.28. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.315 to read as follows:

Sec. 204.315. SURRENDER OF LICENSE. (a) The physician assistant board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the physician assistant board determines, under physician assistant board rules, that the former holder of the license is competent to resume practice.

(c) The physician assistant board by rule shall establish guidelines for determining the competency of a former license holder to return to practice.

SECTION 2.29. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.316 to read as follows:

Sec. 204.316. REFUND. (a) Subject to Subsection (b), the physician assistant board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Section 204.351.

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

SECTION 2.30. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.317 to read as follows:

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The physician assistant board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the physician assistant board makes a determination required by Section 2001.058(e), Government Code.

SECTION 2.31. Subchapter G, Chapter 204, Occupations Code, is amended by adding Section 204.318 to read as follows:

Sec. 204.318. EXPERT IMMUNITY. An expert who assists the physician assistant board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the physician assistant board.

SECTION 2.32. The heading to Subchapter H, Chapter 204, Occupations Code, is amended to read as follows:

#### SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 2.33. Subchapter H, Chapter 204, Occupations Code, is amended by adding Section 204.353 to read as follows:

Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to the physician assistant board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to physician assistant practice, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION 2.34. Section 204.004, Occupations Code, is repealed.

SECTION 2.35. (a) Not later than January 1, 2006, the Texas State Board of Physician Assistant Examiners shall:

(1) adopt the policies required by Sections 204.109 and 204.110, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 204, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Physician Assistant Examiners shall develop the jurisprudence examination required by Section 204.153, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 204.153, Occupations Code, as amended by this article, applies only to an individual who applies for a license as a physician assistant on or after September 1, 2006.

SECTION 2.36. (a) The changes in law made by Sections 204.053, 204.056, and 204.059, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the Texas State Board of Physician Assistant Examiners do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The changes in law made by this article related to the filing, investigation, or resolution of a complaint under Chapter 204, Occupations Code, as amended by this article, apply only to a complaint filed with the Texas State Board of Physician Assistant Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Physician Assistant Examiners to issue, renew, or revoke a license under Chapter 204, Occupations Code, apply only to an application for a license filed with the Texas State Board of Physician Assistant Examiners under Chapter 204, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

### ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

SECTION 3.01. Sections 205.001(6), (7), and (8), Occupations Code, are amended to read as follows:

(6) "Executive director" means the executive director of the Texas Medical [State] Board [of Medical Examiners].

(7) "Medical board" means the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~.

(8) "Physician" means a person licensed to practice medicine by the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~.

SECTION 3.02. Section 205.051(a), Occupations Code, is amended to read as follows:

(a) The Texas State Board of Acupuncture Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four acupuncturist members who have at least five years of experience in the practice of acupuncture in this state and who are not physicians;

(2) two physician members experienced in the practice of acupuncture; and

(3) three members of the general public who are not licensed or trained in a health care profession.

SECTION 3.03. Sections 205.053(a), (c), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a ~~[nonprofit,]~~ cooperative~~[-]~~ and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(c) A person ~~[who is the spouse of an officer, board member, manager, or paid consultant of a Texas trade association in the field of health care]~~ may not be a member of the acupuncture board and may not be a [an employee of the] medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].

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

SECTION 3.04. Section 205.055, Occupations Code, is amended to read as follows:

Sec. 205.055. PRESIDING OFFICER. The governor shall designate an acupuncturist [a] member of the acupuncture board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

SECTION 3.05. Section 205.057, Occupations Code, is amended to read as follows:

Sec. 205.057. TRAINING. (a) ~~A [To be eligible to take office as a member of the acupuncture board, a]~~ person who is appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes [must complete at least one course of] a training program that complies with this section.

(b) The training program must provide the person with information ~~[to the person]~~ regarding:

- (1) this chapter ~~[and the acupuncture board];~~
- (2) the programs operated by the acupuncture board;
- (3) the role and functions of the acupuncture board;
- (4) the rules of the acupuncture board~~[- with an emphasis on the rules that relate to disciplinary and investigatory authority];~~
- (5) the current budget for the acupuncture board;
- (6) the results of the most recent formal audit of the acupuncture board;
- (7) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest [the:

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

~~[(B) open records law, Chapter 552, Government Code; and~~

~~[(C) administrative procedure law, Chapter 2001, Government Code];~~

and

(8) ~~[the requirements of the conflict of interest laws and other laws relating to public officials; and~~

~~[(9)]~~ any applicable ethics policies adopted by the acupuncture [medical] board or the Texas Ethics Commission.

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

SECTION 3.06. Section 205.101, Occupations Code, is amended to read as follows:

Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE BOARD. (a) Subject to the advice and approval of the medical board, the acupuncture board shall:

- (1) establish qualifications for an acupuncturist to practice in this state;
- (2) establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;
- (3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;
- (4) develop requirements for licensure by endorsement of other states;
- (5) prescribe the application form for a license to practice acupuncture;
- (6) recommend rules to establish licensing and other fees [make recommendations on applications for licenses to practice acupuncture];

(7) establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college; and

(8) recommend additional rules as are necessary to administer and enforce this chapter.

(b) The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.

(c) The acupuncture board shall:

(1) review and approve or reject each application for the issuance or renewal of a license;

(2) issue each license; and

(3) deny, suspend, or revoke a license or otherwise discipline a license holder.

SECTION 3.07. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1041 to read as follows:

Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The acupuncture board shall develop guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the acupuncture board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the acupuncture board submits the rule to the medical board for approval.

(b) A rule adopted by the acupuncture board may not be challenged on the grounds that the board did not comply with this section. If the acupuncture board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

SECTION 3.08. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.1045 to read as follows:

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The acupuncture board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

SECTION 3.09. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.106 to read as follows:

Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the acupuncture board shall implement a policy requiring the acupuncture board to use appropriate technological solutions to improve the acupuncture board's ability to perform its functions. The policy must ensure that the public is able to interact with the acupuncture board on the Internet.

SECTION 3.10. Subchapter C, Chapter 205, Occupations Code, is amended by adding Section 205.107 to read as follows:

Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 3.11. Subchapter D, Chapter 205, Occupations Code, is amended by adding Section 205.1521 to read as follows:

Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture board shall complete a preliminary investigation of a complaint received by the acupuncture board not later than the 30th day after the date of receiving the complaint. The acupuncture board shall first determine whether the acupuncturist constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the acupuncture board shall determine whether to officially proceed on the complaint. If the acupuncture board fails to complete the preliminary investigation in the time required by this section, the acupuncture board's official investigation of the complaint is considered to commence on that date.

SECTION 3.12. Section 205.201, Occupations Code, is amended to read as follows:

Sec. 205.201. LICENSE REQUIRED. Except as provided by Section 205.303, a person may not practice acupuncture in this state unless the person holds a license to practice acupuncture issued by the acupuncture ~~medical~~ board under this chapter.

SECTION 3.13. Section 205.202, Occupations Code, is amended to read as follows:

Sec. 205.202. ISSUANCE OF LICENSE. (a) The ~~[After consulting the]~~ acupuncture board, ~~the medical board~~ shall issue a license to practice acupuncture in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The acupuncture board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the acupuncture board. A license issued under this subsection does not require formal acupuncture board approval.

SECTION 3.14. Section 205.203, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsections (c-1) and (f) to read as follows:

(a) An applicant for a license to practice acupuncture must pass an acupuncture examination and a jurisprudence examination approved by the acupuncture board as provided by this section.

(c) The acupuncture examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(c-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the professional practice of acupuncture in this state.

(f) The acupuncture board shall adopt rules for the jurisprudence examination under Subsection (c-1) regarding:

(1) the development of the examination;

(2) applicable fees;

(3) administration of the examination;

(4) reexamination procedures;

(5) grading procedures; and

(6) notice of results.

SECTION 3.15. Section 205.206, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) In addition to the other requirements of this section, an acupuncture school or degree program is subject to approval by the Texas Higher Education Coordinating Board unless the school or program qualifies for an exemption under Section 61.303, Education Code.

(d) In reviewing an acupuncture school or degree program as required by Subsection (c), the Texas Higher Education Coordinating Board shall seek input from the acupuncture board regarding the standards to be used for assessing whether a school or degree program adequately prepares an individual for the practice of acupuncture.

SECTION 3.16. Section 205.255, Occupations Code, is amended by adding Subsections (a-1) and (c) to read as follows:

(a-1) The acupuncture board shall establish written guidelines for granting continuing education credit that specify:

(1) procedural requirements;

(2) the qualifications needed to be considered a preferred provider of continuing education; and

(3) course content requirements.

(c) After guidelines are established under Subsection (a-1), the acupuncture board shall delegate to medical board employees the authority to approve course applications for courses that clearly meet the guidelines. Medical board employees shall refer any courses that are not clearly within the guidelines to the acupuncture board for review and approval.

SECTION 3.17. Sections 205.351(b) and (c), Occupations Code, are amended to read as follows:

(b) If the acupuncture ~~[medical]~~ board proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(c) A complaint, indictment, or conviction of a violation of law is not necessary for an action under Subsection (a)(11). Proof of the commission of the act while in the practice of acupuncture or under the guise of the practice of acupuncture is sufficient for action by the acupuncture ~~[medical]~~ board.

SECTION 3.18. Section 205.352, Occupations Code, is amended to read as follows:

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD. (a) On finding that grounds exist to deny a license or take disciplinary action against a license holder, the acupuncture board by order may:

(1) deny the person's application for a license, license renewal, or certificate to practice acupuncture or revoke the person's license or certificate to practice acupuncture;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board as a condition for the issuance, continuance, or renewal of a license or certificate to practice acupuncture;

(3) require the person to participate in a program of education or counseling prescribed by the acupuncture board;

(4) suspend, limit, or restrict the person's license or certificate to practice acupuncture, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of acupuncture or stipulating periodic review by the acupuncture board;

(5) require the person to practice under the direction of an acupuncturist designated by the acupuncture board for a specified period of time;

(6) assess an administrative penalty against the person as provided by Subchapter J [~~Chapter 165~~];

(7) require the person to perform public service considered appropriate by the acupuncture board; ~~[or]~~

(8) stay enforcement of an order and place the person on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;

(9) require the person to continue or review professional education until the person attains a degree of skill satisfactory to the acupuncture board in those areas that are the basis of the probation under Subdivision (8);

(10) require the person to report regularly to the acupuncture board on matters that are the basis of the probation under Subdivision (8); or

(11) administer a public reprimand.

(b) The acupuncture board may reinstate or reissue a license or remove any disciplinary or corrective measure that the acupuncture board has imposed under this section.

SECTION 3.19. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3522 to read as follows:

Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the acupuncture board determines, under acupuncture board rules, that the former holder of the license is competent to resume practice.

(c) The acupuncture board shall recommend rules to the medical board for determining the competency of a former license holder to return to practice.

SECTION 3.20. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3523 to read as follows:

Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The acupuncture board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which an acupuncturist or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical or mental health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the acupuncture board's power to make an independent licensing decision.

SECTION 3.21. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3541 to read as follows:

Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the acupuncture board, unless good cause is shown by the acupuncture board for scheduling the informal meeting after that date;

(2) the acupuncture board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the acupuncture board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the acupuncture board's legal counsel or a representative of the attorney general be present to advise the acupuncture board or the medical board's staff; and

(6) an employee of the medical board be at the meeting to present to the acupuncture board's representative the facts the medical board staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected acupuncturist is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the acupuncturist reasonably believes the acupuncturist could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the acupuncture board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the acupuncture board, the acupuncture board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

SECTION 3.22. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3542 to read as follows:

Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 205.3541, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 205.3541(b)(4), an informal proceeding may be conducted by one panelist if the affected acupuncturist waives the requirement that at least two panelists conduct the informal proceeding. If the acupuncturist waives that requirement, the panelist may be any member of the acupuncture board.

(c) The panel requirements described by Subsection (a) apply to an informal proceeding conducted by the acupuncture board under Section 205.3541, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the acupuncture board under Section 205.3541 to show compliance with an order of the acupuncture board.

SECTION 3.23. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3543 to read as follows:

Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that serves as a panelist at an informal meeting under Section 205.3541 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected acupuncturist and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An acupuncture board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the acupuncture board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected acupuncturist have an opportunity to present information related to the case. During the panel's deliberation, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the acupuncture board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected acupuncturist and the acupuncturist's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the acupuncturist and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected acupuncturist, the acupuncturist's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected acupuncturist has violated a statute or acupuncture board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected acupuncturist and the acupuncturist's authorized representative. The acupuncturist may accept the proposed settlement within the time established by the panel at the informal meeting. If the acupuncturist rejects the proposed settlement or does not act within the required time, the acupuncture board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

SECTION 3.24. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.3544 to read as follows:

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

SECTION 3.25. Section 205.356, Occupations Code, is amended to read as follows:

Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as an acupuncturist, if the person:

(A) reported the use; ~~and~~

(B) has not previously been the subject of a substance abuse related order of the acupuncture board; and

(C) did not violate the standard of care as a result of the impairment;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The acupuncture board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The acupuncture board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The acupuncture board may disclose a rehabilitation order to a local or statewide private acupuncture association only as provided by Section 205.3562.

SECTION 3.26. Subchapter H, Chapter 205, Occupations Code, is amended by adding Sections 205.3561 and 205.3562 to read as follows:

Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the acupuncture board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the expert in good faith to the acupuncture board.

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 205.356 requires a license holder to participate in activities or programs provided by a local or statewide private acupuncture association, the acupuncture board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

(b) The acupuncture board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the acupuncture board.

SECTION 3.27. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.360 to read as follows:

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS.

(a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 205.3541 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected acupuncturist requests that the complaint be referred for informal proceedings.

SECTION 3.28. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.361 to read as follows:

Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding officer of the acupuncture board, with that board's approval, shall appoint a three-member disciplinary panel consisting of acupuncture board members to determine whether a person's license to practice as an acupuncturist should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice as an acupuncturist would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the acupuncture board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

SECTION 3.29. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.362 to read as follows:

Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to the acupuncture board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of acupuncture, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 205.352.

SECTION 3.30. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.363 to read as follows:

Sec. 205.363. REFUND. (a) Subject to Subsection (b), the acupuncture board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this subchapter.

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order.

SECTION 3.31. Subchapter H, Chapter 205, Occupations Code, is amended by adding Section 205.364 to read as follows:

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code.

SECTION 3.32. Sections 205.402(a) and (d), Occupations Code, are amended to read as follows:

(a) The acupuncture ~~[medical]~~ board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(d) The attorney general, at the request of the acupuncture ~~[medical]~~ board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty.

SECTION 3.33. The heading to Subchapter I, Chapter 205, Occupations Code, is amended to read as follows:

#### SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 3.34. Chapter 205, Occupations Code, is amended by adding Subchapter J to read as follows:

#### SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

(1) the seriousness of the violation, including:

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

and

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

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

(3) the history of previous violations;

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

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the acupuncture board by order determines that a violation has occurred and imposes an administrative penalty, the acupuncture board shall notify the affected person of the board's order.

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

Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the acupuncture board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

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

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

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

or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the acupuncture board's 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) giving a copy of the affidavit to the presiding officer of the acupuncture board by certified mail.

(c) If the presiding officer of the acupuncture board receives a copy of an affidavit under Subsection (b)(2), the presiding officer may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 205.456. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the presiding officer of the acupuncture board may refer the matter to the attorney general for collection of the penalty.

Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

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

Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

SECTION 3.35. Sections 205.002 and 205.353, Occupations Code, are repealed.

SECTION 3.36. (a) Not later than January 1, 2006, the Texas State Board of Acupuncture Examiners shall:

(1) adopt the policies required by Sections 205.106 and 205.107, Occupations Code, as added by this article; and

(2) adopt the rules required by Chapter 205, Occupations Code, as amended by this article.

(b) Not later than March 1, 2006, the Texas State Board of Acupuncture Examiners shall develop the jurisprudence examination required by Section 205.203, Occupations Code, as amended by this article.

(c) The requirement to pass a jurisprudence examination under Section 205.203, Occupations Code, as amended by this article, applies only to an individual who applies for a license as an acupuncturist on or after September 1, 2006.

SECTION 3.37. (a) The changes in law made by Sections 205.053 and 205.057, Occupations Code, as amended by this article, regarding the prohibitions on or qualifications of members of the Texas State Board of Acupuncture Examiners do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The changes in law made by this article related to the filing, investigation, or resolution of a complaint under Chapter 205, Occupations Code, as amended by this article, apply only to a complaint filed with the Texas State Board of Acupuncture Examiners on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The changes in law made by this article governing the authority of the Texas State Board of Acupuncture Examiners to issue, renew, or revoke a license under Chapter 205, Occupations Code, apply only to an application for a license filed with the Texas State Board of Acupuncture Examiners under Chapter 205, Occupations Code, as amended by this article, on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(d) The change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

#### ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

SECTION 4.01. Section 206.001(5), Occupations Code, is amended to read as follows:

(5) "Medical board" means the Texas [~~State Board of~~ Medical Board ~~Examiners~~].

SECTION 4.02. Subchapter D, Chapter 206, Occupations Code, is amended by adding Section 206.1575 to read as follows:

Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board shall complete a preliminary investigation of a complaint not later than the 30th day after the date of receiving the complaint. The medical board shall first determine whether the surgical assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the medical board shall determine whether to officially proceed on the complaint. If the medical board fails to complete the preliminary investigation in the time required by this section, the medical board's official investigation is considered to commence on that date.

SECTION 4.03. Section 206.209, Occupations Code, is amended to read as follows:

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The medical board may delegate authority to board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the medical board. A license issued under this subsection does not require formal medical board approval.

SECTION 4.04. Section 206.305, Occupations Code, is amended to read as follows:

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as a surgical assistant, if the person:

(A) reported the use; ~~and~~

(B) has not previously been the subject of a substance abuse related order of the medical board; and

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as a surgical assistant with reasonable skill and safety because of illness or any other physical or mental condition.

(b) The medical board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The medical board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The medical board may disclose a rehabilitation order to a local or statewide private medical or surgical assistant association only as provided by Section 206.3075.

SECTION 4.05. Subchapter G, Chapter 206, Occupations Code, is amended by adding Section 206.3075 to read as follows:

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 206.305 requires a license holder to participate in activities or programs provided by a local or statewide private medical or surgical assistant association, the medical board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

(b) The medical board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the medical board.

SECTION 4.06. Subchapter G, Chapter 206, Occupations Code, is amended by adding Sections 206.313-206.315 to read as follows:

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the medical board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the medical board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the medical board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the panel the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected surgical assistant is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the surgical assistant reasonably believes the surgical assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the medical board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the medical board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected surgical assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected surgical assistant have an opportunity to

present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant, the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the medical board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected surgical assistant has violated a statute or medical board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the medical board under Section 206.313 to show compliance with an order of the board.

SECTION 4.07. The changes in law made by this article related to the filing, investigation, or disposition of a complaint under Chapter 206, Occupations Code, as amended by this article, apply only to a complaint filed with the Texas Medical Board on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

## ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. This Act takes effect September 1, 2005.

**Floor Amendment No. 1**

Amend **CSSB 419** (House committee printing) as follows:

(1) On page 26, line 6, after the period, add the following:

"In the event that a decision of the board or the State Office of Administrative Hearings is appealed to district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue."

(2) On page 26, beginning at line 9, strike "if the records are available to the board through a means other than a medical peer review committee's records." and insert "or records made or maintained in the regular course of business, if the records are not considered confidential under this chapter or any other law and are otherwise available to the board."

(3) On page 35, line 15, after the period, add the following:

"When admitted into evidence, this information shall be admitted under seal to protect the confidentiality of the documents. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to a district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue."

**Floor Amendment No. 2**

Amend **CSSB 419** by adding the following appropriately numbered section to Article 1 of the bill and renumbering the sections of that article accordingly:

SECTION \_\_. Section 164.052 (a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

- (A) fraudulently purchased or issued;
- (B) counterfeited; or
- (C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion; [✕]

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board; or

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy when the abortion is not necessary to prevent the death of the woman.

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

Amend Floor Amendment No. 2 by Hartnett to **CSSB 419** in proposed Section 164.052(a)(18), Occupations Code, between "woman" and the period, by inserting "or when the viable unborn child does not have a severe, irreversible brain impairment".

### **Floor Amendment No. 8**

Amend Floor Amendment No. 2 by Hartnett to **CSSB 419**, in proposed Section 164.052(a)(18), Occupations Code, between "impairment" and the period, by inserting "or when the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or paralysis".

### **Floor Amendment No. 11**

Amend **CSSB 419** by adding the following appropriately numbered section to Article 1 of the bill and renumbering the sections of that article accordingly:

SECTION \_\_. Section 164.052(a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

- (1) submits to the board a false or misleading statement, document, or certificate in an application for a license;
- (2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;
- (3) commits fraud or deception in taking or passing an examination;
- (4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;
- (5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;
- (6) uses an advertising statement that is false, misleading, or deceptive;
- (7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;
- (8) purchases, sells, barter, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;
- (9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;
- (10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:
  - (A) fraudulently purchased or issued;
  - (B) counterfeited; or
  - (C) materially altered;
- (11) impersonates or acts as a proxy for another person in an examination required by this subtitle for a medical license;
- (12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;
- (13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;
- (14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;
- (15) associates in the practice of medicine with a person:
  - (A) whose license to practice medicine has been suspended, canceled, or revoked; or
  - (B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;
- (16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion; ~~or~~
- (17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board; or
- (18) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order permitting the abortion.

**Floor Amendment No. 13**

Amend Floor Amendment No. 11 by Hartnett for **CSSB 419** as follows:

(1) On page 3, line 9, between "order" and "permitting" insert ", as provided by Sections 33.003 or 33.004, Family Code,"

(2) On page 3, line 10, after the word "abortion" and before the period insert ", unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian".

**Floor Amendment No. 14**

Amend Floor Amendment No. 11 by Hartnett to **CSSB 419**, in proposed 164.052(a)(18), Occupations Code, by striking "permitting" and substituting "authorizing the minor to consent to".

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

Amend **CSSB 419** (House committee printing) on third reading as follows:

(1) In Section 1.11 of the bill, in added Section 153.0015(a), Occupations Code (page 8, lines 18 and 19), strike "Texas State Board of Physician Assistant Examiners" and substitute "Texas Physician Assistant Board".

(2) In Article 2 of the bill (page 43, lines 12–15), strike SECTION 2.01 and substitute the following:

SECTION 2.01. Section 204.002, Occupations Code, is amended to read as follows:

Sec. 204.002. DEFINITIONS. In this chapter:

(1) "Medical board" means the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

(2) "Physician assistant board" means the Texas [~~State Board of~~] Physician Assistant Board [~~Examiners~~].

(3) In Section 2.35(a) of the bill (page 68, lines 2 and 3), strike "Texas State Board of Physician Assistant Examiners" and substitute "Texas Physician Assistant Board".

(4) In Section 2.35(b) of the bill (page 68, lines 8 and 9), strike "Texas State Board of Physician Assistant Examiners" and substitute "Texas Physician Assistant Board".

(5) In Section 2.36(a) of the bill (page 68, line 19), strike "Texas State Board of Physician Assistant Examiners" and substitute "Texas Physician Assistant Board".

(6) In Section 2.36(b) of the bill (page 69, lines 1 and 2), strike "Texas State Board of Physician Assistant Examiners" and substitute "Texas Physician Assistant Board".

(7) In Section 2.36(c) of the bill (page 69, line 7), strike "authority of the Texas State Board of Physician Assistant Examiners" and substitute "authority of the Texas Physician Assistant Board".

(8) In Section 2.36(c) of the bill (page 69, lines 9 and 10) strike "filed with the Texas State Board of Physician Assistant Examiners" and substitute "filed with the Texas Physician Assistant Board".

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

SECTION \_\_. The heading to Subchapter B, Chapter 204, Occupations Code, is amended to read as follows:

SUBCHAPTER B. TEXAS [~~STATE BOARD OF~~] PHYSICIAN  
ASSISTANT BOARD [~~EXAMINERS~~]

SECTION \_\_. Section 204.051, Occupations Code, is amended to read as follows:

Sec. 204.051. TEXAS [~~STATE BOARD OF~~] PHYSICIAN ASSISTANT BOARD [~~EXAMINERS~~]. (a) The Texas [~~State Board of~~] Physician Assistant Board [~~Examiners~~] is an advisory board to the Texas State Board of Medical Examiners.

(b) A reference in any other law to the former Texas State Board of Physician Assistant Examiners means the Texas Physician Assistant Board.

**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 419** on third reading by striking Subdivision (18), Subsection (a), Section 164.052, Occupations Code, as added to the bill by Amendment No. 2 by Hartnett and amended by Amendment No. 3 by Hartnett and Amendment No. 8 by Raymond, and substituting:

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment;

or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or paralysis.

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

Amend Floor Amendment No. 2 on Third Reading by Raymond to **CSSB 419** in proposed Subdivision (18), Subsection (a), Section 164.052, Occupations Code (page 1, line 15), between "or" and "paralysis" by inserting "imminent severe, irreversible".

**Floor Amendment No. 5 on Third Reading**

Amend **CSSB 419** on third reading as follows:

(1) Strike the proposed introductory language to amended Section 164.052, Occupations Code, and substitute the following:

SECTION \_\_. Section 164.052, Occupations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(2) In amended Section 164.052(a)(17), Occupations Code, as amended by Amendment No. 11 by Hartnett, strike "board; or" and substitute "board; ;".

(3) In proposed Section 164.052(a)(18), Occupations Code, as added by Amendment No. 11 by Hartnett, strike the period and substitute the following:

;

(19) performs an abortion on a pregnant unemancipated minor, unless the physician performing the abortion or the physician's agent obtains:

(A) from the minor's parent who appears in person at the facility where the abortion is to be performed, if the minor does not have a managing conservator or guardian, a copy of the parent's proof of identification and a completed, signed form with the following statement:

"I certify that I, \_\_\_\_\_ (insert parent's name), am the parent of (insert minor daughter's name) and have consented to \_\_\_\_\_ (insert physician's name) performing an abortion on \_\_\_\_\_ (insert minor daughter's name). I understand that any person who intentionally, knowingly, recklessly, or with criminal negligence makes a fraudulent statement in this regard commits an offense punishable by law.

\_\_\_\_\_  
Signature of parent  
\_\_\_\_\_  
Date of signature"; or

(B) from the minor's court-appointed managing conservator or guardian who appears in person at the facility where the abortion is to be performed a copy of the conservator's or guardian's proof of identification and a completed, signed form with the following statement:

"I certify that I, \_\_\_\_\_ (insert conservator's or guardian's name), am the conservator or guardian of \_\_\_\_\_ (insert minor's name) and have consented to \_\_\_\_\_ (insert physician's name) performing an abortion on \_\_\_\_\_ (insert minor's name). I understand that any person who intentionally, knowingly, recklessly, or with criminal negligence makes a fraudulent statement in this regard commits an offense punishable by law.

\_\_\_\_\_  
Signature of conservator or guardian  
\_\_\_\_\_  
Date of signature.

(a-1) A person who is unable to produce satisfactory proof of the identity, the relationship, or any other fact required under Subsection (a)(18), or a pregnant female whose ability to obtain an abortion is affected by Subsection (a)(18), may file a petition or motion with any county court at law, court having probate jurisdiction, or district court, including a family district court, of the county in which the person resides or of the county in which the abortion is to be performed. The judge of the court, after conducting a hearing in accordance with the required procedures and determining by a preponderance of the evidence the truth of the requisite fact or facts, shall issue an order authorizing the physician to perform the abortion.

(a-2) An order authorizing a physician to perform an abortion issued as provided by Subsection (a-1) may not be appealed. A person whose petition or motion submitted under Subsection (a-1) is denied may appeal to the court of appeals having jurisdiction over civil matters in the county in which the application was filed.

**Floor Amendment No. 6 on Third Reading**

Amend Floor Amendment No. 5 on Third Reading by Miller to **CSSB 419** by striking the text of the amendment and substituting the following:

Amend **CSSB 419** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 164.052, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor under Subsection (a). The form executed to obtain consent or any other required documentation must be retained by the physician until the later of the fifth anniversary of the date of the minor's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 419** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Harris, Eltife, Deuell, and Zaffirini.

### CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Carona in Chair, at 12:20 p.m. announced the conclusion of morning call.

### HOUSE BILL 2339 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 2339** at this time on its second reading:

**HB 2339**, Relating to the provision of mail ballots to overseas voters and to conforming adjustments to related dates, deadlines, and procedures.

The bill was read second time.

Senator Jackson offered the following committee amendment to the bill:

#### Committee Amendment No. 1

Amend **HB 2339** as follows:

On page 11, lines 15-25, strike Subsection (a) and substitute the following Subsection (a):

(a) Except as provided by Subsection (f), a ~~A~~ candidate's application for a place on a special election ballot must be filed not later than:

(1) 5 p.m. of the 67th day before election day, if election day is on or after the 70th day after the date the election is ordered;

(2) 5 p.m. of the 31st day before election day, if election day is on or after the 36th day and before the 70th day after the date the election is ordered; or

(3) [(2)] 5 p.m. of a day fixed by the authority ordering the election, which day must be not earlier than the fifth day after the date the election is ordered and not later than the 20th day before election day, if election day is before the 36th day after the date the election is ordered.

The amendment to **HB 2339** 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 Jackson offered the following amendment to the bill:

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

Amend **HB 2339** (Senate committee printing) by adding the following appropriately numbered sections to the bill and renumbering the remaining sections appropriately:

SECTION 1. \_\_. Chapter 62, Election Code, is amended by adding Section 62.016 to read as follows:

Sec. 62.016. NOTICE OF ACCEPTABLE IDENTIFICATION OUTSIDE POLLING PLACES. The presiding judge shall post in a prominent place on the outside of each polling location notice that a provisional ballot will be provided to a person who executes the appropriate affidavit and a list of the acceptable forms of photographic and nonphotographic identification. The notice and list must be printed:

- (1) in English, Spanish, and any other language appropriate to the precinct in which the polling place is located; and
- (2) using a font that is at least 24 point.

SECTION 1. \_\_. Section 63.001, Election Code, is amended by amending Subsections (b), (c), (d), and (f) and adding Subsection (g) to read as follows:

(b) On offering to vote, a voter must present to an election officer at the polling place the voter's voter registration certificate and either:

- (1) one form of identification listed in Section 63.0101(a); or
- (2) two different forms of identification listed in Section 63.0101(b) [to an election officer at the polling place].

(c) On presentation of the documentation required by Subsection (b) [a registration certificate], an election officer shall determine whether the voter's name on the registration certificate is on the list of registered voters for the precinct.

(d) If the voter's name is on the precinct list of registered voters and the voter's identity can be verified from the proof presented, the voter shall be accepted for voting.

(f) After determining whether to accept a voter, an election officer shall return the voter's documentation [registration certificate] to the voter.

(g) If the requirements for identification prescribed by Subsection (b)(1) or (2) are not met, the voter shall be accepted for provisional voting only under Section 63.011.

SECTION 1. \_\_. Chapter 63, Election Code, is amended by adding Section 63.0012 to read as follows:

Sec. 63.0012. USE OF ADDRESS ON IDENTIFICATION. (a) This section applies only to a voter who:

(1) presents a registration certificate;

(2) is on the list of registered voters for the precinct; and

(3) confirms the address on the list of registered voters is current under

Section 63.0011.

(b) In verifying the identity of a voter described by Subsection (a) under Section 63.001, an election officer may not consider whether the voter's address on a form described by Section 63.001(b)(1) or (2) matches the voter's address on the registration certificate or the list of registered voters.

SECTION 1. \_\_. Section 63.006(a), Election Code, is amended to read as follows:

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in the precinct in which the voter is offering to vote, but whose name is not on the precinct list of registered voters, shall be accepted for voting if the voter's identity can be verified from the proof presented.

SECTION 1. \_\_. Section 63.007(a), Election Code, is amended to read as follows:

(a) A voter who, when offering to vote, presents a voter registration certificate indicating that the voter is currently registered in a different precinct from the one in which the voter is offering to vote, and whose name is not on the precinct list of registered voters, shall be accepted for voting if the voter's identity can be verified from the proof presented and the voter executes an affidavit stating that the voter:

(1) is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;

(2) was a resident of the precinct in which the voter is offering to vote at the time that information on the voter's residence address was last provided to the voter registrar;

(3) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(4) is voting only once in the election.

SECTION 1. \_\_. Section 63.008(a), Election Code, is amended to read as follows:

(a) A voter who does not present a voter registration certificate when offering to vote, but whose name is on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter's voter registration certificate in the voter's possession at the polling place at the time of offering to vote and the voter's identity can be verified from the proof presented [~~voter presents proof of identification in a form described by Section 63.0101~~].

SECTION 1. \_\_. Section 63.0101, Election Code, is amended to read as follows:

Sec. 63.0101. DOCUMENTATION OF PROOF OF IDENTIFICATION. (a) The following documentation is an acceptable form [~~as proof~~] of photo identification under this chapter:

(1) a driver's license or personal identification card issued to the person by the Department of Public Safety or the equivalent agency of another state that has not expired or that expired no earlier than two years before the date of presentation [~~or a similar document issued to the person by an agency of another state, regardless of whether the license or card has expired~~];

(2) a United States military identification card that contains the person's photograph [~~form of identification containing the person's photograph that establishes the person's identity~~];

(3) a valid employee identification card that contains the person's photograph and is issued by an employer of the person in the ordinary course of the employer's business [~~birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity~~];

(4) a United States citizenship certificate [~~papers~~] issued to the person that contains the person's photograph;

(5) a United States passport issued to the person;

(6) a student identification card issued by a public or private institution of higher education that contains the person's photograph [~~official mail addressed to the person by name from a governmental entity~~];

(7) a license to carry a concealed handgun issued to the person by the Department of Public Safety;

(8) an identification card issued by a state agency of this state that contains the person's photograph; or

(9) an identification card that contains the person's photograph and is issued by a county elections administrator or a county clerk.

(b) The following documentation is acceptable as proof of identification under this chapter:

(1) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;

(2) official mail addressed to the person by name from a governmental entity;

(3) a certified copy of a birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity;

(4) United States citizenship papers issued to the person;

(5) an original or certified copy of the person's marriage license or divorce decree;

(6) court records of the person's adoption, name change, or sex change;

(7) an identification card issued to the person by a governmental entity of this state or the United States for the purpose of obtaining public benefits, including veteran's benefits, Medicaid, or Medicare;

(8) a temporary driving permit issued to the person by the Department of Public Safety;

(9) a pilot's license issued to the person by the Federal Aviation Administration or another authorized agency of the United States;

(10) a library card that contains the person's name issued to the person by a public library located in this state; or

(11) a hunting or fishing license issued to a person by the Parks and Wildlife Department [or

](8) any other form of identification prescribed by the secretary of state].

(c) The commissioners court of a county may authorize the county elections administrator or the county clerk, as applicable, to issue photo identification cards that may be used as proof of a voter's identification under Subsection (a).

SECTION 1. \_\_. Sections 63.011(a) and (b), Election Code, are amended to read as follows:

(a) A person to whom Section 63.001(g), 63.008(b), or 63.009(a) applies may cast a provisional ballot if the person executes an affidavit stating that the person:

(1) is a registered voter in the precinct in which the person seeks to vote; and

(2) is eligible to vote in the election.

(b) A form for the affidavit shall be printed on an envelope in which the provisional ballot voted by the person may be placed and must include a space for entering the identification number of the provisional ballot voted by the person and a space for an election officer to indicate whether the person presented proof of identification as required by Section 63.001(b)(1) or (2). The affidavit form may include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. The secretary of state shall prescribe the form of the affidavit under this section.

SECTION 1. \_\_. Section 65.054(b), Election Code, is amended to read as follows:

(b) A provisional ballot may be accepted only if:

(1) the board determines that, from the information in the affidavit or contained in public records, the person is eligible to vote in the election; and

(2) the voter presents proof of identification as required by Section 63.001(b)(1) or (2):

(A) at the time the ballot was cast; or

(B) in the period prescribed under Section 65.0541.

SECTION 1. \_\_. Subchapter B, Chapter 65, Election Code, is amended by adding Section 65.0541 to read as follows:

Sec. 65.0541. PRESENTATION OF IDENTIFICATION FOR CERTAIN PROVISIONAL BALLOTS. (a) A voter who is accepted for provisional voting under Section 63.011 because the voter does not present proof of identification as required by Section 63.001(b)(1) or (2) may submit proof of identification to the voter registrar by personal delivery or by mail for examination by the early voting ballot board not later than the fifth day after the date of the election.

(b) The early voting ballot board shall accept a provisional ballot under Section 65.054 if the voter:

(1) presents proof of identification in the manner required by this section; and

(2) is otherwise eligible to vote in the election.

(c) The office of the voter registrar shall be open on a Saturday that falls within the five-day period described by Subsection (a) for a voter to present identification as provided under this section.

(d) The secretary of state shall prescribe procedures as necessary to implement this section.

SECTION 1. \_\_. Section 521.422, Transportation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), the [The] fee for a personal identification certificate is:

- (1) \$15 for a person under 60 years of age;
- (2) \$5 for a person 60 years of age or older; and
- (3) \$20 for a person subject to the registration requirements under Chapter 62, Code of Criminal Procedure.

(d) The department may not collect a fee for a personal identification certificate issued to a person who executes an affidavit stating that the person is financially unable to pay the required fee and:

(1) who is a registered voter in this state and presents a valid voter registration certificate; or

(2) who is eligible for registration under Section 13.001, Election Code, and submits a registration application to the department.

SECTION 1. \_\_. The changes in law made by this Act by amending Chapters 62, 63, and 65, Election Code, take effect only if:

(1) the United States District Court for the District of Columbia issues a declaratory judgment under 42 U.S.C. Section 1973c that those changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in 42 U.S.C. Section 1973b(f)(2); or

(2) the secretary of state submits the changes to the United States Attorney General under 42 U.S.C. Section 1973c and the attorney general does not interpose an objection within the time provided by that section.

The amendment was read.

Senator Jackson withdrew Floor Amendment No. 1.

Senator Jackson offered the following amendment to the bill:

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

Amend **HB 2339** by inserting the following appropriately numbered sections of the bill and by renumbering subsequent sections of the bill accordingly:

SECTION \_\_. Chapter 140, Local Government Code, is amended by adding Section 140.008 to read as follows:

Sec. 140.008. EXPENDITURE OF FUNDS BY SCHOOL DISTRICT TO ADVERTISE ELECTION MEASURE. (a) In this section, "measure" has the meaning assigned by Section 1.005, Election Code.

(b) A school district may not spend funds on advertising, other promotional materials, or educational materials related to an election or measure for the period beginning on the 60th day before the date of an election and ending on election day.

(c) This section does not apply to the expenditure of funds for notice or other publications required by the Election Code, another statute, or in response to an open records request under Chapter 552, Government Code.

The amendment was read.

On motion of Senator Jackson, further consideration of **HB 2339** was postponed to a time certain of 3:00 p.m. today.

Question — Shall Floor Amendment No. 2 to **HB 2339** be adopted?

### **SENATE BILL 1830 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 1830** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1830** (House committee printing) by adding the following appropriately numbered section:

SECTION \_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.078 through 531.082 to read as follows:

Sec. 531.078. QUALITY ASSURANCE FEES ON CERTAIN WAIVER PROGRAM SERVICES. (a) In this section, "gross receipts" means money received as compensation for services under an intermediate care facilities for the mentally retarded waiver program such as a home and community services waiver or a community living assistance and support services waiver. The term does not include a charitable contribution, revenues received for services or goods other than waivers, or any money received from consumers or their families as reimbursement for services or goods not normally covered by the waivers.

(b) The executive commissioner by rule shall modify the quality assurance fee program under Subchapter H, Chapter 252, Health and Safety Code, by providing for a quality assurance fee program that imposes a quality assurance fee on persons providing services under a home and community services waiver or a community living assistance and support services waiver.

(c) The executive commissioner shall establish the fee at an amount that will produce annual revenues of not more than six percent of the gross receipts of a person from services the person provides under the waiver.

(d) The executive commissioner shall adopt rules governing:

(1) the reporting required to compute and collect the fee and the manner and times of collecting the fee; and

(2) the administration of the fee, including the imposition of penalties for a violation of the rules.

(e) Fees collected under this section shall be deposited in the waiver program quality assurance fee account.

Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT. (a) The waiver program quality assurance fee account is a dedicated account in the general revenue fund. The account is exempt from the application of Section 403.095. Interest earned on money in the account shall be credited to the account.

(b) The account consists of fees collected under Section 531.078 and interest earned on money in the account.

(c) Subject to legislative appropriation and state and federal law, money in the account may be appropriated only to the Department of Aging and Disability Services to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program or to offset allowable expenses under the state Medicaid program.

Sec. 531.080. REIMBURSEMENT OF WAIVER PROGRAMS. Subject to legislative appropriation and state and federal law, the Department of Aging and Disability Services shall use money from the waiver program quality assurance fee account, together with any federal money available to match money from the account, to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program.

Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of Sections 531.078-531.080 is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the quality assurance fee and the expenditure of the money collected as provided by those sections will not entitle this state to receive additional federal money under the Medicaid program, the commission shall:

(1) stop collection of the quality assurance fee; and

(2) not later than the 30th day after the date the collection of the quality assurance fee is stopped, return any money collected under Section 531.078, but not spent under Section 531.080, to the persons who paid the fees in proportion to the total amount paid by those persons.

Sec. 531.082. EXPIRATION OF QUALITY ASSURANCE FEE ON WAIVER PROGRAMS. If Subchapter H, Chapter 252, Health and Safety Code, expires, this section and Sections 531.078-531.081 expire on the same date.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1830** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Averitt, Duncan, Ogden, and Whitmire.

### HOUSE BILL 3423 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 3423** at this time on its second reading:

**HB 3423**, Relating to the creation of the Victoria County Groundwater Conservation District; providing authority to impose a tax and issue bonds; abolishing the Crossroads Groundwater Conservation District.

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 3423 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 3423** 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 CONCURRENT RESOLUTION 41**

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, **SB 1708** has passed the Texas Senate and the Texas House of Representatives and is now in the office of the governor; and

WHEREAS, Further consideration of the bill by the senate and the house of representatives is necessary; now, therefore, be it

RESOLVED, by the 79th Legislature of the State of Texas, That the governor be hereby requested to return Senate Bill No. 1708 to the senate for further consideration; and, be it further

RESOLVED, That the action of the president of the senate and the speaker of the house of representatives in signing Senate Bill No. 1708 be declared null and void and that the two presiding officers be authorized to remove their signatures from the enrolled bill.

STAPLES

**SCR 41** was read.

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

All Members are deemed to have voted "Yea" on the adoption of the resolution.

### **HOUSE BILL 580 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 580** at this time on its second reading:

**HB 580**, Relating to the authority of a county to provide hazardous materials services.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

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

Amend **HB 580** as follows: on line 1-64, amend Section 353.003 by inserting the following new subsection:

(d) In relation to any hazardous material for which the county may provide hazardous material services under this chapter, a person who caused, suffered, allowed, or permitted the hazardous material to be leaked, spilled, released or abandoned is liable for the reasonable costs, damages, or expenses that are or have been incurred by the county or a third party for the management, handling, storage, and disposal of the material.

The amendment to **HB 580** 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 Gallegos offered the following amendment to the bill:

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

Amend **HB 580**, on page 2, line 2-32, strike SECTION 2 in its entirety, and substitute the following:

"SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005."

The amendment to **HB 580** 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 Gallegos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 580** 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 580 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 580** be placed on its third reading and final passage.

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

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

### **SENATE BILL 11 WITH HOUSE AMENDMENTS**

Senator Staples called **SB 11** from the President's table for consideration of the House amendments to the bill.

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

**Committee Amendment No. 1**

Amend **SB 11** (on page 1, lines 10 and 11 of engrossed version), by striking "as recommended by the United States Department of Homeland Security" and replacing with "as defined by the Texas School Safety Center in conjunction with the state office of homeland security".

**Committee Amendment No. 2**

Amend **SB 11** in SECTION 1 of the bill as follows:

(1) In added Section 37.108(a)(3), Education Code (engrossed version, page 1, line 18), strike "and".

(2) In added Section 37.108(a), Education Code (engrossed version, page 1, line 20), strike the period and substitute:

; and

(5) a system for providing immediate notification through a variety of communication methods to the parents or guardians of affected district students in the event of an emergency.

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

Amend **SB 11** on third reading as follows:

(1) In the recital to SECTION 1 of the bill, strike "Section 37.108" and substitute "Section 37.108 and 37.1085".

(2) In SECTION 1 of the bill, at the end of added Section 37.108, Education Code, insert the following:

Sec. 37.1085. ADDITIONAL TRAINING. (a) A school district that employs a school district peace officer under Section 37.081, may require each officer to attend a security training program for school resource officers and school district peace officers.

(b) The training program must use a curriculum that incorporates learning objectives approved by the commissioner and developed jointly by the Bill Blackwood Law Enforcement Management Institute of Texas at Sam Houston State University and the Texas School Safety Center at Texas State University regarding:

(1) multihazard emergency operations plans;

(2) security audits;

(3) safety training programs; and

(4) discipline management practices or behavior management practices that are consistent with Section 37.0021, Education Code, and the procedures adopted under that section.

(c) The training program curriculum must provide information on the areas related to school security described in Subsection (b) and should distinguish between appropriate safety and discipline management practices or behavior management practices to be applied by a school resource officer or school district peace officer who has been authorized to carry a weapon under Section 37.081, Education Code, and those practices to be applied by a school resource officer or school district peace officer who is not authorized to carry a weapon.

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_. The Bill Blackwood Law Enforcement Management Institute of Texas and the Texas School Safety Center shall develop the curriculum for the training program required under Section 37.1085, Education Code, as added by this Act, not later than January 1, 2006.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 11** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Staples, Chair; Shapiro, Shapleigh, Lindsay, and Ellis.

**(Senator Brimer in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2525 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 2525** at this time on its second reading:

**CSHB 2525**, Relating to contracts by governmental entities for construction projects and related professional services and to public works performance and payment bonds.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2525** as follows:

(1) In SECTION 2, Sec. 2264.427, add Subsection (b) to read as follows:

(b) The injunctive relief provided by this section does not apply to enforcement of a contract entered into by a state agency that has a formal administrative appeals process regarding the award of the contract.

The amendment to **CSHB 2525** 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 Carona offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2525** by adding the following appropriately numbered section to the bill and renumbering the remaining sections of the bill accordingly:

SECTION \_\_. Subchapter C, Chapter 452, Transportation Code, is amended by adding Section 452.1095 to read as follows:

Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR CERTAIN AUTHORITIES. Chapter 2264, Government Code, does not apply to an authority consisting of one subregion governed by a subregional board created under Subchapter O.

The amendment to **CSHB 2525** 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 West offered the following amendment to the bill:

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

Amend **CSHB 2525** by adding a new section appropriately numbered \_\_ to read as follows:

Section \_\_. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.168 to read as follows:

Section 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR CERTAIN PURPOSES. The board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

The amendment to **CSHB 2525** 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 West offered the following amendment to the bill:

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

Amend **CSHB 2525** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_. Section 44.0311(a), Education Code, is amended to read as follows:

(a) This subchapter does not apply [~~applies~~] to junior college districts.

SECTION \_\_. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0103 to read as follows:

Sec. 130.0103. POLICY AND REPORT REGARDING HISTORICALLY UNDERUTILIZED BUSINESSES. (a) In this section, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(b) This section applies only to a junior college district located wholly or partially in a county with a population of one million or more.

(c) Each junior college district shall adopt a policy stating its commitment to developing, maintaining, and enhancing participation by historically underutilized businesses in all phases of the district's procurement processes in order to support, to

the greatest extent feasible, the efforts of historically underutilized businesses to compete for purchases of equipment, supplies, and services and for construction project contracts.

(d) Annually, each junior college district shall publish a report of the total number of contracts awarded by the district in the preceding fiscal year and the number of those contracts awarded to historically underutilized businesses. The report must be published in a newspaper of general circulation in the county in which the majority of the territory or population of the district is located not later than the 60th day following the last day of the district's fiscal year.

SECTION \_\_. Chapter 130, Education Code, is amended by adding Subchapters K and L to read as follows:

SUBCHAPTER K. PURCHASING CONTRACTS OTHER THAN  
CONSTRUCTION CONTRACTS

Sec. 130.251. DEFINITIONS. In this subchapter:

(1) "Board of trustees" means the governing board of a district.

(2) "District" means a public junior college district.

(3) "Purchase of goods":

(A) includes:

(i) contracting for the rights to use rather than own goods; and

(ii) purchase of the materials and labor incidental to the delivery and installation of personal property; and

(B) does not include the purchase or lease of real property.

(4) "Services" does not include:

(A) construction services; or

(B) professional services, including services of an architect, engineer, auditor, accountant, attorney, or fiscal agent.

Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID." (a) The terms "bidder" and "vendor" may be used interchangeably to identify an entity that responds to a request for competitive bids or proposals, or for offers or qualifications.

(b) The term "bid" may be used to refer to a competitive bid or proposal, or to an offer, or to a statement of qualifications.

Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any conflict, this subchapter prevails over any other law relating to the purchase of goods and services by a district other than a law relating to contracting with historically underutilized businesses.

Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise provided by this subchapter, all contracts for the purchase by a district of goods or services valued at \$35,000 or more in the aggregate for each 12-month fiscal year shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive sealed bids;

(2) competitive sealed proposals;

(3) the reverse auction procedure defined by Section 2155.062(d), Government Code; or

(4) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Only one of the methods listed in Subsection (a) may be used for any individual contract. The district must determine which method provides the best value for the district before publishing the notice required by Section 130.258.

(c) If the district uses the competitive sealed proposal method, the district shall:

(1) reveal when the proposals are opened the names of the companies submitting proposals; and

(2) keep the contents of the proposals confidential until the district concludes negotiations and awards a contract.

(d) For professional services not covered by Subchapter A, Chapter 2254, Government Code, including services rendered by a financial consultant, an auctioneer, a personnel services contractor, a travel agent, a technology or educational consultant, or a business engaged to teach approved courses, a district may contract for the professional services in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by Subsection (a).

(e) A district may purchase an item or service that is available from only one source without complying with Subsection (a), including:

(1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;

(2) a film, recording, periodical, manuscript, or book or computer software;

(3) a utility service, including gas or water;

(4) a captive replacement part or component for equipment;

(5) a product needed to match or work with like products; and

(6) technical or specialized services, including advertising, audio/video production, and the repair and maintenance of specialized equipment.

(f) Without complying with Subsection (a), a district may purchase advertising services, meeting and catering services, and travel services, including airfare, ground transportation, and lodging. The district shall exercise reasonable and prudent care to determine whether a contract with a company will provide the best value to the district. The district shall document the process for selecting the provider of the services and shall maintain a list of companies contacted and the basis for selecting the provider. Any company that has provided written notice to the district that it is interested in being considered as a supplier of services covered by this subsection shall be given the opportunity to make an offer to provide the services. After rating and ranking the offers, the district shall attempt to negotiate a contract with the highest ranked company. If a contract cannot be negotiated with the highest ranked company, the next highest ranked company shall be contacted.

(g) Without complying with Subsection (a), a district may purchase an item or service under:

(1) an interlocal contract under Chapter 791, Government Code;

(2) a catalog purchase as provided by Subchapter B, Chapter 2157, Government Code; or

(3) a contract established by the Texas Building and Procurement Commission or Department of Information Resources, including a contract for the purchase of travel services, telephone service, computers, and computer-related equipment and software.

(h) If the Texas Building and Procurement Commission, an institution of higher education as defined by Section 61.003, or a political subdivision of this state has entered into a contract with a company to provide goods or services other than construction services, then during the term of the contract a district may purchase the goods or services directly from the company if the company agrees to sell the goods or services to the district in accordance with the terms and conditions of the original contract at the same cost or at a cost lower than that stated in the original contract. The purchase satisfies the requirements of this subchapter if the original contract was awarded in compliance with the statutory requirements applicable to the governmental entity that awarded the contract and the district's purchase order references the original contract and identifies the parties to the contract. If the Texas Building and Procurement Commission is a party to the original contract, the district may use the contract under this section only if the district is a member of the Texas Building and Procurement Commission Cooperative Purchasing Program.

Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may acquire insurance using a two-step request for proposals process. In the first step, the district shall determine which insurance companies are represented by agents interested in providing insurance for the district. If more than one agent indicates a desire to represent the same company, the agent with the longest and most substantial relationship with the insurance company shall be authorized to submit a proposal for the designated insurance company. In the second step, the district shall notify the interested agents as to which insurance companies the agents represent and request the agents to submit proposals for providing insurance.

(b) In notifying the interested agents to begin the second step, the district is not required to comply with Section 130.258. However, the district in the request for proposals shall give the interested agents notice of the date, time, and place where proposals are to be submitted. Proposals received after the date and time stated in the request for proposals may not be considered.

Sec. 130.255. MULTIYEAR CONTRACTS. A multiyear contract must include a provision that permits termination at the end of each fiscal year.

Sec. 130.256. EVALUATION AND AWARD OF CONTRACT. (a) Except as otherwise provided by this subchapter, a district shall award a contract to the lowest responsible bidder offering the best value to the district according to the selection criteria established by the district. The district shall publish in the request for bids, proposals, or qualifications the criteria the district will use to evaluate the offers and the relative weights given to the criteria that are known at the time of the publication.

(b) In determining the lowest responsible bidder, the district may consider:

(1) the purchase price;

(2) the reputation of the bidder and of the bidder's goods or services;

(3) the quality of the bidder's goods or services;

(4) the extent to which the offered goods or services meet the district's

needs;

(5) the bidder's past relationship with the district;

(6) the total long-term cost to the district to acquire the vendor's goods or services;

(7) the extent to which the offers comply with the requirements of the request for bids, proposals, or qualifications;

(8) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service;

(9) the bidder's ability to provide future maintenance, repair parts, and service;

(10) the installation cost;

(11) the cost of operation and maintenance;

(12) any other relevant factor specifically listed in the request for bids or proposals;

(13) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(14) the bidder's compliance with a requirement for attendance at a mandatory site visit or pre-bid conference; and

(15) the bidder's safety record, if:

(A) the district has adopted a written definition and criteria for accurately determining the safety record of a bidder;

(B) the district has given notice to prospective bidders in the request for bids that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

(C) the district's determinations are not arbitrary and capricious.

(c) A district may reject all bids or proposals or parts of bids or proposals if the rejection serves the district's interest.

(d) The district shall provide all bidders with the opportunity to bid on the same items or services on equal terms and have bids judged according to the same standards as those set forth in the request for bids.

(e) The district shall receive bids under this subchapter in a fair and confidential manner.

(f) Bids may be opened only by the district at a public meeting in a district-owned or district-controlled facility. At the time the district opens a competitive bid, the district shall read aloud the name of the bidder and the total bid amount if a member of the public is present and the bid is of a type that should contain a bid amount. At least two district employees or trustees must be present at the bid opening. When opening proposals or qualifications, the district shall read aloud only the name of the respondents and may not disclose the contents of a proposal on opening the proposal or during negotiations with competing bidders.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. If there is a discrepancy between the total price and the unit price of a bid, the unit price prevails. If there is a discrepancy between the written price and the numerical price of a bid, the written price prevails.

(h) This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(i) The district shall document the basis of its selection and shall make its evaluations public not later than the seventh day after the date the contract is awarded. The district shall state in writing in the contract file the reasons for making an award.

(j) A contract awarded in violation of this subchapter is void.

(k) If a purchase is made at the campus level in a district with independently accredited junior colleges, and the district delegates purchasing decisions to the campus level, this section applies only to the campus and this subchapter does not require the district to aggregate and jointly award the different campus purchasing contracts. A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Section 130.253(a).

(l) If district property is destroyed, stolen, or severely damaged, a building or equipment undergoes major operational or structural failure, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees determines that the delay posed by using the methods required by Section 130.253(a) would pose a material threat to personal safety or potential damage to other property or would prevent or substantially impair the conduct of classes or other essential district activities, then contracts for the replacement or repair of the property may be made by methods other than those required by Section 130.253(a).

Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE AUDITOR.

(a) The board of trustees may adopt rules and procedures for the acquisition of goods or services by the district.

(b) The state auditor may audit purchases of goods or services by the district.

Sec. 130.258. NOTICE. (a) Except as otherwise provided by this subchapter, for any method of contracting selected under Section 130.253(a), the district shall publish the notice required by this section in at least two successive issues of any newspaper of general circulation in the county in which the district's central administrative office is located. The deadline for receiving bids or proposals may not be less than 10 business days after the date of the publication of the last newspaper notice. The deadline for receiving responses to a request for qualifications may not be less than five business days after the date of the publication of the last newspaper notice. If there is not a newspaper in the county in which the district's central administrative office is located, the notice shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(b) The district may, as an alternative to publishing individual notices in a newspaper, publish on a publicly accessible Internet site the notices required by this section, provided the district publishes in a newspaper of general circulation at least one time per week the Internet address where district notices may be found. Notice posted on the Internet under this subsection must be posted every day for at least 10 business days before the deadline for receiving the bids, proposals, or responses to a request for qualifications.

(c) The notice required by this section must include:

(1) the date, time, and place for receiving and opening bids, proposals, or statements of qualifications;

(2) a description of the goods or services;

(3) the location of any mandatory site inspections or pre-bid meetings at which bid, proposal, or qualification documents may be obtained or examined; and

(4) the amount of any required bid bond, payment bond, or performance bond.

Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS. (a) As provided in a request for proposals and under rules adopted by the district, the district may discuss acceptable or potentially acceptable proposals with bidders to assess a bidder's ability to meet the solicitation requirements.

(b) After receiving a proposal but before making an award, the district may permit the bidder to revise the proposal to obtain the best final offer.

(c) The district may not disclose information derived from proposals submitted from competing bidders in conducting discussions under this section.

(d) The district shall provide each bidder an equal opportunity to discuss and revise the bidder's proposal.

Sec. 130.260. PRE-BID CONFERENCE. (a) The district may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions from prospective bidders. Notice under this subsection must be included in the notice published under Section 130.258.

(b) After the district conducts a mandatory pre-bid conference, the district may send any additional required notice for the proposed contract only to prospective bidders who attended the conference.

Sec. 130.261. IDENTICAL BIDS. If, after considering the factors described by Section 130.256, the district determines that the district has received identical bids, the district shall cast lots to determine which bidder will be awarded the contract. The district shall invite the bidders to witness the selection process under this section. The selection process must be conducted by at least two district employees or members of the district's board of trustees.

Sec. 130.262. BID DEPOSIT. (a) The district may, as the district determines necessary, require a bid deposit in an amount determined by the district. The amount of the deposit, if any, must be stated in the notice required by Section 130.258 of the invitation to bid.

(b) On the award of a contract or the rejection of all bids, the district shall refund the bid deposit of an unsuccessful bidder.

(c) For public work contracts, the bid deposit required by the district, if any, may only be in the form of a bid bond written by a surety authorized to conduct business in this state.

(d) For contracts other than public work contracts, the bid deposit required by the district, if any, may only be in the form of a bid bond written by a surety authorized to conduct business in this state or a cashier's check.

Sec. 130.263. PERFORMANCE BOND. A district may require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase of goods or services with a value of \$100,000 or more. The bond must be written by a surety authorized to conduct business in this state.

Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In this section:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(3) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(b) An officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases for the purpose of avoiding the requirements of Section 130.253 or 130.256. An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude that causes a forfeiture of an officer's public office.

(c) An officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Section 130.253 or 130.256 other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude that causes a forfeiture of an officer's public office.

(d) An officer or employee of a district commits an offense if the officer or employee knowingly violates Section 130.253 or Section 130.256 other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is subject to removal as provided by Chapter 66, Civil Practice and Remedies Code. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for this state or a political subdivision of this state, and is ineligible to receive any compensation through a contract with this state or a political subdivision of this state. This subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an injury that occurred before the commission of the offense for which the person was removed. This subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, district attorney, criminal district attorney, citizen of the county in which the district is located, or interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Sec. 130.265. ADDITIONAL REQUIREMENTS FOR PURCHASING SERVICES AND CERTAIN COMMODITIES. (a) This section applies only to:

(1) the purchase of tangible personal property, including produce, gasoline, and fuel oil, if the cost of the commodity is expected to exceed \$35,000 during a fiscal year and must be determined at the time the need for the commodity arises; and

(2) the purchase of services other than construction services or professional services.

(b) The notice requirements of Section 130.258 apply to purchases made under this section, except that the notice must specify the categories of property or services to be purchased under this section and solicit the names, addresses, and telephone numbers of vendors that are interested in supplying the property or services to the district. For each category specified by the district, the district shall create a vendor list consisting of each qualified vendor that responds to the notice and any other vendors the district elects to include.

(c) Before the district makes a purchase subject to this section in a category specified by the district, the district must obtain written or telephone price quotations from at least three vendors from the list created by the district for that category. If fewer than three vendors are on the list, the district shall contact each vendor on the list. Whenever possible, the district shall confirm telephone quotes in writing, including electronic mail or facsimile transmission. The bidding records must be retained with the district's competitive bidding records and are subject to audit. In determining from whom to purchase the property or services, the district may consider the provisions of Section 130.256.

Sec. 130.266. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR. (a) A person or business entity that enters into a contract with a district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

(c) This section does not apply to a publicly held corporation.

#### SUBCHAPTER L. SALE OF PERSONAL PROPERTY BY DISTRICT AND AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES

Sec. 130.301. SALE OF PERSONAL PROPERTY BY DISTRICT. A sale of personal property by a junior college district that is not covered by Chapter 791, Government Code, shall be solicited and awarded in the same manner as a contract for a purchase of personal property or services under Subchapter K.

Sec. 130.302. AWARD OF MISCELLANEOUS CONTRACTS FOR SERVICES. Miscellaneous contracts for services, including contracts for bookstore services, food services, and vending services, shall be solicited and awarded in the same manner as a contract for a purchase of personal property or services under Subchapter K.

SECTION \_\_. Section 271.023, Local Government Code, is amended to read as follows:

Sec. 271.023. CONFLICT OF LAWS. To the extent of any conflict, the provisions of Subchapter B, Chapter 44, Education Code, relating to the purchase of goods and services under contract by a school district and the provisions of Subchapter K, Chapter 130, Education Code, relating to the purchase of goods and services under contract by a junior college prevail over this subchapter.

SECTION \_\_. Sections 44.0311(b), 130.010, and 130.0101, Education Code, are repealed.

The amendment to **CSHB 2525** 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 Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2525** 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 2525 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 2525** 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 955 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 955** at this time on its second reading:

**CSHB 955**, Relating to the regulation of financial businesses and practices; providing civil penalties.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

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

Amend **CSHB 955** by adding a new Section 2.16 and renumbering accordingly:  
Amend Section 342.002(c) of the Texas Finance Code by striking the word "is" and adding the following "may be calculated at either 1/360th or".

The amendment was read.

Senator Deuell withdrew Floor Amendment No. 1.

Senator Carona offered the following amendment to the bill:

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

Amend **CSHB 955** in SECTION 4.01 of the bill, in amended Subsection (a), Section 14.208, Finance Code (committee printing page 8, lines 62 and 63), by striking "or directly to district court in accordance with Chapter 2001, Government Code" and substitute "in accordance with Chapter 2001, Government Code, or, in addition to any other rights or remedies for judicial review, may appeal the order to district court in accordance with Section 2001.173, Government Code".

The amendment to **CSHB 955** 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 West offered the following amendment to the bill:

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

Amend **CSHB 955** by adding the following appropriately-numbered SECTIONS and renumbering subsequent SECTIONS, if applicable, accordingly:

"SECTION \_\_. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.62 to read as follows:

Sec. 35.62. PROHIBITED ACTS WITH RESPECT TO USE OF CUSTOMERS' SOCIAL SECURITY NUMBERS. (a) In this section:

(1) "Customer" means an individual who has established or is attempting to establish an account with a person.

(2) "Financial institution" means:

(A) a bank, or a subsidiary of a bank, savings association, savings bank, or credit union maintaining an office, branch, or agency office in this state; and

(B) a financial institution as defined by 15 U.S.C. Sections 6801-6809.

(b) A person may not request a customer's social security number, or another number that includes four or more consecutive digits of a customer's social security number, as an identifier unless the number is needed to complete a credit check that is required to provide a service or product requested by the customer.

(c) A person that requests a customer's number to complete a credit check, as provided in Subsection (b), shall:

(1) destroy each record of the number by shredding, erasing, or other means after the credit check is completed; or

(2) maintain the number:

(A) for the sole purpose of allowing authorized employees to use the number to collect a debt or rent or to protect against fraud or unauthorized transactions; and

(B) in a database or other location that ensures the security and confidentiality of the number and protects against unauthorized access to, or use of, the number.

(d) When a customer's number is no longer maintained by the person as required by Subsection (c)(2), the person shall destroy each record of the number by shredding, erasing, or other means.

(e) A person may not request an existing customer's social security number, or another number that includes four or more consecutive digits of an existing customer's social security number, to verify the customer's relationship with the person.

(f) This section does not apply to:

(1) a financial institution, mortgage lender, or mortgage broker, or a person duly licensed under Chapter 348 of the Finance Code;

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code;

(3) a governmental entity; or

(4) a person who is required to maintain and disseminate a privacy policy under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(5) a retail electric utility provider as defined by Section 31.002 of the Utilities Code.

(g) A person that violates this section is liable to the state for a civil penalty of \$1,000 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section. The attorney general may bring an action in the name of the state to restrain or enjoin a business from violating this section.

SECTION \_\_. (a) The Office of Consumer Credit Commissioner, with the assistance of the attorney general, shall conduct a study to develop and evaluate proposals to limit the use of social security numbers by businesses in this state.

(b) In conducting the study, the consumer credit commissioner shall receive input from credit reporting agencies, businesses, and consumer groups.

(c) The consumer credit commissioner shall evaluate whether, when a business contacts a credit reporting agency for a credit check of a customer, the business and credit reporting agency should create a unique code that:

(1) would allow the business to retrieve the social security number of the customer for collection purposes; and

(2) permit the business to delete the social security number of the customer from the records of the business.

(d) The consumer credit commissioner shall determine the date on which the system described by Subsection (c) of this section could be implemented and the feasibility of monitoring compliance with the system.

(e) Not later than July 1, 2006, the consumer credit commissioner shall submit a report to the legislature regarding the results of the study conducted under this section.

(f) This section expires September 1, 2006.

The amendment was read.

Senator West offered the following amendment to Floor Amendment No. 3:

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

Amend Floor Amendment No. 3 to **CSHB 955** by adding the following appropriately numbered item to the amendment:

( ) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_. The change in law made by Section 35.62(e), Business & Commerce Code, as added by this Act, applies only to a request for a social security number that is made on or after September 1, 2006. A request made before September 1, 2006, is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendment to Floor Amendment No. 3 to **CSHB 955** 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.

Question recurring on the adoption of Floor Amendment No. 3 to **CSHB 955**, 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. 3 as amended.

Senator West offered the following amendment to the bill:

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

Amend **CSHB 955** (Senate committee printing) by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

#### ARTICLE \_\_. DISCLOSURE OF HOME MORTGAGE PURCHASES

SECTION \_\_.01. Subtitle B, Title 4, Finance Code, is amended by adding Chapter 351 to read as follows:

#### CHAPTER 351. DISCLOSURE OF HOME MORTGAGE PURCHASES BY CERTAIN ENTERPRISES

##### Sec. 351.001. DEFINITIONS. In this chapter:

(1) "Mortgage" means a debt secured by a first lien on a manufactured home or residential real property designed principally for occupancy by one to four families that is created by a deed of trust, security deed, or other security instrument.

(2) "Public use database" means the government-sponsored enterprises database containing information on mortgage loans purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation that the Department of Housing and Urban Development makes available to the public under 12 U.S.C. Section 4543.

(3) "Regulations" means the regulations under 12 C.F.R. Part 203 issued by the Board of Governors of the Federal Reserve System to implement the home mortgage disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.).

Sec. 351.002. APPLICABILITY. This chapter only applies to an enterprise as defined by 12 U.S.C. Section 4502.

Sec. 351.003. REPORTING REQUIREMENTS. (a) An enterprise shall submit to the finance commission not later than March 1 of each year a report containing information on mortgages:

(1) secured by property located in this state;

(2) purchased by the enterprise during the previous calendar year; and

(3) required to be included in the public use database for the corresponding

year.

(b) The enterprise shall include in the report, for each mortgage described by Subsection (a):

(1) the mortgage data that must be reported by a financial institution under the regulations in effect during the previous year, other than data that the finance commission determines by rule is not relevant to the purposes of this chapter; and

(2) any additional information included on the public use database that the finance commission has determined by rule is not redundant to the items required to be provided under Subdivision (1).

(c) Any report provided under Subsection (a) must include the name or identification number of the mortgage financing institution that sells a mortgage to an enterprise.

Sec. 351.004. EXEMPTIONS FROM REPORTING REQUIREMENTS. (a) The finance commission may adopt rules to exempt an enterprise from reporting information required by Section 351.003(b) on the grounds that the required information cannot be obtained by the enterprise.

(b) Before adopting a rule under Subsection (a), the finance commission shall consider:

(1) the strong bargaining position of the enterprise in its dealings with loan sellers;

(2) the prior experience of the enterprise in obtaining mortgage information from sellers; and

(3) the best practices within the mortgage financing industry of collecting and transferring mortgage information.

(c) The finance commission shall periodically review any exemption granted to an enterprise. The finance commission shall adopt a policy to apply an exemption only if the enterprise cannot obtain mortgage information even after following the best practices of collecting and transferring mortgage information.

Sec. 351.005. AVAILABILITY OF REPORT. The finance commission shall make the report submitted under Section 351.003 available to:

(1) the Texas Workforce Commission civil rights division for purposes of monitoring and promoting equal credit opportunity, fair lending, and fair housing; and

(2) the public at the cost of reproducing the report.

Sec. 351.006. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on an enterprise that fails to file a report as required by Section 351.003.

(b) The amount of the penalty may not exceed \$5,000 and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the history of previous violations;

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

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the finance commission to contest the affidavit as provided by those rules.

SECTION \_\_.02. An enterprise shall file the first report with the Finance Commission of Texas as required by Section 351.003, Finance Code, as added by this Act, not later than March 1, 2006. The first report must contain information on mortgages purchased by the enterprise during the 2005 calendar year.

The amendment was read.

Senator West withdrew Floor Amendment No. 5.

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

**CSHB 955** 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 955 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 **CSHB 955** 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.

#### **GUESTS PRESENTED**

Senator Nelson was recognized and introduced to the Senate students from the University of North Texas.

The Senate welcomed its guests.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3426 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSHB 3426** at this time on its second reading:

**CSHB 3426**, Relating to the establishment of a binational alcohol and substance abuse task force.

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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3426 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 3426** 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 2668 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2668** at this time on its second reading:

**HB 2668**, Relating to the performance by a private entity of the functions of a local child support registry or a child support enforcement agency and to the receipt, disbursement, and monitoring of child support payments.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2668** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 154.241 (g), Family Code (page 1, lines 31-33), strike "either under a contract with a county commissioners court or domestic relations office executed under Section 204.002 or under an appointment by a court" and substitute "only under a contract with a county commissioners court or domestic relations office executed under Section 204.002".

(2) Strike SECTIONS 4-16 of the bill (page 1, line 41, through page 4, line 64) and renumber subsequent SECTIONS of the bill appropriately.

The amendment to **HB 2668** 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.

**HB 2668** 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 2668 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 2668** 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 3041 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 3041** at this time on its second reading:

**HB 3041**, Relating to the designation of the structure on Spur 366 connecting the east and west levee of the Trinity River as the Margaret Hunt Hill Bridge.

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 3041 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 3041** 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)**

**COMMITTEE SUBSTITUTE****HOUSE BILL 2120 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 2120** at this time on its second reading:

**CSHB 2120**, Relating to the administration and powers of county government.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2120** as follows:

(1) Insert the following appropriately numbered section:

SECTION \_\_\_\_ . Section 281.056, Health and Safety Code, is amended by amending Subsections (b), (c), and (d) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), a district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the [The] county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district [in all legal matters].

(b-1) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a district located in:

(1) a county with a population of 650,000 or more that borders the United Mexican States;

(2) a county with a population of 3.4 million or more; or

(3) a county with a population of more than 800,000 that was not included in the boundaries of a hospital district before September 1, 2003.

(c) A [The] board that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel when the board determines that additional counsel is advisable. A board that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters when the board determines that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the [The] district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

The amendment to **CSHB 2120** 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 Lindsay offered the following amendment to the bill:

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

Amend **CSHB 2120** (Senate committee printing) as follows:

(1) In Section 49(a), strike "Except as provided by Subsection (b) of this section,".

(2) Strike all of Section 49(b).

The amendment to **CSHB 2120** 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 Seliger offered the following amendment to the bill:

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

Amend **CSHB 2120** (committee printing, on page 3, line 11) by inserting the following SECTION and renumbering subsequent SECTIONS accordingly:

SECTION 6. Article 27.18, Code of Criminal Procedure, is amended by adding Subsections (d), (e), (e-1), and (f) to read as follows:

(d) A defendant who is confined in a county other than the county in which charges against the defendant are pending may use the teleconferencing method provided by this article to enter a plea or waive a right in the court with jurisdiction over the case.

(e) A defendant who enters a plea or waiver under Subsection (d):

(1) consents to venue in the county in which the court receiving the plea or waiver is located; and

(2) waives any claim of error related to venue.

(e-1) Subsection (e) does not prohibit a court from granting a defendant's motion for change of venue during the trial of the defendant.

(f) If a defendant enters a plea of guilty or nolo contendere under Subsection (d), the attorney representing the state may request at the time the plea is entered that the defendant submit a fingerprint of the defendant suitable for attachment to the judgment. On request for a fingerprint under this subsection, the county in which the defendant is confined shall obtain a fingerprint of the defendant and use first-class mail or other means acceptable to the attorney representing the state and the county to forward the fingerprint to the court accepting the plea.

The amendment to **CSHB 2120** 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 Williams offered the following amendment to the bill:

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

Amend **CSHB 2120** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_. Section 172.003(l), Local Government Code, is amended to read as follows:

(1) "Affiliated service contractor" means an organization qualified for exemption under Section 501(c), Internal Revenue Code (26 U.S.C. Section 501(c)), as amended, that provides governmental or quasi-governmental services on behalf of a political subdivision and derives more than 25 [~~50~~] percent of its gross revenues from grants or funding from the political subdivision.

The amendment to **CSHB 2120** 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 Shapleigh offered the following amendment to the bill:

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

Amend **CSHB 2120**, by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 172.015, Local Government Code, is amended to read as follows:

Sec. 172.015. SUBROGATION; ADEQUATE RECOVERY. (a) The payor of employee benefits, whether a political subdivision, group of political subdivisions, pool, or carrier providing reinsurance to one of those entities, is [shall be] subrogated to the employees' right of recovery for personal injuries caused by the tortious conduct of a third party.

(b) A payor of employee benefits whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant employee in an amount determined under an agreement entered into between the attorney and the payor of employee benefits. In the absence of an agreement, the court shall award to the attorney, payable out of the recovery of the payor of employee benefits:

(1) a reasonable fee for recovery of the interest of the payor of employee benefits, not to exceed one-third of the payor's recovery; and

(2) a proportionate share of expenses.

(c) If the injured employee is not able to realize a complete and adequate recovery for injuries sustained as a result of the actionable fault of a third party, the payor of employee benefits is entitled to a pro rata recovery consistent with the recovery obtained by the injured employee.

SECTION \_\_. Section 172.015, Local Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment was read.

Senator Shapleigh temporarily withdrew Floor Amendment No. 5.

Senator Carona offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 2120** by inserting the following new SECTION appropriately numbered:

SECTION \_\_. Chapter 263, Local Government Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. ADVERTISING SPACE

Sec. 263.251. SALE OR LEASE OF ADVERTISING SPACE. (a) The commissioners court of a county may adopt a procedure by which the county may:

(1) lease to another entity advertising space located:

(A) in or on a building or part of a building owned by the county;

(B) on a vehicle owned by the county; or

(C) on an official county website; or

(2) sell advertising space located on correspondence distributed by the county through the United States Postal Service.

(b) The procedure must include a requirement that the county publish, before a sale or lease is made, a notice of its intent to sell or lease the advertising space. The notice must:

(1) be published:

(A) at least one time in a newspaper of general circulation in the county not earlier than the 30th day or later than the 14th day before the date the award of the sale or lease is made; and

(B) on the county's official website continuously for the 14 days immediately before the date the award of the sale or lease is made;

(2) include a description of the advertising space, including its location and a description of the part of any real or personal property that the advertising space occupies; and

(3) include a description of the procedure by which bids or proposals for the sale or lease may be submitted.

(c) Under the procedure, the commissioners court may reject any and all bids or proposals submitted.

The amendment to **CSHB 2120** 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 Fraser offered the following amendment to the bill:

#### **Floor Amendment No. 7**

Amend **CSHB 2120** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Subchapter Z, Local Government Code, is amended by adding Section 271.908 to read as follows:

Sec. 271.908. A county or municipality that enters a contract of \$10,000 or less for building or construction is not required to comply with Subsections (a) and (b) of Section 406.096, Labor Code, if the procurement is with a local micro-business as defined by Section 2006.001, Government Code, and is located within the territorial boundaries of the county or municipality.

The amendment was read.

Senator Fraser withdrew Floor Amendment No. 7.

Senator Gallegos offered the following amendment to the bill:

#### **Floor Amendment No. 8**

Amend **CSHB 2120** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 353 to read as follows:

#### CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.);

(D) the federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); or

(E) Chapter 361, Health and Safety Code.

Sec. 353.002. APPLICABILITY. This chapter applies to an incident involving hazardous material that has been leaked, spilled, released, or abandoned on any property.

Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county may provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, released, or abandoned, if:

(1) the county first provides reasonable notice to a concerned party regarding the need for the hazardous materials services so that the concerned party has a reasonable opportunity to respond to the incident involving hazardous material; and

(2) the concerned party fails to respond or fails to respond in a timely and effective manner to the incident.

(b) A county may provide limited control and containment measures that are necessary to protect human health and the environment without first complying with the requirements of Subsection (a) if the county is the first entity to arrive at a site where an incident involving hazardous material has occurred that is prepared to take action in response to the incident.

(c) If the hazardous material is natural gas released from an underground facility as defined by Section 251.002, Utilities Code, the county:

(1) must comply with the requirements of Section 251.159, Utilities Code; and

(2) may not operate any equipment or other controls or devices at the underground facility without the express permission of the operator of the facility.

Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A county, or a person authorized by contract on the county's behalf, may charge a reasonable fee, including a fee to offset the cost of providing control and containment measures under Section 353.003(b), to a concerned party for responding to a hazardous materials service call.

(b) A county, or a person authorized by contract on the county's behalf, may charge a fee for providing hazardous materials services under Section 353.003(a) only if the county has complied with the requirements of that subsection. A concerned party is not liable for a fee associated with the county's hazardous materials services

under Section 353.003(a) or a fee to offset the cost of providing control and containment measures under Section 353.003(b) if the county provides hazardous materials services under Section 353.003(a) and the county does not provide notice as required by Section 353.003(a)(1).

(c) An individual who is a concerned party does not have to pay a fee under this section if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This chapter does not apply to hazardous materials owned or possessed by a governmental entity.

The amendment was read.

Senator Gallegos temporarily withdrew Floor Amendment No. 8.

Senator Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 9**

Amend **CSHB 2120** (Senate committee printing) as follows:

(1) Insert the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Chapter 372, Local Government Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. IMPROVEMENT PROJECTS IN CERTAIN COUNTIES

Sec. 372.101. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of a district.

(2) "Commissioners court" means the governing body of the county.

(3) "County" means the county in which the public improvement project authorized by this subchapter or the district is located.

(4) "District" means a public improvement district that may be created by a county authorized under this subchapter.

(5) "Hotel" has the meaning assigned by Section 156.001, Tax Code, and includes a timeshare, overnight lodging unit, or condominium during the time the timeshare, overnight lodging unit, or condominium is rented by a person who is not the owner of the timeshare, overnight lodging unit, or condominium.

(6) "Municipality" means the municipality in whose extraterritorial jurisdiction the improvement project is to be located.

Sec. 372.102. PURPOSE. By enacting this subchapter, the legislature has created a program for economic development as provided in Section 52-a, Article III, Texas Constitution. A county eligible under this subchapter is authorized to engage in

economic development projects as provided in this subchapter, and, upon a determination of the governing body of an eligible county, may delegate the authority to oversee and manage the economic development project to an appointed board of directors. In appointing such a board of directors, the governing body of the eligible county delegates its authority to serve a public use and benefit.

Sec. 372.103. COUNTY MAY ESTABLISH DISTRICT. In the event a county determines it is in the best interest of the county, it may create a public improvement district. A district created under this subchapter is a political subdivision of this state.

Sec. 372.104. APPLICABILITY; CONFLICT OF LAWS. In the event of a conflict between this subchapter and Subchapter A, this subchapter controls.

Sec. 372.105. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PROJECTS; OPTIONAL CREATION OF PUBLIC IMPROVEMENT DISTRICT. (a) The governing body of a county with a population of one million or more, but not more than 3.3 million, may by order, upon receipt of a petition satisfying the requirements of Section 372.005, establish an economic development project in a designated portion of that county, or, if the county determines it is in the best interests of the county, create a district only in an area located in the extraterritorial jurisdiction of a municipality in that county.

(b) The order must:

(1) describe the territory in which the economic development project is to be located or the boundaries of a public improvement district;

(2) if the county has determined that the creation of a district is in the best interests of the county, specifically authorize the district to exercise the powers of this subchapter; and

(3) state whether the petition requests improvements to be financed and paid for with taxes authorized by this subchapter instead of or in addition to assessments.

Sec. 372.106. GOVERNING BODY; TERMS. If a county elects to delegate the authority granted under this subchapter, it shall appoint a board of seven directors to serve staggered two-year terms, with three or four directors' terms expiring June 1 of each year to manage the economic development project or, at the option of the county, govern the public improvement district.

Sec. 372.107. ELIGIBILITY. (a) The county must appoint directors who are at least 18 years old.

(b) If the population of the district is more than 1,000, the county must appoint as directors individuals who are at least 18 years old, reside in the district, and meet the qualifications of Section 375.063.

Sec. 372.108. VACANCIES; QUORUM. (a) A board vacancy is filled in the same manner as the original appointment.

(b) A vacant board position is not counted for the purposes of establishing a quorum of the board.

Sec. 372.109. CONFLICTS OF INTEREST. The governing body of an eligible county must comply with Chapter 171 in considering any conflicts of interest for directors.

Sec. 372.110. COMPENSATION. (a) A county is authorized to compensate the directors when they perform the duties of a director. For purposes of this section, "performs the duties of a director" means substantial performance of the management

of the district's business, including participation in board and committee meetings and other activities involving the substantive deliberation of district business and in pertinent educational programs, but does not include routine or ministerial activities such as the execution of documents or self-preparation for meetings.

(b) The county shall compensate a director not more than \$50 a day for each day that the director performs the duties of a director.

Sec. 372.111. OATH AND BOND; OFFICER ELECTIONS. As soon as practicable, a board member shall give the bond and take the oath of office in accordance with Section 375.067, and the board shall elect officers in accordance with Section 375.068.

Sec. 372.112. ELECTION DATES. (a) For an election ordered by the county under this subchapter before December 31, 2005, the uniform election dates under the Election Code in effect on January 1, 2005, apply.

(b) This section expires January 1, 2007.

Sec. 372.113. POWERS AND DUTIES. (a) A county operating under this subchapter has the powers and duties of:

(1) a county development district under Chapter 383, except for Section 383.066;

(2) a road district created by a county under Section 52, Article III, Texas Constitution; and

(3) a municipality or county under Chapter 380 or 381, or under Section 372.003(b)(9).

(b) A county is authorized to manage an economic development project in a designated portion of the county, or to create a public improvement district and to delegate to an appointed board of directors the county's powers and duties, as provided in this subchapter.

(c) A county may not delegate to a district the powers and duties of a road district or provide water, wastewater, or drainage facilities under this section unless the municipality and county both consent by resolution.

Sec. 372.114. DEVELOPMENT AGREEMENTS. A county may enter into a development agreement with owners of land in the territory designated for the economic development project or, if the county has determined to create a district, that entity is authorized to enter into an agreement, for a term not to exceed 30 years on any terms and conditions the county or the board considers advisable. The parties may amend the agreement.

Sec. 372.115. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION; TAXES. (a) A county may enter into an agreement only on terms and conditions the commissioners court, and any board of directors of a district created under this subchapter, consider advisable, to make a grant or loan of public money to promote state or local economic development and to stimulate business and commercial activity in the territory where the economic development project is located, or in the district, including a grant or loan to induce the construction of a tourist destination or attraction in accordance with Chapter 380 or 381.

(b) If the county so authorizes it, an election may be ordered by the district created by the county so that a grant or loan agreement may be approved by the voters of the district at an election held in the district for that purpose, the grant or loan may

be payable over a term of years and be binding and enforceable on the district in accordance with the terms of the agreement and the conditions of the election, which may, subject to the requirements of Sections 372.127(c), include the irrevocable obligation to impose an ad valorem tax, sales and use tax, or hotel occupancy tax for a term not to exceed 30 years. If authorized at the election, the county appointed board may contract and covenant to pay the taxes to the recipient of the grant or loan in accordance with the agreement.

(c) If the property owners petitioning a county to create a district under Section 372.105 propose that the district be created only to provide economic development grants or loans and road improvements and not to impose assessments, and the county determines that the creation of the district is in the best interests of the county, the district is not required to prepare a feasibility report, a service plan or assessment plan, or prepare an assessment roll as required by this chapter.

Sec. 372.116. CONTRACTS; GENERAL. (a) In the event the county creates a district, the district may contract with any person, including the municipality or county, on the terms and conditions and for a period of time the board determines, to:

(1) accomplish any district purpose, including a contract to pay, repay, or reimburse from tax proceeds or another specified source of money any costs, including reasonable interest, incurred by a person on the county's or the district's behalf, including all or part of the costs of an improvement project; and

(2) receive, administer, and perform the county's or the district's duties and obligations under a gift, grant, loan, conveyance, or other financial assistance arrangement relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or another person of an improvement project or proposed improvement project.

(b) A state agency, municipality, county, other political subdivision, corporation, or other person may contract with the county or district to carry out the purposes of this subchapter.

Sec. 372.117. PROCUREMENT CONTRACTS. In the event a county creates a district under this subchapter, such district may contract for materials, supplies, and construction:

(1) in accordance with the laws applicable to counties; or

(2) in the same manner that a local government corporation created pursuant to Chapter 431, Transportation Code, is authorized to contract.

Sec. 372.118. RULES; ENFORCEMENT. A county may authorize the board of a district created under this subchapter to adopt rules:

(1) to administer and operate a district authorized by the commissioners court;

(2) for the use, enjoyment, availability, protection, security, and maintenance of district property, including facilities; or

(3) to provide for public safety and security in the district.

Sec. 372.119. FEES. A county may authorize a board to establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of its facilities or other property, or for services or improvement projects.

Sec. 372.120. RULES; REGULATION OF ROADS AND OTHER PUBLIC AREAS. (a) A county may authorize a board to adopt rules to regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the district, if the use is for a public purpose.

(b) To the extent a rule adopted under this section conflicts with a rule, order, ordinance, or regulation of the county or municipality, the county or municipality rule, order, ordinance, or regulation controls.

(c) A rule adopted under this section may provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas in the area of the district or economic development project.

Sec. 372.121. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the county may delegate to the district the authority to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the territory targeted by the county for an economic development project, or the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located. If the district is located outside the extraterritorial jurisdiction of a municipality, a road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each county in which the district is located.

Sec. 372.122. UTILITIES. (a) This subchapter does not grant the board appointed by a county under this subchapter any right-of-way management authority over public utilities.

(b) To the extent the construction, maintenance, or operation of a project under this subchapter requires the relocation or extension of a public utility facility, the district shall reimburse the public utility for all costs associated with the relocation, removal, extension, or other adjustment of the facility.

Sec. 372.123. SERVICE PLAN REQUIRED. The commissioners court may require an annual service plan, in the manner provided for by Section 372.013, which must meet the commissioners court's review and approval.

Sec. 372.124. NO EMINENT DOMAIN. If a county creates a district under this subchapter, the district may not exercise the power of eminent domain.

Sec. 372.125. NO TAX ABATEMENTS. A county may not grant a tax abatement or enter into a tax abatement agreement for a district created under this subchapter.

Sec. 372.126. BONDS; NOTES. (a) The county commissioners court must grant prior approval to a district it creates under this subchapter before a district is authorized to issue bonds. If the population in the district is more than 1,000, a bond issuance must be approved by a majority of those voting in an election held for that purpose. A bond election under this subsection does not affect prior bond issuances and is not required for refunding bond issuances.

(b) A commissioners court must grant prior approval to a district it creates under this subchapter before such district is authorized to issue a negotiable promissory note or notes.

(c) If the commissioners court grants the approvals in this section, bonds, notes, and other district obligations may be secured by district revenue or any type of district taxes or assessments.

Sec. 372.127. AUTHORITY TO IMPOSE ASSESSMENTS AND AD VALOREM, SALES AND USE, AND HOTEL OCCUPANCY TAXES; ELECTION. (a) A county or a district created under this subchapter may accomplish its purposes and pay the cost of services and improvements by imposing:

- (1) an assessment;
- (2) an ad valorem tax;
- (3) a sales and use tax; or
- (4) a hotel occupancy tax.

(b) If approved by the county commissioners court, and if approved at an election called by the district, and in accordance with Section 372.127(c), a district may impose an ad valorem tax, hotel occupancy tax, or sales and use tax to accomplish the economic development purposes prescribed by Section 52a, Article III, Texas Constitution.

(c) A county must adopt an order providing whether a district created under this subchapter may have authority to impose a hotel occupancy tax, sales and use tax, or ad valorem tax, and must provide the rate at which the district may impose such tax or taxes. A tax rate approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements may not be reduced until the obligations of those instruments have been satisfied.

Sec. 372.128. USE OF REVENUE FROM TAXES. A tax authorized by a county to be imposed under this subchapter may be used to accomplish any improvement project or road project, or to provide any service authorized by this subchapter, chapter or Chapter 380, 381, or 383.

Sec. 372.129. HOTEL OCCUPANCY TAX. (a) A county may authorize a district to impose a hotel occupancy tax on a person who pays for the use or possession of or for the right to the use or possession of a room that is ordinarily used for sleeping in a hotel in the district.

(b) If authorized by a county, a district shall impose a hotel occupancy tax as provided by Chapter 383, Local Government Code, and Section 352.107, Tax Code, except that a hotel occupancy tax:

- (1) may be used for any purpose authorized in this subchapter; and
- (2) is authorized by the county to be imposed by the district.

(c) The hotel occupancy tax rate is the greater of nine percent or the rate imposed by the municipality.

(d) A hotel occupancy tax may not be imposed on the occupants of a hotel unless the owner of the hotel agrees to the imposition of the hotel occupancy taxes under this subchapter. After the owner agrees, the agreement may not be revoked by the owner of the hotel or any subsequent owner of the hotel. After an agreement under this section, the district may impose hotel occupancy taxes as provided by this subchapter.

Sec. 372.130. SALES AND USE TAX. (a) A commissioners court may authorize a district to impose a sales and use tax in increments of 1/8 of one percent up to a rate of two percent.

(b) Except as otherwise provided in this subchapter, a sales and use tax must be imposed in accordance with Chapter 383, Local Government Code, and Chapter 323, Tax Code.

Sec. 372.131. AD VALOREM TAX. A commissioners court may authorize a district to impose an ad valorem tax on property in the district in accordance with Chapter 257, Transportation Code.

Sec. 372.132. BORROWING. The commissioners court may authorize a district to borrow money for any district purpose, including for a development agreement that authorizes the district to borrow money.

Sec. 372.133. REPAYMENT OF COSTS. The commissioner's court may authorize a district, by a lease, lease-purchase agreement, installment purchase contract, or other agreement, or by the imposition or assessment of a tax, user fee, concession, rental, or other revenue or resource of the district, to provide for or secure the payment or repayment of:

(1) the costs and expenses of the establishment, administration, and operation of the district;

(2) the district's costs or share of costs of an improvement project; or

(3) the district's contractual obligations or indebtedness.

Sec. 372.134. LIABILITIES; ASSUMPTION OF ASSETS AFTER COMPLETE ANNEXATION BY MUNICIPALITY. (a) In the event a county has created a district under this subchapter, and if the municipality annexes the entire district territory, the municipality shall succeed to such district's assets, but is not liable for the district's debt or other obligations.

(b) If the county has authorized the district created under this subchapter to have debt or other obligations, the district shall remain in existence after the territory is annexed by the municipality, for the purpose of collecting any taxes or assessments authorized by the county and imposed by the district prior to the annexation, which shall be used by the district solely for the purpose of satisfying any preexisting county authorized district debt or other obligations. After the debt or other obligations have been discharged, or two years have expired since the date of the annexation, the district is dissolved and any outstanding debt or obligations are extinguished.

Sec. 372.135. AUTHORITY TO IMPOSE TAXES OR ASSESSMENTS AFTER PARTIAL OR COMPLETE ANNEXATION. (a) After a district created by a county under this subchapter has been annexed by a municipality wholly or partly for general purposes, the county shall not authorize the district to impose an ad valorem tax, hotel occupancy tax, or sales and use tax, or collect an assessment in the area that the municipality overlaps the district, except as provided by Subsection (b) or Section 372.134(b).

(b) A district may continue to impose a tax in an area that the municipality annexes for limited purposes and in which the municipality does not impose taxes. If the municipality annexes an area for limited purposes and imposes some of the taxes which the district is imposing but not all of them, the district may continue to impose taxes only to the extent that the level of taxation of the municipality and the district combined, calculating the hotel tax, the sales tax, and the ad valorem tax independently, is equal to or less than the tax level of the municipality as to fully annexed areas.

(c) The legislature intends that the level of taxation of areas where the district and the municipality overlap do not exceed the level of taxation of fully annexed areas.

(2) Strike SECTION 49 of the bill (page 18, lines 60-65) and substitute the following:

SECTION \_\_\_\_\_. (a) Except as provided by Subsections (b) of this section, this Act takes effect September 1, 2005.

(b) The provisions of this Act amending Chapter 372, Local Government Code, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, those provisions take effect September 1, 2005.

The amendment to **CSHB 2120** 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 2120** (Senate committee printing) by adding the following appropriately numbered section and renumbering the remaining sections accordingly:

SECTION \_\_. Section 374.017, Local Government Code, is amended by adding Subsection (l) to read as follows:

(l) A private nonprofit corporation or foundation may acquire real property in an urban renewal area from a municipality, county, or agency pursuant to an option to purchase the real property for the minimum disposition price as determined by the municipality, county, or agency and stated in the option to purchase agreement, regardless of any changes in the market value of the property, if:

(1) the property was developed in accordance with the municipality's or county's urban renewal plan; and

(2) the development contributes to the elimination of a federally defined blighted area.

The amendment to **CSHB 2120** 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 Brimer offered the following amendment to the bill:

#### **Floor Amendment No. 11**

Amend **CSHB 2120** by inserting two new SECTIONS appropriately numbered to read as follows:

SECTION \_\_. Subsection (c), Section 343.011, Health and Safety Code, is amended to read as follows:

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood, or maintaining on any property in a neighborhood in a county with a population of more than 1.1 million, a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining a flea market in a manner that constitutes a fire hazard;

(8) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or

(9) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement.

SECTION \_\_. The change in law made by this Act to Subsection (c), Section 343.011, Health and Safety Code, applies only to a swimming pool constructed or installed on or after September 1, 2005, or located on property sold on or after September 1, 2005. A swimming pool constructed or installed before September 1, 2005, is governed by the law in effect immediately before the effective date of this Act until the property on which the pool is located is sold, and the former law is continued in effect for that purpose.

The amendment to **CSHB 2120** 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 Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 12**

Amend **CSHB 2120** (Senate committee report) by adding the following sections to the bill and renumbering subsequent sections accordingly:

SECTION \_\_. Section 209.009, Property Code, is amended to read as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. (a) A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

- (1) fines assessed by the association; or
- (2) attorney's fees incurred by the association solely associated with fines assessed by the association.

(b) Unless otherwise provided in writing by the property owner, a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

- (1) any delinquent assessment;
- (2) any current assessment;
- (3) any fines assessed by the association; and
- (4) any attorney's fees incurred by the association solely associated with fines assessed by the association.

(c) Subsection (b) does not apply to a payment received by a property owners' association if:

(1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 3.3 million or more or in a county adjacent to a county with a population of 3.3 million or more;

(2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and

(3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

(d) The county attorney or the district or county official authorized to initiate civil enforcement actions in the county may sue in a court of competent jurisdiction to enjoin or abate a violation of this section by a property owners' association.

SECTION \_\_. The amendments to Section 209.009, Property Code, apply to a payment received by a property owners' association on or after the effective date of this Act. A payment received before the effective date of this Act is governed by the law in effect when the payment was received, and the former law is continued in effect for that purpose.

The amendment was read.

### POINT OF ORDER

Senator Carona raised a point of order that Floor Amendment No. 12 was not germane to the body of the bill.

### POINT OF ORDER WITHDRAWN

Senator Carona withdrew the point of order.

Senator Wentworth withdrew Floor Amendment No. 12.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 13**

Amend **CSHB 2120** by adding the following appropriate numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 54, Water Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. MUNICIPAL UTILITY DISTRICT ROAD PROJECTS

Sec. 54.771. DEFINITION. In this subchapter, "road project" means the construction, acquisition, improvement, maintenance, or operation of macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes.

Sec. 54.772. AUTHORITY; ELECTION TO PROVIDE POWER TO UNDERTAKE ROAD PROJECTS INSIDE MUNICIPAL UTILITY DISTRICT. (a) A board may order an election to be held in a municipal utility district to determine whether the municipal utility district may undertake road projects inside the municipal utility district.

(b) The ballot for the election must be printed to provide for voting for or against providing the municipal utility district the power to undertake road projects inside the municipal utility district.

(c) If a majority of the persons voting in the election vote in favor of the proposition, the municipal utility district may undertake road projects inside the municipal utility district to the extent authorized by Section 52, Article III, Texas Constitution.

Sec. 54.773. BONDS; ELECTION. (a) A municipal utility district may not issue bonds or otherwise lend its credit to finance road projects except on approval of two-thirds or more of the voters of the municipal utility district voting at an election held for that purpose.

(b) The total amount of bonds and other obligations of the municipal utility district issued or incurred to finance road projects may not exceed one-fourth of the assessed valuation of real property in the municipal utility district.

(c) The attorney general may approve under Section 49.184 bonds issued by a municipal utility district to finance road projects as provided by this subchapter only if the municipal utility district meets the requirements of Section 54.774.

Sec. 54.774. LIMITATION ON ISSUANCE OF BONDS. (a) A municipal utility district that may undertake road projects under this subchapter may issue bonds to finance road projects only if the combined projected tax rate for the municipal utility district does not exceed \$1.50 per \$100 of taxable value and the combined no-growth tax rate for the municipal utility district does not exceed \$2.50 per \$100 of taxable value.

(b) In this section:

(1) "Combined no-growth tax rate" means the sum of:

(A) the municipal utility district's no-growth debt service tax rate;

(B) the no-growth debt service tax rate of all overlapping political subdivisions that is specifically attributable to water, wastewater, drainage, or roads;

(C) an equivalent surcharge tax rate for any water or wastewater surcharge paid by the municipal utility district;

(D) any municipal tax rate, other than the municipality's debt service tax rate, specifically attributable to water, wastewater, or drainage;

(E) any current or proposed maintenance tax rate of the municipal utility district or an overlapping political subdivision; and

(F) any contract tax rate, less any equivalent tax rebate or other payment.

(2) "Combined projected tax rate" means the sum of:

(A) the municipal utility district's projected debt service tax rate;

(B) the projected debt service tax rate of all overlapping political subdivisions that is specifically attributable to water, wastewater, drainage, or roads;

(C) an equivalent surcharge tax rate for any water or wastewater surcharge paid by the municipal utility district;

(D) any municipal tax rate, other than the municipality's debt service tax rate, specifically attributable to water, wastewater, or drainage;

(E) any current or proposed maintenance tax rate of the municipal utility district or an overlapping political subdivision; and

(F) any contract tax rate, less any equivalent tax rebate or other payment.

(3) "No-growth debt service tax rate" means a debt service tax rate for future years calculated based on the applicable current taxable valuation.

(4) "Projected debt service tax rate" means a debt service tax rate for future years calculated based on the applicable projected taxable valuation for each year.

(c) The calculation of tax rates under this section, other than projected tax rates, must be based on the most recent taxable values certified by the appropriate appraisal district. The calculation of projected tax rates must be based on projected increases in those taxable values.

Sec. 54.775. MUNICIPAL OR COUNTY CONSENT AND STANDARDS. (a) A municipal utility district may not undertake a road project unless each municipality in whose corporate limits or extraterritorial jurisdiction the municipal utility district is located consents by ordinance or resolution. If the municipal utility district is located outside the extraterritorial jurisdiction of a municipality, the municipal utility district may not undertake a road project unless each county in which the municipal utility district is located consents by ordinance or resolution.

(b) A road project must meet or exceed all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each municipality in whose corporate limits or extraterritorial jurisdiction the municipal utility district is located. If the municipal utility district is located outside the extraterritorial jurisdiction of a municipality, a road project must meet or exceed all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each county in which the municipal utility district is located.

Sec. 54.776. MAINTENANCE OF ROADS. A municipal utility district that may undertake road projects under this subchapter shall maintain all roads constructed or purchased by the municipal utility district unless the county or another political subdivision assumes responsibility for maintaining the roads.

Sec. 54.777. CERTAIN AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY NOT APPLICABLE. Sections 49.181 and 49.182 do not apply to a road project undertaken by the municipal utility district or to bonds issued by the municipal utility district to finance the project.

The amendment to **CSHB 2120** 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 Barrientos offered the following amendment to the bill:

#### **Floor Amendment No. 14**

Amend **CSHB 2120** by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3840 to read as follows:

#### CHAPTER 3840. BEE CAVE DEVELOPMENT DISTRICT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3840.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "District" means the Bee Cave Development District.

Sec. 3840.002. BEE CAVE DEVELOPMENT DISTRICT. The Bee Cave Development District is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. 3840.003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing the Village of Bee Cave, Travis County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the Village of Bee Cave's business area.

(c) This chapter and the creation of the district may not be interpreted to relieve Travis County or the Village of Bee Cave from providing the level of services provided as of September 1, 2005, to the area in the district or to release the county or village from the obligations of each entity to provide services to that area. The district is created to supplement and not to supplant the county or village services provided in the area in the district.

Sec. 3840.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, visitors, and consumers in the district, and of the public, by providing, operating, and maintaining:

(A) attractive, safe, and convenient street and road improvements;

(B) off-street parking facilities; and

(C) necessary water, sewer, and drainage facilities, including a facility for the improvement of water quality, to serve the district;

(2) provide needed funding for the Village of Bee Cave's business area to:

(A) preserve, maintain, and enhance the economic health and vitality of the area as a community and business center; and

(B) provide a government center; and

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways, parks, and off-street parking, and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3840.005. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes of the district contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for a purpose for which the district is created or to pay the principal of and interest on the bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

(c) The district boundaries may not be changed. Sections 375.043 and 375.044, Local Government Code, and Subchapter J, Chapter 49, Water Code, do not apply to the district.

Sec. 3840.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created by the Village of Bee Cave under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created by the Village of Bee Cave under Chapter 312, Tax Code; or

(3) an enterprise zone created by the Village of Bee Cave under Chapter 2303, Government Code.

Sec. 3840.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3840.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3840.009-3840.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3840.051. GOVERNING BODY; TERMS. The district is governed by a board of five directors who serve staggered terms of four years, with two or three directors' terms expiring July 1 of each odd-numbered year.

Sec. 3840.052. APPOINTMENT. (a) The governing body of the Village of Bee Cave shall appoint directors as provided by Subchapter D, Chapter 375, Local Government Code, except that to be qualified to serve as a director, a person must be at least 18 years of age and:

(1) a resident of the Village of Bee Cave;

(2) an owner of property in the district;

(3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district;

(4) an owner of a beneficial interest in a trust that owns property in the district; or

(5) an agent, employee, or tenant of a person described by Subdivision (2), (3), or (4).

(b) Sections 375.063 and 375.064(a)-(c) and (e), Local Government Code, do not apply to the district.

Sec. 3840.053. VACANCY. (a) The governing body of the Village of Bee Cave shall appoint a person to fill a board vacancy in the same manner as an original appointment.

(b) Section 375.066, Local Government Code, does not apply to the district.

Sec. 3840.054. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT. (a) Except as provided by this section:

(1) a director may participate in all board votes and decisions; and

(2) Chapter 171, Local Government Code, governs conflicts of interest for directors.

(b) Section 171.004, Local Government Code, does not apply to the district. A director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action shall file a one-time affidavit declaring the interest. An additional affidavit is not required if the director's interest changes. After the affidavit is filed with the board secretary, the director may participate in a discussion or vote on that action if:

(1) a majority of the directors have a similar interest in the same entity;

(2) all other similar business or charitable entities in the district will receive a similar pecuniary benefit; or

(3) the director owns property in the district.

(c) A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that public entity.

(d) For purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002, Local Government Code.

[Sections 3840.055-3840.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 3840.101. NONPROFIT CORPORATION. (a) The board by resolution may, with the consent of the Village of Bee Cave, authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code.

Sec. 3840.102. AGREEMENTS; GRANTS; DONATIONS. (a) The district may enter into an agreement with or accept a donation, grant, or loan from any person.

(b) A municipality, county, or other political subdivision of this state, without further authorization, may contract with the district for:

(1) the acquisition, construction, improvement, implementation, maintenance, and operation of a district project; or

(2) the provision of a service authorized under this chapter.

(c) A contract under Subsection (b) may:

(1) be for a period and include terms on which the parties agree;

(2) be payable from taxes or any other source of revenue that may be available for that purpose; and

(3) provide terms under which taxes or other revenues collected at a district project or from a person using or purchasing a commodity or service at a district project may be paid or rebated to the district.

(d) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

Sec. 3840.103. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT. To protect the public interest, the district may contract with the Village of Bee Cave for the village to provide law enforcement services in the district for a fee.

Sec. 3840.104. APPROVAL OF CERTAIN IMPROVEMENT PROJECTS. (a) Except as provided by Subsection (b), the district must obtain the approval of the Village of Bee Cave's governing body:

(1) for the issuance of a bond for each improvement project;

(2) of the plans and specifications of an improvement project financed by the bond; and

(3) of the plans and specifications of any district improvement project related to the use of land owned by the Village of Bee Cave, an easement granted by the Village of Bee Cave, or a right-of-way of a street, road, or highway.

(b) If the district obtains the approval of the Village of Bee Cave's governing body of a capital improvements budget for a period not to exceed five years, the district may finance the capital improvements and issue bonds specified in the budget without further approval of the Village of Bee Cave.

Sec. 3840.105. NO EMINENT DOMAIN. The district may not exercise the power of eminent domain.

Sec. 3840.106. HOTEL CONSTRUCTION PROHIBITED. (a) In this section, "hotel" has the meaning assigned by Section 156.001, Tax Code.

(b) The district may not build a hotel or finance or construct a facility or other improvement to enhance or benefit a hotel in the district. A hotel may not be connected to or use a facility or other improvement financed or constructed by the district.

[Sections 3840.107-3840.150 reserved for expansion]

#### SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 3840.151. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3840.152. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or improvement project under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition filed under Subsection (a) must be signed by:

(1) the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Travis County; or

(2) at least 25 owners of land in the district, if more than 25 persons own land in the district according to the most recent certified property tax appraisal roll for Travis County.

Sec. 3840.153. AUTHORITY TO IMPOSE AD VALOREM TAXES, ASSESSMENTS, AND IMPACT FEES. (a) The district may impose an ad valorem tax, assessment, or impact fee as provided by Chapter 375, Local Government Code, on all property in the district, including industrial, commercial, or residential property, to:

(1) finance or provide an improvement or service for a project or activity this chapter authorizes the district to construct, acquire, or improve; or

(2) provide or to make a payment under a contract.

(b) This section does not apply to property owned by a municipality.

Sec. 3840.154. ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this chapter.

(b) The district may not impose an assessment against any property of the Village of Bee Cave in the district. Payment of an assessment by another exempt jurisdiction must be established by contract.

(c) The board may apportion the cost of an improvement project or service to be assessed against property in the district on all property in the district according to a finding of the board that the improvement project or service benefits all property in the district.

(d) The board may include two or more types of improvements and services in one assessment proceeding. The board may conduct separate assessment proceedings as the district undertakes improvement projects or the provision of services.

(e) The board may adjust annual assessments for services in accordance with an annual budget the board adopts for the provision of those services. An annual adjustment may not exceed the annual amount set forth in the original assessment proceedings except after public notice and hearing on the increase.

(f) The board, after notice and hearing as provided by Subchapter F, Chapter 375, Local Government Code, may:

(1) correct, add to, or delete assessments from its assessment rolls; and

(2) collect assessments after making the corrections, additions, or deletions.

Sec. 3840.155. LIENS FOR ASSESSMENTS. (a) An assessment, including an assessment resulting from an addition to or correction of the assessment roll by the district, a reassessment, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceeding.

(b) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

Sec. 3840.156. AD VALOREM TAX. (a) If authorized at an election held in accordance with Section 3840.160, the district may impose an annual ad valorem tax on taxable property in the district for any district purpose, including to:

(1) maintain and operate the district;

(2) construct or acquire improvements; or

(3) provide a service.

(b) The board shall determine the tax rate.

Sec. 3840.157. CONTRACTS SECURED BY AD VALOREM TAXES. A contract for which the payments are secured wholly or partly by ad valorem taxes may not be executed unless the imposition of the ad valorem taxes to secure the payment of the contract is approved by a majority, or a larger percentage if constitutionally required, of the voters in the district voting at an election held for that purpose.

Sec. 3840.158. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property of a person that provides gas, electricity, telephone, sewage, or water service to the public.

Sec. 3840.159. BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations payable wholly or partly from taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) The district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

Sec. 3840.160. TAX AND BOND ELECTIONS. (a) Except as provided by Subsection (c), the district shall hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district imposes a maintenance tax or issues bonds payable from ad valorem taxes or assessments.

(b) The board may include more than one purpose in a single proposition at an election.

(c) If the district obtains the written consent of all property owners in the district to impose a maintenance tax or issue bonds payable from ad valorem taxes or assessments, the district is exempt from the election requirement under Subsection (a) and may cancel an election called under Subsection (a).

Sec. 3840.161. MUNICIPALITIES NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, a municipality is not required to pay a bond, note, or other obligation of the district.

Sec. 3840.162. COMPETITIVE BIDDING. Section 375.221, Local Government Code, applies to the district only for a contract that has a value greater than \$25,000.

[Sections 3840.163-3840.200 reserved for expansion]

#### SUBCHAPTER E. DISSOLUTION

Sec. 3840.201. DISSOLUTION OF DISTRICT WITH OUTSTANDING DEBT. (a) The board may dissolve the district regardless of whether the district has debt. Section 375.264, Local Government Code, does not apply to the district.

(b) If the district has debt when it is dissolved, the district shall remain in existence solely for the purpose of discharging its debts. The dissolution is effective when all debts have been discharged.

[Sections 3840.202-3840.250 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT POWERS

Sec. 3840.251. INJUNCTIVE RELIEF. (a) If it appears that a person or the district has violated or is violating or threatening to violate this chapter or a rule, permit, or other order of the district issued or adopted under this chapter, a resident of the Village of Bee Cave may institute an action in a district court for injunctive relief to restrain the person or the district from continuing the violation or threat of violation.

(b) On application for injunctive relief and a finding that a person or the district is violating or threatening to violate this chapter or a rule, permit, or other order of the district under this chapter, the district court shall grant injunctive relief as the facts warrant.

(c) Venue for an action seeking injunctive relief is in a district court in Travis County.

SECTION \_\_\_\_\_. As of the effective date of this Act, the Bee Cave Development District includes all territory contained in the following described area:

BEING A 156.088 ACRE TRACT LOCATED IN THE A. ZILLER SURVEY NUMBER 2 ABSTRACT 2529, THE JAS. G. SWISHER SURVEY NUMBER 152 ABSTRACT NUMBER 691, THE WILLIAM P. MOORE SURVEY NUMBER 525 ABSTRACT NUMBER 557, THE ORRAN WADE SURVEY NUMBER 540 ABSTRACT NUMBER 811, AND THE JOHN HOBSON SURVEY NUMBER 527 ABSTRACT NUMBER 387, TRAVIS COUNTY, TEXAS, AND BEING ALL OF A 31.9094 ACRE TRACT DESCRIBED IN A DEED TO TECHNOLOGY PROPERTIES, INC. AND RECORDED IN VOLUME 12101, PAGE 1883, REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS, ALSO BEING ALL OF A 3.662 ACRE TRACT, THE REMAINDER OF A 66.47 ACRE TRACT, THE REMAINDER OF A 45.760 ACRE TRACT, AND ALL OF A 1.633 ACRE TRACT, ALL BEING CONVEYED TO BALDWIN PROPERTIES, LTD. AND DESCRIBED IN DOCUMENT NUMBER 2003036917, OF THE OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, ALSO BEING ALL OF THE REMAINDER OF BEE CAVES COMMONS, A SUBDIVISION OF RECORD IN VOLUME 88, PAGE 325, OF THE PLAT RECORDS, TRAVIS COUNTY, TEXAS, ALSO BEING A PORTION OF A 6.009 ACRE TRACT CONVEYED TO WILLIAM J. MADDOX, AND DESCRIBED IN DOCUMENT NUMBER 1999022498, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, ALSO BEING A PORTION OF A 5.5 ACRE TRACT CONVEYED TO HIGHLAND HILLS VFW, AND DESCRIBED IN VOLUME 8218, PAGE 501, DEED RECORDS, TRAVIS COUNTY, TEXAS, ALSO BEING A PORTION OF A 3.92 ACRE TRACT CONVEYED TO R.C. AND J. PURYEAR, AND DESCRIBED IN VOLUME 11960, PAGE 211, REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF TROUBLEMAKER SECTION ONE, A SUBDIVISION OF RECORD IN VOLUME 103, PAGE 74, PLAT RECORDS, TRAVIS COUNTY, TEXAS. SAID 156.088 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod found in the north right-of-way (ROW) line of Bee Caves Road (R.M. 2244), (ROW varies), same being the southeast corner of said 66.47 acre tract, also being the southwest corner of Bee Caves Plaza, Section Two, a subdivision of record in Document Number 199900247, Official Public Records, Travis County, Texas, for the southeast corner of this tract and the POINT OF BEGINNING;

THENCE with the north ROW line of said Bee Caves Road, same being the south line of said 66.47 acre tract the following four (4) courses and distances:

1. S89°30'01"W, a distance of 80.15 feet to a TXDOT concrete monument found,
2. S89°49'16"W, a distance of 62.18 feet to a TXDOT concrete monument found,
3. S80°34'19"W, a distance of 185.07 feet to a 1/2 inch iron rod with plastic cap found, and

4. N89°43'33"W, a distance of 25.52 feet to a TXDOT brass disk in concrete found at the intersection of the north ROW line of said Bee Caves Road and the north ROW line of State Highway 71 (ROW varies), same being a south corner of said 66.47 acre tract

THENCE with the north ROW line of said State Highway 71, same being the south line of said 66.47 acre tract, N66°38'55"W, a distance of 220.65 feet to a calculated point for a south corner of said 66.47 acre tract, same being the southeast corner of The Village at Bee Caves, Phase 1, a subdivision of record in Volume 100, Page 268, Plat Records, Travis County, Texas, also being a point in the north ROW line of said State Highway 71.

THENCE leaving said ROW line and with the east, north, and west lines of said Village at Bee Caves subdivision, same being the south line of said 66.47 acre tract the following three (3) courses and distances:

1. N23°21'07"E, a distance of 261.28 feet to a 1/2 inch iron rod found,
2. N66°37'43"W, a distance of 179.91 feet to a 1/2 inch iron rod found, and
3. S23°21'07"W, a distance of 261.34 feet to a 1/2 inch iron rod with plastic "VARA" cap found in the north ROW line of said State Highway 71, same being the southwest corner of said Village at Bee Caves subdivision, also being a south corner of said 66.47 acre tract.

THENCE with the north ROW line of said State Highway 71, same being the south line of said 66.47 acre tract, the south line of said Bee Caves Commons, and said 45.760 acre tract, the following eight (8) courses and distances:

1. N66°38'55"W, a distance of 606.82 feet to a TXDOT brass disk in concrete found,
2. N35°38'36"W, a distance of 38.26 feet to a TXDOT brass disk in concrete found,
3. N66°40'51"W, a distance of 328.08 feet to a TXDOT brass disk in concrete found,
4. N49°47'50"W, a distance of 102.78 feet to a TXDOT brass disk in concrete found,
5. N66°40'13"W, a distance of 459.16 feet to a TXDOT brass disk in concrete found,
6. N77°51'51"W, a distance of 100.61 feet to a TXDOT brass disk in concrete found,
7. N66°39'08"W, a distance of 426.63 feet to a TXDOT brass disk in concrete found, and
8. N77°08'12"W, a distance of 253.20 feet to a 1/2 inch iron rod found in the east property line of Lot 15, of the Glass-Bohls Subdivision, a subdivision of record in Volume 90, Page 274, Plat Records, Travis County, Texas, same being a southwest corner of said 45.760 acre tract, also being a corner in the north ROW line of said State Highway 71.

THENCE leaving said ROW line and with the east line of said Lot 15, same being a west line of said 45.760 acre tract, N13°22'57"E, a distance of 209.67 feet to a 1/2 inch iron rod found for the northeast corner of said Glass-Bohls Subdivision, same being the south east corner of a 42.929 acre (Remainder) tract conveyed to

Baldwin Investments and described in Volume 10846, Page 477, Real Property Records, Travis County, Texas, also being a corner in a southwest line of said 45.760 acre tract.

THENCE with the east, north, and west lines of the said 42.929 acre (Remainder) tract, same being south lines of said 45.760 acre tract, the following three (3) courses and distances:

1. N13°22'11"E, a distance of 141.56 feet to a 1/2 inch iron rod with plastic "VARA" cap found,
2. N76°35'16"W, a distance of 247.99 feet to a 1/2 inch iron rod found, and
3. S13°36'24"W, a distance of 141.65 feet to a 1/2 inch iron rod found for the southwest corner of said 42.929 acre (Remainder) tract, same being the northwest corner of said Lot 15, also being a point in an east line of said 45.760 acre tract.

THENCE with the east line of said 45.760 acre tract, same being the west line of said Lot 15, S13°27'17"W, a distance of 174.90 feet to a 1 inch iron pipe found in the east ROW line of R.M. 620, (ROW varies), same being the southwest corner of said Lot 15, also being a south corner of said 45.760 acre tract.

THENCE with the east ROW line of said R.M. 620, same being a south line of said 45.760 acre tract, N54°32'05"W, a distance of 19.86 feet to a 1 inch iron pipe found in the west ROW line of said R.M. 620, same being the southeast corner of a 0.85 acre tract conveyed to Ethel Hudson Thurman, and described in Volume 2876, Page 554, Deed Records, Travis County, Texas, also being a south corner of said 45.760 acre tract.

THENCE with the west line of the said 45.760 acre tract, same being the east line of said 0.85 acre tract and the east and north lines of a 1.24 acre tract conveyed to Shirley Thurman Grumbles, and described in Volume 13323, Page 1016, Real Property Records, Travis County, Texas, N13°14'26"E, a distance of 418.29 feet to a 1/2 inch iron rod found, for the northeast corner of said 1.24 acre tract, same being the southeast corner of said 1.633 acre tract, also being in the east line of said 45.760 acre tract.

THENCE with the south line of the said 1.633 acre tract, same being the north lines of said 1.24 acre tract, N66°47'02"W, a distance of 353.33 feet to a 1/2 inch iron rod found in the east ROW line of said R.M. 620, same being the northwest corner of said 1.24 acre tract, also being the southwest corner of said 1.633 acre tract.

THENCE with the east ROW line of said R.M. 620, same being the west line of said 1.633 acre tract and said 45.760 acre tract, the following three (3) courses and distances:

1. N15°35'09"W, a distance of 264.34 feet to a TXDOT brass disk in concrete found,
2. N19°46'35"W, a distance of 53.60 feet to a 3/4 inch iron pipe found, and
3. N19°20'10"W, a distance of 38.61 feet to a 3/4 inch iron pipe found in the east ROW line of said R.M. 620, same being a west corner of said 45.760 acre tract, also being an east corner of the Travis County Subdivision No. Two, a subdivision of record in Volume 100, Page 268, Plat Records, Travis County, Texas.

THENCE with the south, east, and north lines of said Travis County Subdivision No. Two, same being west lines of said 45.760 acre tract, the following five (5) courses and distances:

1. N56°11'48"E, a distance of 8.13 feet to a 3/4 inch iron pipe found,
2. S32°51'32"E, a distance of 10.01 feet to a 1/2 inch iron rod found,
3. S47°20'00"E, a distance of 106.22 feet to a 1/2 inch iron rod found,
4. N21°50'40"E, a distance of 582.01 feet to a 1/2 inch iron rod found, and
5. N60°39'51"W, a distance of 359.35 feet to calculated point in the east line of said 6.009 acre tract, same being the northwest corner of said Travis County Subdivision No. Two, also being the west corner of said 45.760 acre tract.

THENCE with the west line of said Travis County Subdivision No. Two, same being the east line of said 6.009 acre tract, the following two (2) courses and distances:

1. S37°13'35"W, a distance of 42.91 feet to a 1/2 inch iron rod found, and
2. S46°05'26"W, a distance of 265.76 feet to a 1/2 inch iron rod found in the northeast ROW line of said R.M. 620, same being the west corner of said Travis County Subdivision No. Two, also being the southeast corner of said 6.009 acre tract.

THENCE with the north ROW line of said R.M. 620, same being the south line of said 6.009 acre tract, N40°02'34"W, a distance of 60.40 feet to a 1/2 inch iron rod found in the north ROW line of said R.M. 620, same being the southwest corner of said 6.009 acre tract, also being the southeast corner of the remainder of said 5.5 acre tract.

THENCE with the east line of the remainder of said 5.5 acre tract, same being the west line of said 6.009 acre tract, N44°53'05"E, a distance of 298.91 feet to a calculated point for a west corner of said 6.009 acre tract, same being a west corner of the remainder of said 5.5 acre tract.

THENCE leaving said common line and crossing said 6.009 acre tract, said 45.760 acre tract, said 5.5 acre tract, and said 3.92 acre tract, the following three (3) courses and distances:

1. N60°42'58"E, a distance of 367.90 feet to a calculated point,
2. N29°17'47"W, a distance of 532.97 feet to a calculated point, and
3. S32°43'50"W, a distance of 85.11 feet to a 1 inch iron rod in concrete found in the south line of said 3.92 acre tract, same being the northwest corner of said 5.5 acre tract, also being the east corner of a 6.947 acre tract conveyed to Duane James Terry, and described in Volume 12657, Page 1860, Real Property Records, Travis County, Texas.

THENCE with the south and west lines of said 3.92 acre tract, same being the north lines of said 6.947 acre tract, the following two (2) courses and distances:

1. N62°10'44"W, a distance of 237.62 feet to a 1/2 inch iron rod found, and
2. N02°07'31"E, a distance of 189.38 feet to a 1 inch iron rod in concrete found for a south corner of said Troublemaker subdivision, same being the northwest corner of said 3.92 acre tract, also being the northeast corner of said 6.947 acre tract.

THENCE with the south line of said Troublemaker tract, same being the north line of said 3.92 acre tract, S77°05'56"E, a distance of 123.37 feet to a calculated point in said common line.

THENCE leaving said common line and crossing said Troublemaker tract the following two (2) courses and distances:

1. With the arc of a curve to the left a distance of 1083.76 feet, through a central angle of  $65^{\circ}42'33''$ , having a radius of 945.00 feet, and whose chord bears  $N72^{\circ}04'04''W$ , a distance of 1025.34 feet to a calculated point, and
2.  $S75^{\circ}04'40''W$ , a distance of 31.40 feet to a calculated point in the west line of said Troublemaker tract, same being the east line of said R.M. 620.

THENCE with the east ROW line of said R.M. 620, same being the west line of said Troublemaker tract, the following two (2) courses and distances:

1.  $N18^{\circ}04'22''W$ , a distance of 272.77 feet to a TXDOT type II monument found, and
2. With the arc of a curve to the left a distance of 240.18 feet, through a central angle of  $10^{\circ}12'24''$ , having a radius of 1348.24 feet, and whose chord bears  $N20^{\circ}32'19''W$ , a distance of 239.86 feet to a calculated point in said ROW line, same being the northwest corner of said Troublemaker tract, also being the southwest corner of an 819.739 acre tract conveyed to the City of Austin and described in Volume 12124, Page 143, Real Property Records, Travis County, Texas.

THENCE with the north line of said Troublemaker tract, same being the south line of said 819.739 acre tract,  $N88^{\circ}45'35''E$ , a distance of 190 feet to a calculated point in said common line.

THENCE leaving said common line and crossing said Troublemaker tract the following three (3) courses and distances:

1.  $S09^{\circ}31'59''W$ , a distance of 208.34 feet to a calculated point,
2.  $S18^{\circ}04'22''E$ , a distance of 167.41 feet to a calculated point, and
3. With the arc of a curve to the right a distance of 1303.65 feet, through a central angle of  $70^{\circ}47'59''$ , having a radius of 1055.00 feet, and whose chord bears  $S67^{\circ}28'29''E$ , a distance of 1222.28 feet to a calculated point in the south line of said Troublemaker tract, same being the north line of said 3.92 acre tract.

THENCE with the north line of said 3.92 acre tract, same being the south line of said Troublemaker tract,  $S77^{\circ}02'56''E$ , a distance of 230.18 feet to a cotton spindle found for the southeast corner of said Troublemaker tract, same being a southwest corner of said 819.739 acre tract, also being a point in the north line of said 3.92 acre tract.

THENCE with the north line of said 3.92 acre tract, same being a south line of said 819.739 acre tract,  $S77^{\circ}22'13''E$ , a distance of 164.44 feet to a 1/2 inch iron rod found for the northeast corner of said 3.92 acre tract, same being a point in the south line of said 819.739 acre tract, also being the northwest corner of said 6.009 acre tract.

THENCE with the north line of said 6.009 acre tract, same being a south line of said 819.739 acre tract,  $S76^{\circ}46'31''E$ , a distance of 276.72 feet to a calculated point in said common line.

THENCE leaving said common line and crossing said 3.92 acre tract and said 6.009 acre tract the following seven (7) courses and distances:

1.  $S63^{\circ}22'07''W$ , a distance of 143.52 feet to a calculated point,
2.  $N70^{\circ}03'44''W$ , a distance of 137.19 feet to a calculated point,

3. S59°02'55"W, a distance of 262.60 feet to a calculated point,
4. S29°17'47"E, a distance of 196.22 feet to a calculated point,
5. N60°42'13"E, a distance of 120.12 feet to a calculated point,
6. S49°44'17"E, a distance of 85.54 feet to a calculated point, and
7. S29°17'47"E, a distance of 175.95 feet to a calculated point in the south line of said 6.009 acre tract, same being a north line of said 45.760 acre tract.

THENCE with the south line of said 6.009 acre tract, same being the north line of said 45.760 acre tract, S77°06'32"E, a distance of 146.00 feet to a 3/4 inch iron pipe found for an east corner of said 6.009 acre tract, same being a point in the west line of a 462.4037 acre tract conveyed to the City of Austin and described in Volume 12396, Page 1204, Real Property Records, Travis County, Texas.

THENCE with the east and north lines of said 45.760 acre tract and said 66.47 acre tract, same being the west and south lines of said 462.4037 acre tract and a 12.268 acre tract conveyed to the L.C.R.A. and described in Document Number 2001056302, Official Public Records, Travis County, Texas, the following two (2) courses and distances:

1. S12°35'44"W, a distance of 327.14 feet to a 3/4 inch iron pipe found, and
2. S70°13'01"E, a distance of 1884.98 feet to a 1/2 inch iron rod with plastic cap found, for a southeast corner of said 462.4037 acre tract, same being the west corner of said 3.662 acre tract, also being a point in the north line of said 66.47 acre tract.

THENCE with the common line of said 3.662 acre tract and said 462.4037 acre tract the following five (5) courses and distances:

1. N61°00'54"E, a distance of 196.44 feet to a 1/2 inch iron rod with plastic cap found,
2. N87°33'49"E, a distance of 433.24 feet to a 1/2 inch iron rod found,
3. N65°19'12"E, a distance of 38.74 feet to a 1/2 inch iron rod found,
4. N87°43'36"E, a distance of 647.80 feet to a 1/2 inch iron rod found, and
5. N45°10'09"E, a distance of 75.12 feet to a 1/2 inch iron rod found for the southeast corner of said 462.4037 acre tract, same being a point in the southwest line of Lake Pointe Phase II, a subdivision of record in Volume 97, Page 84, Plat Records, Travis County, Texas, also being the northeast corner of said 3.662 acre tract.

THENCE with the east lines of said 3.662 acre tract and said 31.9094 acre tract, same being the southwest line of said Lake Pointe subdivision, S41°11'34"E, a distance of 1845.56 feet to a 1/2 inch iron rod found, in the curving north ROW line of said Bee Caves Road, same being the east corner of said 31.9094 acre tract, also being the south corner of said Lake Pointe subdivision.

THENCE with the south line of said 31.9094 acre tract, same being the north ROW line of said Bee Caves Road the following two (2) courses and distances:

1. With the arc of a curve to the left a distance of 56.87 feet, through a central angle of 1°38'15", having a radius of 1989.93 feet, and whose chord bears S54°32'32"W, a distance of 56.87 feet to a calculated point, from which a TXDOT type II monument found bears, S53°43'25"W, a distance of 0.21 feet, and

2. S53°43'07"W, a distance of 808.02 feet to a 5/8 inch iron rod found in the north ROW line of said Bee Caves Road, same being the south corner of said 31.9094 acre tract, also being the southeast corner of Lot 2, of Bee Caves Plaza Section One, a subdivision of record in Volume 97, Page 106, Plat Records, Travis County, Texas.

THENCE leaving said ROW line and with the east line of said Lot 2, same being a west line of said 31.9094 acre tract, N18°13'50"W, at an approximate distance of 308 feet passing the northeast corner of said Lot 2, same being the southeast corner of a 4.84 acre tract conveyed to Ted L. Stewart, Trustee, and described in Volume 13047, Page 244, Real Property Records, Travis County, Texas, thence continuing with the west line of said 31.9094 acre tract same being the east line of said 4.84 acre tract, for a total distance of 1027.22 feet to a 1/2 inch iron rod found.

THENCE continuing with said common line, N44°29'59"W, a distance of 147.70 feet to a 1/2 inch iron rod with plastic "VARA" cap found for a common corner.

THENCE continuing with said common line, S89°40'20"W, at an approximate distance of 169 feet passing the northwest corner of said 4.84 acre tract, same being the northeast corner of Lot 1, of said Bee Caves Plaza Section One, thence continuing with a south line of said 31.9094 acre tract, same being the north line of said Lot 1, at an approximate distance of 346 feet passing the northwest corner of said Lot 1, same being the northeast corner of Bee Caves Plaza Section Three, a subdivision of record in Volume 101, Page 92, Plat Records, Travis County, Texas, thence continuing with the north line of said Bee Caves Plaza Section Three, same being a south line of said 31.9094 acre tract, a total distance of 657.81 feet to a 1/2 inch iron rod found in the east line of said 66.47 acre tract, same being the southwest corner of said 31.9094 acre tract, also being the northeast corner of said Bee Caves Plaza Section Three.

THENCE with east line of said 66.47 acre tract, same being the west lines of said Bee Caves Plaza Section Three, a 7.69 acre tract conveyed to Ted L. Stewart, Trustee, and described in Volume 13047, Page 244, Real Property Records, Travis County, Texas, and said Bee Caves Plaza Section Two, S10°17'49"E, a distance of 1295.56 feet to the POINT OF BEGINNING and containing 156.088 acres of land, more or less.

SECTION \_\_\_\_\_. Not later than January 1, 2006, the governing body of the Village of Bee Cave shall appoint the initial board of directors for the Bee Cave Development District under Section 3840.052, Special District Local Laws Code, as added by this Act. The governing body shall stagger the initial directors' terms so that three terms expire July 1, 2007, and two terms expire July 1, 2009.

SECTION \_\_\_\_\_. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality;

(2) the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION \_\_\_\_. 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 2120** 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. 14.

Senator Lindsay offered the following amendment to the bill:

#### **Floor Amendment No. 15**

Amend **CSHB 2120** by adding the following appropriately numbered SECTION and renumbering the following SECTIONS of the bill accordingly:

SECTION \_\_. Section 25.1032, Government Code, is amended by adding Subsection (m) to read as follows:

(m) If the judge of a county civil court at law in Harris County is disqualified or recused from a case pending before the court, the judge of another county civil court at law in Harris County shall be assigned to sit for the regular judge and hear the case. If another county civil court judge for Harris County is not available or is unable to hear the case because of a disqualification or recusal, the presiding judge of the administrative judicial region shall appoint as a visting judge:

(1) a retired judge who served as the judge for a county or district court in Harris County; or

(2) if a judge described by Subdivision (1) is not available for the assignment, a former, retired, or active judge from another county.

SECTION \_\_. The changes in law made by this Act to Section 25.1032, Government Code, apply only to the assignment of a judge under that section on or after the effective date of this Act.

The amendment to **CSHB 2120** 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. 15.

Senator Shapleigh again offered the following amendment to the bill:

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

Amend **CSHB 2120**, by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 172.015, Local Government Code, is amended to read as follows:

Sec. 172.015. SUBROGATION; ADEQUATE RECOVERY. (a) The payor of employee benefits, whether a political subdivision, group of political subdivisions, pool, or carrier providing reinsurance to one of those entities, is [shall be] subrogated to the employees' right of recovery for personal injuries caused by the tortious conduct of a third party.

(b) A payor of employee benefits whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant employee in an amount determined under an agreement entered into between the attorney and the payor of employee benefits. In the absence of an agreement, the court shall award to the attorney, payable out of the recovery of the payor of employee benefits:

(1) a reasonable fee for recovery of the interest of the payor of employee benefits, not to exceed one-third of the payor's recovery; and

(2) a proportionate share of expenses.

(c) If the injured employee is not able to realize a complete and adequate recovery for injuries sustained as a result of the actionable fault of a third party, the payor of employee benefits is entitled to a pro rata recovery consistent with the recovery obtained by the injured employee.

SECTION \_\_. Section 172.015, Local Government Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment to **CSHB 2120** 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. 5 except as follows:

Nays: Harris.

Senator Gallegos again offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 2120** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_. Subtitle B, Title 11, Local Government Code, is amended by adding Chapter 353 to read as follows:

#### CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.);

(D) the federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); or

(E) Chapter 361, Health and Safety Code.

Sec. 353.002. APPLICABILITY. This chapter applies to an incident involving hazardous material that has been leaked, spilled, released, or abandoned on any property.

Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county may provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, released, or abandoned, if:

(1) the county first provides reasonable notice to a concerned party regarding the need for the hazardous materials services so that the concerned party has a reasonable opportunity to respond to the incident involving hazardous material; and

(2) the concerned party fails to respond or fails to respond in a timely and effective manner to the incident.

(b) A county may provide limited control and containment measures that are necessary to protect human health and the environment without first complying with the requirements of Subsection (a) if the county is the first entity to arrive at a site where an incident involving hazardous material has occurred that is prepared to take action in response to the incident.

(c) If the hazardous material is natural gas released from an underground facility as defined by Section 251.002, Utilities Code, the county:

(1) must comply with the requirements of Section 251.159, Utilities Code; and

(2) may not operate any equipment or other controls or devices at the underground facility without the express permission of the operator of the facility.

Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A county, or a person authorized by contract on the county's behalf, may charge a reasonable fee, including a fee to offset the cost of providing control and containment measures under Section 353.003(b), to a concerned party for responding to a hazardous materials service call.

(b) A county, or a person authorized by contract on the county's behalf, may charge a fee for providing hazardous materials services under Section 353.003(a) only if the county has complied with the requirements of that subsection. A concerned party is not liable for a fee associated with the county's hazardous materials services under Section 353.003(a) or a fee to offset the cost of providing control and

containment measures under Section 353.003(b) if the county provides hazardous materials services under Section 353.003(a) and the county does not provide notice as required by Section 353.003(a)(1).

(c) An individual who is a concerned party does not have to pay a fee under this section if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This chapter does not apply to hazardous materials owned or possessed by a governmental entity.

The amendment was again read.

Senator Gallegos offered the following amendment to Floor Amendment No. 8:

#### **Floor Amendment No. 16**

Amend Floor Amendment No. 8 to **CSHB 2120** as follows:

On page 2, between lines 28-29, insert the following new Subsection (d), Section 353.003, Local Government Code:

(d) In relation to any hazardous material for which the county may provide hazardous material services under this chapter, a person who caused, suffered, allowed, or permitted the hazardous material to be leaked, spilled, released or abandoned is liable for the reasonable costs, damages, or expenses that are or have been incurred by the county or third party for the management, handling, storage, and disposal of the material.

The amendment to Floor Amendment No. 8 to **CSHB 2120** 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.

Question recurring on the adoption of Floor Amendment No. 8 to **CSHB 2120**, 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. 8 as amended.

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

**CSHB 2120** 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 2120 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 2120** 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 Carona in Chair)**

**HOUSE BILL 3482 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 3482** at this time on its second reading:

**HB 3482**, Relating to the creation of the North Fort Bend Water Authority; providing authority to issue bonds; granting the power of eminent domain; providing an administrative penalty.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3482** as follows:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of the North Fort Bend Water Authority; the creation of the Fort Bend County Municipal Utility District No. 178; the creation of the Fort Bend County Municipal Utility District No. 182; the creation of the Fort Bend County Municipal Utility District No. 181; providing authority to impose a tax and issue bonds; granting the power of eminent domain; providing an administrative penalty.

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

ARTICLE 1. NORTH FORT BEND WATER AUTHORITY

SECTION 1.1. AMENDMENT. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8813 to read as follows:

CHAPTER 8813. NORTH FORT BEND WATER AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8813.001. DEFINITIONS. In this chapter:

(1) "Authority" means the North Fort Bend Water Authority.

(2) "Board" means the board of directors of the authority.

(3) "Commission" means the Texas Commission on Environmental Quality or its successor.

(4) "Director" means a member of the board.

(5) "District" means any district created under Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of the manner of creation, other than:

- (A) a navigation district or port authority;
- (B) a district governed by Chapter 36, Water Code; or
- (C) a district that does not have the legal authority to supply water.

(6) "Groundwater reduction plan" means a plan adopted or implemented to supply water, reduce reliance on groundwater, regulate groundwater pumping and usage, or require and allocate water usage among persons in order to comply with or exceed requirements imposed by the Fort Bend Subsidence District or the Harris-Galveston Coastal Subsidence District, as applicable, including any applicable groundwater reduction requirements.

(7) "Local government" means a municipality, county, district, or other political subdivision of this state or a combination of two or more of those entities.

(8) "Person" includes an individual, corporation, organization, government or governmental subdivision or agency, district, local government, business trust, estate, trust, partnership, association, and any other legal entity.

(9) "Subsidence" means the lowering in elevation of the surface of land by the withdrawal of groundwater.

(10) "System" means a network of pipelines, conduits, valves, canals, pumping stations, force mains, treatment plants, and any other construction, device, or related appurtenance used to treat or transport water.

(11) "Water" includes:

- (A) groundwater, percolating or otherwise;
- (B) any surface water, natural or artificial, navigable or nonnavigable;

and

(C) industrial and municipal wastewater.

(12) "Well" includes a facility, device, or method used to withdraw groundwater from a groundwater source within the boundaries of the authority.

Sec. 8813.002. NATURE OF AUTHORITY. The authority is a regional water authority in Fort Bend and Harris Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, including the acquisition and provision of surface water and groundwater for residential, commercial, industrial, agricultural, and other uses, the reduction of groundwater withdrawals, the conservation, preservation, protection, and recharge of groundwater and of groundwater reservoirs or their subdivisions, the prevention of waste of groundwater, the control of subsidence caused by the withdrawal of water from groundwater reservoirs or their subdivisions, and other public purposes stated in this chapter. The authority is a political subdivision of this state.

Sec. 8813.003. CONFIRMATION ELECTION NOT REQUIRED. An election to confirm the creation of the authority is not required.

Sec. 8813.004. INITIAL AUTHORITY TERRITORY. (a) The authority is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

- (1) the organization, existence, or validity of the authority;

(2) the right of the authority to issue any type of bond or note for the purposes for which the authority is created or to pay the principal of and interest on a bond or note;

(3) the right of the authority to impose or collect a fee, user fee, rate, charge, or special assessment; or

(4) the legality or operation of the authority.

(c) All of the territory of a local government created after the effective date of the Act creating this chapter that encompasses any territory within the boundaries of the authority, immediately on the creation and without any action required of the authority, is subject to all of the rights, powers, privileges, and rules of the authority to the same extent as the territory was before the local government was created.

Sec. 8813.005. EXCLUSION OF CERTAIN TERRITORY. (a) A district or municipality that, on the effective date of the Act creating this chapter, is located, wholly or partly, within the territory described by Section 2(a) or (b) of the Act creating this chapter may petition for exclusion of all of its territory from the authority's boundaries by a petition signed by a majority of the members of the governing body of the district or municipality.

(b) The board shall:

(1) not later than the 120th day after the effective date of the Act creating this chapter, grant the petition and order the territory excluded if the petition:

(A) includes an accurate legal description of the boundaries of the territory to be excluded; and

(B) is filed with the authority not later than the 60th day after the effective date of the Act creating this chapter; and

(2) if the board grants the petition, file for recording in the office of the county clerk for the applicable county or counties a copy of the order and a description of the authority's boundaries as they exist after the exclusion of the territory.

(c) If a district or municipality is excluded from the authority's boundaries under this section, the authority is not required to:

(1) provide water or any other service to the district or municipality; or

(2) include the district or municipality in any groundwater reduction plan adopted or implemented by the authority.

(d) If, not later than the 60th day after the effective date of the Act creating this chapter, a district or municipality files a petition for exclusion under this section, the authority may not impose fees, user fees, rates, charges, or special assessments on the district or municipality after the petition is filed with the authority unless the district or municipality is annexed by the authority under Section 8813.006.

(e) If a district or municipality excluded from the authority's boundaries under this section petitions the authority to be annexed under Section 8813.006, the authority may annex the district or municipality. The authority may, as a condition of annexation, require terms and conditions the board considers appropriate. The authority may require the district or municipality to pay the authority the fees, user fees, charges, and special assessments, with interest, that, as determined by the authority, the district or municipality would have been charged by the authority if the district or municipality had not been excluded from the authority under this section.

Sec. 8813.006. ANNEXATION. (a) Except to the extent the authority agrees in writing, a municipality's annexation of territory within the authority does not affect:

(1) the authority's powers inside or outside the annexed territory;

(2) the authority's boundaries or contracts; or

(3) the authority's ability to assess fees, user fees, rates, charges, or special assessments inside or outside the territory annexed by the municipality.

(b) Territory may be annexed to the authority, regardless of whether the territory is contiguous to the authority, as provided by Chapter 49, Water Code.

(c) In addition to the authority granted by Subsection (b), regardless of whether the territory is contiguous to the authority, the authority may annex some or all of the territory located within a district or municipality if the district or municipality files with the authority a petition requesting the annexation signed by a majority of the members of the governing body of the district or municipality. The petition must include an accurate legal description of the boundaries of the territory to be included. If the authority has bonds, notes, or other obligations outstanding, the authority shall require the petitioning district or municipality to be obligated to pay its share of the principal of and interest on the outstanding bonds, notes, or other obligations, and related costs. The board may grant the petition and order the territory described by the petition annexed to the authority if it is feasible, practicable, and to the advantage of the authority.

(d) Any territory that a district located within the authority annexes becomes territory of the authority on the effective date of the annexation without any action required of the authority. The authority by rule may require all districts located within the authority to send to the authority written notice of the effective date of an annexation and require the districts to send to the authority copies of any necessary documents describing the annexed land and describing the districts' boundaries as they exist after inclusion of the annexed land.

(e) The annexation to the authority of territory under this section does not affect the validity of the authority's bonds issued before or after the annexation.

(f) A municipality that annexes territory of the authority for limited purposes under Subchapter F, Chapter 43, Local Government Code, does not have the right to:

(1) receive notices from the authority under Section 8813.103(c);

(2) participate in the appointment of directors under Subchapter B; or

(3) receive information about or have the opportunity to fund its share of capital costs in the manner provided by the authority under Section 8813.104.

Sec. 8813.007. APPLICABILITY OF OTHER LAW. (a) Except as otherwise provided by this chapter, Chapter 49, Water Code, applies to the authority.

(b) This chapter does not prevail over or preempt a provision of Chapter 36, Water Code, Chapter 8801 of this code, or Chapter 1045, Acts of the 71st Legislature, Regular Session, 1989, that is being implemented by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable.

Sec. 8813.008. FINDING OF BENEFIT. All the land, property, and persons included within the boundaries of the authority will be directly benefited by the works, projects, improvements, and services to be provided by the authority under powers conferred by Section 59, Article XVI, Texas Constitution, and this chapter. The authority is created to serve a public use and benefit. The creation of the authority

will serve to promote the health, safety, and general welfare of persons within the authority and the general public. Any fees, user fees, rates, charges, or special assessments imposed by the authority under this chapter are necessary to pay for the costs of accomplishing the purposes of the authority as set forth in Section 59, Article XVI, Texas Constitution, and this chapter, including:

(1) the reduction of groundwater withdrawals;

(2) the facilitation of compliance with the requirements of the Fort Bend Subsidence District or the Harris-Galveston Coastal Subsidence District, as applicable; and

(3) the provision of services, facilities, and systems.

[Sections 8813.009-8813.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8813.021. INITIAL DIRECTORS. (a) The initial board consists of:

<u>Name of Director:</u>	<u>Representing Director Precinct:</u>
<u>David Spell</u>	<u>1</u>
<u>Robert Darden</u>	<u>2</u>
<u>Bruce Fay</u>	<u>3</u>
<u>Melony Gay</u>	<u>4</u>
<u>Robert Patton</u>	<u>5</u>
<u>Peter Houghton</u>	<u>6</u>
<u>Pat Hebert</u>	<u>7</u>

(b) The directors for director precincts 1, 3, 5, and 7 shall serve until the appointment of directors under Section 8813.056 in 2008. The directors for director precincts 2, 4, and 6 shall serve until the appointment of directors under Section 8813.056 in 2010.

Sec. 8813.022. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010.

[Sections 8813.023-8813.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8813.051. DIRECTORS; TERMS. (a) The authority is governed by a board of seven directors.

(b) The directors serve staggered four-year terms that expire May 15 of even-numbered years.

Sec. 8813.052. ELIGIBILITY TO SERVE AS DIRECTOR. (a) To be eligible to serve as a director of the authority or to be listed on a ballot as a candidate for director of the authority representing a director precinct, an individual must:

(1) be at least 18 years of age;

(2) be a resident of the authority; and

(3) have served as a director of one or more districts for a total of at least four years.

(b) Notwithstanding Subsection (a), to serve as a director representing, or to be listed on a ballot as a candidate for director representing, a director precinct that includes any part of the City of Fulshear, an individual must:

(1) meet the qualifications provided by Subsections (a)(1) and (2); and

(2) have served as:

(A) the mayor or a member of the city council of the City of Fulshear for any period; or

(B) a director of one or more districts for a total of at least four years.

Sec. 8813.053. DISQUALIFICATION OF DIRECTORS. The common law doctrine of incompatibility does not disqualify an official or employee of a public entity from serving as a director of the authority. A director who is also an officer or employee of a public entity may not participate in the discussion of or vote on a matter regarding a contract with that public entity.

Sec. 8813.054. CONFLICTS OF INTEREST. Chapter 171, Local Government Code, governs conflicts of interest of board members.

Sec. 8813.055. SINGLE-MEMBER DIRECTOR PRECINCTS. (a) The authority is divided into seven single-member director precincts, as described by Section 3 of the Act creating this chapter.

(b) The board may redraw the single-member director precincts in a manner that is reasonable and equitable:

(1) after any change in the boundaries of the authority; or

(2) by a resolution redrawing the director precincts adopted by a two-thirds majority of the board based on changed circumstances.

Sec. 8813.056. METHOD OF APPOINTMENT OF DIRECTORS. (a) The governing bodies of the districts and municipalities located within each director precinct jointly shall appoint one director to represent the precinct by a vote conducted as provided by this section.

(b) If a district or municipality is located within two or more director precincts, the district or municipality is considered, for purposes of this section, to be located only within the director precinct in which the greatest amount of territory of the district or municipality is located.

(c) For the appointment of a director for a director precinct, the board shall determine the number of votes each district or municipality may cast. The number of votes for a governing body of a district or municipality within the precinct is equal to the number computed by dividing the total number of units of water, as determined by the board, used within the precinct by the district or municipality during the calendar year preceding the year in which the director is selected by the total number of units of water used within the precinct by all districts and municipalities in the precinct, multiplying that quotient by 100, and rounding that result to the nearest one-tenth. The board shall provide the presiding officer of each governing body of a district or municipality within each director precinct written notice of the number of votes computed for that governing body to cast.

(d) For purposes of Subsection (c), the board shall determine the amount of water usage of all districts and municipalities within each director precinct.

(e) In the appropriate even-numbered year, the governing body of each district or municipality in a director precinct by resolution may nominate one candidate for the position of director for that director precinct. Each district or municipality shall submit the name of its candidate, if any, to the presiding officer of the authority by February 15 of that year. If by February 15 of that year only one candidate's name is submitted for the position of director for a director precinct, the board may declare the unopposed candidate elected and may cancel the director appointment procedures

generally required by this section for that position. If more than one candidate's name is submitted for the position of director for a director precinct, before March 15 of that year the board shall prepare, for the director precinct or precincts from which a director is being appointed, a ballot listing all of the candidates for that director precinct and shall provide a copy of the appropriate ballot to the presiding officer of the governing body of each district or municipality located within the director precinct from which a director is being appointed.

(f) An individual may not be listed as a candidate on the ballot for more than one director position. If a candidate is nominated for more than one director position, the candidate must choose to be on the ballot for only one director position.

(g) The governing body of each district or municipality shall determine its votes for director by resolution and submit them to the presiding officer of the authority before May 1 of the appropriate even-numbered year. In casting its votes for director, the governing body of each district or municipality may vote for only one candidate on the ballot for the director precinct in which the district or municipality is located. For each director precinct from which a director is being appointed, the board shall count the votes, declare elected the candidate who received the greatest number of votes from districts and municipalities located within that director precinct, and submit the results before May 15 of that year to the governing body of each district or municipality within that director precinct.

(h) The board may adopt rules regarding:

(1) the manner and timing of determinations and calculations required by this section;

(2) the reporting of water usage to the authority by districts and municipalities; and

(3) the conduct and process of the appointment of directors.

Sec. 8813.057. VACANCY IN OFFICE OF DIRECTOR. A vacancy in the office of director shall be filled by appointment by the governing bodies of the districts and municipalities that are located within the director precinct for which the vacancy occurred. The appointment process shall follow the procedures of Section 8813.056. The board may establish dates different from those specified by Sections 8813.056(e) and (g), but the date for the board's submission of the voting results to each district and municipality may not be later than the 120th day after the date the vacancy occurs.

Sec. 8813.058. MEETINGS AND ACTIONS OF BOARD. (a) The board may meet as many times each year as the board considers appropriate.

(b) Directors of the authority are public officials and are entitled to governmental immunity for their actions in their capacity as directors and officers of the authority.

Sec. 8813.059. GENERAL MANAGER. (a) The board may employ a general manager of the authority or contract with a person to perform the duties of a general manager. The board may delegate to the general manager full authority to manage and operate the affairs of the authority subject only to orders of the board.

(b) The board may delegate to the general manager the authority to employ all persons necessary for the proper handling of the business and operation of the authority and to determine the compensation to be paid to all employees, other than the general manager.

[Sections 8813.060-8813.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8813.101. GENERAL POWERS AND DUTIES. (a) The authority may:

(1) provide for the conservation, preservation, protection, recharge, and prevention of waste of groundwater, and for the reduction of groundwater withdrawals as necessary to develop, implement, or enforce a groundwater reduction plan, in a manner consistent with the purposes of Section 59, Article XVI, Texas Constitution, and facilitate compliance with Fort Bend Subsidence District or Harris-Galveston Coastal Subsidence District, as applicable, rules, orders, regulations, or requirements;

(2) acquire or develop surface water and groundwater supplies from sources inside or outside the boundaries of the authority, conserve, store, transport, treat, purify, distribute, sell, and deliver water to or among persons inside and outside the boundaries of the authority, and allocate water among persons participating in the authority's groundwater reduction plan whether they are located inside or outside the authority's boundaries;

(3) enter into contracts with persons inside or outside the authority on terms and conditions the board considers desirable, fair, and advantageous for the performance of its rights, powers, and authority under this chapter;

(4) coordinate water services provided inside, outside, or into the authority;

(5) provide wholesale and retail water services to any users or customers within the authority's boundaries without being required to execute contracts with those users or customers;

(6) adopt policies establishing whether, when, and the manner in which the authority uses requests for proposals in obtaining services, including professional services;

(7) determine whether to adopt administrative policies in addition to those required by Section 49.199, Water Code; and

(8) administer and enforce this chapter.

(b) Sections 49.451-49.455, Water Code, do not apply to the authority.

(c) Notwithstanding Subsection (a)(5), the authority may not provide retail water service to a retail user within the authority's boundaries that is located within the boundaries of a district or municipality on the date the authority awards a contract for the construction or executes a contract for the acquisition of water facilities to serve that retail user, unless:

(1) the district or municipality consents in writing to the authority's provision of retail water service; or

(2) the retail user owns or operates a well.

(d) If a retail user that does not own or operate a well is added to the boundaries of a district or municipality after the date the authority awards a contract for the construction or executes a contract for the acquisition of water facilities to serve that retail user, the authority may provide retail service to that retail user without the written consent of the district or municipality.

Sec. 8813.102. AUTHORITY RULES. The authority may adopt and enforce rules reasonably required to implement this chapter, including rules governing procedures before the board and rules regarding implementation, enforcement, and any other matters related to the authority's water supply or groundwater reduction plan.

Sec. 8813.103. FEES, USER FEES, RATES, AND CHARGES. (a) The authority may establish fees, user fees, rates, and charges and classifications of payers of fees and rates as necessary to enable the authority to fulfill the authority's purposes and regulatory functions provided by this chapter. The authority may impose fees, user fees, rates, and charges on any person within the authority.

(b) The authority may charge the owner of a well located within the authority's boundaries a fee or user fee according to the amount of water pumped from the well. If ownership of a well changes, both the prior and subsequent well owners are liable to the authority, jointly and severally, for all fees and user fees imposed by the authority under this subsection, and any related penalties and interest, for water pumped from that well before the change in well ownership.

(c) The board shall make reasonable efforts to send districts and municipalities written notice of the date, time, and location of the meeting at which the board intends to adopt a proposed charge under Subsection (b) and the amount of the proposed charge. The board's failure to comply with this subsection does not invalidate a charge adopted by the board under Subsection (b).

(d) For wells located in Harris County or Fort Bend County, the board shall exempt from the charge under Subsection (b) classes of wells that are not subject to any groundwater reduction requirement imposed by the Harris-Galveston Coastal Subsidence District or the Fort Bend Subsidence District, as applicable. If any of those classes of wells become subject to a groundwater reduction requirement imposed by the applicable subsidence district, the authority may impose the charge under Subsection (b) on those classes. The board by rule may exempt any other classes of wells from the charge under Subsection (b). The board may not apply the charge under Subsection (b) to a well:

(1) with a casing diameter of less than five inches that serves only a single-family dwelling; or

(2) regulated under Chapter 27, Water Code.

(e) For purposes of Subsection (d), a well is subject to a groundwater reduction requirement if the applicable subsidence district has adopted or adopts a requirement or rule that groundwater withdrawals from the well, or from the well and other wells collectively, be reduced, including a groundwater reduction that is not required until a future date.

(f) The authority may establish fees, user fees, rates, and charges that are sufficient to:

(1) achieve water conservation;

(2) prevent waste of water;

(3) serve as a disincentive to pumping groundwater;

(4) develop, implement, or enforce a groundwater reduction plan;

(5) accomplish the purposes of this chapter, including making available alternative water supplies;

(6) enable the authority to meet operation and maintenance expenses;

(7) pay the principal of and interest on notes, bonds, and other obligations issued in connection with the exercise of the authority's general powers and duties;  
and

(8) satisfy all rate covenants relating to the issuance of notes, bonds, and other obligations.

(g) The authority may charge rates established by the authority for water purchased from the authority.

(h) The authority may impose fees, user fees, or charges for the importation of water into the authority's boundaries from a source located outside the authority's boundaries.

Sec. 8813.104. PURCHASE OF WATER FROM ANOTHER ENTITY. (a) If the authority purchases water from another entity for resale to local governments, the authority shall use its best efforts in negotiating with the entity to determine the amount of capital costs included in any rates or charges paid by the authority. The authority shall determine the amount of expected capital costs of its own system.

(b) The authority shall provide each district or municipality within its boundaries information regarding the share of the capital costs to be paid by the district or municipality, as determined by the authority, and shall provide each district or municipality the opportunity, in a manner and by a procedure determined by the authority, to fund its share of the capital costs with proceeds from the sale of bonds or fees and charges collected by the districts or municipalities. A district or municipality may use any lawful source of revenue, including bond funds, to pay any sums due to the authority.

(c) The authority may adopt a procedure by which a district or municipality may receive a credit from the authority. The board may adopt any other procedure necessary to accomplish the goals of this section.

(d) In complying with this section, the authority may use any reasonable basis to calculate from time to time the share of the capital costs of a district or municipality. The authority may calculate the shares of the capital costs based on the amount of water used within the authority by the district or municipality during the calendar year preceding the year in which the calculation is made.

(e) This section or any failure to comply with this section does not limit or impede the authority's ability to issue bonds or notes or invalidate any fees, user fees, charges, rates, or special assessments imposed by the authority.

Sec. 8813.105. ASSESSMENTS. (a) The board may undertake improvement projects and services that confer a special benefit on all or a definable part of the authority. The board may impose special assessments on property in that area, including property of a local government, based on the benefit conferred by the improvement project or services, to pay all or part of the cost of the project and services. The board may provide improvements and services to an area outside the boundaries of the authority if the board determines that there is a benefit to the authority. The authority may finance with special assessments any improvement project or service authorized by this chapter or any other applicable law.

(b) Services or improvement projects may be financed with special assessments under this chapter only after the board holds a public hearing on the advisability of the improvements and services and the proposed assessments.

(c) The board shall publish notice of the hearing in a newspaper or newspapers with general circulation in Harris and Fort Bend Counties. The publication must be made not later than the 30th day before the date of the hearing.

(d) Notice provided under this section must include:

(1) the time and place of the hearing;

(2) the general nature of the proposed improvement project or services;

(3) the estimated cost of the improvement, including interest during construction and associated financing costs; and

(4) the proposed method of assessment.

(e) Written notice containing the information required by Subsection (d) shall be mailed by certified mail, return receipt requested, not later than the 30th day before the date of the hearing. The notice shall be mailed to each person within the authority who holds a permit for a well issued by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable, and whose well is subject to a groundwater reduction requirement imposed by that district. The Harris-Galveston Coastal Subsidence District and Fort Bend Subsidence District shall provide to the authority a list of persons who hold such a permit.

(f) The board may establish rules regarding procedures for a hearing. A hearing on the services or improvement project, whether conducted by the board or a hearings examiner, may be adjourned from time to time. At the conclusion of a hearing conducted by the board, the board shall make written findings and conclusions relating to the advisability of the improvement project or services, the nature of the improvement project or services, the estimated cost, and the area benefited. If the board appoints a hearings examiner to conduct the hearing, after conclusion of the hearing, the hearings examiner shall file with the board a written report of the examiner's findings and conclusions.

(g) At a hearing on proposed assessments, on adjournment of the hearing, or after consideration of the hearings examiner's report, the board shall hear and rule on all objections to each proposed assessment. The board may amend proposed assessments for any property. After the board hears and takes action on those objections, the board, by order:

(1) shall impose the assessments as special assessments on the property;

(2) shall specify the method of payment of the assessments; and

(3) may provide that those assessments, including interest, be paid in periodic installments.

(h) Periodic installments must be in amounts sufficient to meet annual costs for services and improvements as provided by Subsection (j) and continue for the number of years required to retire the indebtedness or pay for the services to be rendered. The board may provide interest charges or penalties for failure to make timely payment and may impose an amount to cover delinquencies and expenses of collection.

(i) If assessments are imposed for more than one service or improvement project, the board may provide that assessments collected for one service or improvement project may be borrowed to be used for another service or improvement

project. The board shall establish a procedure for the distribution or use of any assessments in excess of those necessary to finance the services or improvement project for which those assessments were collected.

(j) The board shall apportion the cost of an improvement project or services to be assessed against the property in the authority according to the special benefits that accrue to the property because of the improvement project or services. The board may assess the cost only according to the number of gallons of groundwater pumped from wells within the authority that are subject to a groundwater reduction requirement imposed by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable. The board may not assess the cost according to groundwater pumped from:

(1) a well with a casing diameter of less than five inches that serves only a single-family dwelling; or

(2) a well that is regulated by Chapter 27, Water Code.

(k) The area of the authority to be assessed according to the findings of the board may be the entire authority or any part of the authority and may be less than the area proposed in the notice of the hearing.

(l) The area to be assessed may not include property that is not within the authority boundaries at the time of the hearing unless there is an additional hearing, following the required notice.

(m) Notwithstanding Subsection (l), the owner of land annexed to the authority after the authority has imposed assessments may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for land annexed to the authority. A district or municipality may waive the right to notice and an assessment hearing for land within its boundaries annexed to the authority and may agree to the imposition and payment of assessments at an agreed rate for the annexed land.

(n) The board shall have prepared an assessment roll showing the assessments against each property and the board's basis for the assessment. The assessment roll shall be:

(1) filed with the secretary of the board or other officer who performs the function of secretary; and

(2) open for public inspection.

(o) After notice and hearing in the manner required for an original assessment, the board may make supplemental assessments to correct omissions or mistakes in the assessment:

(1) relating to the total cost of the improvement project or services; or

(2) covering delinquencies or costs of collection.

Sec. 8813.106. INTEREST AND PENALTIES. The board may require the payment of interest on any late or unpaid fees, user fees, rates, charges, and special assessments due the authority, but the interest rate may not exceed the interest rate permitted by Section 2251.025, Government Code. The board may also impose penalties for the failure to make a complete or timely payment to the authority. In addition, the board may exclude a person, or any territory or well owned or controlled by a person, from the authority's groundwater reduction plan for failure to make a complete or timely payment to the authority.

Sec. 8813.107. ATTORNEY'S FEES AND COLLECTION EXPENSES. (a) The authority is entitled to reasonable attorney's fees incurred by the authority in enforcing its rules.

(b) The authority is entitled to collection expenses and reasonable attorney's fees incurred by the authority in collecting any delinquent fees, user fees, rates, and charges and any related penalties and interest.

Sec. 8813.108. LIEN. (a) Fees and user fees imposed by the authority under Section 8813.103(b), any related penalties and interest, and collection expenses and reasonable attorney's fees incurred by the authority:

(1) are a first and prior lien against the well to which the fees or user fees apply;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against the owner of the well.

(b) A lien under this section is effective from the date of the resolution or order of the board imposing the fee or user fee until the fee or user fee is paid.

(c) The board may enforce the lien in the same manner that a municipal utility district operating under Chapter 54, Water Code, may enforce an ad valorem tax lien against real property.

Sec. 8813.109. ADMINISTRATIVE PENALTY; INJUNCTION. (a) A person who violates a rule or order of the authority is subject to an administrative penalty of not more than \$5,000, as determined by the board, for each violation or each day of a continuing violation. The person shall pay the penalty to the authority.

(b) The authority may bring an action to recover the penalty in a district court in the county where the violation occurred.

(c) The authority may bring an action for injunctive relief in a district court in the county where a violation of an authority rule or order occurs or is threatened to occur. The court may grant to the authority, without bond or other undertaking, a prohibitory or mandatory injunction that the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) The authority may bring an action for an administrative penalty and injunctive relief in the same proceeding.

Sec. 8813.110. WATER SUPPLY OR DROUGHT CONTINGENCY PLANS. The authority by rule may develop, prepare, revise, adopt, implement, enforce, and manage comprehensive water supply or drought contingency plans for the authority, or any portion of the authority.

Sec. 8813.111. GROUNDWATER REDUCTION PLAN. (a) The authority may wholly or partly develop, prepare, revise, adopt, implement, enforce, manage, or participate in a groundwater reduction plan that is applicable only to the authority and one or more persons outside the authority. The authority may require that any groundwater reduction plan that the authority wholly or partly develops, prepares, revises, adopts, implements, enforces, or manages or in which the authority participates be the exclusive groundwater reduction plan that is binding and mandatory on some or all of the territory, persons, or wells located within the authority. A groundwater reduction plan may:

(1) specify the measures to be taken to reduce groundwater withdrawals;

(2) identify alternative sources of water, including water from the authority, to be provided to those affected;

(3) identify the rates, terms, and conditions under which alternative sources of water will be provided, which may be changed from time to time as considered necessary by the authority;

(4) specify the dates and extent to which persons or districts within the authority's boundaries shall reduce or cease reliance on groundwater and accept water from alternative sources, including water from the authority;

(5) include other terms and measures that are consistent with the powers and duties of the authority;

(6) exceed the minimum requirements imposed by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable, including any applicable groundwater reduction requirements; and

(7) be amended from time to time at the discretion of the authority.

(b) Fees, user fees, rates, charges, and special assessments of the authority may be imposed under this chapter for a person's participation in and benefit derived from the authority's groundwater reduction plan or a groundwater reduction plan in which the authority participates.

Sec. 8813.112. ACQUISITION, CONSTRUCTION, AND OPERATION OF SYSTEMS. (a) The authority may:

(1) acquire by purchase, gift, lease, contract, or any other legal means a water treatment or supply system, or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority, or any interest of the authority, inside or outside the authority's boundaries;

(2) design, finance, operate, maintain, or construct a water treatment or supply system or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority and provide water services inside or outside the authority's boundaries;

(3) lease or sell a water treatment or supply system or any other works, plants, improvements, or facilities necessary or convenient to accomplish the purposes of the authority that the authority constructs or acquires inside or outside the authority's boundaries;

(4) contract with any person to operate or maintain a water treatment or supply system the person owns; or

(5) acquire water rights under any law or permit.

(b) The authority may contract, according to terms and conditions the board considers desirable, fair, and advantageous, with a person outside the authority's boundaries:

(1) to allow the person, or the person's well, to be included in a groundwater reduction plan adopted or implemented wholly or partly by the authority or in a groundwater reduction plan in which the authority participates;

(2) to sell water to the person; or

(3) to sell the person available excess capacity or additional capacity of the authority's water treatment or supply system.

(c) The authority by rule may require that the plans and specifications of water lines to be constructed within the authority that are designed or intended to serve more than one district or more than one person owning or holding a well permit issued by the Harris-Galveston Coastal Subsidence District or Fort Bend Subsidence District, as applicable, be approved by the authority before the commencement of construction of the water lines.

Sec. 8813.113. SALE OR REUSE OF WATER OR BY-PRODUCT. The authority may store, sell, or reuse:

- (1) water; or
- (2) any by-product from the authority's operations.

Sec. 8813.114. CONTRACTS. (a) The authority may enter into a contract with a person for the performance of a purpose or function of the authority, including a contract to design, construct, finance, lease, own, manage, operate, or maintain works, improvements, facilities, plants, equipment, or appliances necessary to accomplish a purpose or function of the authority. A contract may be of unlimited duration.

(b) The authority may purchase, acquire, finance, or lease an interest in a project used for a purpose or function of the authority.

(c) The authority may contract for:

- (1) the purchase, sale, or lease of water or water rights;
- (2) the performance of activities within the powers of the authority through the purchase, construction, or installation of works, improvements, facilities, plants, equipment, or appliances; or
- (3) the design, construction, ownership, management, maintenance, or operation of any works, improvements, facilities, plants, equipment, or appliances of the authority or another person.

(d) The authority may purchase surplus property from this state, the United States, or another public entity through a negotiated contract without bids.

Sec. 8813.115. COOPERATION WITH AND ASSISTANCE OF OTHER GOVERNMENTAL ENTITIES. (a) In implementing this chapter, the board may cooperate with and request the assistance of the Texas Water Development Board, the commission, the United States Geological Survey, the Fort Bend Subsidence District, other local governments, and other agencies of the United States and this state.

(b) The Fort Bend Subsidence District may enter into an interlocal contract with the authority to carry out the authority's purposes and may carry out the governmental functions and services specified in the interlocal contract.

(c) In an attempt to minimize costs associated with preparing a groundwater reduction plan, the board may consider the usefulness of water supply studies and plans prepared by or on behalf of the North Harris County Regional Water Authority, the West Harris County Regional Water Authority, the City of Houston, or other governmental entities to the extent those studies or plans are available and applicable to the authority.

Sec. 8813.116. GIFTS AND GRANTS. The authority may accept a gift or grant from money collected by the Fort Bend Subsidence District to fund the construction, maintenance, or operation of a water treatment or supply system.

Sec. 8813.117. EXPENDITURES. (a) The authority's money may be disbursed only by check, draft, order, federal reserve wire system, or other instrument or authorization.

(b) Disbursements of the authority must be signed by at least a majority of the directors. The board by resolution may allow the general manager, treasurer, bookkeeper, or other employee of the authority to sign disbursements, except as limited by Subsection (c).

(c) The board by resolution may allow disbursements to be transferred by federal reserve wire system to accounts in the name of the authority without the necessity of any directors signing the disbursement. Disbursements of the authority's money by federal reserve wire system to any accounts not in the name of the authority must be signed by at least a majority of the directors.

Sec. 8813.118. AD VALOREM TAXATION. The authority may not impose an ad valorem tax.

Sec. 8813.119. EMINENT DOMAIN. (a) The authority may acquire by condemnation any land, easements, or other property inside the authority's boundaries to further authorized purposes, powers, or duties of the authority. The authority may acquire by condemnation any land, easements, or other property outside the authority's boundaries for the purposes of pumping, storing, treating, or transporting water. When exercising the power of eminent domain granted by this section, the authority may elect to condemn either the fee simple title or a lesser property interest.

(b) The authority shall exercise the right of eminent domain in the manner provided by Chapter 21, Property Code. The authority is not required to give bond for appeal or bond for costs in a condemnation suit or other suit to which it is a party. The authority is not required to deposit more than the amount of an award in a suit.

(c) The authority may not use the power of eminent domain for the condemnation of land for the purpose of acquiring rights to groundwater or for the purpose of acquiring water or water rights.

[Sections 8813.120-8813.150 reserved for expansion]

#### SUBCHAPTER D. BONDS AND NOTES

Sec. 8813.151. REVENUE BONDS AND NOTES. (a) The authority may issue bonds or notes payable solely from revenue from any source, including:

(1) tolls, charges, rates, fees, user fees, and special assessments the authority imposes or collects;

(2) the sale of water, water services, water rights or capacity, water transmission rights or services, water pumping, or any other service or product of the authority provided inside or outside the boundaries of the authority;

(3) grants or gifts;

(4) the ownership or operation of all or a designated part of the authority's works, improvements, facilities, plants, or equipment; and

(5) contracts between the authority and any person.

(b) Notes issued by the authority may be first or subordinate lien notes at the board's discretion.

(c) In connection with any bonds or notes of the authority, the authority may exercise any power of an issuer under Chapter 1371, Government Code.

(d) The authority may conduct a public, private, or negotiated sale of the bonds or notes.

(e) The authority may enter into one or more indentures of trust to further secure its bonds or notes.

(f) The authority may issue bonds or notes in more than one series as necessary to carry out the purposes of this chapter. In issuing bonds or notes secured by revenue of the authority, the authority may reserve the right to issue additional bonds or notes secured by the authority's revenue that are on a parity with or are senior or subordinate to the bonds or notes issued earlier.

(g) A resolution of the board authorizing the bonds or notes or a trust indenture securing the bonds or notes may specify additional provisions that constitute a contract between the authority and its bondholders or noteholders.

(h) Bonds and notes may be additionally secured by deed of trust or mortgage on any or all of the authority's facilities.

(i) The authority may issue refunding bonds or notes to refund any of its bonds or notes in any manner provided by law.

(j) Sections 49.153, 49.154, and 49.181, Water Code, do not apply to bonds or notes issued by the authority. Commission rules regarding bonds or notes do not apply to bonds or notes issued by the authority.

SECTION 1.2. INITIAL AUTHORITY TERRITORY. (a) The North Fort Bend Water Authority initially includes the territory that is contained in the following area, regardless of whether the territory contains noncontiguous parcels of land or whether the territory is located within the boundaries of any other governmental entity or political subdivision of the state:

BEGINNING at a point marking the Northwest corner and Point of Beginning of Regulatory Area A as defined in the Fort Bend Subsidence District 2003 Regulatory Plan, said point being near the intersection of Jordan Road and the common line between Waller and Fort Bend Counties and having approximate coordinates of North 29° 45' 10" and West 95° 55' 15";

THENCE in a Northeasterly direction, along and with the common line between said Waller and Fort Bend Counties to its intersection with the West line of the Willow Point Municipal Utility District (as it existed December 20, 2004), same being the West line of the W.W. Bains Survey, Abstract No. 753 (Fort Bend County) and Abstract No. 385 (Waller County);

THENCE in a Northerly direction, along and with the West line of said Willow Point Municipal Utility District (as it existed December 20, 2004), same being the West line of said W.W. Bains Survey, Abstract No. 385 to a point in the South right-of-way line of Interstate 10 and marking the Northwest corner of said Willow Point Municipal Utility District (as it existed December 20, 2004);

THENCE in an Easterly direction, along and with the South right-of-way line of said Interstate 10 to the Northeast corner of said Willow Point Municipal Utility District (as it existed December 20, 2004), said point also being a Southwest corner of the current corporate limits of the City of Katy;

THENCE in a Southerly direction, along and with the East line of said Willow Point Municipal Utility District (as it existed December 20, 2004), same being the East line of said W.W. Bains Survey, Abstract No. 385 to a point in the common line between Waller and Fort Bend Counties;

THENCE in a Northeasterly direction, along and with the common line between said Waller and Fort Bend Counties to its intersection with a Southerly line of the current corporate limits of said City of Katy, same being the South right-of-way line of said Interstate 10 and having approximate coordinates of North  $29^{\circ} 46' 40''$  and West  $95^{\circ} 51' 20''$ ;

THENCE in a generally Southeast direction and along and with the southerly limits of the current corporate limits of the City of Katy the following courses:

Easterly, along and with the South right-of-way line of said Interstate 10 to approximately 2,350 feet;

Southerly, approximately 2,350 feet;

Easterly, to its intersection with the Northeasterly line of the C.W. Schrimph Survey, Abstract No. 412;

Southeasterly, along and with the Northeasterly line of said Schrimph Survey and the Northeasterly line of the E. Everett Survey, Abstract No. 385 to point in the centerline of Katy-Flewellen Road and being the most Easterly corner of said Everett Survey;

Northeasterly, along and with the centerline of said Katy-Flewellen Road to its intersection with the Easterly right-of-way line of Pin Oak Road, same being a Westerly line of Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004);

Southeasterly, along and with the Easterly right-of-way line of said Pin Oak Road, same being a Westerly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004) to its intersection with the Southeasterly right-of-way line of said Katy-Flewellen Road;

Southwesterly, along and with the Southeasterly right-of-way line of said Katy-Flewellen Road, same being a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004) to the most Westerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004);

Southeasterly, along and with the most Southwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004) to the most Westerly South corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004),

Northeasterly, along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004), same being the most Northerly corner of Pin Oak Village Section 1;

Southeasterly, along and with the Northeasterly line of said Pin Oak Village Section 1, same being a Southwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004) to the most

Easterly corner of said Pin Oak Village Section 1, same being the most Southerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004);

Northeasterly, along and with the meanders of the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004), passing the most Westerly corner of Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004), continuing along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004), same being the Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004), passing the line common to Harris and Fort Bend Counties for the most East corner of said current corporate limits of the City of Katy, continuing along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004), same being the Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004) to a point in the West right-of-way line of Falcon Point Drive for the most Westerly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004), same being the most Easterly corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed December 20, 2004);

THENCE Easterly, along and with the North line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004) to the most Easterly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004);

THENCE Southeasterly, along and with the Northeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004) to the Northeast corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004);

THENCE Southwesterly, along and with a Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004);

THENCE Southeasterly, along and with a Northeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004), crossing the line common to Harris and Fort Bend Counties, passing the most Easterly corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed December 20, 2004), continuing along and with a Southeasterly extension of said Northeast line, crossing Roesner Road to a point in the Southeasterly right-of-way line of said Roesner Road, same being the Northwesterly line of Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Northeasterly, along and with the Southeasterly right-of-way line of said Roesner Road, same being the Northwesterly line of Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) to a point in the

line common to said Harris and Fort Bend Counties for the most Northerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Southeasterly, along and with said county line, same being a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) to a point in the Northwesterly line of the Cimarron Municipal Utility District (as it existed December 20, 2004) for the most Easterly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Southwesterly, along and with the Northwesterly line of said Cimarron Municipal Utility District (as it existed December 20, 2004), same being a Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being a Southwesterly line of said Cimarron Municipal Utility District (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Northeasterly, along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being a Southeasterly line of said Cimarron Municipal Utility District (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being a Southwesterly line of said Cimarron Municipal Utility District (as it existed December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being the most Southerly corner of said Cimarron Municipal Utility District (as it existed December 20, 2004);

THENCE Northeasterly, along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being a Southeasterly line of said Cimarron Municipal Utility District (as it existed December 20, 2004), crossing the line common to said Harris and Fort Bend Counties and the Grand Parkway (State Highway 99) passing a point in the Easterly right-of-way of said Grand Parkway, continuing along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) to point in a Southwesterly line of Cinco Municipal Utility District No. 9 (as it existed December 20, 2004) for the most Northerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) East of said Grand Parkway;

THENCE Northwesterly, along and with a Southwesterly line of said Cinco Municipal Utility District No. 9 (as it existed December 20, 2004) to a point in the South line of said Cimarron Municipal Utility District (as it existed December 20, 2004) for the West corner of said Cinco Municipal Utility District No. 9 (as it existed December 20, 2004);

THENCE Easterly, along and with the North line of said Cinco Municipal Utility District No. 9 (as it existed December 20, 2004), same being the South line of said Cimarron Municipal Utility District (as it existed December 20, 2004) passing the common North corner of said Cinco Municipal Utility District No. 9 (as it existed December 20, 2004) and Cornerstones Municipal Utility District (as it existed December 20, 2004), also passing the common South corner of said Cimarron Municipal Utility District (as it existed December 20, 2004) and Harris County Municipal Utility District No. 81 (as it existed December 20, 2004), continuing along and with a South line of said Harris County Municipal Utility District No. 81 (as it existed December 20, 2004) to a point in Mason Road for the Northeast corner of said Cornerstones Municipal Utility District (as it existed December 20, 2004);

THENCE Southerly, along and with Mason Road, same being the East line of said Cornerstones Municipal Utility District (as it existed December 20, 2004), passing the common West corner of said Harris County Municipal Utility District No. 81 (as it existed December 20, 2004) and Memorial Municipal Utility District (as it existed December 20, 2004), continuing along and with Mason Road and along and with the East line of said Cornerstones Municipal Utility District (as it existed December 20, 2004) crossing the line common to Harris and Fort Bend Counties to the Southeast corner of said Memorial Municipal Utility District (as it existed December 20, 2004), same being the Northwest corner of Cinco Municipal Utility District No. 3 (as it existed December 20, 2004);

THENCE Easterly, along and with South line of said Memorial Municipal Utility District (as it existed December 20, 2004), same being the North line of said Cinco Municipal Utility District No. 3 (as it existed December 20, 2004) crossing the line common to Harris and Fort Bend Counties, passing the common North corner of said Cinco Municipal Utility District No. 3 (as it existed December 20, 2004) and Cinco Municipal Utility District No. 6 (as it existed December 20, 2004), continuing along and with the South line of said Memorial Municipal Utility District (as it existed December 20, 2004) to the most Easterly Northwest corner of said Cinco Municipal Utility District No. 6 (as it existed December 20, 2004);

THENCE Southeasterly, along and with the Northeasterly meanders of said Cinco Municipal Utility District No. 6 (as it existed December 20, 2004), same being partly the Southwesterly line of a Harris County Flood Control District right-of-way to the most Easterly corner of said Cinco Municipal Utility District No. 6 (as it existed December 20, 2004), same being an angle point in the Westerly current corporate limits of the City of Houston, same being the Westerly line of the United States Government Barker Reservoir, same further being the Easterly limits of Tract 1 of the West Harris County Regional Water Authority;

THENCE along and with the Easterly limits of said West Harris County Regional Water Authority, same being the Westerly current corporate limits of said City of Houston, same further being the Westerly line of said United States Government

Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 6 (as it existed December 20, 2004) the following courses and distances: (bearings and distances based on the description of said West Harris County Regional Water Authority dated December 22, 2000)

South 23° 42' West, a distance of 1178.3 feet;

North 59° 10' West, a distance of 517.8 feet;

South 23' 32' West, to a point in the line common to Harris and Fort Bend Counties for the most Westerly Southeast corner of Tract 1 of said West Harris County Regional Water Authority and having approximate coordinates of North 29° 44' 05" and West 95° 43' 50"

THENCE Southwesterly and Northwesterly, continuing along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 6 (as it existed December 20, 2004) to a point in the Easterly right-of-way line of Fry Road, same being the Easterly line of Cinco Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Southwesterly and Southeasterly, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 5 (as it existed December 20, 2004) to a point in the centerline of the Willow Fork of Buffalo Bayou for the corner common to said Cinco Municipal Utility District No. 5 (as it existed December 20, 2004) and Cinco Municipal Utility District No. 7 (as it existed December 20, 2004);

THENCE along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to a point in the West line of the H.E. Looney Survey, Abstract No. 277 for an angle point;

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) and the West line of said Looney Survey to a point in the North line of Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) for the Southwest corner of said Looney Survey, same being the Southeast corner of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004);

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Northerly line of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) to the Northeast corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004);

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District

No. 8 (as it existed December 20, 2004), passing the most Easterly Southeast corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) to an angle point;

THENCE Westerly, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being the Southerly line of the Northerly portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), passing the common South corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) and Grand Lakes Municipal Utility District No. 1 (as it existed December 20, 2004), continuing along and with the meanders of the Westerly current corporate limits of said City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being the Southerly line of said Grand Lakes Municipal Utility District No. 1 (as it existed December 20, 2004), passing the Southwest corner of said Grand Lakes Municipal Utility District No. 1 (as it existed December 20, 2004) in the centerline of Peek Road, continuing along and with the meanders of the Westerly current corporate limits of said City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip) to the Northwest corner of said Barker Dam Strip, same being the most Westerly Northeast corner of the Southern portion of Grand Lakes Municipal Utility District No. 4 (as it existed December 20, 2004);

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being a Westerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being an Easterly line of said Grand Lakes Municipal Utility District No. 4 (as it existed December 20, 2004) to the Southwest corner of said Barker Dam Strip;

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being a Northerly line of the Southerly portion of said Grand Lakes Municipal Utility District No. 4 (as it existed December 20, 2004), passing the most Easterly Northeast corner of the Southern portion of Grand Lakes Municipal Utility District No. 4 (as it existed December 20, 2004), continuing along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip), same being partly the Northerly line of the Southerly portion of said Grand Lakes Municipal Utility District No. 1 (as it existed December 20, 2004), passing the Northwest corner of the Southerly portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), continuing along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip), same being the partly Northerly line of the Southerly portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) to a point in the West line of the John Brock Survey, Abstract No. 4 for an angle point;

THENCE Northerly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir, same further being the West line of said Brock Survey, an approximate distance of 62.8 feet to an angle point;

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir, an approximate distance of 3,635 feet to an angle point;

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir to a point in the Northerly right-of-way line of Farm To Market Highway 1093 (Westheimer Road),

THENCE Easterly, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Northerly right-of-way line of said Highway 1093 to its intersection with the Easterly right-of-way line of Farm To Market Highway 1464;

THENCE Southerly, along and with the Easterly right-of-way line of said Highway 1464, passing the Northwest corner of West Harris County Municipal Utility District No. 4 (as it existed December 20, 2004), continuing along and with the Easterly right-of-way line of said Highway 1464, same being the Westerly line of said West Harris County Municipal Utility District No. 4 (as it existed December 20, 2004) to the intersection of the North right-of-way line of Alief-Clodine Road with said Easterly right-of-way line for the Southwest corner of said West Harris County Municipal Utility District No. 4 (as it existed December 20, 2004);

THENCE Easterly, along and with the North right-of-way line of said Alief-Clodine Road, same being the South line of said West Harris County Municipal Utility District No. 4 (as it existed December 20, 2004) to a point in the line common to Harris and Fort Bend Counties;

THENCE Southeasterly, along and with said county line to the South right-of-way line of said Alief-Clodine Road, same being the North line of Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004);

THENCE along and with the Northerly and Easterly limits of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004) the following courses and distances: (bearings and distances based on an exhibit of said Fort Bend County Municipal Utility District No. 30 prepared by Total Surveyors, Inc. and dated March 28, 2000, revised August 30, 2002);

South 56° 52' 06" East, along and with said county line, a distance of 285.62 feet to an angle point;

South 00° 03' 43" West, a distance of 369.13 feet to an interior corner;

North 85° 19' 43" East, crossing said county line, a distance of 1,585.75 feet to the most Southerly Northeast corner;

South 01° 33' 14" West, a distance of 244.10 feet to an angle point;

North 89° 18' 17" East, a distance of 32.93 feet to an angle point;

South 01° 33' 14" West, crossing said county line, a distance of 1,530.25 feet to an interior corner of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004);

South 01° 15' 14" West, along and with the West line of the Chelford City Municipal Utility District (as it existed December 20, 2004), departing the East line of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004), a distance of 463.95 feet to an interior corner of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004);

South 01° 35' 26" West, along and with the East line of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004), a distance of 564.29 feet to an angle point;

South 01° 33' 11" West, a distance of 1,028.29 feet to an angle point;

South 89° 41' 05" West, a distance of 977.24 feet to an angle point;

South 00° 14' 11" West, a distance of 3,248.96 feet to an angle point;

North 85° 58' 03" East, a distance of 276.35 feet to an angle point;

North 89° 56' 54" East, a distance of 564.71 feet to an angle point;

North 86° 13' 12" East, a distance of 131.40 feet to an angle point;

North 86° 09' 25" East, a distance of 59.92 feet to an angle point;

North 85° 19' 10" East, a distance of 165.19 feet to an angle point;

North 81° 39' 13" East, a distance of 248.15 feet to an angle point;

North 86° 51' 58" East, along and with the South line of the Mission Bend Municipal Utility

District No. 1 (as it existed December 20, 2004), a distance of 307.84 feet to an angle point in the East line of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004), same being the Northwest corner of the North Mission Glen Municipal Utility District (West Tract) (as it existed December 20, 2004);

THENCE Easterly, along and with the North line of said North Mission Glen Municipal Utility District (West Tract) (as it existed December 20, 2004), same being the South line of said Mission Bend Municipal Utility District No. 1 (as it existed December 20, 2004) to the Northeast corner of said North Mission Glen Municipal Utility District (West Tract) (as it existed December 20, 2004);

THENCE Southerly, along and with the East line of said North Mission Glen Municipal Utility District (West Tract) (as it existed December 20, 2004), same being a West line of said Mission Bend Municipal Utility District No. 1 (as it existed December 20, 2004), passing an interior Southwest corner of said Mission Bend Municipal Utility District No. 1 (as it existed December 20, 2004), continuing along and with the East line of said North Mission Glen Municipal Utility District (West Tract) (as it existed December 20, 2004) to a Westerly extension of the South right-of-way line of Forest Briar Drive;

THENCE Easterly, along and with said Westerly extension, passing the intersection of the East right-of-way line of Gaines Road with the South right-of-way line of said Forest Briar Drive, same being the Northwest corner of the Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Easterly, along and with the South right-of-way line of said Forest Briar Drive, same being the North line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004) to its intersection with the South line of the North Mission Glen Municipal Utility District (East Tract) (as it existed December 20, 2004);

THENCE along and with the meanders of the Westerly and Northerly line of said North Mission Glen Municipal Utility District (East Tract) (as it existed December 20, 2004), same partly being an Easterly and Southerly Line of said Mission Bend Municipal Utility District No. 1 (as it existed December 20, 2004) to a point in the West right-of-way line of State Highway 6 for the common East corner of said North Mission Glen Municipal Utility District (East Tract) and Mission Bend Municipal Utility District No. 1 (as they existed December 20, 2004);

THENCE Westerly and Southerly, along and with the West line of said North Mission Glen Municipal Utility District (East Tract) (as it existed December 20, 2004) to its intersection with the North line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Easterly, along and with the North line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004), crossing the line common to Harris and Fort Bend Counties to a point in the West right-of-way line of Sugarland-Howell Road for the Northeast corner of said Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of Sugarland-Howell Road, same being the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004) to the North right-of-way line of Bissonnet Street, same being an interior North line of the Renn Road Municipal Utility District (as it existed December 20, 2004);

THENCE Westerly, along and with the North right-of-way line of Bissonnet Street, same being a South line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004), same further being an interior North line of said Renn Road Municipal Utility District (as it existed December 20, 2004) to a point in the line common to Harris and Fort Bend Counties for the most Westerly corner of said Renn Road Municipal Utility District (as it existed December 20, 2004), same being an interior corner in the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Southeasterly, along and with said county line to the intersection of the centerline of said Sugarland-Howell Road with said county line for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004), same being an angle point in the West line of said Renn Road Municipal Utility District (as it existed December 20, 2004);

THENCE Southerly, along and with the centerline of said Sugarland-Howell Road, same being an East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004) to the intersection of the South right-of-way line of said Bissonnet Street with said centerline for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Westerly, along and with the South right-of-way line of said Bissonnet Street to the intersection of the West right-of-way line of said Sugarland-Howell Road with said South right-of-way line for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of Sugarland-Howell Road, same being the East line of said Kingsbridge Municipal Utility District (as it existed December 20, 2004) to a Westerly extension of the most Westerly South line of said Renn Road Municipal Utility District (as it existed December 20, 2004);

THENCE Easterly, along and with said Westerly extension passing a point in the East right-of-way line of said Sugarland-Howell Road for the most Westerly Southwest corner of said Renn Road Municipal Utility District (as it existed December 20, 2004), continuing Easterly and Southerly along and with the meanders of the Southwesterly and Southerly lines of said Renn Road Municipal Utility District (as it existed December 20, 2004) to the intersection of the West right-of-way line of Eldridge Road with the South line of said Renn Road Municipal Utility District (as it existed December 20, 2004);

THENCE Northerly, along and with the West right-of-way line of said Eldridge Road same being an Easterly line of said Renn Road Municipal Utility District (as it existed December 20, 2004) to a point in the line common to Harris and Fort Bend Counties;

THENCE Southeasterly, along and with said county line, same being a Southwesterly line of said Renn Road Municipal Utility District (as it existed December 20, 2004), passing a point in the Easterly right-of-way line of said Eldridge Road for an interior corner of said Renn Road Municipal Utility District (as it existed December 20, 2004), continuing along and with said county line, passing a point for the Northeast corner of Tract C of the Fort Bend County Municipal Utility District No. 2 (as it existed December 20, 2004), continuing along and with said county line, same being the Northeasterly line of said Tract C (as it existed December 20, 2004) to the intersection of a North current corporate limit of the City of Houston with said county line and being the most Easterly corner of said Tract C (as it existed December 20, 2004);

THENCE Westerly, along and with a South line of said Tract C (as it existed December 20, 2004), same being a Northerly current corporate limit of the City of Houston, a distance of 579.60 feet to an interior corner of said Tract C (as it existed December 20, 2004);

THENCE Southerly, along and with an East line of said Tract C (as it existed December 20, 2004), same being a Westerly current corporate limit of the City of Houston, at a distance of 227.76 feet passing the most Westerly Southeast corner of said Tract C (as it existed December 20, 2004), continuing along and with said Westerly corporate limits to an interior corner of said Westerly corporate limits;

THENCE Westerly, along and with a Northerly line of the current corporate limits of said City of Houston passing a point in the East right-of-way line of said Eldridge Road, continuing along and with a Westerly extension of said Northerly current corporate limit of said City of Houston to a point in the West right-of-way line of said Eldridge Road, same being the East line of Tract A of said Fort Bend County Municipal Utility District No. 2 (as it existed December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of said Eldridge Road, same being the East line of said Tract A (as it existed December 20, 2004) to the Southeast corner of said Tract A (as it existed December 20, 2004);

THENCE, along and with the Southerly line of said Tract A (as it existed December 20, 2004), same being a Northerly current corporate limit of the City of Houston the following courses and distances (bearings and distances based on the Fort Bend County Municipal Utility District No. 2 District Boundary Map prepared by Pate Engineers and dated November, 1996);

South 89° 19' 00" West, a distance of 309.57 feet to an angle point;

North, a distance of 211.22 feet to an angle point;

West, a distance of 273.60 feet to an angle point;

North, a distance of 240.97 feet to a point;

North 89° 52' 59" West to a Northwest corner of said Northerly corporate limit;

THENCE in a general Southeasterly direction, along and with the Westerly and Southerly current corporate limits of said City of Houston to a point in the West line of Tract B of said Fort Bend County Municipal Utility District No. 2 (as it existed December 20, 2004);

THENCE, along and with the boundary of said Tract B (as it existed December 20, 2004) the following courses and distances (bearings and distances based on the Fort Bend County Municipal Utility District No. 2 District Boundary Map prepared by Pate Engineers and dated November, 1996);

South 89° 59' 49" East, a distance of 1,159.05 feet to the Northeast corner;

South 00° 00' 25" West, a distance of 1,399.19 feet to an angle point;

South 00° 01' 54" West, a distance of 867.48 feet to the Southeast corner;

North 89° 58' 30" West, a distance of 1,995.67 feet to the Southwest corner;

North 00° 00' 07" West, a distance of 618.91 feet to the Northerly Southeast corner;

South 89° 57' 30" East, a distance of 699.62 feet to an interior corner;

North 00° 07' 34" East, a distance of 250.22 feet to an interior corner in the South right-of-way line of Florence Road;

South 89° 54' 40" East, along and with the South right-of-way line of said Florence Road, a distance of 136.12 feet to an interior corner;

North 00° 02' 30" East, to a point in the North right-of-way line of said Florence Road;

THENCE Westerly, along and with the Northerly right-of-way line of said Florence Road, passing the most Westerly Southeast corner of Tract A of said Fort Bend County Municipal Utility District No. 2 (as it existed December 20, 2004), continuing along and with the North right-of-way line of said Florence Road, same being the South line of said Tract A (as it existed December 20, 2004) to the intersection of the East right-of-way line of Burney Road with said North right-of-way line, same being the Southwest corner of said Tract A (as it existed December 20, 2004);

THENCE Southerly, along and with a Southerly extension of the East right-of-way line of said Burney Road to a point in the South right-of-way line of said Florence Road, same being the Northerly current corporate limits of the City of Sugar Land;

THENCE in a generally Southwesterly direction and along and with the meanders of the most Northerly and Westerly current corporate and/or extra territorial jurisdictional (ETJ) limits of the City of Sugar Land to the intersection of the North right-of-way line of U.S. Highway 90 with said limits and having approximate coordinates of North 29° 36' 15" and West 95° 40' 25";

THENCE Westerly, along and with the meanders of the North right-of-way line of said U.S. Highway 90, same being the North current ETJ limits of the City of Sugar Land to the intersection of the East right-of-way line of Farm To Market Highway 1464 with said North right-of-way line, same being the corner common with the current ETJ limits of the City of Houston, the City of Sugar Land, and the City of Richmond and having approximate coordinates of North 29° 36' 08" and West 95° 41' 00";

THENCE in a generally Northerly and Westerly direction and along and with the meanders of the most Easterly and Northerly current corporate and/or ETJ limits of the City of Richmond to a point in the centerline of Farm To Market Highway 723 and being the corner common with the current ETJ limits of the City of Fulshear, the City of Richmond, and the City of Rosenberg and having approximate coordinates of North 29° 36' 00" and West 95° 48' 40";

THENCE in a generally Westerly direction and along and with the meanders of the most Northerly current corporate and/or ETJ limits of the City of Rosenberg to the intersection of the West line of said Regulatory Area A as defined in the Fort Bend Subsidence District 2003 Regulatory Plan with said current ETJ limits of said City of Rosenberg and having approximate coordinates of North 29° 35' 33" and West 95° 55' 00";

THENCE North, along and with a meridian having a Longitude of West 95° 55' 00", same being the West line of said Regulatory Area A to the POINT OF BEGINNING.

SAVE AND EXCEPT:

That portion of the right-of-way of said Eldridge Road contained within this description.

(b) In addition to the territory described by Subsection (a) of this section, the authority includes all territory in Harris County of any district the territory of which includes, on the effective date of this Act, any of the territory described by Subsection (a) of this section, regardless of whether the territory contains noncontiguous parcels of land.

(c) Notwithstanding Subsections (a) and (b) of this section, the authority does not include any area that, on the effective date of this Act, is inside:

(1) the municipal limits or extraterritorial jurisdiction, as determined under Subchapter B, Chapter 42, Local Government Code, of the Cities of Stafford, Missouri City, Sugar Land, Richmond, Rosenberg, and Katy;

(2) the municipal limits of the City of Houston;

(3) the territory of the West Harris County Regional Water Authority;

(4) the boundaries of Waller County; or

(5) the boundaries of Fort Bend County Water Control and Improvement District No. 2.

(d) Notwithstanding Subsection (c)(3) of this section, the area within the following districts, as their boundaries existed on December 20, 2004, is included within the authority:

- (1) Harris-Fort Bend Counties Municipal Utility District No. 1;
- (2) Harris-Fort Bend Counties Municipal Utility District No. 5; and
- (3) Fort Bend County Municipal Utility District No. 30.

SECTION 1.3. DESCRIPTION OF DIRECTOR PRECINCTS. (a) The authority includes seven single-member director precincts as follows:

(1) Director Precinct No. 1 includes the territory that is contained in the following area:

BEGINNING at the intersection of an Easterly extension of the North line of the Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) and State Highway 6;

THENCE Southerly, along and with the centerline of said Highway 6 to the intersection of the centerline of Voss Road with the centerline of said Highway 6, same being the Northerly current extra territorial jurisdictional (ETJ) limits of the City of Sugar Land;

THENCE in a generally Southwesterly direction and along and with the meanders of the most Northerly and Westerly current corporate and/or current ETJ limits of the City of Sugar Land to the intersection of the North right-of-way line of U.S. Highway 90 with said limits and having approximate coordinates of North 29° 36' 15" and West 95° 40' 25";

THENCE Westerly, along and with the meanders of the North right-of-way line of said U.S. Highway 90, same being the North current ETJ limits of the City of Sugar Land to the intersection of the East right-of-way line of Farm To Market Highway 1464 with said North right-of-way line, same being the corner common with the current ETJ limits of the City of Houston, said City of Sugar Land, and the City of Richmond and having approximate coordinates of North 29° 36' 08" and West 95° 41' 00";

THENCE in a generally Northerly and Westerly direction and along and with the meanders of the most Easterly and Northerly current corporate and/or current ETJ limits of said City of Richmond to a point in the centerline of Farm To Market Highway 723 and being the corner common with the current ETJ limits of the City of Fulshear, said City of Richmond, and the City of Rosenberg and having approximate coordinates of North 29° 36' 00" and West 95° 48' 40";

THENCE Northerly, along and with the centerline of said Highway 723 to the intersection of a Westerly extension of the centerline of Wessendorf Road with the centerline of said Highway 723 and having approximate coordinates of North 29° 38' 54" and West 95° 48' 43";

THENCE Easterly, along and with said Westerly extension and the centerline of said Wessendorf Road to the intersection of the centerline of Holmes Road with the centerline of said Wessendorf Road;

THENCE Northerly, along and with the centerline of said Holmes Road, passing an angle point in said Holmes Road, continuing along and with a Northerly extension of the centerline of said Holmes Road that runs coincident with the West line of the Knight & White Survey, Abstract No. 46 to the intersection of the centerline of the proposed Winner-Foster Thoroughfare as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004) with said Northerly extension;

THENCE Northeasterly and Easterly, along and with the centerline of said proposed Winner-Foster Thoroughfare to the intersection of the centerline of the Grand Parkway with the centerline of said proposed Winner-Foster Thoroughfare;

THENCE Southeasterly, along and with the centerline of said Grand Parkway, passing the intersection of Skinner Lane and said Grand Parkway to a Westerly extension of the Southerly line of a 166.5718 acre tract described in a conveyance to J.A.B. Development Corporation and recorded under Clerk's File No. 2002038808 of the Fort Bend County Deed Records;

THENCE Easterly, along and with said Westerly extension, passing the Northeast right-of-way line of the Grand Parkway, continuing along and with the Southerly line of said 166.5718 acre tract to a point in the West line of a 335.948 acre tract described in a conveyance to LM Land Holdings, LP and recorded under Clerk's File No. 2002106104 of the Fort Bend County Deed Records for the Southeast corner of said 166.5718 acre tract;

THENCE Northerly, along and with the Westerly line of said 335.948 acre tract to a point in the North line of the I.& G.N. R.R. Survey, Abstract No. 353 for the Northwest corner of said 335.948 acre tract;

THENCE Easterly, along and with the common North line of said I. & G.N. R.R. Survey and said 335.948 acre tract to the intersection of a Southerly extension of the Westerly line of the Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004) with said North line;

THENCE Northerly, along and with said Southerly extension, passing the South right-of-way line of Canal Road (Beechnut extension) to a point in the North line of said Canal Road for the Southwest corner of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004);

THENCE Easterly, along and with the North right-of-way line of said Canal Road, same being the South line of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004) to a point in the West line of the John Frederick Survey, Abstract No. 171 for the Southeast corner of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004);

THENCE, Southerly, along and with the West line of said John Frederick Survey, Abstract No. 171, passing the common West corner of the John Frederick Survey, Abstract No. 172 and said John Frederick Survey, Abstract No. 171, continuing along and with the West line of said John Frederick Survey, Abstract No. 172 to a point in the centerline of Morton Road for the Southwest corner of said John Frederick Survey, Abstract No. 172;

THENCE Easterly, along and with the centerline of said Morton Road, and partly along and with the North line of the Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) to the Northeast corner of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004);

THENCE Southerly, along and with the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004), passing the Grand Parkway, continuing along and with the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) to the most Easterly Southeast corner of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004), and being located at the intersection of said Oyster/Flatbank Creek and the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004);

THENCE Easterly, to a point in the centerline of Harlem Road and being located approximately 1,200 feet South of the Bullhead Slough crossing with said Harlem Road and having approximate coordinates of North 29° 38' 44" and West 95° 42' 52";

THENCE Easterly, to the intersection of the centerline of proposed Airport Boulevard as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004) with the centerline of the Grand Parkway, said intersection being located approximately midway between the Oyster/Flatbank Creek and Bullhead Slough crossings with said Grand Parkway and having approximate coordinates of North 29° 38' 46" and West 95° 42' 29";

THENCE Easterly, along and with the meanders of the centerline of said Airport Boulevard, proposed or existing, to the intersection of an interior West line of the Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004) with the centerline of existing Airport Boulevard;

THENCE Northerly, along and with an interior West line of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004) to the most Northerly Northwest corner of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004);

THENCE Easterly, along and with the meanders of the North line of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004) to a point in the West right-of-way line of Gaines Road for the Northeast corner of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of said Gaines Road to the intersection of a Westerly extension of the Northerly line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) with said right-of-way line;

THENCE Easterly, along and with said Westerly extension, passing the Northwest corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) in the East right-of-way line of said Gaines Road, continuing along and with the North line of said Fort Bend County

Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) to an interior corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004);

THENCE Northerly, along and with an interior West line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) to the most Northerly Northwest corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004);

THENCE Easterly, along and with the North line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) to the POINT OF BEGINNING.

(2) Director Precinct No. 2 includes the territory that is contained in the following area:

BEGINNING at the intersection of the East right-of-way line of Gaines Road with the South right-of-way line of Forest Briar Drive (also known as Gaines Road), same being the Northwest corner of Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Easterly, along and with the South right-of-way line of said Forest Briar Drive, same being the North line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004) to its intersection with the South line of the North Mission Glen Municipal Utility District (East Tract) (as it existed on December 20, 2004);

THENCE along and with the meanders of the Westerly and Northerly line of said North Mission Glen Municipal Utility District (East Tract) (as it existed on December 20, 2004), same partly being an Easterly and Southerly Line of the Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004) to a point in the West right-of-way line of State Highway 6 for the common East corner of said North Mission Glen Municipal Utility District (East Tract) (as it existed on December 20, 2004) and Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Southerly and Westerly, along and with the East line of said North Mission Glen Municipal Utility District (East Tract) (as it existed on December 20, 2004) to its intersection with the North line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Easterly, along and with the North line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004), crossing the line common to Harris and Fort Bend Counties to a point in the West right-of-way line of Sugarland-Howell Road for the Northeast corner of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of Sugarland-Howell Road, same being the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004) to the North right-of-way line of Bissonnet Street, same being an interior North line of the Renn Road Municipal Utility District (as it existed on December 20, 2004);

THENCE Westerly, along and with the North right-of-way line of Bissonnet Street, same being a South line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004), same further being an interior North line of the Renn Road Municipal Utility District (as it existed on December 20, 2004) to a point in the line common to Harris and Fort Bend Counties for the most Westerly corner of said Renn Road Municipal Utility District (as it existed on December 20, 2004), same being an interior corner in the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Southeasterly, along and with said county line to the intersection of the centerline of said Sugarland-Howell Road with said county line for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004), same being an angle point in the West line of said Renn Road Municipal Utility District (as it existed on December 20, 2004);

THENCE Southerly, along and with the centerline of said Sugarland-Howell Road, same being an East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004) to the intersection of the South right-of-way line of said Bissonnet Street with said centerline for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Westerly, along and with the South right-of-way line of said Bissonnet Street to the intersection of the West right-of-way line of said Sugarland-Howell Road with said South right-of-way line for an angle point in the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of Sugarland-Howell Road, same being the East line of said Kingsbridge Municipal Utility District (as it existed on December 20, 2004) to a Westerly extension of the most Westerly South line of said Renn Road Municipal Utility District (as it existed on December 20, 2004);

THENCE Easterly, along and with said Westerly extension passing a point in the East right-of-way line of said Sugarland-Howell Road for the most Westerly Southwest corner of said Renn Road Municipal Utility District (as it existed on December 20, 2004), continuing Easterly and Southerly along and with the meanders of the Southwesterly and Southerly lines of said Renn Road Municipal Utility District (as it existed on December 20, 2004) to the intersection of the West right-of-way line of Eldridge Road with the South line of said Renn Road Municipal Utility District (as it existed on December 20, 2004);

THENCE Northerly, along and with the West right-of-way line of said Eldridge Road same being an Easterly line of said Renn Road Municipal Utility District (as it existed on December 20, 2004) to a point in the line common to Harris and Fort Bend Counties;

THENCE Southeasterly, along and with said county line, same being a Southwesterly line of said Renn Road Municipal Utility District (as it existed on December 20, 2004), passing a point in the Easterly right-of-way line of said Eldridge Road for an interior Southeast corner of said Renn Road Municipal Utility District (as it existed on December 20, 2004), continuing along and with said county line, passing a point for the Northeast corner of Tract C of the Fort Bend County Municipal Utility District No. 2 (as it existed on December 20, 2004), continuing along and with said county

line, same being the Northeasterly line of said Tract C (as it existed on December 20, 2004) to the intersection of a North current corporate limit of the City of Houston with said county line and being the most Easterly corner of said Tract C (as it existed on December 20, 2004);

THENCE Westerly, along and with a South line of said Tract C (as it existed on December 20, 2004), same being a Northerly current corporate limit of the City of Houston, a distance of 579.60 feet to an interior corner of said Tract C (as it existed on December 20, 2004);

THENCE Southerly, along and with an East line of said Tract C (as it existed on December 20, 2004), same being a Westerly current corporate limit of the City of Houston, at a distance of 227.76 feet passing the most Westerly Southeast corner of said Tract C (as it existed on December 20, 2004), continuing along and with said Westerly current corporate limits of the City of Houston to an interior corner of said Westerly current corporate limits of the City of Houston;

THENCE Westerly, along and with a Northerly line of the current corporate limits of said City of Houston passing a point in the East right-of-way line of said Eldridge Road, continuing along and with a Westerly extension of said Northerly current corporate limit to a point in the West right-of-way line of said Eldridge Road, same being the East line of Tract A of said Fort Bend County Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE Southerly, along and with the West right-of-way line of said Eldridge Road, same being the East line of said Tract A (as it existed on December 20, 2004) to the Southeast corner of said Tract A (as it existed on December 20, 2004);

THENCE, along and with the Southerly line of said Tract A (as it existed on December 20, 2004), same being a Northerly current corporate limit of the City of Houston the following courses and distances (bearings and distances based on the Fort Bend County Municipal Utility District No. 2 District Boundary Map prepared by Pate Engineers and dated November, 1996);

South 89° 19' 00" West, a distance of 309.57 feet to an angle point;

North, a distance of 211.22 feet to an angle point;

West, a distance of 273.60 feet to an angle point;

North, a distance of 240.97 feet to a point;

North 89° 52' 59" West to a Northwest corner of said Northerly current corporate limit;

THENCE, in a general Southeasterly direction, along and with the Westerly and Southerly current corporate limits of said City of Houston to a point in the West line of Tract B of said Fort Bend County Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE, along and with the boundary of said Tract B (as it existed on December 20, 2004) the following courses and distances (bearings and distances based on the Fort Bend County Municipal Utility District No. 2 District Boundary Map prepared by Pate Engineers and dated November, 1996);

North 00° 02' 30" East to the Northwest corner;

South 89° 59' 49" East, a distance of 1,159.05 feet to the Northeast corner;

South 00° 00' 25" West, a distance of 1,399.19 feet to an angle point;

South 00° 01' 54" West, a distance of 867.48 feet to the Southeast corner;  
North 89° 58' 30" West, a distance of 1,995.67 feet to the Southwest corner;  
North 00° 00' 07" West, a distance of 618.91 feet to the Northerly Southeast corner;

South 89° 57' 30" East, a distance of 699.62 feet to an interior corner;  
North 00° 07' 34" East, a distance of 250.22 feet to an interior corner in the South right-of-way line of Florence Road;

South 89° 54' 40" East, along and with the South right-of-way line of said Florence Road, a distance of 136.12 feet to an interior corner;

North 00° 02' 30" East, to a point in the North right-of-way line of said Florence Road;

THENCE Westerly, along and with the Northerly right-of-way line of said Florence Road, passing the most Westerly Southeast corner of Tract A of said Fort Bend County Municipal Utility District No. 2 (as it existed on December 20, 2004), continuing along and with the North right-of-way line of said Florence Road, same being the South line of said Tract A (as it existed on December 20, 2004) to the intersection of the West right-of-way line of Burney Road with said North right-of-way line, same being the Southwest corner of said Tract A (as it existed on December 20, 2004);

THENCE Southerly, along and with a Southerly extension of the East right-of-way line of said Burney Road to a point in the South right-of-way line of said Florence Road, same being the Northerly current corporate limits of the City of Sugar Land;

THENCE in a generally Southwesterly direction and along and with the meanders of the most Northerly and Westerly current corporate and/or extra territorial jurisdictional (ETJ) limits of the City of Sugar Land and along and with the East right-of-way line of Burney Road and the centerline of Voss Road to the intersection of the centerline of said Voss Road with the centerline of State Highway 6;

THENCE Northerly, along and with the centerline of said Highway 6 to the intersection of an Easterly extension of the North line of the Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) with said centerline;

THENCE Westerly, along and with said Easterly extension, passing the Northeast corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) in the West right-of-way line of said Highway 6, continuing along and with the North line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004), to the most Northerly Northwest corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004);

THENCE Southerly, along and with an interior West line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) to an interior corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004);

THENCE Westerly, along and with the North line of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) passing the Northwest corner of said Fort Bend County Municipal Utility District No. 41 (East of Gaines Road) (as it existed on December 20, 2004) in the East right-of-way line of said Gaines Road, continuing along and with a Westerly extension of said Northerly line to a point in the West right-of-way line of said Gaines Road, same being the East line of the Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004);

THENCE Northerly, along and with the West right-of-way line of said Gaines Road to the Northeast corner of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004);

THENCE Westerly, along and with the meanders of the North line of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004) to the most Northerly Northwest corner of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004);

THENCE Southerly, along and with the West line of said Fort Bend County Municipal Utility District No. 41 (West of Gaines Road) (as it existed on December 20, 2004) to the intersection of the centerline of Airport Boulevard with said West line;

THENCE Westerly, along and with the meanders of the centerline of Airport Boulevard, proposed or existing as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004) to the intersection of the centerline of the Grand Parkway with the centerline of said proposed Airport Boulevard, said intersection being located approximately midway between the Oyster/Flatbank Creek and Bullhead Slough crossings with said Grand Parkway and having approximate coordinates of North 29° 38' 46" and West 95° 42' 29";

THENCE Westerly, to a point in the centerline of Harlem Road and being located approximately 1,200 feet South of the Bullhead Slough crossing with said Harlem Road and having approximate coordinates of North 29° 38' 44" and West 95° 42' 52";

THENCE Westerly to the most Easterly Southeast corner of the Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) and being located at the intersection of said Oyster/Flatbank Creek and the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004);

THENCE Northerly, along and with the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004), passing the Grand Parkway, continuing along and with the East line of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) to the Northeast corner of said Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) in the centerline of Morton Road, same being the centerline of the proposed West Belfort;

THENCE Easterly, along and with the meanders of the centerline of West Belfort, proposed or existing as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004), said West Belfort following parts of the existing rights-of-way of Morton Road, Madden Road and Boss Gaston Road to the

intersection of the West line of the John Leverton Survey, Abstract No. 402 with the centerline of said West Belfort, same being the centerline of Boss Gaston Road at this point;

THENCE Northerly, along and with the West line of the John Leverton Survey, Abstract No. 402 to a point in the South line of the North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004);

THENCE Easterly, along and with the Southerly line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004), passing the Southeast corner of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004) in the West right-of-way line of said Gaines Road, continuing along and with an Easterly extension of the Southerly line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004) to a point in the East right-of-way of said Gaines Road;

THENCE Northerly, along and with the East right-of-way line of said Gaines Road to the Southwest corner of that portion of the North Mission Glen Municipal Utility District that lies East of said Gaines Road (as it existed on December 20, 2004);

THENCE in a general Northerly direction, along and with the Southerly, Easterly and Northerly sides of said portion of the North Mission Glen Municipal Utility District (as it existed on December 20, 2004) that lies East of said Gaines Road to the Northwest corner of said portion in the East right-of-way line of said Gaines Road;

THENCE Northerly, along and with the East right-of-way line of said Gaines Road to the POINT OF BEGINNING.

SAVE AND EXCEPT:

That portion of the right-of-way of said Eldridge Road contained within this description.

(3) Director Precinct No. 3 includes the territory that is contained in the following area:

BEGINNING at the intersection of the centerline of Farm To Market Highway 1093 (Westheimer Road) with a Southerly extension of a West line of the Westerly current corporate limits of the City of Houston and being located approximately 60 feet West of the intersection of the centerline of Harlem Road with said Highway 1093;

THENCE Northerly, along and with said Southerly extension to a point in the North right-of-way line of said Highway 1093 to a Southwest corner of the Westerly current corporate limits of said City of Houston, same being the Southerly line of the United States Government Barker Reservoir;

THENCE Easterly, along and with the meanders of a Southerly line of the Westerly current corporate limits of said City of Houston, same being the Northerly right-of-way line of said Highway 1093 to its intersection with the Easterly right-of-way line of Farm To Market Highway 1464;

THENCE Southerly, along and with the Easterly right-of-way line of said Highway 1464, passing the Northwest corner of the West Harris County Municipal Utility District No. 4 (as it existed on December 20, 2004), continuing along and with the Easterly right-of-way line of said Highway 1464, same being the Westerly line of said West Harris County Municipal Utility District No. 4 (as it existed on December 20,

2004) to the intersection of the North right-of-way line of Alief-Clodine Road with said Easterly right-of-way line for the Southwest corner of said West Harris County Municipal Utility District No. 4 (as it existed on December 20, 2004);

THENCE Easterly, along and with the North right-of-way line of said Alief-Clodine Road, same being the South line of said West Harris County Municipal Utility District No. 4 (as it existed on December 20, 2004) to a point in the line common to Harris and Fort Bend Counties;

THENCE Southeasterly, along and with said county line to the South right-of-way line of said Alief-Clodine Road, same being the North line of Fort Bend County Municipal Utility District No. 30 (as it existed on December 20, 2004);

THENCE along and with the Northerly and Easterly limits of said Fort Bend County Municipal Utility District No. 30 (as it existed on December 20, 2004) the following courses and distances: (bearings and distances based on an exhibit of said Fort Bend County Municipal Utility District No. 30 prepared by Total Surveyors, Inc. and dated March 28, 2000, revised August 30, 2002);

South 56° 52' 06" East, along and with said county line, a distance of 285.62 feet to an angle point;

South 00° 03' 43" West, a distance of 369.13 feet to an interior corner;

North 85° 19' 43" East, crossing said county line, a distance of 1,585.75 feet to the most Southerly Northeast corner;

South 01° 33' 14" West, a distance of 244.10 feet to an angle point;

North 89° 18' 17" East, a distance of 32.93 feet to an angle point;

South 01° 33' 14" West, crossing said county line, a distance of 1,530.25 feet to an interior corner of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004);

South 01° 15' 14" West, along and with the West line of the Chelford City Municipal Utility District (as it existed December 20, 2004), departing the East line of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004), a distance of 463.95 feet to an interior corner of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004);

South 01° 35' 26" West, along and with the East line of said Fort Bend County Municipal Utility District No. 30 (as it existed December 20, 2004), a distance of 564.29 feet to an angle point;

South 01° 33' 11" West, a distance of 1,028.29 feet to an angle point;

South 89° 41' 05" West, a distance of 977.24 feet to an angle point;

South 00° 14' 11" West, a distance of 3,248.96 feet to an angle point;

North 85° 58' 03" East, a distance of 276.35 feet to an angle point;

North 89° 56' 54" East, a distance of 564.71 feet to an angle point;

North 86° 13' 12" East, a distance of 131.40 feet to an angle point;

North 86° 09' 25" East, a distance of 59.92 feet to an angle point;

North 85° 19' 10" East, a distance of 165.19 feet to an angle point;

North 81° 39' 13" East, a distance of 248.15 feet to an angle point;

North 86° 51' 58" East, along and with the South line of the Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004), a distance of 307.84 feet to an angle point in the East line of said Fort Bend County

Municipal Utility District No. 30 (as it existed on December 20, 2004), same being the Northwest corner of the North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004);

THENCE Easterly, along and with the North line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004), same being the South line of said Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004) to the Northeast corner of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004);

THENCE Southerly, along and with the East line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004), same being a West line of said Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004), passing an interior Southwest corner of said Mission Bend Municipal Utility District No. 1 (as it existed on December 20, 2004), continuing along and with the East line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004) to a Westerly extension of the South right-of-way line of Forest Briar Drive;

THENCE Easterly, along and with said Westerly extension, to the intersection of the East right-of-way line of Gaines Road with the South right-of-way line of said Forest Briar Drive, same being the Northwest corner of the Kingsbridge Municipal Utility District (as it existed on December 20, 2004);

THENCE, Southerly, along and with the East right-of-way line of said Gaines Road to the Northwest corner of that portion of the North Mission Glen Municipal Utility District that lies East of said Gaines Road (as it existed on December 20, 2004);

THENCE, in a general Southerly direction, along and with the Northerly, Easterly and Southerly sides of said portion of the North Mission Glen Municipal Utility District (as it existed on December 20, 2004) that lies East of said Gaines Road to the Southwest corner of said portion (as it existed on December 20, 2004) in the East right-of-way line of said Gaines Road;

THENCE, Southerly, along and with the East right-of-way line of said Gaines Road to an Easterly extension of the Southerly line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004);

THENCE, Westerly along and with said extension passing the Southeast corner of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004) in the West right-of-way line of said Gaines Road, continuing along and with the South line of said North Mission Glen Municipal Utility District (West Tract) (as it existed on December 20, 2004) to a point in the West line of the John Leverton Survey, Abstract No. 402;

THENCE Southerly, along and with the West line of said John Leverton Survey to a point in the centerline of the proposed West Belfort, same more or less being Boss Gaston Road;

THENCE Westerly, along and with the meanders of the centerline of West Belfort, proposed or existing as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004), said West Belfort following parts of the existing rights-of-way of Boss Gaston Road and Madden Road to the intersection of the centerline of Morton Road with the centerline of said proposed West Belfort;

THENCE Westerly, along and with the centerline of said Morton Road, same more or less being the centerline of said proposed West Belfort and partly along and with the North line of the Fort Bend County Municipal Utility District No. 118 (as it existed on December 20, 2004) to the Southwest corner of the John Frederick Survey, Abstract No. 172;

THENCE, Northerly, along and with the West line of said John Frederick Survey, Abstract No. 172, passing the common West corner of the John Frederick Survey, Abstract No. 171 and said John Frederick Survey, Abstract No. 172, continuing along and with the West line of said John Frederick Survey, Abstract No. 171 to the Southeast corner of the Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004) in the North line of Canal Road (Beechnut extension);

THENCE Westerly, along and with the North right-of-way line of said Canal Road, same being the South line of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004) to the Southwest corner of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004);

THENCE Southerly, along and with a Southerly extension of the Westerly line of said Fort Bend County Municipal Utility District No. 123 (South Portion) (as it existed on December 20, 2004) passing the South right-of-way line of said Canal Road (Beechnut extension) to the North line of the I. & G.N. R.R. Survey, Abstract No. 353, same being the North line of a 335.948 acre tract described in a conveyance to LM Land Holdings, LP and recorded under Clerk's File No. 2002106104 of the Fort Bend County Deed Records;

THENCE Westerly, along and with the common North line of said I. & G.N. R.R. Survey and said 335.948 acre tract to the Northwest corner of said 335.948 acre tract;

THENCE, Southerly, along and with the Westerly line of said 335.948 acre tract to the Southeast corner of a 166.5718 acre tract described in a conveyance to J.A.B. Development Corporation and recorded under Clerk's File No. 2002038808 of the Fort Bend County Deed Records;

THENCE Westerly, along and with the Southerly line of said 166.5718 acre tract, passing the Northeast right-of-way line of the Grand Parkway, continuing along and with a Westerly extension of said Southerly line to the centerline of said Grand Parkway;

THENCE, Northwesterly, along and with the centerline of said Grand Parkway, passing the intersection of Skinner Lane and said Grand Parkway to the intersection of the centerline of the proposed Winner-Foster Thoroughfare as depicted on the Fort Bend County Major Thoroughfare Plan (as it existed on December 20, 2004),

THENCE Southwesterly and Westerly, along and with the centerline of said proposed Winner-Foster Thoroughfare to the intersection of a Northerly extension of the centerline of that portion of Holmes Road that runs coincident with the West line of the Knight & White Survey, Abstract No. 46 with said proposed Winner-Foster Thoroughfare;

THENCE Southerly, along and with said Northerly extension of the centerline of said Holmes Road, passing an angle point in said Holmes Road, continuing along and with the centerline of said Holmes Road to the intersection of the centerline of Wessendorf Road with the centerline of said Holmes Road;

THENCE Westerly, along and with the centerline of said Wessendorf Road and a Westerly extension of said centerline to the intersection of the centerline of Farm To Market Highway 723 with said Westerly extension and having approximate coordinates of North 29° 38' 54" and West 95° 48' 43";

THENCE Northerly, along and with the centerline of said Highway 723 to the intersection of the centerline of said Highway 1093 with the centerline of said Highway 723;

THENCE Easterly, along and with the centerline of said Highway 1093 to the POINT OF BEGINNING.

(4) Director Precinct No. 4 includes the territory that is contained in the following area:

Tract A

BEGINNING at the intersection of the centerline of the Grand Parkway (State Highway 99) with the Southeasterly line of Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004), same being the most Northerly corner of Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004);

THENCE Southerly, along and with the meanders of the centerline of said Grand Parkway, same being the Easterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004) to the intersection of the centerline of Cinco Ranch Boulevard with the centerline of said Grand Parkway, same being the most Northerly Southeast corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Southwesterly, along and with the meanders of the centerline of said Cinco Ranch Boulevard, same being a Southeasterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004) to the intersection of the centerline of Westheimer Parkway with the centerline of said Cinco Ranch Boulevard, same being an interior corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Southeasterly, along and with the meanders of the centerline of said Westheimer Parkway, same partly being a Northeasterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004) to the intersection of the West right-of-way line of said Grand Parkway with the centerline of said Westheimer Parkway;

THENCE Southerly, along and with the West right-of-way line of said Grand Parkway to the intersection of the South right-of-way line of said Westheimer Parkway with said West right-of-way line, same being the most Southerly Northeast corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Easterly, along and with the South right-of-way line of said Westheimer Parkway passing the intersection of the East right-of-way line of said Grand Parkway with said South right-of-way line, same being the Northwest corner of the West

portion of Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004), continuing along and with said South right-of-way line to the most Northerly corner of the West portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004);

THENCE Southeasterly, along and with the Northeasterly line of the West portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to the intersection of the Southwesterly line of the Willow Fork Drainage District Ditch VA1;

THENCE Northerly, along and with the Southwesterly and Westerly line of said Ditch VA1 to the intersection of the South right-of-way line of said Westheimer Parkway with said Westerly line;

THENCE Easterly, along and with the South right-of-way line of said Westheimer Parkway, passing the Easterly line of said Ditch VA1, same being the Northwest corner of the Northerly West Portion of Cinco Municipal Utility District No. 7 (as it existed December 20, 2004), same being the James Williams Elementary School Site, continuing along and with the South right-of-way line of Westheimer Parkway to the intersection of the South right-of-way line of Westheimer Parkway with the Westerly right-of-way line of Peek Road;

THENCE Southerly, along and with the meanders of the Westerly right-of-way line of said Peek Road passing the Northeasterly line of said Ditch VA1 for the most Southerly corner of the Northerly West Portion of Cinco Municipal Utility District No. 7 (as it existed December 20, 2004), same being the James Williams Elementary School Site, continuing along and with the meanders of the Westerly right-of-way line of said Peek Road passing the Southwesterly line of said Ditch VA1 for the most Easterly corner of the West portion of said Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004), continuing along and with the meanders of the Westerly right-of-way line of said Peek Road, passing the Southeast corner of the West portion of said Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004), continuing along and with the meanders of the Westerly right-of-way line of said Peek Road to the intersection of the centerline of the Willow Fork of Buffalo Bayou with the Westerly right-of-way line of said Peek Road;

THENCE Westerly, along and with the meanders of the centerline of said Willow Fork of Buffalo Bayou, passing the centerline of said Grand Parkway, continuing along and with the centerline of said Willow Fork of Buffalo Bayou, same being the Northeasterly line of Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004) to the most Easterly North corner of said Grand Lakes Municipal Utility District No. 2 (as it existed December 20, 2004);

THENCE Southwesterly, along and with an interior line of said Grand Lakes Municipal Utility District No. 2 (as it existed December 20, 2004) to a point in the Southerly line of said Willow Fork of Buffalo Bayou;

THENCE Northwesterly, along and with the Southerly line of said Willow Fork of Buffalo Bayou to the most Westerly North corner of said Grand Lakes Municipal Utility District No. 2 (as it existed December 20, 2004), same being the Northeast corner of the East portion of Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the meanders of the Southeasterly line of the East portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004), crossing Fry Road to a point in the Southeasterly right-of-way line of said Fry Road for the most Southerly corner of the East portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004);

THENCE Northwesterly, along and with the Southwest line of the East portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004) to a point in the centerline of Cinco Ranch Boulevard, same being the Southeast line of Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004) for the most Westerly corner of the East portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004);

THENCE Southwesterly, along and with the Southeast line of said Cinco Municipal Utility District No. 1 (as it existed December 20, 2004), passing the most Southerly corner of said Cinco Municipal Utility District No. 1 (as it existed December 20, 2004), same being the most Easterly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004), continuing along and with the Southeast line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004) to an angle point in the Northeasterly right-of-way line of Katy-Gaston Road, same being the most Southerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004);

THENCE Northwesterly, along and with a Northeasterly right-of-way line of said Katy-Gaston Road, same being the Southwesterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004) to an angle point in the Easterly right-of-way line of said Katy-Gaston Road, same being the most Westerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004);

THENCE Northeasterly, along and with a Southeasterly right-of-way line of said Katy-Gaston Road, same being the Northwesterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004) to an angle point in the Easterly right-of-way line of said Katy-Gaston Road, same being the most Northerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004);

THENCE Southeasterly, along and with the Northeasterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed December 20, 2004) to a point in the Northwesterly line of said Cinco Municipal Utility District No. 1 (as it existed December 20, 2004);

THENCE Northeasterly, along and with the Northwesterly line of said Cinco Municipal Utility District No. 1 (as it existed December 20, 2004), passing the intersection of the centerline of said Willow Fork of Buffalo Bayou with the Northwesterly line of said Cinco Municipal Utility District No. 1 (as it existed December 20, 2004), same being the most Westerly corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004), continuing along and with the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004) and partly along and with the Southeasterly line of Fort Bend

County Municipal Utility District No. 124 (as it existed on December 20, 2004) to an angle point in the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004) to an angle point in the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Northeasterly, along and with the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004), an approximate distance of 733.5 feet to an interior corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004);

THENCE Northwesterly, along and with a Southwesterly line of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004), to the most Northerly West corner of said Cinco Municipal Utility District No. 10 (as it existed December 20, 2004), same being the most Southerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004);

THENCE Northeasterly, along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed December 20, 2004) to the POINT OF BEGINNING.

#### Tract B

BEGINNING at the intersection of the South line of the Willow Fork of Buffalo Bayou with the Northeasterly line of a Detention Ditch for the most Westerly corner of the East portion of said Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004);

THENCE Northwesterly, perpendicular to the centerline of said Willow Fork of Buffalo Bayou to the centerline of said Willow Fork of Buffalo Bayou;

THENCE Easterly, along and with the meanders of the centerline of said Willow Fork of Buffalo Bayou, passing Mason and Fry Roads, downstream to the intersection of the Westerly current corporate limits of the City of Houston, same being the Westerly line of the United States Government Barker Reservoir with said centerline;

THENCE in a generally Southeast direction, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to a point in the West line of the H.E. Looney Survey, Abstract No. 277 for an angle point;

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) and the West line of said Looney Survey to a point in the North line of the Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004) for the Southwest corner of said Looney Survey, same being the Southeast corner of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004);

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Northerly line of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) to the Northeast corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004);

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Westerly line of the John Brock Survey, Abstract No. 110, passing the most Easterly Southeast corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), continuing along and with the Westerly line of said John Brock Survey passing a corner of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, continuing along and with the Westerly line of said John Brock Survey crossing a portion of said United States Government Barker Reservoir to the intersection of the Westerly current corporate limits of said City of Houston, same being the Southerly line of said United States Government Barker Reservoir;

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir, an approximate distance of 3,635 feet to an angle point;

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir passing the North right-of-way line of Farm to Market Highway 1093 (Westheimer Road), continuing along and with a Southerly extension of said Westerly current corporate limits of said City of Houston to a point in the centerline of said Highway 1093;

THENCE Westerly along and with the centerline of said Highway 1093 to the intersection of the Northwesterly line of the Brooks & Burleson Survey, Abstract No. 145 with said centerline and being in a Southwesterly extension of the Northwesterly line of the South portion of Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004) (located South of the United States Government Barker Reservoir Dam);

THENCE Northeasterly, along and with the Northwesterly line of said Brooks & Burleson Survey, passing a point in the North right-of-way line of said Highway 1093 for the Southwest corner of the South portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), continuing along and with the Northwesterly line of said Brooks & Burleson Survey, passing a point in the Westerly current corporate limits of the City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip) for the Northwest corner of the South portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), continuing along and with the Northwesterly line of said Brooks & Burleson Survey across a portion of said United States Government Barker Reservoir (Barker Dam Strip) passing the Westerly current corporate limits of the City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip) for the Southwest corner of the North portion of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), continuing

along and with the Northwest line of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004) to an interior corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), same being the most Easterly corner of Grand Lakes Municipal Utility District No. 1 (as it existed December 20, 2004); THENCE Northwesterly, along and with a Southwesterly line of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), passing the Northwest corner of said Cinco Municipal Utility District No. 8 (as it existed December 20, 2004), same being the Southwest corner of the East portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004), continuing along and with the Southwesterly line of the East portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to an angle point in the Southwesterly line of the East portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004);

THENCE Westerly, along and with a Southerly line of the East portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to the POINT OF BEGINNING.

SAVE AND EXCEPT:

That portion of the Westerly current corporate limits of said City of Houston, same being said United States Government Barker Reservoir (Barker Dam Strip) contained within this description.

(5) Director Precinct No. 5 includes the territory that is contained in the following area:

BEGINNING at the Northwest corner of Cornerstones Municipal Utility District (as it existed on December 20, 2004), same being the Northeast corner of Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004);

THENCE Easterly, along and with the North line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004), same being the South line of Cimarron Municipal Utility District (as it existed on December 20, 2004) passing the common South corner of said Cimarron Municipal Utility District (as it existed on December 20, 2004) and Harris County Municipal Utility District No. 81 (as it existed on December 20, 2004), continuing along and with a South line of said Harris County Municipal Utility District No. 81 (as it existed on December 20, 2004) to a point in the centerline of Mason Road for the Northeast corner of said Cornerstones Municipal Utility District (as it existed on December 20, 2004);

THENCE Southerly, along and with the centerline of Mason Road, same being the East line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004), passing the common West corner of said Harris County Municipal Utility District No. 81 (as it existed on December 20, 2004) and Memorial Municipal Utility District (as it existed on December 20, 2004), continuing along and with the centerline of Mason Road and along and with the East line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004) crossing the line common to Harris and Fort Bend Counties to the Southeast corner of said Memorial Municipal Utility District (as it existed on December 20, 2004), same being the Northwest corner of Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004);

THENCE Easterly, along and with South line of said Memorial Municipal Utility District (as it existed on December 20, 2004), same being the North line of said Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004) crossing the line common to Harris and Fort Bend Counties, passing the common North corner of said Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004) and Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004), continuing along and with the South line of said Memorial Municipal Utility District (as it existed on December 20, 2004) to the most Easterly Northwest corner of said Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with the Northeasterly meanders of said Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004), same being partly the Southwesterly line of a Harris County Flood Control District right-of-way to a the most Easterly corner of said Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004), same being an angle point in the Westerly current corporate limits of the City of Houston, same also being the Westerly line of the United States Government Barker Reservoir, same further being the Easterly limits of Tract 1 of the West Harris County Regional Water Authority;

THENCE along and with the Easterly limits of said West Harris County Regional Water Authority, same being the Westerly current corporate limits of said City of Houston, same further being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004) the following courses and distances: (bearings and distances based on the description of said West Harris County Regional Water Authority dated December 22, 2000)

South 23° 42' West, a distance of 1178.3 feet;

North 59° 10' West, a distance of 517.8 feet;

South 23° 32' West, to a point in the line common to Harris and Fort Bend Counties for the

most Westerly Southeast corner of Tract 1 of said West Harris County Regional Water Authority and having approximate coordinates of North 29° 44' 05" and West 95° 43' 50"

THENCE Southwesterly and Northwesterly, continuing along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 6 (as it existed on December 20, 2004) to a point in the Easterly right-of-way line of Fry Road, same being the Easterly line of Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southwesterly and Southeasterly, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being the Westerly line of said United States Government Barker Reservoir, same further being the Easterly line of said Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004) to a point in the centerline of the Willow Fork of Buffalo Bayou for the corner common to said Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004) and Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004);

THENCE Westerly, along and with the meanders of the centerline of said Willow Fork of Buffalo Bayou, upstream to the intersection of the centerline of said Mason Road, with the centerline of said Willow Fork of Buffalo Bayou, same being the common South corner of Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004) and said Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Northerly, along and with the meanders of the centerline of said Mason Road, same being the Easterly line of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004), same also being the Westerly line of said Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004), passing the intersection of the centerline of Westheimer Parkway with the centerline of said Mason Road, same being the common West corner of said Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004) and said Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004), continuing along and with the meanders of the centerline of said Mason Road, same being the Easterly line of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004), same also being the Westerly line of said Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004) to the Northeast corner of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004), same being the Southeast corner of said Cornerstones Municipal Utility District (as it existed on December 20, 2004);

THENCE Westerly, along and with the Southerly line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004) to the Southwest corner of said Cornerstones Municipal Utility District (as it existed on December 20, 2004);

THENCE Northerly, along and with the Westerly line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004) to the POINT OF BEGINNING.

(6) Director Precinct No. 6 includes the territory that is contained in the following area:

Tract A

BEGINNING at a point in the South line of the Cimarron Municipal Utility District (as it existed on December 20, 2004) marking the Northwest corner of Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004) in the intersection of the Grand Parkway and Katy Fort Bend Roads;

THENCE Easterly, along and with the North line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004), same being the South line of said Cimarron Municipal Utility District (as it existed on December 20, 2004) to the Northeast corner of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004), same being the Northwest corner of Cornerstones Municipal Utility District (as it existed on December 20, 2004);

THENCE Southerly, along the Easterly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004), passing the Southeast corner of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004), same being the most Westerly Northeast corner of Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004), continuing along and with the Easterly line of

said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004) to the Southwest corner of said Cornerstones Municipal Utility District (as it existed on December 20, 2004);

THENCE Easterly, along and with a North line of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004), same being the South line of said Cornerstones Municipal Utility District (as it existed on December 20, 2004) to a point in the West line of Cinco Municipal Utility District No. 3 (as it existed on December 20, 2004), same being the centerline of Mason Road for the Southeast corner of said Cornerstones Municipal Utility District (as it existed on December 20, 2004), same being the Northeast corner of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE Southerly, along and with the meanders of the centerline of said Mason Road, same being the Easterly line of said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004) to a point in the centerline of the Willow Fork of Buffalo Bayou, same being the Northerly line of Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004) for the common Southerly corner of Cinco Municipal Utility District No. 5 (as it existed on December 20, 2004) and said Cinco Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE Westerly and Southwesterly, along and with the centerline of said Willow Fork of Buffalo Bayou to the intersection of the Westerly right-of-way line of Peek Road with the centerline of said Willow Fork of Buffalo Bayou;

THENCE Northerly, along and with the Westerly right-of-way line of said Peek Road, passing the North line of said Willow Fork of Buffalo Bayou, same being the Southeast corner of the West portion of Cinco Municipal Utility District No. 7 (as it existed December 20, 2004), continuing along and with the West right-of-way line of said Peek Road to the intersection of the Southerly right-of-way line of Westheimer Parkway with said Westerly right-of-way line, same being the Northeast corner of the Northerly West Portion of Cinco Municipal Utility District No. 7 (as it existed December 20, 2004), same being the James Williams Elementary School Site;

THENCE Westerly, along and with the South right-of-way of said Westheimer Parkway to the intersection of the Westerly line of the Willow Fork Drainage District Ditch VA1 with said South right-of-way line;

THENCE Southerly, along and with the Westerly line of said Willow Fork Drainage District Ditch VA1 to the intersection of the Northeasterly line of the West portion of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) with said Westerly line;

THENCE Northwesterly, along and with the Northeasterly line of said Cinco Municipal Utility District No. 7 (as it existed December 20, 2004) to the intersection of the South right-of-way of said Westheimer Parkway with said Northeasterly line;

THENCE Westerly, along and with the Southerly right-of-way line of said Westheimer Parkway to a point in the West right-of-way line of said Grand Parkway;

THENCE Northerly, along and with the West right-of-way line of said Grand Parkway to a point in the centerline of said Westheimer Parkway;

THENCE Northwesterly, along and with the meanders of the centerline of said Westheimer Parkway to the intersection of the centerline of Cinco Ranch Boulevard with the centerline of said Westheimer Parkway for the most Westerly corner of said Cinco Municipal Utility District No. 12 (as it existed on December 20, 2004);

THENCE Northeasterly and Easterly, along and with the centerline of said Cinco Ranch Boulevard to the intersection of the centerline of said Grand Parkway, same being the West line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004) with the centerline of said Cinco Ranch Boulevard for the most Northerly Southeast corner of Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004);

THENCE Northerly, along and with the meanders of the centerline of said Grand Parkway to the most Northerly corner of said Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004), same being an angle point in the Westerly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with the Northwesterly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004), crossing the line common to said Harris and Fort Bend Counties to a point in the Northeasterly line of the I.& G.N.R.R. Survey, Abstract No. 1448 for an angle point in the Westerly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004);

THENCE Northwesterly, along and with the Northeasterly line of said I.& G.N.R.R. Survey, Abstract No. 1448 to an angle point in the Westerly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004);

THENCE Northerly, along and with the Westerly line of said Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004) to the Northeast corner of the Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) East of said Grand Parkway;

THENCE Northwesterly, along and with the Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) East of said Grand Parkway to the POINT OF BEGINNING.

#### Tract B

BEGINNING at a the intersection of the centerline of Westheimer Parkway with the Northwesterly line of Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004) for the most Southerly corner of the Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Northwesterly, along and with the centerline of said Westheimer Parkway, same being partly the Southwesterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004) to the most Westerly corner of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with the Northwesterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004) to the most Northerly corner of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004), same being an angle point in the Southwesterly line of the Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southeasterly along and with the Northeasterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004), same being a Southwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to an angle point;

THENCE Southwesterly, along and with a Southeasterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004) approximately 160 feet to an interior corner in the Northeasterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Southeasterly along and with the Northeasterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004), to the most Easterly corner of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the Southeasterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004), same being partly the Northwesterly line of the Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004) to the POINT OF BEGINNING.

(7) Director Precinct No. 7 includes the territory that is contained in the following area:

BEGINNING at a point marking the Northwest corner and Point of Beginning of Regulatory Area A as defined in the Fort Bend Subsidence District 2003 Regulatory Plan, said point being near the intersection of Jordan Road and the common line between Waller and Fort Bend Counties and having approximate coordinates of North  $29^{\circ} 45' 10''$  and West  $95^{\circ} 55' 15''$ ;

THENCE in a Northeasterly direction, along and with the common line between said Waller and Fort Bend Counties to its intersection with the West line of the Willow Point Municipal Utility District (as it existed on December 20, 2004), same being the West line of the W.W. Bains Survey, Abstract No. 753 (Fort Bend County) and Abstract No. 385 (Waller County);

THENCE in a Northerly direction, along and with the West line of said Willow Point Municipal Utility District (as it existed on December 20, 2004), same being the West line of said W.W. Bains Survey, Abstract No. 385 to a point in the South right-of-way line of Interstate 10 and marking the Northwest corner of said Willow Point Municipal Utility District (as it existed on December 20, 2004);

THENCE in an Easterly direction, along and with the South right-of-way line of said Interstate 10 to the Northeast corner of said Willow Point Municipal Utility District (as it existed on December 20, 2004), said point also being a Southwest corner of the current corporate limits of the City of Katy;

THENCE in a Southerly direction, along and with the East line of said Willow Point Municipal Utility District (as it existed on December 20, 2004), same being the East line of said W.W. Bains Survey, Abstract No. 385 to a point in the common line between Waller and Fort Bend Counties;

THENCE in a Northeasterly direction, along and with the common line between said Waller and Fort Bend Counties to its intersection with a Southerly line of said current corporate limits of the City of Katy, same being the South right-of-way line of said Interstate 10 and having approximate coordinates of North  $29^{\circ} 46' 40''$  and West  $95^{\circ} 51' 20''$ ;

THENCE in a generally Southeast direction and along and with the southerly limits of said current corporate limits of the City of Katy the following courses:

Easterly, along and with the South right-of-way line of said Interstate 10 approximately 2,350 feet;

Southerly, approximately 1,335 feet;

Easterly, to its intersection with the Northeasterly line of the C.W. Schrimph Survey, Abstract No. 412;

Southeasterly, along and with the Northeasterly line of said Schrimph Survey and the Northeasterly line of the E. Everett Survey, Abstract No. 385 to point in the centerline of Katy-Flewellen Road and being the most Easterly corner of said Everett Survey;

Northeasterly, along and with the centerline of said Katy-Flewellen Road to its intersection with the Easterly right-of-way line of Pin Oak Road, same being a Westerly line of Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004);

Southeasterly, along and with the Easterly right-of-way line of said Pin Oak Road, same being a Westerly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004) to its intersection with the Southeasterly right-of-way line of said Katy-Flewellen Road;

Southwesterly, along and with the Southeasterly right-of-way line of said Katy-Flewellen Road, same being a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004) to the most Westerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004);

Southeasterly, along and with the most Southwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004) to the most Westerly South corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004);

Northeasterly, along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004), same being the most Northerly corner of Pin Oak Village Section 1;

Southeasterly, along and with the Northeasterly line of said Pin Oak Village Section 1, same being a Southwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004) to the most Easterly corner of said Pin Oak Village Section 1, same being the most Southerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004);

Northeasterly, along and with the Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004), passing the most Westerly corner of Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004), continuing along and with said course and along and with the meanders of the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004), same being the Northwesterly line of said Harris-Fort Bend

Counties Municipal Utility District No. 1 (as it existed on December 20, 2004), to a point in the common line between Harris and said Fort Bend Counties for the most Easterly corner of the current corporate limits of the City of Katy in Fort Bend County;

THENCE Northeasterly, along and with the meanders of the Southeasterly line of the Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004), same being the Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004) to a point in the West right-of-way line of Falcon Point Drive for the most Westerly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004), same being the most Easterly Northeast corner of said Harris-Fort Bend Counties Municipal Utility District No. 4 (as it existed on December 20, 2004);

THENCE Easterly, along and with the North line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004) to the most Easterly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with the Northeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004) to the Northeast corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with a Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with a Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004), crossing the line common to said Harris and Fort Bend Counties, passing the most Easterly corner of said Harris-Fort Bend Counties Municipal Utility District No. 1 (as it existed on December 20, 2004), continuing along and with a Southeasterly extension of said Northeast line, crossing Roesner Road to a point in the Southeasterly right-of-way line of said Roesner Road, same being the Northwesterly line of Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with the Southeasterly right-of-way line of said Roesner Road, same being the Northwesterly line of Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to a point in the line common to said Harris and Fort Bend Counties for the most Northerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with said County Line, same being a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 05 to a point in the Northwesterly line of the Cimarron Municipal Utility District (as it existed on December 20, 2004) for the most Easterly North corner of said Harris-Fort Bend Counties Municipal Utility District No. 05;

THENCE Southwesterly, along and with the Northwesterly line of said Cimarron Municipal Utility District (as it existed on December 20, 2004), same being a Southeast line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being a Southwesterly line of said Cimarron Municipal Utility District (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being a Southeasterly line of said Cimarron Municipal Utility District (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being a Southwesterly line of said Cimarron Municipal Utility District (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being the most Southerly corner of said Cimarron Municipal Utility District (as it existed on December 20, 2004);

THENCE Northeasterly, along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being a Southeasterly line of said Cimarron Municipal Utility District (as it existed on December 20, 2004), crossing the line common to said Harris and Fort Bend Counties and the Grand Parkway (State Highway 99), passing a point in the East right-of-way of said Grand Parkway, continuing along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to point in a Southwesterly line of Cinco Municipal Utility District No. 9 (as it existed on December 20, 2004) for the most Northerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) East of said Grand Parkway;

THENCE Southeasterly, along and with a Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to an angle point in the Easterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southerly, along and with an Easterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to an angle point in the Easterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with a common Northeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) and the I.& G.N.R.R. Survey, Abstract No. 1448 to the most Easterly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), crossing the line common to said Harris and Fort Bend Counties, passing the intersection of the centerline of said Grand Parkway with the Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) for the most Northerly corner of Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004), continuing along and with Southeasterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004) to the most Southerly corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being the most Northerly West corner of said Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with a Northwesterly line of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004) to an interior corner of said Harris-Fort Bend Counties Municipal Utility District No. 5 (as it existed on December 20, 2004), same being the most Northerly corner of Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004),

THENCE Southwesterly, along and with the Northwesterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004) to a point in the centerline of Westheimer Parkway for the most Westerly corner of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with the centerline of said Westheimer Parkway, same being partly the Southwesterly line of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004) to the intersection of the Northeast line of Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004) with said centerline for the most Southerly corner of said Fort Bend County Municipal Utility District No. 124 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004), passing the intersection of the centerline of said Willow Fork of Buffalo Bayou with the Northwesterly line of said Cinco Municipal Utility District No. 10 (as it existed on December 20, 2004), same being the Northwest corner of the Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004), continuing along and with the Northwesterly line of said Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004) to the intersection of the Northeast line of the West portion of the Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004) with the Northwesterly line of said Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Northwesterly, along and with the Northeasterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004) to an angle point in the Easterly right-of-way line of said Katy-Gaston Road, same being the most Northerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with a Southeasterly right-of-way line of said Katy-Gaston Road, same being the Northwesterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004) to an angle point in the Easterly right-of-way line of said Katy-Gaston Road, same being the most Westerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with a Northeasterly right-of-way line of said Katy-Gaston Road, same being the Southwesterly line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004) to an angle point in the Northeasterly right-of-way line of Katy-Gaston Road, same being the most Southerly corner of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with the Southeast line of the West portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004), passing the most Easterly corner of said West portion (as it existed on December 20, 2004), same being the most Southerly corner of said Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004), continuing along and with the Southeast line of said Cinco Municipal Utility District No. 1 (as it existed on December 20, 2004) to the most Westerly corner of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004), said point being in the centerline of Cinco Ranch Boulevard;

THENCE Southeasterly, along and with the Southwest line of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004) to a point in the Southeasterly right-of-way line of Fry Road for the most Southerly corner of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with the meanders of the Southeasterly line of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004), passing the center line of said Fry Road for the most Southerly corner of Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004), continuing along and with the meanders of the Southeasterly line of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004), same being the Northwest line of said Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004) to a point in the Southerly line of the Willow Fork of Buffalo Bayou for the most Westerly North corner of said Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004), same being the Northeast corner of the East portion of said Cinco Municipal Utility District No. 14 (as it existed on December 20, 2004);

THENCE Southeasterly, along and with the Southerly line of said Willow Fork of Buffalo Bayou to an interior corner of said Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE Northeasterly, along and with an interior line of said Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004) to a point in the centerline of said Willow Fork of Buffalo Bayou for the most Easterly North corner of said Grand Lakes Municipal Utility District No. 2 (as it existed on December 20, 2004);

THENCE Easterly, along and with the meanders of the centerline of said Willow Fork of Buffalo Bayou, passing the Grand Parkway and Peek Road to a point opposite of the most Westerly corner of the East portion of the Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004);

THENCE Southeasterly, perpendicular to the centerline of said Willow Fork of Buffalo Bayou to the most Westerly corner of the East portion of the Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004);

THENCE Easterly, along and with a Southerly line of the East portion of said Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004) to an angle point in the Southwesterly line of said East portion (as it existed on December 20, 2004);

THENCE Southeasterly, along and with the Southwesterly line of the East portion of said Cinco Municipal Utility District No. 7 (as it existed on December 20, 2004), passing the Southwest corner of said East portion (as it existed on December 20, 2004), same being the Northwest corner of the Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004), continuing along and with a Southwesterly line of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004), to an interior corner of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004), same being the most Easterly corner of said Grand Lakes Municipal Utility District No. 1 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the Northwesterly line of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004) to a point in the Westerly current corporate limits of said City of Houston, same being a Northerly line of the United States Government Barker Reservoir (Barker Dam Strip) for the common South corner of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004) and said Grand Lakes Municipal Utility District No. 1 (as it existed on December 20, 2004),

THENCE Westerly, along and with the meanders of the Westerly current corporate limits of said City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip), same being the Southerly line of Grand Lakes Municipal Utility District No. 1 (as it existed on December 20, 2004), passing the Southwest corner of said Grand Lakes Municipal Utility District No. 1 (as it existed on December 20, 2004) in the centerline of Peek Road, continuing along and with the meanders of the Westerly current corporate limits of said City of Houston, same being a Northerly line of said United States Government Barker Reservoir (Barker Dam Strip) to the Northwest corner of said Barker Dam Strip, same being the most Westerly Northeast corner of the Southern portion of Grand Lakes Municipal Utility District No. 4 (as it existed on December 20, 2004);

THENCE Southerly, along and with the Westerly current corporate limits of said City of Houston, same being a Westerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being an Easterly line of said Grand Lakes Municipal Utility District No. 4 (as it existed on December 20, 2004) to the Southwest corner of said Barker Dam Strip;

THENCE Easterly, along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip), same further being a Northerly line of the Southerly portion said Grand Lakes Municipal Utility District No. 4 (as it existed on

December 20, 2004), passing the most Easterly Northeast corner of the Southern portion of Grand Lakes Municipal Utility District No. 4 (as it existed on December 20, 2004), continuing along and with the Westerly current corporate limits of said City of Houston, same being a Southerly line of said United States Government Barker Reservoir (Barker Dam Strip), same being partly the Northerly line of the Southerly portion of said Grand Lakes Municipal Utility District No. 1 (as it existed on December 20, 2004), to the Northwest corner of the Southerly portion of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004);

THENCE Southwesterly, along and with the Northwesterly line of the Southerly portion of said Cinco Municipal Utility District No. 8 (as it existed on December 20, 2004), passing a point in the North right-of-way line of Farm To Market Highway 1093 (Westheimer Road), continuing along and with a Southwesterly extension of said Northeasterly line to a point in the centerline of said Highway 1093;

THENCE Westerly, along and with the centerline of said Highway 1093 to the intersection of the centerline of said Highway 723 with the centerline of said Highway 1093;

THENCE Southerly, along and with the centerline of said Highway 723 to the corner common with the current ETJ limits of the City of Fulshear, the City of Richmond, and the City of Rosenberg and having approximate coordinates of North 29° 36' 00" and West 95° 48' 40";

THENCE in a generally Westerly direction and along and with the meanders of the most Northerly current corporate and/or current ETJ limits of said City of Rosenberg to the intersection of the West line of said Regulatory Area A as defined in the Fort Bend Subsidence District 2003 Regulatory Plan with said current ETJ limits and having approximate coordinates of North 29° 35' 33" and West 95° 55' 00";

THENCE North, along and with a meridian having a Longitude of West 95° 55' 00", same being the West line of said Regulatory Area A to the POINT OF BEGINNING.

SECTION 1.4. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting out the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and this Act to the commission.

(b) The commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to notice, introduction, and passage of this Act are fulfilled and accomplished.

## ARTICLE 2. FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 178

SECTION 2.1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8154 to read as follows:

CHAPTER 8154. FORT BEND COUNTY MUNICIPAL  
UTILITY DISTRICT NO. 178

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8154.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "Director" means a member of the board.
- (3) "District" means the Fort Bend County Municipal Utility District No.

178.

Sec. 8154.002. NATURE OF DISTRICT. The district is a municipal utility district in Fort Bend County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8154.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8154.023 before September 1, 2007:

- (1) the district is dissolved September 1, 2007, except that:
  - (A) any debts incurred shall be paid;
  - (B) any assets that remain after the payment of debts shall be transferred to Fort Bend County; and
  - (C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and
- (2) this chapter expires September 1, 2010.

Sec. 8154.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

- (1) the organization, existence, or validity of the district;
- (2) the right of the district to impose taxes;
- (3) the validity of the district's bonds, notes, or indebtedness; or
- (4) the legality or operation of the district or the board.

[Sections 8154.005-8154.020 reserved for expansion]

SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 8154.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2005, a person who owns land in the district may petition the Texas Commission on Environmental Quality to appoint as temporary directors the five persons listed in the petition.

(b) The commission shall appoint as temporary directors the persons listed in a petition received by the commission under Subsection (a). If the commission receives more than one petition, the commission shall appoint the directors listed in the first petition the commission receives.

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

- (1) the date directors are elected under Section 8154.023; or
- (2) the date this chapter expires under Section 8154.003.

Sec. 8154.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. If a location cannot be agreed upon, the meeting shall be at the Fort Bend County Courthouse. At the meeting, the temporary directors shall elect officers from among the temporary directors.

Sec. 8154.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

Sec. 8154.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8154.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors under Section 8154.052 and which three shall serve until the second regularly scheduled election of directors.

Sec. 8154.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010.

[Sections 8154.026-8154.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8154.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 8154.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 8154.053-8154.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8154.101. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8154.102. ROAD PROJECTS. (a) The district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of the municipality or county in whose jurisdiction the district is located.

(c) The district may not undertake a road project unless each municipality or county in whose jurisdiction the district is located consents by ordinance or resolution.

Sec. 8154.103. LIMITATION ON USE OF EMINENT DOMAIN. The district may exercise the power of eminent domain outside the district only to acquire an easement necessary for a pipeline that serves the district.

Sec. 8154.104. DIVISION OF DISTRICT. (a) Except as provided by Subsection (c), the district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt;
- (2) is not imposing ad valorem taxes; and
- (3) has not annexed land.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code. Any new district created by the division of the district has all the powers and duties of the district.

(c) A new district created by the division described by Subsection (a) is subject to the restrictions prescribed by Subsections (a)(1) and (2). If the new district annexes land, that new district may not again divide if the result is that the annexed land wholly constitutes one of the districts created by the division of the new district.

Sec. 8154.105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section 54.016, Water Code, the district shall comply with all applicable requirements of any ordinance or resolution adopted by the city council of the City of Fulshear, including an ordinance or resolution adopted before September 1, 2005, that consents to the creation of the district or to the inclusion of lands within the district.

[Sections 8154.106-8154.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8154.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds issued under Section 8154.201.

Sec. 8154.152. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

[Sections 8154.153-8154.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8154.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of projects under Section 8154.101 or 8154.102.

(b) The district may not issue bonds to finance projects authorized by Section 8154.102 unless the issuance is approved by a vote of a two-thirds majority of the voters of the district voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8154.102 may not exceed one-fourth of the assessed value of the real property in the district.

(d) Sections 49.181 and 49.182, Water Code, do not apply to a project undertaken by the district under Section 8154.102 or to bonds issued by the district to finance the project.

SECTION 2.2. The Fort Bend County Municipal Utility District No. 178 initially includes all the territory contained in the following area:

## TRACT I:

Two Hundred (200) acre tract off the North end of Section 105, Block 1 of the H. & T. C. Railway Company Survey in Waller and Fort Bend Counties, Texas (Waller County Abstract Being No. 416 and Fort Bend County Abstract being No. 261) described as follows:

BEGINNING at an iron stake, the Northwest corner of Section 105;

THENCE South 1188 1/2 varas to stake on West line of said Section from which a large iron post bears South 59 degrees East 67 3/4 varas;

THENCE 950 varas to a stake on the East line of said Section 105;

THENCE North with the east line of said section 1188 1/2 varas to the Northeast corner;

THENCE West 950 varas to the place of beginning containing 200 acres of land, more or less, and being the Fifth Tract described in the Deed to William Dorsey Parker by Emma D. Parker, individually and as Executrix of J. B. Parker, deceased, and recorded in Volume 163, Page 106, Deed Records of Fort Bend County, Texas (but not including any other land described in said deed);

And being the same land as conveyed from W. D. Parker to Chester F. Jordan by deed recorded in Volume 252, Page 465, Deed Records of Fort Bend County, Texas.

## TRACT II:

Being a tract of One Hundred and Ten acres (110), more or less, out of Section 105, Block 1 of the H. & T. C. Railway Company Survey in Waller and Fort Bend Counties, Texas (Waller County Abstract Being No. 416 and Fort Bend County Abstract being No. 261) described as follows:

Being 110 acres of land, more or less, bounded thus:

BEGINNING at a 2" iron pipe in the West line of said survey 5112 ft. south of the Northwest corner thereof;

THENCE East 2640.3 ft. to a stake for corner in the East line of said survey;

THENCE North 1813.8 ft. with the East line of said survey to a stake for corner in same;

THENCE West 2640.3 ft. to a stake for corner in the West line survey;

THENCE South 1813.8 ft. with the west line of said survey to the place of beginning, containing 110 acres of land, more or less, and being the same land conveyed to W. D. Parker by Lessy C. McDade, et al, by deed dated September 9, 1941, filed January 23, 1942, of record in Volume 202, Page 84, Deed Records of Fort Bend County, Texas;

And being the same land as conveyed from W. D. Parker to Chester F. Jordan by deed recorded in Volume 252, Page 465, Deed Records of Fort Bend County, Texas.

## TRACT III:

All that certain tract of land out of Section No. 105, H. & T. C. Railway Company Survey in Fort Bend County, Texas and described by metes and bounds as follows:

BEGINNING at an iron stake, Harvey & McDade's Southwest corner of the West line of Section No. 105;

THENCE South 817 varas to an iron stake for corner;

THENCE East 950 varas to an iron stake for corner in fence;

THENCE North 817 varas to an iron stake in fence, Harvey & McDade's Southeast corner;

THENCE West 950 varas to the place of beginning and containing 137 1/2 acres of land more or less,

And being the same identical property conveyed from W. S. Cochran, Jr, to Chester Jordan in a deed recorded in Volume 208, Page 635, Deed Records of Fort Bend County, Texas.

TRACT IV:

All of that certain tract of land known and described as 160 acres off of the north end of H. & T. C. Railroad Section No. 106 in Fort Bend County, Texas, and described by metes and bounds as follows:

BEGINNING at a 3/4" iron pipe at the northeast corner of H. & T. C. Railroad Section No 106, the same being the northwest corner of the J. D. Vermillion One-third League, said iron pipe being 8 feet South and 20 feet South 89 degrees 40 minutes west from a northeast fence corner of fences enclosing the property;

THENCE south, along the east line of said Section 106 and the west line of the J. D. Vermillion One-third League, at 600 feet pass the northwest corner of a 10 acre tract, at 2002.8 feet the southwest corner of said 10 acre tract, in all 2640 feet to an iron pipe, the southeast corner of this 160 acres, and 25.2 feet South 89 degrees 40 minutes west from another iron pipe set under fence;

THENCE south 89 degrees 40 minutes west 2640 feet to an iron pipe in a rice field;

THENCE north at 2633 feet cross east and west fence, in all 2640 feet to an iron pipe on levee,

THENCE north 89 degrees 40 minutes east, at 86.6 feet a fence corner and angle point 7 feet right, at 418.2 feet an angle point in fence 14 feet left, in all 2640 feet to the place of beginning, containing 160 acres of land;

And being the same land conveyed by F. M. Robinson to Ethan A. Wilmot by deed dated September 17, 1904, and recorded in Volume 29, Page 197, et seq., of the Deed Records of Fort Bend County, Texas.

TRACT V:

200 acres of land out of and a part of the Joseph D. Vermillion Survey in said Fort Bend County, Texas described by metes and bounds as follows:

BEGINNING at a stake set in the W. line of the said Joseph D. Vermillion Survey and 1960 vrs N. from its S. W. Corner

THENCE N. along said W. boundary line 1124 vrs or 3122.2 ft. to a stake in N. W. corner of the 200 acres tract herein conveyed;

THENCE E. 1006 Vrs or 2794.44 ft. to a point for the N.E. corner of the tract herein conveyed;

THENCE S. parallel with the said W. line of the Joseph D. Vermillion Survey 1124 vrs or 3122.2 ft. to a point for the S. E. corner of the 200 acre tract herein conveyed;

THENCE W. 2794.44 t. to the place of beginning and containing 200 acres of land; being the same 200 acres of land conveyed to George F. Fluke by J. A. Friedman and Eugene Mills by Warranty Deed dated April 23, 1904 and recorded in Deed Book 28, Pages 164 and 165 of the Deed Records of Fort Bend County, Texas.

TRACT VI:

75.856 acres of land out of the Joseph D. Vermillion Survey, Abstract 339, Fort Bend County, Texas, described by metes and bounds as follows:

BEGINNING at a one inch iron pipe set for the Northwest corner of the Joseph D. Vermillion Survey, and also being the Northwest corner of the herein described 75 856 acre tract;

THENCE East, 1,910.87 feet along the North line of the Joseph D. Vermillion Survey, Abstract 339, to a one inch pipe set for the Northeast corner of this 75.856 acre tract;  
THENCE South, 2,002.77 feet to a one inch iron pipe set in a fence line for the Southeast corner of this 75.856 acre tract;  
THENCE West, 1,600.34 feet along a fence line to a one inch iron pipe set for the most Southerly West corner of this 75.856 acre tract, and also being the Southeast corner of the Chester Jordan ten acre tract;  
THENCE North 1,402.77 feet with the East line of said ten acre tract, pass a one inch iron pipe set for the Northeast corner of said ten acre tract and also being the Southeast corner of a 2 acre tract, continuing along same course a total distance of 1,683.32 feet to a one inch iron pipe set for an interior corner of this 75.856 acre tract, and also being the Northeast corner of said 2 acre tract;  
THENCE West, 310.53 feet with the North line of said 2 acre tract to a one inch iron pipe set in the West line of the Joseph D. Vermillion Survey, Abstract 339, being the Northwest corner of said 2 acre tract;  
THENCE North, 319.45 feet along the West line of the Joseph D Vermillion Survey, Abstract 339, to the place of beginning and containing 75.856 acres of land, more or less,

And being the same and identical land conveyed from McMillian Farms, Inc. to Chester Jordan by General Warranty Deed recorded in Volume 416, Page 572, Deed Records of Fort Bend County, Texas.

TRACT VII:

The following described property, to-wit:

Being a ten (10) acre tract of land out of the J. D. Vermillion one-third (1/3) League Survey, Patent No. 197, Volume 21, situated in Fort Bend County, Texas and being described by metes and bounds as follows.

BEGINNING at a stake set in the West line of at the R. D. MacDonald 179.6 acre tract recorded in Volume 85, Pages 342-344, Deed Records of Fort Bend County, Texas, off of the West side of Lot number four (4) of the J. D. Vermillion 1/3 League Survey, Patent Number 197, Volume 21, situated in Fort Bend County, Texas, 600 feet South of its N. W. corner,

THENCE South following the West line of the R. D. MacDonald 179.6 acre tract in said survey 1402.8 feet to a stake for corner and same being the S. W corner of said R D. MacDonald 179.6 acre tract;

THENCE East following the South line of the said R. D. MacDonald 179 6 acre tract in said survey 311.14 feet to a stake for corner;

THENCE North parallel with the West line of the said R D. MacDonald 179.6 acre tract in said survey 1402.8 feet to a stake for corner;

THENCE West parallel with the South line of the said R D. MacDonald 1796 acre tract in said survey 311.14 feet to the place of beginning and containing ten (10) acres of land

And being the same identical property conveyed from Sam Schwartz to Chester F. Jordan in a deed recorded in Volume 281, Page 207, Deed Records of Fort Bend County, Texas.

TRACT VIII:

The following described real property situated in Fort Bend, Texas, to-wit:

COMMENCING at the Northwest corner of the J. D. Vermillion Survey, Same being the Northwest corner of the Chester F. Jordan 75.856 Acre Tract, (Volume 416, Page 572, Deed Records) Fort Bend County, Texas;

THENCE, South along the West line of the Chester F. Jordan 75.856 Acre Tract, 319.45 feet to the Northwest corner and Place of Beginning of the herein described 2 Acre Tract;

THENCE, continuing South, for a distance of 280.55 feet to a point for the Southwest corner of this 2.0 acre tract same being the Northwest corner of a certain 10.0 Acre Tract, owned by Chester F Jordan,

THENCE, East along the common line of this 2.0 Acre Tract and the above mentioned Chester F. Jordan 10.0 Acre Tract, 310.53 feet to a point for the Southeast corner, of the aforementioned 10.0 Acre Tract and on the West line of the aforementioned 75.856 Acre Tract;

THENCE, North along the common line of this 2.0 Acre Tract and the aforementioned 75.856 Acre Tract, 280.55 feet to a point for the Northeast corner of this 2 0 Acre Tract, same being an interior corner of the aforementioned 75.856 Acre Tract;

THENCE. West along a line common to this 2.0 Acre Tract and the 75 856 Acre Tract, 310.53 feet to the Place of Beginning and containing 2 0 Acres of Land, And being the same & identical property conveyed by Don F. McMillian to Chester F. Jordan in deed recorded in Volume 523, Page 545, Deed Records of Fort Bend County, Texas.

SECTION 2.3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

### ARTICLE 3. FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 182

SECTION 3.1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8156 to read as follows:

#### CHAPTER 8156. FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 182

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8156.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "Director" means a member of the board.

(3) "District" means the Fort Bend County Municipal Utility District No. 182.

Sec. 8156.002. NATURE OF DISTRICT. The district is a municipal utility district in Fort Bend County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8156.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8156.023 before September 1, 2007:

(1) the district is dissolved September 1, 2007, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred to Fort Bend County; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2010.

Sec. 8156.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

(4) the legality or operation of the district or the board.

[Sections 8156.005-8156.020 reserved for expansion]

#### SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 8156.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2005, a person who owns land in the district may petition the Texas Commission on Environmental Quality to appoint as temporary directors the five persons listed in the petition.

(b) The commission shall appoint as temporary directors the persons listed in a petition received by the commission under Subsection (a). If the commission receives more than one petition, the commission shall appoint the directors listed in the first petition the commission receives.

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8156.023; or

(2) the date this chapter expires under Section 8156.003.

Sec. 8156.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. If a location cannot be agreed upon, the meeting shall be at the Fort Bend County Courthouse. At the meeting, the temporary directors shall elect officers from among the temporary directors.

Sec. 8156.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

Sec. 8156.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8156.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors under Section 8156.052 and which three shall serve until the second regularly scheduled election of directors.

Sec. 8156.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010.

[Sections 8156.026-8156.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8156.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 8156.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 8156.053-8156.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8156.101. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8156.102. ROAD PROJECTS. (a) The district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of the municipality or county in whose jurisdiction the district is located.

(c) The district may not undertake a road project unless each municipality or county in whose jurisdiction the district is located consents by ordinance or resolution.

Sec. 8156.103. LIMITATION ON USE OF EMINENT DOMAIN. The district may exercise the power of eminent domain outside the district only to acquire an easement necessary for a pipeline that serves the district.

Sec. 8156.104. DIVISION OF DISTRICT. (a) Except as provided by Subsection (c), the district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt;
- (2) is not imposing ad valorem taxes; and
- (3) has not annexed land.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code. Any new district created by the division of the district has all the powers and duties of the district.

(c) A new district created by the division described by Subsection (a) is subject to the restrictions prescribed by Subsections (a)(1) and (2). If the new district annexes land, that new district may not again divide if the result is that the annexed land wholly constitutes one of the districts created by the division of the new district.

Sec. 8156.105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section 54.016, Water Code, the district shall comply with all applicable requirements of any ordinance or resolution adopted by the city council of the City of Fulshear, including an ordinance or resolution adopted before September 1, 2005, that consents to the creation of the district or to the inclusion of lands within the district.

[Sections 8156.106-8156.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8156.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds issued under Section 8156.201.

Sec. 8156.152. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

[Sections 8156.153-8156.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8156.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of projects under Section 8156.101 or 8156.102.

(b) The district may not issue bonds to finance projects authorized by Section 8156.102 unless the issuance is approved by a vote of a two-thirds majority of the voters of the district voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8156.102 may not exceed one-fourth of the assessed value of the real property in the district.

(d) Sections 49.181 and 49.182, Water Code, do not apply to a project undertaken by the district under Section 8156.102 or to bonds issued by the district to finance the project.

SECTION 3.2. The Fort Bend County Municipal Utility District No. 182 initially includes all the territory contained in the following area:

#### TRACT I

All that certain tract or parcel of land, lying and being situated in FORT BEND COUNTY, TEXAS, part of the ALEXANDER PHILLIPS SURVEY, A-300, being a portion of the same land described as the south one-half (S.1/2) of 1/3 of a League, originally granted to Alexander Phillips and called 738 acres in a deed from Florence B. Cardiff to Charles I. Cardill, et. al, dated January 3, 1950, recorded in Volume 270, Page 431, Deed Records of Fort Bend County, Texas (270/431

D.R.F.B.C., Tx.), and/or being part of a Charles I. Cardiff, et al. tract described as 194.1101 acres (1356/871 & 1356/874, O.R.F.B.C., Tx.), and being more fully described by metes and bounds as follows, to-wit:

BEGINNING at 3/4" iron rod found for the most easterly or northeast corner hereof and of said 194.1101 acre tract, being the most northerly northwest corner of a 553.382 acre tract surveyed for West Houston LTD. (2571/1460, O.R.F.B.C., Tx.), and on the south line of an Imperatum Corporation tract called 309.1712 acres (2479/1977, O.R.F.B.C., Tx.), a 3/4" iron rod found on the east line of said Alexander Phillips Survey bears N 89° 21' 14" E, 1034.98 feet;

THENCE, along the southeast line hereof and of said 194.1101 acre tract, commence with the northwest line of said West Houston LTD. Tract, being on the northwest side of a Transcontinental Gas Pipe Line Corporation easement (273/342 & 407/169 D.R.F.B.C., Tx.) situated upon and crossing said West Houston LTD. tract, S 41° 20' 16" W, 2345.77 feet, to a 5/8" iron rod set on said line for the south corner hereof;

THENCE, severing said 194.1101 acre tract, N 00° 29' 46" W, 1839.81 feet, to a 5/8" iron rod set on the south margin of Corbitt Road (Flewellen-Katy Road) for the northwest corner hereof, being 49.9 feet southerly from a north line of said 194.1101 acre tract;

THENCE, along the south margin of said road, N 89° 30' 14" E, 200.00 feet, to a 5/8" iron rod set as said road margin for a northerly exterior corner hereof, being on an easterly line of said original 194.1101 acre tract, common with a west line of said Imperatum Corporation tract, a 3/4" iron rod found in Corbitt Road (Flewellen-Katy Road) at a turn of same for a northeasterly exterior corner of said 194.1101 acre tract bears N 00° 27' 18" W, 49.98 feet;

THENCE, along the common line of said 194.1101 acre tract and of said Imperatum Corporation tract, S 00° 27' 18" E, 95.59 feet, to a 1/2 iron pipe found for the southwest corner of said Imperatum Corporation tract and for an interior corner hereof and of said 194.1101 acre tract;

THENCE, along a south line of said Imperatum Corporation Tract, N 89° 21' 14" E, 1364.64 feet, to the PLACE OF BEGINNING, containing 31.755 ACRES of land.

## TRACT II

FIELD NOTES for a 685.9742 ACRE TRACT OF LAND IN THE J. D. VERMILLION SURVEY, ABSTRACT 339, FORT BEND COUNTY, TEXAS, 201.1257 ACRES BEING THAT CERTAIN CALLED 201.5 ACRE TRACT DESCRIBED IN DEED, RECORDED IN VOLUME 339, PAGE 434, DEED RECORDS, 201.1251 ACRES BEING THAT CERTAIN CALLED 200 ACRE TRACT DESCRIBED IN DEED, RECORDED IN VOLUME 242, Page 533, DEED RECORDS, AND 283.7234 ACRES BEING THAT CERTAIN CALLED 357.66 ACRE TRACT DESCRIBED IN DEED, RECORDED IN VOLUME 129, PAGE 207, DEED RECORDS, FORT BEND COUNTY, TEXAS.

BEGINNING at a 1 1/4 inch Iron Pipe found at the Southwest corner of the J. D. Vermillion Survey, Abstract 339, for the Southwest corner and Place of Beginning of the herein described 685.9742 Acre Tract, said point being the upper Northwest corner of the Micajah Autrey Survey, Abstract 100, and being located in the East line

of the J. G. Bennett Survey, Abstract 611, said point also being the Southwest corner of a certain 201.1257 Acre Tract being that certain called 201.5 Acre Tract described in deed, recorded in Volume 339, Page 434, Fort Bend County Deed Records; THENCE North 00 degrees 04 minutes 20 seconds East along the West line of the J. D. Vermillion Survey, Abstract 339, same being the East line of the J. G. Bennett Survey, Abstract 611, at 2886.00 feet pass an Iron Pipe set at the Northwest corner of the said 201.1257 Acre Tract, same being the Southwest corner of a certain 283.7234 Acre Tract being that certain called 357.66 Acre Tract described in deed, recorded in Volume 129, Page 207, Fort Bend County Deed Records, and continuing for a total distance of 4919.99 feet a 1 inch Iron Pipe found for the Northwest corner of the herein described 685.9742 Acre Tract, same being the Northwest corner of said 283.7234 Acre Tract, same being the Southwest corner of a certain 199.9539 Acre Tract being that certain called 200 Acre Tract, described in deed, recorded in Volume 251, Page 551, Fort Bend County Deed Records;

THENCE North 89 degrees 51 minutes 39 seconds East along the North line of said 283.7734 Acre Tract, at 2793.03 feet pass an Iron Pipe set at the Southeast corner of the said 199.9539 Acre Tract, at 5025.10 feet pass an Iron Pipe set at the Southwest corner of a certain 75.9665 Acre Tract being that certain called 75.75 Acre Tract described in deed, recorded in Volume 251, Page 551, Fort Bend County Deed Records, and continuing for a total distance of 6077.75 feet to an Iron Pipe set for the Northeast corner of the herein described 685.9742 Acre Tract, same being the Southeast corner of said 75.9665 Acre Tract, said point being on the common line of the William Ames Survey, Abstract 104, and the J.D. Vermillion Survey, Abstract 339;

THENCE South 00 degrees 10 minutes 33 seconds West along the common line of the J.D. Vermillion Survey and the William Ames Survey, at 580.04 feet pass the Southwest corner of the William Ames Survey, same being the upper Northwest corner of the A. G. Sharpless Survey, Abstract 322, at 2034.24 feet pass an Iron Pipe set at the Southeast corner of the aforementioned 283.7234 Acre Tract, same being the Northeast corner of that certain 201.1251 Acre Tract being that certain called 200 Acre Tract, described in deed, recorded in Volume 242, Page 533, Fort Bend County Deed Records, and continuing for a total distance of 4920.24 feet to an Iron Pipe set for the Southeast corner of the herein described 685.9742 Acre Tract, same being the Southeast corner of the J. D. Vermillion Survey, same being a reentry corner of the A. G. Sharpless Survey, same also being the Southeast corner of the aforementioned 201.1251 Acre Tract;

THENCE South 89 degrees 51 minutes 46 seconds West along the common line of the J.D. Vermillion Survey and the A. G. Sharpless Survey, at 1346.64 feet pass the lower Northwest corner of the A. G. Sharpless Survey, same being the Northeast corner of the Micajah Autrey Survey, Abstract 100, at 3034.43 feet pass an Iron Pipe set at the Southwest corner of the aforementioned 201.1251 Acre Tract, same being the Southeast corner of the aforementioned 201.1257 Acre Tract, and continuing along the common line of the J. D. Vermillion Survey and the Micajah Autrey Survey for a total distance of 6068.85 feet to the Place of BEGINNING and containing 685.9742 acres of land, more or less.

SECTION 3.3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

#### ARTICLE 4. FORT BEND MUNICIPAL UTILITY DISTRICT NO. 181

SECTION 4.1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8155 to read as follows:

#### CHAPTER 8155. FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 181 SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8155.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Fort Bend County Municipal Utility District No.

181.

Sec. 8155.002. NATURE OF DISTRICT. The district is a municipal utility district in Fort Bend County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8155.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8155.023 before September 1, 2007:

(1) the district is dissolved September 1, 2007, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred to Fort Bend County; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2010.

Sec. 8155.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

(4) the legality or operation of the district or the board.

[Sections 8155.005-8155.020 reserved for expansion]

SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 8155.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2005, a person who owns land in the district may petition the Texas Commission on Environmental Quality to appoint as temporary directors the five persons listed in the petition.

(b) The commission shall appoint as temporary directors the persons listed in a petition received by the commission under Subsection (a). If the commission receives more than one petition, the commission shall appoint the directors listed in the first petition the commission receives.

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8155.023; or

(2) the date this chapter expires under Section 8155.003.

Sec. 8155.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. If a location cannot be agreed upon, the meeting shall be at the Fort Bend County Courthouse. At the meeting, the temporary directors shall elect officers from among the temporary directors.

Sec. 8155.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

Sec. 8155.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8155.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors under Section 8155.052 and which three shall serve until the second regularly scheduled election of directors.

Sec. 8155.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010.

[Sections 8155.026-8155.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8155.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 8155.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 8155.053-8155.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8155.101. GENERAL POWERS. The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8155.102. ROAD PROJECTS. (a) The district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of the municipality or county in whose jurisdiction the district is located.

(c) The district may not undertake a road project unless each municipality or county in whose jurisdiction the district is located consents by ordinance or resolution.

Sec. 8155.103. LIMITATION ON USE OF EMINENT DOMAIN. The district may exercise the power of eminent domain outside the district only to acquire an easement necessary for a pipeline that serves the district.

Sec. 8155.104. DIVISION OF DISTRICT. (a) Except as provided by Subsection (c), the district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt;
- (2) is not imposing ad valorem taxes; and
- (3) has not annexed land.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code. Any new district created by the division of the district has all the powers and duties of the district.

(c) A new district created by the division described by Subsection (a) is subject to the restrictions prescribed by Subsections (a)(1) and (2). If the new district annexes land, that new district may not again divide if the result is that the annexed land wholly constitutes one of the districts created by the division of the new district.

Sec. 8155.105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section 54.016, Water Code, the district shall comply with all applicable requirements of any ordinance or resolution adopted by the city council of the City of Beasley, including an ordinance or resolution adopted before September 1, 2005, that consents to the creation of the district or to the inclusion of lands within the district.

[Sections 8155.106-8155.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8155.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds issued under Section 8155.201.

Sec. 8155.152. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

[Sections 8155.153-8155.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 8155.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of projects under Section 8155.101 or 8155.102.

(b) The district may not issue bonds to finance projects authorized by Section 8155.102 unless the issuance is approved by a vote of a two-thirds majority of the voters of the district voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8155.102 may not exceed one-fourth of the assessed value of the real property in the district.

(d) Sections 49.181 and 49.182, Water Code, do not apply to a project undertaken by the district under Section 8155.102 or to bonds issued by the district to finance the project.

SECTION 4.2. The Fort Bend County Municipal Utility District No. 181 initially includes all the territory contained in the following area:

Field notes for a 288.37 acre tract of land in the Samuel Cross Survey, Abstract 397, Fort Bend County, Texas, being out of the residue of a called 320 acre tract set aside to Thomas R. Booth and described in deed recorded in Volume 17, Page 50, Deed Records, Fort Bend County, Texas, said 288.37 acre tract also being out of Lots 1, 4, 5, 6, 7, 10 and 11 of the Cobb & Booth Subdivision, according to map or plat thereof recorded in Volume 2, Page 18, Plat Records, Fort Bend County, Texas.

Beginning at the east corner of said Samuel Cross survey, Abstract 397, same being the south corner of the I. & G. N. Railroad Company Survey, Abstract 351, said point also being the east corner of said called 320 acre tract, for the Place of Beginning of the herein described 288.37 acre tract of land, and being in the northwest line of the H. Brodbeck Survey, Abstract 687;

Thence South 45° West along the southeast line of the herein described tract and the southeast line of said called 320 acre tract, same being the common line of the Samuel Cross Survey, Abstract 397, and the H. Brodbeck Survey, Abstract 687, 2,640.28 feet to a point in the centerline of Hardin Road for the south corner of the herein described tract and the south corner of said called 320 acre tract;

Thence North 45° West along the southwest line of the herein described tract and the southwest line of said called 320 acre tract, as located in Hardin Road, 5,280.56 feet to a point for the west corner of the herein described tract and the west corner of said called 320 acre tract, said point being in the common line of the Samuel Cross Survey, Abstract 397, and the B.B.B. & C. Survey, Abstract 141;

Thence North 45° East along the northwesterly line of the herein described tract, 105 feet to a point on said line at its intersection with the southeasterly right-of-way of US Highway 59, and being an angle point in said northwesterly line;

Thence North 68° 14 minutes 55 seconds East along the southeasterly right-of-way of U.S. Highway 59, 2,759.34 feet to a point for the north corner of the herein described tract, said point being in the northeast line of said called 320 acre tract, same being the common line of the Samuel Cross Survey, Abstract 397, and the I. & G. N. Railroad Company Survey, Abstract 351;

Thence South 45° East along the northeast line of the herein described tract and the northeast line of said called 320 acre tract, same being the common line of the Samuel Cross Survey, Abstract 397, and the I. & G. N. Railroad Company Survey, Abstract 351, 4,191.39 feet to the Place of Beginning and containing 288.37 acres of land, more or less.

This description is based upon available records and does not represent an actual on the ground survey.

SECTION 4.3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

#### ARTICLE 5. EFFECTIVE DATE.

SECTION 5.1. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **HB 3482** 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 3482** 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 3482 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 3482** 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.

On motion of Senator Armbrister, further consideration of **HB 3482** was postponed until after the Local and Uncontested Calendar Session today.

Question — Shall **HB 3482** be finally passed?

### **HOUSE BILL 2257 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2257** at this time on its second reading:

**HB 2257**, Relating to the speed limit on certain highways in rural counties.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

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

Amend **HB 2257** by adding the following to SECTION 1 of the bill:

SECTION 1. Section 545.353, Transportation Code, is amended by amending Subsections (h) to read as follows:

(h) Notwithstanding Section 454.352(b), the commission may establish a speed limit of 75 miles per hour in daytime on a part of the highway system if:

(1) the commission determines that 75 miles per hour in daytime is a reasonable and safe speed for that part of the highway system; and

(2) that part of the highway is located in a county with a population density of less than 15 [~~40~~] persons per square mile.

The amendment to **HB 2257** 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 Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2257** 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 2257 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2257** 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 908 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 908** at this time on its second reading:

**HB 908**, Relating to the use of the reverse auction procedure by the Texas Building and Procurement Commission and other state agencies.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 908** as follows:

In Section 1, subsection (a), strike "Except as provided by Subsection (e), in".

In Section 1, subsection (a), replace "[In]" with "In".

In Section 1, strike subsection (e).

The amendment to **HB 908** 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 Estes offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 908** as follows:

In Section 2, Sec. 2155.085(1) strike "except as provide by Section 2155.062(e)".

The amendment to **HB 908** 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 Estes and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 908** 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 908 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 908** 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 602 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **HB 602** at this time on its second reading:

**HB 602**, Relating to the designation of a weight enforcement officer by a commissioners court in certain counties.

The motion prevailed.

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

The bill was read second time.

Senator Madla offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 602**, on page 2, line 3 by adding a new subsection (1) and renumbering the subsequent subsections accordingly:

"(1) that is a county with a population of 1 million or more and is within 200 miles of an international border, or"

The amendment to **HB 602** 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 Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 602** (Senate committee report), as follows:

(1) On page 1, line 36, between "COURT." and "A", insert "(a)".

(2) On page 1, between lines 46 and 47, insert the following:

(b) A constable or deputy constable designated under this Section shall be subject to the requirements of Subchapter C, Chapter 644, Transportation Code.

The amendment to **HB 602** 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 Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 602** 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: Eltife.

**HOUSE BILL 602 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 602** be placed on its third reading and final passage.

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

Nays: Eltife.

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 1207 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 1207** at this time on its second reading:

**CSHB 1207**, Relating to the exclusion of land from a water district with outstanding bonds for failure to provide sufficient services.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1207** (committee printing) by adding the following new section and numbering it appropriately:

SECTION \_\_\_\_\_. Section 54.016(f), Water Code, is amended to read as follows:

(f) A city located in a county with a population of less than 1 million in which a municipality with a population of more than 650,000 is predominately located may provide in its written consent for the inclusion of land in a district that a contract ("allocation agreement") between the district and the city be entered into prior to the first issue of bonds, notes, warrants, or other obligations of the district. The allocation agreement shall contain the following provisions:

(1) a method by which the district shall continue to exist following the annexation of all territory within the district by the city, if the district is initially located outside the corporate limits of the city;

(2) an allocation of the taxes or revenues of the district or the city which will assure that, following the date of the inclusion of all the district's territory within the corporate limits of the city, the total annual ad valorem taxes collected by the city and the district from taxable property within the district does not exceed an amount greater than the city's ad valorem tax upon such property;

(3) an allocation of governmental services to be provided by the city or the district following the date of the inclusion of all of the district's territory within the corporate limits of the city;

(4) such other terms and conditions as may be deemed appropriate by the city.

The amendment to **CSHB 1207** 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 Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1207** 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 1207 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 1207** 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 1238 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1238** at this time on its second reading:

**HB 1238**, Relating to distribution of certain child support payments by the state disbursement unit.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1238** as follows:

(1) In SECTION 1 of the bill, in the introductory language (Senate committee printing page 1, line 12), strike "Subsection (d)" and substitute "Subsections (d) and (e)".

(2) In SECTION 1 of the bill, in added Section 234.008(d), Family Code (Senate committee printing page 1, line 19), strike "The" and substitute "Subject to Subsection (e), the".

(3) In SECTION 1 of the bill, immediately following added Section 234.008(d), Family Code (Senate committee printing page 1, between lines 30 and 31), insert the following:

(e) If the Title IV-D agency is notified by the Federal Office of Child Support Enforcement that Subsection (d) results in the Title IV-D agency's failure to meet the requirements of 42 U.S.C. Sections 654a(e) and 654b related to the establishment and operation of the state case registry and state disbursement unit, Subsection (d) is null and void and the Title IV-D agency shall publish in the Texas Register notice that Subsection (d) is not effective.

The amendment to **HB 1238** 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.

**HB 1238** 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 1238 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 1238** 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 2651 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2651** at this time on its second reading:

**HB 2651**, Relating to the regulation of subsurface area drip dispersal systems by the Texas Commission on Environmental Quality.

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 2651 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2651** 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 2339 ON SECOND READING**

The Presiding Officer, Senator Carona in Chair, laid before the Senate **HB 2339** on its second reading. The bill had been read second time, amended, an amendment offered, and further consideration postponed to a time certain of 3:00 p.m. today:

**HB 2339**, Relating to the provision of mail ballots to overseas voters and to conforming adjustments to related dates, deadlines, and procedures.

Question — Shall Floor Amendment No. 2 to **HB 2339** be adopted?

Senator Jackson withdrew Floor Amendment No. 2.

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 2339** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Subchapter D, Chapter 11, Education Code, is amended by adding Section 11.168 to read as follows:

Sec. 11.168. ELECTIONEERING PROHIBITED. Notwithstanding any other law, the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.

The amendment to **HB 2339** 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.

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

**HB 2339** 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 2339 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 2339** 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 2928 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 2928** at this time on its second reading:

**CSHB 2928**, Relating to projects that may be undertaken by certain development corporations with respect to business enterprises or business development.

The bill was read second time.

Senator Seliger, on behalf of Senator West, offered the following amendment to the bill:

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

Amend **CSHB 2928** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in the recital (page 1, line 49), strike "Subdivision (3)" and substitute "Subdivisions (3) and (4)".

(2) In SECTION 2 of the bill, following proposed Section 4B(a)(3), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, between lines 54 and 55), insert the following:

(4)(A) In this subdivision, "landlocked community" means a city that is wholly or partly located in a county with a population of 2 million or more and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city.

(B) For a landlocked community that creates or has created a corporation governed by this section, "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises and commercial activity within the landlocked community.

(3) In SECTION 3 of the bill, in amended Section 40(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 60), strike "or" and substitute "₂".

(4) In SECTION 3 of the bill, in amended Section 40(a), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 61), between "(3)" and "of this", insert ", or (4)".

The amendment to **CSHB 2928** 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 Hinojosa offered the following amendment to the bill:

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

Amend **CSHB 2928** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, at the end of amended Section 2(11)(B), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 39), strike "or".

(2) In SECTION 1 of the bill, at the end of amended Section 2(11)(C), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 46), strike "." and substitute the following:

; or [-]

(D) for a corporation created by a city any part of which is located within 25 miles of an international border, the land, buildings, equipment, facilities, expenditures, infrastructure, and improvements that:

(i) the board of directors finds are required or suitable for the development, retention, or expansion of airport facilities or retail businesses or facilities; or

(ii) are undertaken by the corporation if the city that created the corporation has, at the time the project is approved by the corporation as provided by this Act:

(a) a population of less than 50,000; or

(b) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved.

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 4A(i), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(i) Except as provided by this subsection, the corporation may not undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public, or air or water pollution control facilities. However, the corporation may

provide those facilities to benefit property acquired for a project having another primary purpose. The corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park; ~~[or]~~

(2) port-related facilities to support waterborne commerce; or

(3) airport-related facilities, if the corporation is created by a city that is wholly or partly located within 25 miles of an international border and has, at the time the project is approved by the corporation as provided by this Act:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved.

The amendment to **CSHB 2928** 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 Hinojosa offered the following amendment to the bill:

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

Amend **CSHB 2928** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, at the end of amended Section 2(11)(B), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 39), strike "or".

(2) In SECTION 1 of the bill, at the end of amended Section 2(11)(C), Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) (page 1, line 46), strike "." and substitute the following:

; or

(D) expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, mass commuting facilities, parking facilities, other transportation facilities, sewer or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, and facilities located in this state or in the coastal waters of this state for furnishing water to the general public, if the corporation:

(i) is created by a city wholly or partly located in a county that is bordered by the Rio Grande, has a population of at least 500,000, and has wholly or partly within its boundaries at least four cities that each have a population of at least 25,000; and

(ii) does not support a project, as defined by this subdivision, with sales and use tax revenue collected under Section 4A or 4B of this Act.

The amendment to **CSHB 2928** 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.

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

**CSHB 2928** 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 2928 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 2928** 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 79 ON SECOND READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **HJR 79** at this time on its second reading:

**HJR 79**, Proposing a constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority.

The motion prevailed.

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

The resolution 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: Shapleigh.

**HOUSE JOINT RESOLUTION 79 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 79** be placed on its third reading and final passage.

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

Nays: Shapleigh.

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

**HOUSE BILL 2647 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 2647** at this time on its second reading:

**HB 2647**, Relating to designation of Farm-to-Market Road 68 in Fannin County as Speaker Jimmy Turman Road.

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 2647 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 2647** 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 3181 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3181** at this time on its second reading:

**HB 3181**, Relating to the creation of the Central Harris County Regional Water Authority; providing authority to issue bonds or notes; granting the power of eminent domain; providing an administrative 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.

#### **HOUSE BILL 3181 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 **HB 3181** 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 3112 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3112** at this time on its second reading:

**HB 3112**, Relating to the security of computer networks in state government.

The bill was read second time.

Senator Eltife offered the following committee amendment to the bill:

#### **Committee Amendment No. 1**

Amend **HB 3112** (House engrossment) as follows:

(1) In Section 1 of the bill, in added Subchapter B, Chapter 2059, Government Code (page 2, between lines 4 and 5), insert a new Section 2059.052 to read as follows:

Sec. 2059.052. SERVICES PROVIDED TO INSTITUTIONS OF HIGHER EDUCATION. The department may provide network security services to an institution of higher education, and may include an institution of higher education in a center, only if and to the extent approved by the Information Technology Council for Higher Education.

(2) Renumber the sections of Subchapter B, Chapter 2059, Government Code, and cross-references to those sections accordingly.

The amendment to **HB 3112** 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 Eltife offered the following committee amendment to the bill:

### **Committee Amendment No. 2**

Amend **HB 3112** (engrossed version) as follows:

On page 7, beginning on line 13, strike Section 2059.106 (engrossed version) and substitute the following:

"Sec. 2059.106. PRIVATE VENDOR. The department may contract with a private vendor to build and operate the center and act as an authorized agent to acquire, install, integrate, maintain, configure, and monitor the network security services and security infrastructure elements."

The amendment to **HB 3112** 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 Wentworth offered the following amendment to the bill:

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

Amend **HB 3112** (Senate committee printing) in Section 1 of the bill by striking added Section 2059.054, Government Code (page 2, lines 4-8), and substituting the following:

Sec. 2059.054. RESTRICTED INFORMATION. (a) Confidential network security information may be released only to officials responsible for the network, law enforcement, the state auditor's office, and agency or elected officials designated by the department.

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;

(2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or

(3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

The amendment to **HB 3112** 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.

**HB 3112** 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 3112 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 3112** 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.

### **REMARKS ORDERED PRINTED**

On motion of Senator Van de Putte and by unanimous consent, the remarks by Senators Van de Putte and Wentworth regarding **HB 3112** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Van de Putte:** For purposes of legislative intent, the bill defines "Network Security" to mean protection of the state's computer system and technology assets from unauthorized external intervention or improper use. In terms of protecting the state's technology assets, is it your intent that the scope of your definition of network security extends to protecting and securing the state's phone systems that interact with the state's computers and any converged voice and data network systems from unauthorized external intervention or improper use?

**Senator Wentworth:** Yes.

### **RECESS**

On motion of Senator Harris, the Senate at 3:39 p.m. recessed until 4:00 p.m. today.

### **AFTER RECESS**

The Senate met at 4:10 p.m. and was called to order by Senator Van de Putte.

### **SESSION HELD FOR LOCAL AND UNCONTESTED CALENDAR**

The Presiding Officer announced that the time had arrived to consider bills and resolutions placed on the Local and Uncontested Calendar. Notice of consideration of the local calendar was given by Senator Harris yesterday.

Pursuant to Senate Rule 9.03(d), the following bills and resolutions were laid before the Senate in the order listed, read second time, amended where applicable, passed to engrossment or third reading, read third time, and passed. The votes on

passage to engrossment or third reading, suspension of the Constitutional Three-day Rule, and final passage are indicated after each caption. All Members are deemed to have voted "Yea" on viva voce votes unless otherwise indicated.

**CSHB 34** (Williams)

Relating to erecting an off-premise sign adjacent to and visible from certain roads.  
(viva voce vote) (31-0) (31-0)

**HB 39** (Staples)

Relating to outdoor burning of household refuse in certain counties; creating an offense.  
(viva voce vote) (31-0) (31-0)

**HB 43** (Ellis)

Relating to requiring the Texas Department of Criminal Justice to conduct a mandatory human immunodeficiency virus test on certain inmates and state jail felons.  
(viva voce vote) (31-0) (31-0)

**HB 51** (Zaffirini)

Relating to the punishment prescribed for and conditions of community supervision imposed on certain persons who commit intoxication offenses.  
(viva voce vote) (31-0) (31-0)

Senator Whitmire offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 51** as follows:

(1) In Section 1, Subsection (d), (page 1, line 9), strike "~~Article 67011-1, Revised Statutes, as that law existed before September 1, 1994, Article 67011-2, Revised Statutes, as that law existed before January 1, 1984, Section 19.05(a)(2), as that law existed before September 1, 1994, or~~".

(2) In Section 1, Subsection (d), (page 1, line 13), after "49.08" insert "that occurs on or after September 1, 1994,".

The amendment to **HB 51** 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.

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

**HB 62** (Eltife)

Relating to procedures for appealing a residential eviction suit.  
(viva voce vote) (31-0) (31-0)

**HB 75** (Duncan)

Relating to the selection of a jury in criminal and civil cases.  
(viva voce vote) (31-0) (31-0)

**CSHB 107** (Carona)

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

(viva voce vote) (31-0) (31-0)

**HB 133** (Ogden)

Relating to the award of academic credit to a student at an institution of higher education for the completion of certain military training.

(viva voce vote) (31-0) (31-0)

**HB 135** (Harris)

Relating to regulation of health spas.

(viva voce vote) (31-0) (31-0)

**HB 148** (Carona)

Relating to the probationary period of persons appointed to beginning positions in certain fire or police departments.

(viva voce vote) (31-0) (31-0)

Senator Gallegos offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 148** on page 1, line 10, after the period, strike "The", and insert "In a municipality with a population less than 1.9 million, the".

The amendment to **HB 148** 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.

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

**HB 157** (Averitt)

Relating to the conditions of community supervision for certain persons convicted of an intoxication offense.

(viva voce vote) (31-0) (31-0)

**CSHB 178** (Averitt)

Relating to the use of electronically readable information from a driver's license or personal identification card in an election.

(viva voce vote) (31-0) (31-0)

**CSHB 192** (Williams)

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

(viva voce vote) (31-0) (31-0)

**HB 201** (Madla on behalf of Van de Putte)

Relating to the eligibility of a spouse for spousal maintenance in a suit for dissolution of a marriage.

(viva voce vote) (31-0) (31-0)

**HB 251** (Williams)

Relating to the release of certain information regarding a workers' compensation claim.

(viva voce vote) (31-0) (31-0)

**CSHB 266** (Lindsay)

Relating to the time for processing certain county permits.

(viva voce vote) (31-0) (31-0)

**CSHB 269** (West)

Relating to the effect of an expunction.

(viva voce vote) (31-0) (31-0)

**HB 270** (Zaffirini)

Relating to court-ordered access to a child by the child's sibling.

(viva voce vote) (31-0) (31-0)

**HB 312** (Staples)

Relating to the additional tax imposed on land appraised for ad valorem taxation as timber land that is claimed as part of a residence homestead or diverted to certain other uses.

(viva voce vote) (31-0) (31-0)

**HB 363** (Armbrister)

Relating to the declination of certain property and casualty insurance policies.

(viva voce vote) (31-0) (31-0)

**HB 365** (Armbrister)

Relating to the date of the election of directors for the Coastal Bend Groundwater Conservation District.

(viva voce vote) (31-0) (31-0)

**HB 370** (Madla)

Relating to deferred disposition of certain traffic offenses by certain holders of out-of-state driver's licenses.

(viva voce vote) (31-0) (31-0)

**HB 381** (Armbrister)

Relating to the service area of the Blinn College District.

(viva voce vote) (31-0) (31-0)

**HB 383** (Hinojosa)

Relating to the right of certain persons to discipline a child.

(viva voce vote) (31-0) (31-0)

**CSHB 401** (Averitt)

Relating to providing information to certain persons about the availability of volunteer income tax assistance programs and the federal earned income tax credit.

(viva voce vote) (31-0) (31-0)

**HB 407** (Madla)

Relating to coverage for school district employees under certain health benefit plans.

(viva voce vote) (31-0) (31-0)

**HB 418** (Whitmire)

Relating to an exception to the 72-hour waiting period for a marriage ceremony for certain individuals.

(viva voce vote) (31-0) (31-0)

**HB 473** (Armbrister)

Relating to examinations for licenses to engage in certain liquefied petroleum gas-related activities.

(viva voce vote) (31-0) (31-0)

**HB 474** (Armbrister)

Relating to the duty of a gas utility to report certain transactions to the Railroad Commission of Texas.

(viva voce vote) (31-0) (31-0)

**HB 480** (Wentworth)

Relating to the towing and storage of certain vehicles; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 484** (Armbrister)

Relating to the filing of electric logs with the Railroad Commission of Texas.

(viva voce vote) (31-0) (31-0)

**HB 505** (Madla)

Relating to the discharge of a firearm across a property line; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 506** (Jackson)

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

(viva voce vote) (31-0) (31-0)

**HB 511** (Madla on behalf of Van de Putte)

Relating to the processing of consumer rebates.

(viva voce vote) (31-0) (31-0)

**HB 573** (Duncan)

Relating to collateral for deposits of public school funds.

(viva voce vote) (31-0) (31-0)

**HB 578** (Armbrister)

Relating to the inclusion in a regional water plan of information regarding water infrastructure facilities that may be used in an emergency shortage of water.

(viva voce vote) (31-0) (31-0)

**HB 582** (Whitmire)

Relating to the prosecution of the offense of taking or attempting to take a stun gun from a peace officer, parole officer, or community supervision and corrections department officer.

(viva voce vote) (31-0) (31-0)

**CSHB 616** (Lindsay)

Relating to a landowner's liability for injuries incurred during certain recreational activities.

(viva voce vote) (31-0) (31-0)

**(Senator Hinojosa in Chair)****HB 617** (Duncan)

Relating to contributions made by and the service retirement annuity paid to certain members of the Judicial Retirement System of Texas Plan Two.

(viva voce vote) (31-0) (31-0)

**HB 637** (Zaffirini)

Relating to authorizing an extension of credit secured by a residence homestead in which a minor or ward has an ownership interest.

(viva voce vote) (31-0) (31-0)

**HB 638** (Armbrister)

Relating to the applicability of procedures governing restrictive covenants in certain residential subdivisions.

(viva voce vote) (31-0) (31-0)

**HB 647** (Ogden)

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

(viva voce vote) (31-0) (31-0)

**HB 659** (Fraser)

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

(viva voce vote) (31-0) (31-0)

**HB 669** (Carona)

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

(viva voce vote) (31-0) (31-0)

**CSHB 677** (Wentworth)

Relating to emergency services for sexual assault survivors.

(viva voce vote) (31-0) (31-0)

**HB 681** (Ogden)

Relating to the forfeiture of good conduct time from inmates who file frivolous applications for writ of habeas corpus.

(viva voce vote) (31-0) (31-0)

**CSHB 698** (Averitt)

Relating to the creation and disposal of certain materials that contain personal identifying information; providing a civil penalty.

(viva voce vote) (31-0) (31-0)

**HB 699** (Carona)

Relating to prosecution and punishment of certain offenses relating to a driver's license or personal identification certificate.

(viva voce vote) (31-0) (31-0)

**HB 703** (Lindsay)

Relating to the deferral of adjudication in cases involving certain misdemeanor traffic offenses.

(viva voce vote) (31-0) (31-0)

**HB 706** (Whitmire)

Relating to the adoption of the Interstate Compact for Juveniles.

(viva voce vote) (31-0) (31-0)

**CSHB 731** (Madla)

Relating to an electronic requisition system for counties.

(viva voce vote) (31-0) (31-0)

**HB 765** (Van de Putte)

Relating to notice of coverage under certain group health insurance policies and standard health benefit plans.

(viva voce vote) (31-0) (31-0)

Senator Harris offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 765** as follows:

In Section 2 of the bill, delete subsection c in its entirety.

The amendment to **HB 765** 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.

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

**HB 776** (Janek)

Relating to the Wharton County Junior College District service area.

(viva voce vote) (31-0) (31-0)

**CSHB 790** (Nelson)

Relating to the conduct of newborn screening by the Department of State Health Services.

(viva voce vote) (31-0) (31-0)

**CSHB 809** (Staples)

Relating to excepting certain motor vehicles owned by an individual and used for the production of income from required rendition for ad valorem tax purposes.

(viva voce vote) (31-0) (31-0)

**HB 825** (Whitmire)

Relating to the prosecution of the offense of interference with public duties.

(viva voce vote) (31-0) (31-0)

**CSHB 831** (Lucio)

Relating to the eligibility of certain judges to retire with full benefits.  
(viva voce vote) (31-0) (31-0)

**CSHB 853** (Harris)

Relating to the return of merchandise; providing a civil penalty.  
(viva voce vote) (31-0) (31-0)

**HB 858** (Armbrister)

Relating to the issuance of a marriage license to applicants who are unable to personally appear before the county clerk.  
(viva voce vote) (31-0) (31-0)

**HB 860** (Ellis)

Relating to charitable contributions by state employees to certain General Land Office programs.  
(viva voce vote) (31-0) (31-0)

**HB 868** (Williams)

Relating to the establishment of a Center for Excellence in Deaf Studies and Deaf Education at Lamar University.  
(viva voce vote) (31-0) (31-0)

**HB 900** (Zaffirini)

Relating to the requirement that workforce development programs provide training in financial literacy.  
(viva voce vote) (31-0) (31-0)

**HB 915** (Whitmire)

Relating to authority of a peace officer to make an arrest outside of the officer's jurisdiction or to seize property while making the arrest.  
(viva voce vote) (31-0) (31-0)

**CSHB 934** (Lucio on behalf of Hinojosa)

Relating to notice requirements in certain proceedings relating to charitable trusts.  
(viva voce vote) (31-0) (31-0)

**HB 967** (Whitmire)

Relating to administration of the criminal justice information system.  
(viva voce vote) (31-0) (31-0)

**HB 970** (Lucio on behalf of Hinojosa)

Relating to the required mental state for commission of certain misdemeanor offenses.  
(viva voce vote) (31-0) (31-0)

**CSHB 972** (Nelson)

Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.  
(viva voce vote) (31-0) (31-0)

**HB 975** (Harris)

Relating to a deposition taken of a witness in a criminal action.  
(viva voce vote) (31-0) (31-0)

Senator Lucio, on behalf of Senator Hinojosa, offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 975** by inserting the following after the period on page 2, line 25: "This provision is limited to the purposes stated in Section 39.01."

The amendment to **HB 975** 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.

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

**HB 994** (West)

Relating to the tuition charged for certain courses repeated by students attending public junior colleges and public technical institutes.

(viva voce vote) (31-0) (31-0)

**HB 1012** (Whitmire)

Relating to the offense of abuse of a corpse and to the offense of criminal mischief in certain circumstances; providing a criminal penalty.

(viva voce vote) (31-0) (31-0)

Senator Whitmire offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1012** (engrossed) on page 1, line 24 by striking "state jail felony" and inserting "Class A misdemeanor."

The amendment to **HB 1012** 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.

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

**HB 1030** (Jackson)

Relating to availability of preferred providers.

(viva voce vote) (31-0) (31-0)

**HB 1054** (Staples)

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

(viva voce vote) (31-0) (31-0)

**HB 1055** (Staples)

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

(viva voce vote) (31-0) (31-0)

**HB 1063** (Lucio)

Relating to a fee to support the wellness, recreational, and fitness complex at The University of Texas at Brownsville.

(viva voce vote) (31-0) (31-0)

**HB 1071** (Van de Putte)

Relating to the format in which certain reports of political contributions and expenditures are filed.

(viva voce vote) (31-0) (31-0)

**CSHB 1079** (Seliger)

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

(viva voce vote) (31-0) (31-0)

**HB 1092** (Gallegos)

Relating to the authority of certain counties to remove property from county roads.

(viva voce vote) (31-0) (31-0)

Senator Gallegos offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1092** as follows:

On page 1, line 16, after "right-of-way" insert "for at least six hours"

The amendment to **HB 1092** 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.

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

**HB 1102** (Fraser)

Relating to certain student fees at Tarleton State University.

(viva voce vote) (31-0) (31-0)

**HB 1106** (Janek)

Relating to the repeal of the Public School Facilities Funding Act.

(viva voce vote) (31-0) (31-0)

**HB 1111** (Brimer)

Relating to admission to open-enrollment charter schools that specialize in performing arts.

(viva voce vote) (31-0) (31-0)

**CSHB 1114** (Duncan)

Relating to contributions by and benefits for certain members and retirees under the Judicial Retirement System of Texas Plan One and Plan Two.

(viva voce vote) (31-0) (31-0)

**CSHB 1126** (Madla)

Relating to exemptions from the law governing emergency medical services for certain transfer vehicles and staff and to the minimum qualifications for obtaining an emergency medical services provider license.

(viva voce vote) (31-0) (31-0)

**(Senator Janek in Chair)****HB 1132** (Averitt)

Relating to the regulation of and rights of private security personnel.

(viva voce vote) (31-0) (31-0)

**HB 1140** (Averitt)

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

(viva voce vote) (31-0) (31-0)

**HB 1161** (Armbrister)

Relating to the provision of certain information to owners of oil or gas royalty interests by the Railroad Commission of Texas.

(viva voce vote) (31-0) (31-0)

**HB 1162** (Armbrister)

Relating to the training, examination, and seminar attendance requirements for applicants for or holders of licenses or registrations to perform certain activities pertaining to compressed natural gas or liquefied natural gas.

(viva voce vote) (31-0) (31-0)

**HB 1173** (Ogden)

Relating to the regulation of the use of postsecondary credits and degrees, persons offering or granting certain postsecondary credits and degrees, and the manner of offering or granting those credits and degrees; providing criminal penalties.

(viva voce vote) (31-0) (31-0)

**HB 1181** (Wentworth)

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

(viva voce vote) (31-0) (31-0)

**CSHB 1188** (West)

Relating to tax increment financing.

(viva voce vote) (31-0) (31-0)

**HB 1215** (Armbrister)

Relating to the degree programs offered by the University of Houston-Victoria.

(viva voce vote) (31-0) (31-0)

**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 PASSED THE FOLLOWING MEASURES:**

**SB 18**, Relating to the adoption of ad valorem tax rates by taxing units and to related tax bills.

**SB 39**, Relating to continuing education in forensic evidence collection for certain physicians and nurses.

(Amended)

**SB 44**, Relating to the Indigent Health Care Advisory Committee.

(Committee Substitute)

**SB 51**, Relating to administration of certain health benefit plans.

(Committee Substitute)

**SB 66**, Relating to the establishment of certain programs and initiatives designed to prevent the manufacture and use of methamphetamine; providing a penalty.

**SB 96**, Relating to the provision on the Internet of forms and permit or license information by state agencies.

**SB 188**, Relating to a memorandum of understanding between the Texas School for the Blind and Visually Impaired and the Texas Education Agency.

**SB 189**, Relating to the operation of the Texas School for the Blind and Visually Impaired.

**SB 213**, Relating to requiring more Spanish language content for online information provided by state agencies.

**SB 254**, Relating to the removal of certain restrictions imposed on the programs, enrollment, and admission policies of The University of Texas at Dallas.

**SB 256**, Relating to the release of certain student information by a school district.

**SB 263**, Relating to use of certain information relating to tax audits; providing penalties.

**SB 269**, Relating to certain administrative fees and taxes collected by the Texas Alcoholic Beverage Commission.

(Committee Substitute)

**SB 270**, Relating to mass gatherings outside the limits of a municipality.

- SB 271**, Relating to the issuance of a certificate of birth resulting in stillbirth on request of a parent.
- SB 291**, Relating to the index of court fees and costs.
- SB 302**, Relating to reports regarding participation in higher education.
- SB 308**, Relating to temporary successors to members of the legislature during a period of emergency caused by enemy attack.
- SB 314**, Relating to the emergency service fee rate in certain 9-1-1 emergency communication districts.
- SB 325**, Relating to the management of behavior of residents of certain facilities; providing an administrative penalty.
- SB 338**, Relating to the amount of the use tax imposed on certain motor vehicles brought into this state by a new resident.
- SB 356**, Relating to an urban land bank program in certain municipalities.  
(Amended)
- SB 369**, Relating to the prohibition of signs on Farm-to-Market Road 3238.  
(Committee Substitute)
- SB 387**, Relating to school district employment policies.
- SB 423**, Relating to the issuance of a limited license to practice medicine to certain applicants.
- SB 425**, Relating to subdivision platting requirements and assistance for certain counties near an international border.
- SB 428**, Relating to the repeal of the requirement that the creation of the Harris County Municipal Utility District No. 388 be confirmed by a specific date.
- SB 429**, Relating to the repeal of the requirement that the creation of the Harris County Municipal Utility District No. 387 be confirmed by a specific date.
- SB 442**, Relating to immunity from liability for certain civil actions and civil actions against sales agents.
- SB 450**, Relating to the confidentiality of certain personal information regarding the employees of a prosecutor's office or of an office with jurisdiction over child protective services.
- SB 452**, Relating to transferring the duties of the Texas Building and Procurement Commission under the public information law to the attorney general.
- SB 465**, Relating to the administration of psychoactive medication to certain patients.
- SB 471**, Relating to the Texas Coastal Ocean Observation Network.
- SB 483**, Relating to allowing designated public school libraries to participate in group purchasing agreements with the TexShare Library Consortium.
- SB 493**, Relating to reducing paperwork required of school districts and school district employees.

- SB 502**, Relating to common undergraduate admission application forms for public institutions of higher education in this state.
- SB 511**, Relating to public testimony at regular meetings of the governing board of a general academic teaching institution.
- SB 521**, Relating to exemptions from the law governing emergency medical services for certain transfer vehicles and staff and to the minimum qualifications for obtaining an emergency medical services provider license.
- SB 593**, Relating to the governor's study of emerging technology and economic development.
- SB 610**, Relating to the regulation of the practice of dentistry.  
(Committee Substitute)
- SB 621**, Relating to the territory of certain 9-1-1 emergency communication districts.
- SB 626**, Relating to medical assistance in certain alternative community-based care settings.
- SB 691**, Relating to the creation and functions of an arthritis control and prevention program.
- SB 702**, Relating to authorizing certain uses for student center complex fees charged to students enrolled in component institutions of The Texas A&M University System.
- SB 727**, Relating to the public information law.
- SB 729**, Relating to a weighted caseload study of the district courts.
- SB 737**, Relating to the prosecution of offenses involving the operating or loading of an overweight vehicle in violation of certain laws.
- SB 739**, Relating to the payment of certain administrative penalties assessed by the Texas Commission on Environmental Quality under an installment payment schedule.
- SB 742**, Relating to disqualification for eligibility for workers' compensation benefits of certain professional athletes.
- SB 760**, Relating to the classification of open-space land into categories for purposes of appraising the land for ad valorem tax purposes.
- SB 776**, Relating to persons eligible to administer or take a high school equivalency examination.
- SB 815**, Relating to the long-range plan for the South Texas Health Care System and the provision of tuberculosis and other health care services in the Lower Rio Grande Valley.
- SB 829**, Relating to the authority of counties to establish petty cash funds.
- SB 866**, Relating to the operation of authorized emergency vehicles conducting a police escort.
- SB 867**, Relating to the application of the motor vehicle sales tax emissions reduction surcharge on certain recreational vehicles.

**SB 920**, Relating to creating the Texas Treasure Award to honor businesses that have existed in Texas for 50 years or more.

**SB 951**, Relating to the operation of certain cemeteries using county resources.

**SB 955**, Relating to awards for certain members of the state military forces serving on active federal military duty.

**SB 967**, Relating to the creation of the Central Texas Groundwater Conservation District; providing authority to impose a tax and issue bonds.

**SB 984**, Relating to a feasibility study regarding the provision of financial incentives to individuals who undergo training for child protective services.

**SB 986**, Relating to the election of directors of the Wes-Tex Groundwater Conservation District.

**SB 998**, Relating to contracts with local workforce development boards.

**SB 1863**, Relating to certain fiscal matters affecting governmental entities.  
(Committee Substitute/Amended)

**SCR 12**, Honoring The Crickets of Lubbock for their pioneering contributions to rock and roll.

**SCR 16**, Recognizing the Texas wine industry.

**SCR 17**, Requesting Texas institutes of higher education to offer education and research opportunities in viticulture and enology.

**SCR 18**, Memorializing Congress to enact legislation to provide funding to support the protection and growth of the Texas wine industry.

**SCR 19**, Requesting the Texas Wine Marketing Research Institute at Texas Tech University include comparisons of the economic impacts of the states in the wine industry.

**SCR 21**, Authorizing the naming of the natatorium at the Texas School for the Deaf in Austin for LeRoy Colombo.

**SCR 27**, Memorializing Congress to eliminate current caps on funded Medicare resident training slots and related limits on costs per resident used to determine Medicare graduate medical education reimbursement payments.

**SCR 30**, Urging the State of Texas to continue to pursue increased trade with Mexico and to develop a plan with Mexico to mitigate delays at border crossings.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HB 1234** (Harris)

Relating to the appointment of substitute trustees in certain foreclosures.  
(viva voce vote) (31-0) (31-0)

**HB 1244** (Ogden)

Relating to specialty license plates for classic travel trailers.

(viva voce vote) (31-0) (31-0)

**HB 1248** (Wentworth)

Relating to erecting an off-premise sign adjacent to and visible from certain roads.

(viva voce vote) (31-0) (31-0)

**HB 1253** (Armbrister)

Relating to projects that may be undertaken by certain development corporations for career centers.

(viva voce vote) (31-0) (31-0)

**HB 1268** (Lindsay on behalf of Janek)

Relating to the information included on a voter registration application.

(viva voce vote) (31-0) (31-0)

**HB 1274** (Estes)

Relating to the service area of the Ranger Junior College District.

(viva voce vote) (31-0) (31-0)

Senator Lindsay, on behalf of Senator Janek, offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **HB 1274** by striking amended Subdivision (2), Section 130.196, Education Code (House engrossment, page 1, line 12), and substituting the following:

(2) [~~Young,~~ Comanche, Brown, ~~and~~ Erath, and Young counties, except for the part of the Graham Independent School District that is located in Young County.

The amendment to **HB 1274** 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.

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

**HB 1287** (Madla)

Relating to county abatement of a public nuisance.

(viva voce vote) (31-0) (31-0)

**CSHB 1294** (Williams)

Relating to interlocutory appeals.

(viva voce vote) (31-0) (31-0)

**HB 1323** (Seliger)

Relating to the prosecution of the offense of credit card or debit card abuse.

(viva voce vote) (31-0) (31-0)

**HB 1353** (Duncan)

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

(viva voce vote) (31-0) (31-0)

Senator Duncan offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1353**, engrossed version, on page 2, line 6 (Sec. 407A.453(b)(2)), by deleting subdivision (2) and inserting a new subdivision (2) as follows:

"(2) one member to represent wage earners designated by the commission;"

The amendment to **HB 1353** 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.

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

**HB 1366** (Lindsay on behalf of Janek)

Relating to the regulation of nursing.

(viva voce vote) (31-0) (31-0)

Senator Lindsay, on behalf of Senator Janek, offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1366** as follows:

(1) Strike Section 6 of the bill, adding proposed Section 301.354, Occupations Code (House engrossment page 6, line 9, through page 8, line 3).

(2) Strike Section 7 of the bill (House engrossment page 8, lines 4 and 5) and substitute the following appropriately numbered section:

SECTION \_\_. Section 304.010, Occupations Code, is repealed.

(3) Renumber the sections of the bill accordingly.

The amendment to **HB 1366** 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.

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

**CSHB 1399** (Whitmire)

Relating to notice of a landlord's motor vehicle towing or parking rules and policies and to liability arising from certain actions of a towing service; providing a civil penalty.

(viva voce vote) (31-0) (31-0)

**HB 1404** (Hinojosa)

Relating to the fees collected by a county clerk for certain filings in pending probate actions.

(viva voce vote) (31-0) (31-0)

**HB 1413** (Whitmire)

Relating to the continuation and functions of the Texas State Board of Examiners of Marriage and Family Therapists.

(viva voce vote) (31-0) (31-0)

**HB 1414** (Ellis)

Relating to the acceptance and counting of certain ballots voted by mail.

(viva voce vote) (31-0) (31-0)

**HB 1426** (Armbrister)

Relating to the confidentiality of certain information in a rabies vaccination certificate.

(viva voce vote) (31-0) (31-0)

**HB 1438** (Whitmire)

Relating to continuing education for peace officers.

(viva voce vote) (31-0) (31-0)

**CSHB 1449** (Harris)

Relating to suits affecting the parent-child relationship, including proceedings for the establishment, modification, and enforcement of child support; providing a civil penalty.

(viva voce vote) (31-0) (31-0)

**HB 1462** (Hinojosa)

Relating to the referral by the Texas Water Development Board of certain persons to another state agency, office, or division for investigation or enforcement action.

(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)****HB 1470** (Hinojosa)

Relating to the collection of certain administrative fees by a community supervision and corrections department.

(viva voce vote) (31-0) (31-0)

**HB 1472** (Wentworth)

Relating to the creation of a management trust by a probate court.

(viva voce vote) (31-0) (31-0)

**HB 1475** (Williams)

Relating to repealing certain authority regarding taxation and financing by the Chambers County Public Hospital District No. 1.

(viva voce vote) (31-0) (31-0)

**HB 1484** (Whitmire)

Relating to the penalty for failing to perform certain duties following a vehicle accident.

(viva voce vote) (31-0) (31-0)

**HB 1502** (Nelson)

Relating to payment for medical assistance provided to an individual who is dually eligible for Medicaid and Medicare.

(viva voce vote) (31-0) (31-0)

**HB 1509** (Jackson)

Relating to the requirements for the validity of a signature on certain petitions.

(viva voce vote) (31-0) (31-0)

**HB 1535** (Shapleigh)

Relating to the continuation and functions of the Texas Midwifery Board.

(viva voce vote) (31-0) (31-0)

**HB 1547** (Madla on behalf of Van de Putte)

Relating to the form of the loan contract and related documents for a consumer loan.

(viva voce vote) (31-0) (31-0)

**HB 1571** (Averitt)

Relating to requirements for a group life insurance policy to be issued for certain employee groups.

(viva voce vote) (31-0) (31-0)

**HB 1572** (Fraser)

Relating to the recovery of certain costs and payments relating to losses covered by personal automobile insurance.

(viva voce vote) (31-0) (31-0)

**HB 1575** (West)

Relating to juvenile delinquency; providing a criminal penalty.

(viva voce vote) (31-0) (31-0)

Senator Hinojosa offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1575** in SECTION 37 of the bill, in amended Section 25.0951(a), Education Code (page 37, line 13), by striking "two" and substituting "seven".

The amendment to **HB 1575** 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.

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

**HB 1580** (Lindsay)

Relating to the period for preserving precinct election records.

(viva voce vote) (31-0) (31-0)

**CSHB 1582** (Ellis)

Relating to a study of residential foreclosures in certain counties.

(viva voce vote) (31-0) (31-0)

**HB 1584** (Madla)

Relating to requiring the operator of a vehicle storage facility to accept certain forms of payment for the delivery or storage of a vehicle.

(viva voce vote) (31-0) (31-0)

**HB 1589** (Williams)

Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.

(viva voce vote) (31-0) (31-0)

**HB 1596** (Nelson)

Relating to the regulation of motor-assisted scooters.

(viva voce vote) (31-0) (31-0)

**HB 1610** (Brimer)

Relating to a county fee for an activity that excavates or cuts the surface of a county road.

(viva voce vote) (31-0) (31-0)

Senator Brimer offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1610** by adding after line 14 on page 1 the following:

(b) Pipelines that cross roads to service oil or gas wells must be buried and maintained as designated by a private road owner.

Re-letter remaining subsections.

The amendment to **HB 1610** 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.

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

**HB 1614** (Duncan)

Relating to supervision of a primary election by the county executive committee.

(viva voce vote) (31-0) (31-0)

**HB 1631** (Fraser)

Relating to amendment of restrictions governing certain residential subdivisions.

(viva voce vote) (31-0) (31-0)

**HB 1632** (Staples)

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

(viva voce vote) (31-0) (31-0)

**HB 1636** (Armbrister)

Relating to residency in relation to a license or permit or certain hunting and catching restrictions of the Parks and Wildlife Department; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 1647** (Fraser)

Relating to the appointment of a campaign treasurer and the filing of reports by a political party's county executive committee that accepts or makes a certain amount of political contributions or expenditures.

(viva voce vote) (31-0) (31-0)

**HB 1648** (Eltife)

Relating to the expansion of the boundaries of the Wood County Central Hospital District of Wood County.

(viva voce vote) (31-0) (31-0)

**HB 1659** (Lucio)

Relating to the designation of certain areas of this state as enterprise zones under the enterprise zone program.

(viva voce vote) (31-0) (31-0)

**HB 1664** (Shapiro)

Relating to the reporting of political contributions and expenditures by certain political committees.

(viva voce vote) (31-0) (31-0)

**CSHB 1672** (Janek)

Relating to costs imposed in connection with the collection and enforcement of certain tolls.

(viva voce vote) (31-0) (31-0)

**HB 1673** (Armbrister)

Relating to the procedure for conversion and creation of a special utility district.

(viva voce vote) (31-0) (31-0)

**HB 1681** (Seliger)

Relating to the imposition of sanctions on an inmate who refuses to cooperate in the taking of a sample or specimen to create a DNA record.

(viva voce vote) (31-0) (31-0)

**HB 1718** (Nelson)

Relating to the regulation of certain nursing practices.

(viva voce vote) (31-0) (31-0)

Senator Nelson offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1718** as follows:

On page 2, line 24, amend House Bill 1718 (engrossed) by adding a new SECTION 2 to read as follows and renumber the subsequent sections appropriately:

SECTION 2. Subchapter B, Chapter 241, Health and Safety Code, is amended by adding Section 241.0262 to read as follows:

Section 241.0262. CIRCULATING DUTIES FOR SURGICAL SERVICES. Circulating duties in the operating room must be performed by qualified registered nurses. In accordance with approved medical staff policies and procedures, licensed vocational nurses and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse circulator.

The amendment to **HB 1718** 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.

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

**HB 1733** (Armbrister)

Relating to prohibiting disclosure of certain records or reports by the Texas Feed and Fertilizer Control Service.

(viva voce vote) (31-0) (31-0)

**HB 1737** (Zaffirini)

Relating to the establishment of a dual usage educational complex by a junior college district and other political subdivisions or institutions of higher education.

(viva voce vote) (31-0) (31-0)

Senator Zaffirini offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1737** as follows:

In SECTION 1 of the bill, in Subsection (a), Section 130.0103 of the Education Code (page 1, lines 8 and 9 of the engrossed version), strike "With the approval of the Texas Higher Education Coordinating Board.".

The amendment to **HB 1737** 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.

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

**CSHB 1740** (Armbrister)

Relating to authorizing the City of Aransas Pass to acquire certain state property.

(viva voce vote) (31-0) (31-0)

**HB 1744** (Hinojosa)

Relating to the operation of the Fair Access to Insurance Requirements (FAIR) Plan Association.

(viva voce vote) (31-0) (31-0)

**CSHB 1751** (Whitmire)

Relating to the procedures governing the payment of restitution by criminal defendants.

(viva voce vote) (31-0) (31-0)

**CSHB 1767** (Armbrister)

Relating to the regulation of veterinary medicine.

(viva voce vote) (31-0) (31-0)

**CSHB 1773** (Averitt)

Relating to the authority of certain counties to impose a hotel occupancy tax and to the use of that tax revenue.

(viva voce vote) (31-0) (31-0)

**HB 1775** (Averitt)

Relating to the meaning of certain terms used in a specified disease insurance policy.

(viva voce vote) (31-0) (31-0)

**(Senator Carona in Chair)****HB 1789** (Lindsay)

Relating to certain obsolete documents issued in connection with the licensing of drivers.

(viva voce vote) (31-0) (31-0)

**CSHB 1799** (Fraser)

Relating to a transfer and nonsubstantive revision of laws governing the holding of local option elections regarding alcoholic beverages.

(viva voce vote) (31-0) (31-0)

**HB 1812** (Staples)

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

(viva voce vote) (31-0) (31-0)

**HB 1816** (Shapiro)

Relating to the transfer of powers and duties over railroads from the Railroad Commission of Texas to the Texas Department of Transportation.

(viva voce vote) (31-0) (31-0)

Senator Barrientos offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1816** (engrossed version) as follows:

(1) Strike SECTION 2 of the bill and renumber subsequent SECTIONS of the bill as appropriate.

(2) In SECTION 4 of the bill (page 3, line 27), strike "provided by SECTION 1 of this Act" and substitute "otherwise provided".

(3) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS as appropriate:

SECTION \_\_. (a) The legislature finds that the transfer of powers and duties over railroads from the Railroad Commission of Texas to the Texas Department of Transportation results in an agency that has a name that no longer reflects the administrative and executive jurisdiction of the agency. The changes in law made by this Act provide that the Railroad Commission of Texas no longer has powers and duties over railroads, but primarily over energy-related issues.

(b) The legislature also finds that the subject of this Act, as discerned from the body of this Act, makes the renaming of the Railroad Commission of Texas relevant, appropriate, and in the natural and logical sequence to the subject matter and original purpose of this Act.

SECTION \_\_. Effective October 1, 2005, Subchapter A, Chapter 81, Natural Resources Code, is amended by adding Section 81.002 to read as follows:

Sec. 81.002. TEXAS ENERGY COMMISSION. (a) The Railroad Commission of Texas is renamed the Texas Energy Commission.

(b) Except as provided by Subsection (c), Article 6445, Revised Statutes, a reference in law to the Railroad Commission of Texas means the Texas Energy Commission.

(c) The Texas Energy Commission is the successor agency to the Railroad Commission of Texas under Section 30(b), Article XVI, Texas Constitution.

SECTION \_\_. (a) Effective October 1, 2005:

(1) the name of the Railroad Commission of Texas is changed to the Texas Energy Commission;

(2) all powers, duties, obligations, rights, contracts, leases, records, assets, property, funds, and appropriations of the Railroad Commission of Texas:

(A) that do not primarily relate to railroads and the regulation of railroads are the powers, duties, obligations, rights, contracts, leases, records, assets, property, funds, and appropriations of the Texas Energy Commission; and

(B) that primarily relate to railroads and the regulation of railroads are the powers, duties, obligations, rights, contracts, leases, records, assets, property, funds, and appropriations of the Texas Department of Transportation;

(3) all rules, policies, forms, procedures, and decisions of the Railroad Commission of Texas:

(A) that do not relate primarily to railroads and the regulation of railroads are continued in effect as rules, policies, forms, procedures, and decisions of the Texas Energy Commission until superseded by a rule or other appropriate action of the Texas Energy Commission; and

(B) that relate primarily to railroads and the regulation of railroads are continued in effect as rules, policies, forms, procedures, and decisions of the Texas Department of Transportation until superseded by a rule or other appropriate action of the Texas Department of Transportation;

(4) all full-time employees of the Railroad Commission of Texas:

(A) who do not primarily perform functions related to railroads and the regulation of railroads become employees of the Texas Energy Commission; and

(B) who primarily perform functions related to railroads and the regulation of railroads become employees of the Texas Department of Transportation;

(5) any investigation, complaint, action, contested case, or other proceeding involving the Railroad Commission of Texas that:

(A) does not relate primarily to railroads and the regulation of railroads is transferred without change in status to the Texas Energy Commission, and the Texas Energy Commission assumes, without a change in status, the position of the Railroad Commission of Texas in any investigation, complaint, action, contested case, or other proceeding that does not relate primarily to railroads and the regulation of railroads involving the Railroad Commission of Texas; and

(B) relates primarily to railroads and the regulation of railroads is transferred without change in status to the Texas Department of Transportation, and the Texas Department of Transportation assumes, without a change in status, the

position of the Railroad Commission of Texas in any investigation, complaint, action, contested case, or other proceeding that relates primarily to railroads and the regulation of railroads involving the Railroad Commission of Texas; and

(6) a member of the Railroad Commission of Texas is a member of the Texas Energy Commission.

(b) The Railroad Commission of Texas shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until October 1, 2005, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas or as the Texas Energy Commission. Any act of the Railroad Commission of Texas acting as the Texas Energy Commission after the effective date of this Act and before October 1, 2005, is an act of the Railroad Commission of Texas.

(c) The transfer of the powers and duties of the Railroad Commission of Texas that relate primarily to railroads and the regulation of railroads to the Texas Department of Transportation does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the Railroad Commission of Texas.

The amendment to **HB 1816** 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.

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

**CSHB 1829** (Averitt)

Relating to authorizing certain institutions of higher education to charge fees for processing or handling certain payments or payment transactions.

(viva voce vote) (31-0) (31-0)

**HB 1831** (Hinojosa)

Relating to the definition of "convicted" for purposes of eligibility to carry a concealed handgun.

(viva voce vote) (31-0) (31-0)

**HB 1851** (Madla)

Relating to erecting an off-premise sign adjacent to and visible from certain roads.

(viva voce vote) (31-0) (31-0)

**CSHB 1890** (Jackson)

Relating to the operation and funding of the Texas Windstorm Insurance Association, including funding of coverage for certain catastrophic events through the establishment of a revenue bond program.

(viva voce vote) (31-0) (31-0)

**HB 1891** (Jackson)

Relating to certain insurers subject to the Texas Windstorm Insurance Association.  
(viva voce vote) (31-0) (31-0)

**HB 1896** (Whitmire)

Relating to the application of laws awarding credit to an inmate for time between release on and subsequent revocation of parole, mandatory supervision, or conditional pardon.  
(viva voce vote) (31-0) (31-0)

**HB 1919** (Harris)

Relating to notice in certain real property transactions concerning public improvement districts.  
(viva voce vote) (31-0) (31-0)

**HB 1925** (Brimer)

Relating to removal or covering of certain signs in a construction or maintenance work zone.  
(viva voce vote) (31-0) (31-0)

**HB 1928** (Gallegos)

Relating to the reimbursement of medical expenses incurred by county jailers and detention officers exposed to certain contagious diseases.  
(viva voce vote) (31-0) (31-0)

**HB 1934** (Gallegos)

Relating to security fees for justice courts.  
(viva voce vote) (31-0) (31-0)

**CSHB 1939** (Fraser)

Relating to certain disqualifications for unemployment compensation benefits for assigned employees of staff leasing services companies.  
(viva voce vote) (31-0) (31-0)

**CSHB 1940** (Wentworth)

Relating to alternative dispute resolution of certain contract claims against the state.  
(viva voce vote) (31-0) (31-0)

**HB 1945** (Madla)

Relating to the filing of personal financial statements by the state chair of a political party.  
(viva voce vote) (31-0) (31-0)

**CSHB 1959** (Armbrister)

Relating to the hunting of deer with dogs and the taking of wildlife resources without the consent of the landowner; providing penalties.  
(viva voce vote) (31-0) (31-0)

**HB 1977** (Gallegos)

Relating to the presentation of Star of Texas awards to peace officers, firefighters, and emergency medical first responders who are killed or sustain serious or fatal injuries in the line of duty.  
(viva voce vote) (31-0) (31-0)

**HB 1981** (Staples)

Relating to the amount of the fee that the Pineywoods Groundwater Conservation District may impose on a well.

(viva voce vote) (31-0) (31-0)

**HB 1984** (Janek)

Relating to the information required to be provided with a notice of appraised value for ad valorem tax purposes and an ad valorem tax bill.

(viva voce vote) (31-0) (31-0)

**CSHB 1986** (Nelson)

Relating to the administration and powers of a coordinated county transportation authority.

(viva voce vote) (31-0) (31-0)

**HB 1987** (Armbrister)

Relating to the regulation of underground and aboveground storage tanks.

(viva voce vote) (31-0) (31-0)

**HB 1996** (Duncan)

Relating to the election of directors of the Wes-Tex Groundwater Conservation District.

(viva voce vote) (31-0) (31-0)

**HB 1999** (Lindsay)

Relating to the preparation of medical history reports by parents who relinquish children for adoption.

(viva voce vote) (31-0) (31-0)

**CSHB 2026** (Jackson)

Relating to the recovery of certain enforcement-related costs and to the taking and possession of certain wildlife or eggs, including requirements related to taxidermy and tanning and to harmful aquatic plants; imposing penalties.

(viva voce vote) (31-0) (31-0)

**CSHB 2027** (Armbrister)

Relating to the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 2036** (Shapiro)

Relating to the regulation of sex offender treatment providers and the treatment of sex offenders; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 2059** (Jackson)

Relating to the period of voter registration of a person registered by a federal postcard application.

(viva voce vote) (31-0) (31-0)

**HB 2064** (Shapiro on behalf of Carona)

Relating to private club alcoholic beverage permits issued to a fraternal or veterans organization.

(viva voce vote) (31-0) (31-0)

**HB 2065** (Shapiro on behalf of Carona)

Relating to operation of the holder of a private club registration permit under the Alcoholic Beverage Code.

(viva voce vote) (31-0) (31-0)

**HB 2068** (Averitt)

Relating to the designation of certain state agencies as voter registration agencies.

(viva voce vote) (31-0) (31-0)

**HB 2069** (Averitt)

Relating to contracts to provide election services to a political party.

(viva voce vote) (31-0) (31-0)

**HB 2071** (Van de Putte)

Relating to the designation of U.S. Highway 281 as the American Legion Memorial Highway.

(viva voce vote) (31-0) (31-0)

**HB 2077** (Staples)

Relating to the prohibition of wireless communications devices in correctional facilities operated by or under contract with the Texas Department of Criminal Justice; providing penalties.

(viva voce vote) (31-0) (31-0)

**HB 2100** (Nelson)

Relating to heirloom wedding anniversary certificates.

(viva voce vote) (31-0) (31-0)

**HB 2101** (Nelson)

Relating to heirloom birth certificates.

(viva voce vote) (31-0) (31-0)

**CSHB 2104** (Nelson)

Relating to the prosecution of the offense of hindering apprehension or prosecution.

(viva voce vote) (31-0) (31-0)

**HB 2109** (Shapiro)

Relating to the Early High School Graduation Scholarship program.

(viva voce vote) (31-0) (31-0)

**HB 2134** (Shapleigh)

Relating to the administration of the state infrastructure bank.

(viva voce vote) (31-0) (31-0)

**HB 2139** (Wentworth)

Relating to certain agreements by the Texas Department of Transportation involving pass-through tolls.

(viva voce vote) (31-0) (31-0)

**HB 2140** (Seliger)

Relating to the provision of notice to affected political subdivisions regarding the proposed construction of a reservoir.

(viva voce vote) (31-0) (31-0)

**CSHB 2157** (Harris)

Relating to the receivership of insurers in this state; providing penalties.

(viva voce vote) (31-0) (31-0)

**HB 2158** (Nelson)

Relating to an exemption from annual registration fees for a retired physician who provides volunteer medical services in a disaster.

(viva voce vote) (31-0) (31-0)

**CSHB 2180** (Averitt)

Relating to donees of anatomical gifts.

(viva voce vote) (31-0) (31-0)

**HB 2194** (Whitmire)

Relating to the review of the results of competency examinations in criminal cases by the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(viva voce vote) (31-0) (31-0)

**HB 2195** (Whitmire)

Relating to the disclosure of certain confidential health information to the Texas Department of Criminal Justice.

(viva voce vote) (31-0) (31-0)

**HB 2197** (Whitmire)

Relating to the availability to the public of photographs of an inmate confined by the Texas Department of Criminal Justice.

(viva voce vote) (31-0) (31-0)

**HB 2228** (Ellis)

Relating to the creation of the offense of online sexual solicitation of a minor.

(viva voce vote) (31-0) (31-0)

**HB 2235** (Barrientos)

Relating to the merger of emergency services districts.

(viva voce vote) (31-0) (31-0)

**HB 2254** (Armbrister)

Relating to reducing the penalty for a failure by a disabled or elderly person to make a timely installment payment of ad valorem taxes imposed on the person's residence homestead.

(viva voce vote) (31-0) (31-0)

**CSHB 2267** (Ellis)

Relating to the powers of the Coastal Water Authority; providing the authority to impose a tax; affecting the authority to issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 2273** (Fraser)

Relating to the administration of the unemployment compensation system by the Texas Workforce Commission.

(viva voce vote) (31-0) (31-0)

**HB 2280** (Fraser)

Relating to the implementation of a statewide voter registration system as required by the federal Help America Vote Act.

(viva voce vote) (31-0) (31-0)

**HB 2294** (Armbrister)

Relating to the venue for certain crimes regarding misapplication of property.

(viva voce vote) (31-0) (31-0)

**HB 2296** (Armbrister)

Relating to the reduction of a state jail felony prosecution to a misdemeanor prosecution.

(viva voce vote) (31-0) (31-0)

**HB 2300** (Whitmire)

Relating to the authority of metropolitan rapid transit authorities to enter into comprehensive development agreements.

(viva voce vote) (31-0) (31-0)

**HB 2301** (Ellis)

Relating to proceedings involving the change of rates of a water and sewer utility.

(viva voce vote) (31-0) (31-0)

**CSHB 2303** (Armbrister)

Relating to the regulation of and rights of private security personnel.

(viva voce vote) (31-0) (31-0)

**HB 2309** (Jackson)

Relating to certain election processes and procedures.

(viva voce vote) (31-0) (31-0)

Senator Jackson offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2309** by inserting the following appropriately numbered sections of the bill and by renumbering subsequent sections of the bill accordingly:

SECTION \_\_\_\_. Section 41.001(a), Election Code, as amended by Section 1, Chapter 1, Acts of the 78th Legislature, 3rd Called Session, 2003, is amended to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

- (1) the first Saturday in February;
- (2) the second ~~first~~ Saturday in May;
- (3) the second Saturday in September; or
- (4) the first Tuesday after the first Monday in November.

SECTION \_\_\_\_. Section 67.003, Election Code, is amended to read as follows:

Sec. 67.003. TIME FOR LOCAL CANVASS. (a) Except as provided by Subsection (b), each [Each] local canvassing authority shall convene to conduct the local canvass at the time set by the canvassing authority's presiding officer not earlier than the eighth day or later than the 11th day after election day.

(b) For an election held on the uniform election date in May, the local canvass must occur not later than the 11th day after election day and not earlier than the later of:

(1) the third day after election day;

(2) the date on which the early voting ballot board has verified and counted all provisional ballots, if a provisional ballot has been cast in the election; or

(3) the date on which all timely received ballots cast from addresses outside of the United States are counted, if a ballot to be voted by mail in the election was provided to a person outside of the United States.

SECTION \_\_\_\_ . Section 85.001, Election Code, is amended by adding Subsection (e) to read as follows:

(e) For an election held on the uniform election date in May, the period for early voting by personal appearance begins on the 12th day before election day and continues through the fourth day before election day.

The amendment to **HB 2309** 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.

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

### **HB 2333** (West)

Relating to the qualifications of and training and continuing education for certain officials and personnel of career schools or colleges.

(viva voce vote) (31-0) (31-0)

### **HB 2344** (West)

Relating to the Council on Cardiovascular Disease and Stroke.

(viva voce vote) (31-0) (31-0)

Senator West offered the following committee amendment to the bill:

### **Committee Amendment No. 1**

Amend **HB 2344** as follows:

1. On page 9, line 22 insert the following:

(d) The council shall collaborate with the Governor's EMS and Trauma Advisory Council, the American Stroke Association and other stroke experts to make recommendations to the department for rules on the recognition and rapid transportation of stroke patients to health care facilities capable of treating strokes twenty-four hours a day and recording stroke patient outcomes.

The amendment to **HB 2344** 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.

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

**HB 2348** (Zaffirini)

Relating to construction on a highway under the jurisdiction of the Texas Department of Transportation by certain transit departments.

(viva voce vote) (31-0) (31-0)

**HB 2381** (Armbrister)

Relating to posting on the Internet the notice of a meeting of the governing body of a county and certain districts and political subdivisions.

(viva voce vote) (31-0) (31-0)

Senator Ellis offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2381** (engrossed version) as follows:

(1) Strike SECTIONS 2, 3, and 4 and renumber subsequent SECTIONS of the bill accordingly.

The amendment to **HB 2381** 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.

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

**HB 2384** (Whitmire)

Relating to the composition of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(viva voce vote) (31-0) (31-0)

**HB 2388** (Fraser)

Relating to insurance fraud reporting requirements.

(viva voce vote) (31-0) (31-0)

**(Senator Hinojosa in Chair)**

**HB 2408** (Wentworth)

Relating to delivery to an employer of an order or writ for the withholding of child support from an employee's earnings.

(viva voce vote) (31-0) (31-0)

**HB 2414** (Fraser)

Relating to jury service in certain counties.

(viva voce vote) (31-0) (31-0)

**HB 2428** (Armbrister)

Relating to water and energy saving performance standards for commercial preinse spray valves.

(viva voce vote) (31-0) (31-0)

**CSHB 2430** (Armbrister)

Relating to the establishment of a rainwater harvesting evaluation committee and to standards for harvested rainwater.

(viva voce vote) (31-0) (31-0)

**HB 2437** (Lucio)

Relating to rate regulation of certain insurers writing personal automobile insurance.

(viva voce vote) (31-0) (31-0)

**HB 2440** (Armbrister)

Relating to the regulation by the Railroad Commission of Texas of activities associated with multiple accumulations of hydrocarbons from which production by commingling of hydrocarbons is authorized.

(viva voce vote) (31-0) (31-0)

**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 PASSED THE FOLLOWING MEASURES:**

**SCR 41**, Recalling S.B. No. 1708 from the governor.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HB 2441** (Van de Putte)

Relating to the recreational facility fee at The University of Texas at San Antonio.

(viva voce vote) (31-0) (31-0)

**HB 2454** (Ellis)

Relating to the eligibility of certain voters to vote a limited ballot in a new county of residence.

(viva voce vote) (31-0) (31-0)

**HB 2458** (Carona)

Relating to authorizing the commissioners court of a county to delegate its authority to make certain budget transfers.

(viva voce vote) (31-0) (31-0)

**HB 2463** (Janek)

Relating to the creation of a Medicaid health literacy pilot program and health care funding districts in certain counties and authorizing the districts to impose taxes on certain institutional health care providers located in the districts.

(viva voce vote) (31-0) (31-0)

Senator Carona offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2463** (House engrossed version) as follows:

(1) In Section 1 of the bill, strike Subsection (f) of added Section 288.201, Health and Safety Code (page 8, lines 22 through 24).

(2) In Section 1 of the bill, in Subdivision (2) of added Section 288.203, Health and Safety Code (page 9, line 20), strike "health care services" and substitute "programs".

(3) In Section 1 of the bill, after added Section 288.204, Health and Safety Code, (between page 9, line 25, and page 10, line 1), add Sections 288.205 and 288.206, Health and Safety Code, to read as follows:

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 288.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

(4) In Section 1 of the bill, in Subsection (b) of added Section 289.051, Health and Safety Code (page 11, lines 10 and 11), strike "any remaining members who meet" and substitute "one member who meets".

(5) In Section 1 of the bill, in Subsection (b) of added Section 289.051, Health and Safety Code (page 11, line 13), strike "one member who meets" and substitute "any remaining members who meet".

(6) In Section 1 of the bill, strike Subsection (f) of added Section 289.201, Health and Safety Code, (page 17, lines 11-13).

(7) In Section 1 of the bill, after added Section 289.204, Health and Safety Code (page 18, between lines 14 and 15), add Sections 289.205 and 289.206, Health and Safety Code, to read as follows:

Sec. 289.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 289.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

(8) In Section 1 of the bill, strike Subsection (f) of added Section 290.201, Health and Safety Code (page 25, lines 24-26).

(9) In Section 1 of the bill, after added Section 290.204, Health and Safety Code (between page 26, line 27, and page 27, line 1), add Sections 290.205 and 290.206, Health and Safety Code, to read as follows:

Sec. 290.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Sec. 290.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

The amendment to **HB 2463** 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.

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

**HB 2470** (Nelson)

Relating to the operations of and the funding mechanisms for emergency medical services and trauma facility care in this state.

(viva voce vote) (31-0) (31-0)

**HB 2471** (Nelson)

Relating to authorizing the Department of State Health Services to issue a single license for multiple hospitals.

(viva voce vote) (31-0) (31-0)

**HB 2473** (Ellis)

Relating to certain state publications maintained by the Texas State Library and Archives Commission.

(viva voce vote) (31-0) (31-0)

**HB 2476** (Nelson)

Relating to allowing the Texas Medical Disclosure Panel to hold hearings by telecommunication methods.

(viva voce vote) (31-0) (31-0)

**HB 2495** (Lindsay)

Relating to the transfer of a motor vehicle title at a dealer auction.

(viva voce vote) (31-0) (31-0)

**HB 2507** (Ellis)

Relating to the regulation of mobile food units and roadside food vendors in certain populous areas.

(viva voce vote) (31-0) (31-0)

**HB 2509** (Ellis)

Relating to jurisdiction of a municipal court over an action to enforce certain vehicle dealer and manufacturer license plate laws.

(viva voce vote) (31-0) (31-0)

**HB 2526** (Whitmire)

Relating to the promotional activities of certain alcoholic beverage license or permit holders.

(viva voce vote) (31-0) (31-0)

**HB 2574** (Whitmire)

Relating to the waiver of civil process continuing education requirements for constables and deputy constables by the Commission on Law Enforcement Officer Standards and Education.

(viva voce vote) (31-0) (31-0)

**HB 2581** (Armbrister)

Relating to the regulation of a perpetual care cemetery and the sale of interment rights in a mausoleum before completion of construction.

(viva voce vote) (31-0) (31-0)

**HB 2590** (Lucio)

Relating to the issuance of a package store tasting permit to the holder of a wine only package store permit.

(viva voce vote) (31-0) (31-0)

**HB 2594** (Nelson)

Relating to the health disparities task force.

(viva voce vote) (31-0) (31-0)

**HB 2613** (Averitt)

Relating to the adoption of the Interstate Insurance Product Regulation Compact.

(viva voce vote) (31-0) (31-0)

**HB 2618** (Nelson)

Relating to county expenditures for certain health care services.  
(viva voce vote) (31-0) (31-0)

**HB 2626** (Lindsay)

Relating to the penalties and fees imposed by municipalities and counties in relation to certain false alarms.  
(viva voce vote) (31-0) (31-0)

**HB 2627** (Carona)

Relating to certain requirements for issuance of a barbershop permit.  
(viva voce vote) (31-0) (31-0)

**HB 2630** (Carona)

Relating to procedures regarding the removal and storage of vehicles.  
(viva voce vote) (31-0) (31-0)

Senator Carona offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2630** as follows:

(1) Strike the prefatory language to SECTION 9 of the bill (House engrossment, page 5, lines 24 and 25) and substitute:

"Section 2303.152, Occupations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:"

(2) In SECTION 9 of the bill (House engrossment, page 6, between lines 13 and 14), insert:

(e) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle does not display a license plate or a vehicle inspection certificate indicating the state of registration;

(2) the identity of the registered owner cannot reasonably be determined by the operator of the storage facility; or

(3) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(3) Strike SECTION 11 of the bill (House engrossment, page 6, line 22 through page 7, line 2) and substitute:

SECTION 11. Sections 2303.155(e) and (f), Occupations Code, are amended to read as follows:

(e) The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is mailed or published under this subchapter, if the vehicle is registered in this state; ~~and~~

(2) for not more than five days before the date the request for owner information is sent to the appropriate governmental entity as required by this subchapter, if the vehicle is registered in another state; and

(3) for each day the vehicle is in storage after the date the notice is mailed or published until the vehicle is removed and all accrued charges are paid.

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 643, Transportation Code [~~that is similar to a notification, impoundment, or administrative fee~~].

(4) Add the following appropriately numbered SECTION to the bill and renumber existing SECTIONS accordingly:

SECTION \_\_. Subchapter D, Chapter 2303, Occupations Code, is amended by adding Section 2303.158 to read as follows:

Sec. 2303.158. FORMS OF PAYMENT OF CHARGES. (a) The operator of a vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle.

(b) In this section, "vehicle storage facility" includes a governmental vehicle storage facility as defined by Section 2303.155.

The amendment to **HB 2630** 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.

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

**CSHB 2639** (Brimer)

Relating to the powers and duties of the Tarrant Regional Water District.

(viva voce vote) (31-0) (31-0)

**HB 2640** (Duncan)

Relating to municipal civil service coverage for certain employees of a fire department.

(viva voce vote) (31-0) (31-0)

**HB 2650** (Brimer)

Relating to local government participation in the financing of turnpike projects.

(viva voce vote) (31-0) (31-0)

**HB 2661** (Ogden)

Relating to the use of competitive sealed proposals for certain construction projects.

(viva voce vote) (31-0) (31-0)

**HB 2677** (Seliger)

Relating to certain employment records maintained by the Commission on Law Enforcement Officer Standards and Education; providing an administrative penalty.

(viva voce vote) (31-0) (31-0)

**HB 2694** (Carona)

Relating to the eligibility of certain counties to use the competitive proposal procedure for certain purchases.

(viva voce vote) (31-0) (31-0)

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2694** (engrossed) by striking "two million", (line 7, page 1), and substituting "one million".

The amendment to **HB 2694** 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.

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

**HB 2695** (West)

Relating to allowing a county to consider health insurance benefits provided by a bidder to its employees when awarding a purchasing contract.

(viva voce vote) (31-0) (31-0)

**HB 2696** (West)

Relating to the licensing and regulation of massage therapy and massage establishments and certain services related to massage; providing penalties.

(viva voce vote) (31-0) (31-0)

**HB 2716** (Eltife)

Relating to equal employment opportunity reports.

(viva voce vote) (31-0) (31-0)

**HB 2755** (Duncan)

Relating to the authority of certain development corporations to undertake projects for the development, retention, or expansion of business enterprises.

(viva voce vote) (31-0) (31-0)

**CSHB 2759** (Jackson)

Relating to requirements for county election precincts.

(viva voce vote) (31-0) (31-0)

**HB 2765** (Nelson)

Relating to the definition of a legally authorized representative under the Texas Hospital Licensing Law.

(viva voce vote) (31-0) (31-0)

**CSHB 2767** (Lucio on behalf of Hinojosa)

Relating to the release of a criminal defendant in certain cases and the eligibility of and citation to certain individuals to act as sureties on bail bonds.

(viva voce vote) (31-0) (31-0)

**HB 2769** (Whitmire)

Relating to the presentation of state flags to survivors of certain deceased honorably retired peace officers.

(viva voce vote) (31-0) (31-0)

**HB 2772** (Duncan)

Relating to health savings accounts and high-deductible health plans implemented as a part of the group benefits program of the Employees Retirement System of Texas.  
(viva voce vote) (31-0) (31-0)

Senator Harris offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2772** (House engrossment printing) in SECTION 1 of the bill (page 1, lines 8-9) by striking "health savings accounts and high-deductible health plans" and substituting "a health reimbursement account program or a health savings account and high-deductible health plan program".

The amendment to **HB 2772** 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.

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

**HB 2791** (Carona)

Relating to the use of substance abuse treatment facilities and other community corrections facilities for individuals referred for treatment as part of a drug court or similar program.

(viva voce vote) (31-0) (31-0)

**HB 2810** (Ellis)

Relating to certain inquiries relating to an applicant for individual health benefit plan coverage.

(viva voce vote) (31-0) (31-0)

**HB 2823** (Madla)

Relating to the form of payments made to certain disabled peace officers under the Crime Victims' Compensation Act.

(viva voce vote) (31-0) (31-0)

**(Senator Armbrister in Chair)****HB 2826** (Brimer)

Relating to frivolous or bad-faith complaints filed with the Texas Ethics Commission.

(viva voce vote) (31-0) (31-0)

**HB 2837** (Seliger)

Relating to the state's activities regarding education, vocational training, and reintegration of offenders.

(viva voce vote) (31-0) (31-0)

**HB 2839** (Harris)

Relating to the participation of state inmates in the production of certain goods and the provision of certain services.

(viva voce vote) (31-0) (31-0)

**HB 2856** (Ellis)

Relating to the repeal of the regulation of career counseling services.  
(viva voce vote) (31-0) (31-0)

**HB 2866** (Whitmire)

Relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.  
(viva voce vote) (31-0) (31-0)

**HB 2879** (Jackson on behalf of Armbrister)

Relating to requirements for certain amusement rides.  
(viva voce vote) (31-0) (31-0)

**CSHB 2883** (Harris)

Relating to the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.  
(viva voce vote) (31-0) (31-0)

**CSHB 2901** (Jackson on behalf of Armbrister)

Relating to a deer breeder's permit; providing a penalty.  
(viva voce vote) (31-0) (31-0)

**HB 2926** (Wentworth)

Relating to the procedure for listing property in the appraisal records following certain ad valorem tax sales.  
(viva voce vote) (31-0) (31-0)

**HB 2931** (Fraser)

Relating to the authority of a municipality that includes or is near a defense base to issue bonds for facilities to be leased to the federal government.  
(viva voce vote) (31-0) (31-0)

**CSHB 2940** (Estes)

Relating to stamps for migratory and upland game bird hunting; providing a penalty.  
(viva voce vote) (31-0) (31-0)

**CSHB 2941** (Brimer)

Relating to compensation of insurance agents.  
(viva voce vote) (31-0) (31-0)

**HB 2942** (Jackson)

Relating to license fees for commercial fish dealers and shrimp boats.  
(viva voce vote) (31-0) (31-0)

**HB 2956** (Lindsay)

Relating to filing requirements for certain candidates for the board of trustees of a junior college district.  
(viva voce vote) (31-0) (31-0)

(Senator Van de Putte in Chair)

**HB 2957** (Gallegos)

Relating to an exemption from the competitive bidding requirement for certain purchases by an emergency services district.

(viva voce vote) (31-0) (31-0)

**CSHB 2959** (Zaffirini)

Relating to the use of federal child care and development block grant funds by local workforce development boards.

(viva voce vote) (31-0) (31-0)

**CSHB 2965** (Brimer)

Relating to regulation of sharing of certain profits and fees by premium finance companies and certain related persons or entities.

(viva voce vote) (31-0) (31-0)

**HB 2966** (Hinojosa)

Relating to the criminal penalty for violating certain statutes enforceable by, or ordinances, rules, or regulations of, navigation districts or port authorities.

(viva voce vote) (31-0) (31-0)

**HB 2988** (Ellis)

Relating to waiver of sovereign immunity.

(viva voce vote) (31-0) (31-0)

**HB 2999** (Armbrister)

Relating to contracts between hospitals and preferred provider benefit plan issuers.

(viva voce vote) (31-0) (31-0)

**CSHB 3024** (Brimer)

Relating to the sale of fish collected from certain private property.

(viva voce vote) (31-0) (31-0)

**HB 3029** (Barrientos)

Relating to eligibility of certain rural areas for certain state assistance.

(viva voce vote) (31-0) (31-0)

**HB 3036** (Janek)

Relating to the number, terms, and removal of directors of certain development corporations.

(viva voce vote) (31-0) (31-0)

**HB 3045** (Ogden)

Relating to the juvenile boards of Grimes, Leon, Madison, and Walker Counties.

(viva voce vote) (31-0) (31-0)

**HB 3047** (Eltife)

Relating to communication district or emergency communication district participation in state travel services contracts.

(viva voce vote) (31-0) (31-0)

**HB 3048** (Staples)

Relating to insurance coverage for certain structures.

(viva voce vote) (31-0) (31-0)

**HB 3101** (Wentworth)

Relating to the filing for record of a plat or replat of a subdivision of real property.

(viva voce vote) (31-0) (31-0)

**HB 3140** (Armbrister)

Relating to exemption of certain electronic access control device or alarm system manufacturers or providers from private security regulation.

(viva voce vote) (31-0) (31-0)

**HB 3144** (Eltife)

Relating to a prohibition on hunting on certain parts of Big Sandy Creek in Wood County; providing penalties.

(viva voce vote) (31-0) (31-0)

**HB 3149** (Madla on behalf of Van de Putte)

Relating to inactive status for cosmetology certificate or license holders.

(viva voce vote) (31-0) (31-0)

**HB 3152** (Ellis)

Relating to procedures applicable to waivers of the right to counsel.

(viva voce vote) (31-0) (31-0)

**HB 3162** (Ellis)

Relating to the temporary replacement of a member of a political party's county executive committee who enters active military service.

(viva voce vote) (31-0) (31-0)

Senator Armbrister offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 3162** as follows:

On page 1, strike line 19 and substitute with the following:

unable to fulfill the member's duties, due to the member's obligations to the armed forces of the United States.

The amendment to **HB 3162** 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.

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

**HB 3169** (Duncan)

Relating to purchase of equivalent membership service credit in the Teacher Retirement System of Texas.

(viva voce vote) (31-0) (31-0)

**HB 3200** (Shapiro)

Relating to single employer benefit plans.

(viva voce vote) (31-0) (31-0)

**HB 3221** (Lindsay)

Relating to the records of certain vehicle repairs, sales, and purchases; providing penalties.

(viva voce vote) (31-0) (31-0)

**CSHB 3235** (Madla on behalf of Van de Putte)

Relating to providing interpreter services to certain recipients of medical assistance or their parents or guardians.

(viva voce vote) (31-0) (31-0)

**HB 3250** (Fraser)

Relating to the acquisition of unemployment compensation experience after the transfer of an employing unit; providing penalties.

(viva voce vote) (31-0) (31-0)

**CSHB 3262** (Lucio)

Relating to the validation of a governmental act or proceeding of the Town of South Padre Island.

(viva voce vote) (31-0) (31-0)

**HB 3269** (Staples)

Relating to the duties of the Texas Historical Commission relating to El Camino Real de los Tejas National Historic Trail.

(viva voce vote) (31-0) (31-0)

**HB 3297** (Staples)

Relating to the inclusion of certain public school accountability information in a student's grade report card and on a school district's Internet website.

(viva voce vote) (31-0) (31-0)

**HB 3300** (Averitt)

Relating to reinstatement of a personal automobile insurance policy.

(viva voce vote) (31-0) (31-0)

**HB 3302** (Shapleigh)

Relating to the membership and powers and duties of the Texas Military Preparedness Commission.

(viva voce vote) (31-0) (31-0)

**HB 3333** (Madla)

Relating to the sale or transfer of interest of real property to certain federally recognized Indian tribes.

(viva voce vote) (31-0) (31-0)

Senator Madla offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 3333** (engrossed version) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 5 and 6), strike "Sections 202.021(b) and (c), Transportation Code, are" and substitute "Section 202.021(b), Transportation Code, is".

(2) In SECTION 1 of the bill, in amended Subsection (b), Section 202.021, Transportation Code (page 1, line 11), between "landowners" and the comma, insert "of Tract 11, Block 49 of the Ysleta Grant located in El Paso County".

(3) Strike amended Subsection (c), Section 202.021, Transportation Code (page 1, line 16, through page 2, line 1).

(4) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS as appropriate:

SECTION \_\_\_\_ . Subchapter B, Chapter 202, Transportation Code, is amended by adding Section 202.034 to read as follows:

Sec. 202.034. SALE OR CONVEYANCE OF BRIDGE. (a) The department shall sell or convey the part of the Presidio International Bridge owned by this state to the City of Presidio and Presidio County.

(b) A sale or conveyance under this section must comply with all state and federal rules governing the transaction.

The amendment to **HB 3333** 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.

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

**HB 3357** (Nelson)

Relating to certain information required to be contained in an application for or renewal of a hospital license.

(viva voce vote) (31-0) (31-0)

**HB 3376** (Lucio)

Relating to the prosecution and punishment of certain criminal offenses involving theft and fraud and to the provision of notice of the commission of those offenses to certain licensing entities.

(viva voce vote) (31-0) (31-0)

**HB 3384** (Zaffirini)

Relating to the authority of a junior college district or local workforce development board to contract under the Interlocal Cooperation Act.

(viva voce vote) (31-0) (31-0)

**HB 3409** (Harris)

Relating to the application of the municipal civil service law for firefighters and police officers to certain municipalities.

(viva voce vote) (31-0) (31-0)

**HB 3425** (Brimer)

Relating to the use of certain exhibition vehicles.

(viva voce vote) (31-0) (31-0)

**HB 3428** (Seliger)

Relating to financial institution accounts.

(viva voce vote) (31-0) (31-0)

**HB 3441** (Hinojosa)

Relating to the exchange of benches between justices of the peace.

(viva voce vote) (31-0) (31-0)

**HB 3460** (Fraser)

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

(viva voce vote) (31-0) (31-0)

**HB 3461** (Armbrister)

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

(viva voce vote) (31-0) (31-0)

**HB 3468** (Madla on behalf of Van de Putte)

Relating to an intensive reading and language intervention pilot program.

(viva voce vote) (31-0) (31-0)

**CSHB 3469** (Barrientos)

Relating to the establishment of a program to provide grants to be used to reduce emissions of diesel exhaust from school buses and to the use of the Texas emissions reduction plan to fund the program.

(viva voce vote) (31-0) (31-0)

**HB 3476** (Armbrister)

Relating to the creation of the Fort Bend County Municipal Utility District No. 177; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 3478** (Wentworth)

Relating to the exemption of certain municipalities, utilities, and consumers from fees or taxes imposed by the Trinity Glen Rose Groundwater Conservation District.

(viva voce vote) (31-0) (31-0)

**HB 3479** (Wentworth)

Relating to the South Buda Water Control and Improvement District No. 1.

(viva voce vote) (31-0) (31-0)

**HB 3490** (Nelson)

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

(viva voce vote) (31-0) (31-0)

**HB 3497** (Ogden)

Relating to the creation of the Sonterra Municipal Utility District; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3498** (Deuell)

Relating to the creation, administration, powers, duties, functions, operations, and financing of the Rose Hill Special Utility District.

(viva voce vote) (31-0) (31-0)

**HB 3502** (Whitmire)

Relating to the creation of the Harris County Municipal Utility District No. 406; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 3513** (Hinojosa)

Relating to the creation of the Corpus Christi Aquifer Storage and Recovery Conservation District.

(viva voce vote) (31-0) (31-0)

**HB 3515** (Wentworth)

Relating to the composition of the Comal County Juvenile Board.

(viva voce vote) (31-0) (31-0)

**CSHB 3518** (Ellis)

Relating to the creation of the Harris County Improvement District No. 6; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3519** (Wentworth)

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

(viva voce vote) (31-0) (31-0)

**HB 3520** (Madla)

Relating to the distribution of assessments charged by Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1.

(viva voce vote) (31-0) (31-0)

**HB 3524** (Ogden)

Relating to the creation of the Williamson County Municipal Utility District No. 19; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**CSHB 3528** (Gallegos)

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

(viva voce vote) (31-0) (31-0)

**HB 3530** (Nelson)

Relating to the creation of the City of Fort Worth Municipal Utility District No. 2 of Tarrant County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 3531** (Harris)

Relating to the Dallas County district and county courts administration and court services.

(viva voce vote) (31-0) (31-0)

**HB 3535** (Nelson)

Relating to the creation of the City of Fort Worth Municipal Utility District No. 1 of Denton County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 3537** (Estes)

Relating to the board of directors of the Palo Pinto County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 3541** (Ogden)

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

(viva voce vote) (31-0) (31-0)

**HB 3548** (Ogden)

Relating to the creation of the Williamson County Municipal Utility District No. 16; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3549** (Ogden)

Relating to the creation of the Williamson County Municipal Utility District No. 21; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3550** (Gallegos)

Relating to the powers and duties of the Aldine Improvement District; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3554** (Janek)

Relating to the creation of the Imperial Redevelopment District; providing authority to impose taxes and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3557** (Harris)

Relating to statutory probate court associate judges in certain courts in Harris County.

(viva voce vote) (31-0) (31-0)

**HB 3560** (Whitmire)

Relating to the boundaries and organization of the Spring Branch Area Management District.

(viva voce vote) (31-0) (31-0)

**HB 3563** (Staples)

Relating to the use of anabolic steroids by public school students.

(viva voce vote) (31-0) (31-0)

Senator West offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 3563** by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Chapter 33, Education Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. SAFETY REGULATIONS FOR CERTAIN  
EXTRACURRICULAR ACTIVITIES

Sec. 33.201. APPLICABILITY. This subchapter applies to each public school in this state and to any other school in this state subject to University Interscholastic League regulations.

Sec. 33.202. SAFETY TRAINING REQUIRED. (a) The commissioner by rule shall develop and adopt a safety training program as provided by this section. In developing the program, the commissioner may use materials available from the American Red Cross or another appropriate entity.

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

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

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

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

(c) The safety training program must include:

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

(2) annual training in:

(A) emergency action planning;

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

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

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

(E) recognizing symptoms of steroid use; and

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

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

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

and

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

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

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

Sec. 33.201. COMPLETION OF UNIVERSITY INTERSCHOLASTIC LEAGUE MEDICAL HISTORY FORM. (a) Each student participating in an extracurricular athletic activity must complete the University Interscholastic League forms entitled "Preparticipation Physical Evaluation–Medical History" and "Acknowledgment of Rules." Each form must be signed by both the student and the student's parent or guardian.

(b) Each form described by Subsection (a) must clearly state that failure to accurately and truthfully answer all questions on a form required by statute or by the University Interscholastic League as a condition for participation in an extracurricular athletic activity subjects a signer of the form to penalties determined by the University Interscholastic League.

(c) The "Preparticipation Physical Evaluation–Medical History" form described by Subsection (a) must contain the following statement:

"An individual answering in the affirmative to any question relating to a possible cardiovascular health issue, as identified on the form, should be restricted from further participation until the individual is examined by the individual's primary care physician. Ultimately, the individual may need to be evaluated by a cardiologist and/or undergo cardiac testing (including an echocardiogram and/or other heart-related examination) based on the assessment by the primary care physician."

Sec. 33.203. CERTAIN UNSAFE ATHLETIC ACTIVITIES PROHIBITED. A coach, trainer, or sponsor for an extracurricular athletic activity may not encourage or permit a student participating in the activity to engage in any unreasonably dangerous athletic technique that unnecessarily endangers the health of a student, including using a helmet or any other sports equipment as a weapon.

Sec. 33.204. CERTAIN SAFETY PRECAUTIONS REQUIRED. (a) A coach, trainer, or sponsor for an extracurricular athletic activity shall at each athletic practice or competition ensure that:

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

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

(4) heatstroke prevention materials are readily available.

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

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

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

Sec. 33.205. COMPLIANCE; ENFORCEMENT. (a) On request, a school shall make available to the public proof of compliance for each person enrolled in, employed by, or volunteering for the school who is required to receive safety training described by Section 33.202.

(b) The superintendent of a school district or the director of a school subject to this subchapter shall maintain complete and accurate records of the district's or school's compliance with Section 33.202.

(c) A school campus that is determined by the school's superintendent or director to not be in compliance with Section 33.202, 33.204, or 33.205 shall discontinue all extracurricular athletic activities offered by the school campus, including all practices and competitions, until the superintendent or director determines that the school campus is in compliance.

Sec. 33.206. CONTACT INFORMATION. (a) The commissioner shall maintain an existing telephone number and an electronic mail address to allow a person to report a violation of this subchapter.

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

Sec. 33.207. NOTICE REQUIRED. (a) A school that offers an extracurricular athletic activity shall provide to each student participating in an extracurricular athletic activity and to the student's parent or guardian a copy of the text of Sections 33.201-33.207 and a copy of the University Interscholastic League's parent information manual.

(b) A document required to be provided under this section may be provided in an electronic format unless otherwise requested by a student, parent, or guardian.

Sec. 33.208. INCORPORATION OF SAFETY REGULATIONS. The University Interscholastic League shall incorporate the provisions of Sections 33.203-33.207 into the league's constitution and contest rules.

Sec. 33.209. LIABILITY. The requirements of this subchapter are not considered ministerial acts for purposes of immunity from liability under Section 22.0511.

SECTION \_\_\_\_. Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.087 to read as follows:

Sec. 33.087. REPORT CONCERNING AUTOMATED EXTERNAL DEFIBRILLATORS. (a) Using existing funds and other resources available for the purpose, the agency and the University Interscholastic League shall jointly investigate the availability of federal, state, local, and private funds for purchasing automated external defibrillators, as defined by Section 779.001, Health and Safety Code, for use by University Interscholastic League member schools, and the possibility of receiving a bulk discount on such purchases.

(b) The agency and the University Interscholastic League shall submit a report describing the findings of the investigation to the legislature not later than June 1, 2006.

(c) This section expires July 1, 2006.

The amendment to **HB 3563** 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.

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

**HB 3570** (Hinojosa)

Relating to the creation of an additional county court at law in Hidalgo County.  
(viva voce vote) (31-0) (31-0)

**HCR 35** (Harris)

Authorizing the lieutenant governor and the speaker to appoint interim joint committees.  
(viva voce vote)

**HCR 49** (Jackson)

Urging the United States Congress to fully fund NASA's budget request for fiscal year 2006.  
(viva voce vote)

**HCR 88** (Duncan)

Urging the Supreme Court of Texas and the Court of Criminal Appeals of Texas, as necessary, to develop rules relating to the random assignment to courts of appeals of cases pending or on appeal from counties with overlapping appellate jurisdictions and relating to determining the court of appeals precedent applicable in such randomly assigned cases.  
(viva voce vote)

**HCR 98** (Zaffirini)

Designating pan de campo the Official State Bread of Texas.  
(viva voce vote)

**HCR 105** (Wentworth)

Designating Buda as the official Outdoor Capital of Texas.  
(viva voce vote)

**HCR 108** (Wentworth)

Designating the Blue Lacy as the official State Dog Breed of Texas.  
(viva voce vote)

**HCR 117** (Jackson)

Designating Elissa the official tall ship of Texas.  
(viva voce vote)

**HCR 138** (Hinojosa)

Memorializing Congress and the Department of Veterans Affairs to support the veterans of South Texas by building a veterans hospital in Weslaco, Texas.  
(viva voce vote)

**HCR 153** (West)

Requesting the Texas Legislative Council to schedule a revision of the Family Code during the 2005-2006 interim.

(viva voce vote)

**CSSB 934** (Wentworth)

Relating to student representation on the board of regents of each state university or state university system.

(viva voce vote) (31-0) (31-0)

**SB 1438** (Madla)

Relating to the ability of a commissioners court to appoint a member to the board of an emergency services district.

(viva voce vote) (31-0) (31-0)

**SB 1890** (Armbrister)

Relating to the territory of the Plum Creek Conservation District.

(viva voce vote) (31-0) (31-0)

**SB 1897** (Madla)

Relating to the territory of the Culberson County Groundwater Conservation District.

(viva voce vote) (31-0) (31-0)

**CSSB 1899** (Zaffirini)

Relating to the regulation of chemical dependency counselors.

(viva voce vote) (31-0) (31-0)

**SCR 37** (Staples)

Supporting Texas' application for a Mental Health Transformation State Incentive Grant from the U.S. Department of Health and Human Services.

(viva voce vote)

**BILLS REMOVED FROM  
LOCAL AND UNCONTESTED CALENDAR**

Senator Seliger and Senator Harris requested in writing that **HB 1357** be removed from the Local and Uncontested Calendar.

Senator Armbrister and Senator Harris requested in writing that **HB 1434** be removed from the Local and Uncontested Calendar.

Senator Shapleigh and Senator Whitmire requested in writing that **HB 1579** be removed from the Local and Uncontested Calendar.

Senator Madla and Senator Harris requested in writing that **HB 2135** be removed from the Local and Uncontested Calendar.

Senator Ogden and Senator Harris requested in writing that **HB 2162** be removed from the Local and Uncontested Calendar.

Senator Madla and Senator Fraser requested in writing that **HB 2257** be removed from the Local and Uncontested Calendar.

Senator Staples and Senator Nelson requested in writing that **HB 2370** be removed from the Local and Uncontested Calendar.

Senator Fraser and Senator Van de Putte requested in writing that **HB 2589** be removed from the Local and Uncontested Calendar.

Senator Lindsay and Senator Van de Putte requested in writing that **HB 2667** be removed from the Local and Uncontested Calendar.

Senator Deuell, sponsor of the bill, requested in writing that **HB 2679** be removed from the Local and Uncontested Calendar.

Senator Madla and Senator Harris requested in writing that **HB 2819** be removed from the Local and Uncontested Calendar.

Senator Fraser and Senator Van de Putte requested in writing that **HB 2918** be removed from the Local and Uncontested Calendar.

Senator Seliger and Senator Harris requested in writing that **HB 2928** be removed from the Local and Uncontested Calendar.

Senator Estes and Senator Harris requested in writing that **HB 3353** be removed from the Local and Uncontested Calendar.

Senator Fraser and Senator Harris requested in writing that **HB 3487** be removed from the Local and Uncontested Calendar.

Senator Ogden and Senator Harris requested in writing that **HCR 132** be removed from the Local and Uncontested Calendar.

#### **AT EASE**

The Presiding Officer, Senator Van de Putte in Chair, at 6:25 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

#### **IN LEGISLATIVE SESSION**

Senator Armbrister at 7:05 p.m. called the Senate to order as In Legislative Session.

#### **HOUSE BILL 2422 ON SECOND READING**

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2422** at this time on its second reading:

**HB 2422**, Relating to the designation of Farm-to-Market Road 2065 as the Staff Sergeant Herbert S. Robertson, Jr., Memorial Highway.

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 2422 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 **HB 2422** 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 1357 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 1357** at this time on its second reading:

**HB 1357**, Relating to the civil consequences of certain alcohol-related offenses.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1357** (committee printing, on page 1, lines 11-37) by striking Section 1 of the bill and renumbering subsequent sections accordingly.

The amendment to **HB 1357** 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 Gallegos offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **HB 1357** (House engrossment) by adding the following new section, appropriately numbered, and renumbering remaining sections accordingly:

SECTION \_\_. Section 11.641(c), Alcoholic Beverage Code, is amended to read as follows:

(c) The commission may not take any action against or impose any sanction or penalty on a permit or license holder [A civil penalty], including cancellation of a permit, [may not be imposed] on the basis of a criminal prosecution of an alleged agent, servant, or employee of a permit or license holder for unlawful acts conducted on the permit or license holder's premises in which the alleged agent, servant, or employee of a permit or license holder [defendant] was found not guilty, the criminal charges were dismissed, or there has not been final adjudication.

The amendment to **HB 1357** 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 Seliger and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1357** 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 1357 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 1357** 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 1800 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1800** at this time on its second reading:

**HB 1800**, Relating to corrected reports, registrations, and statements filed with the Texas Ethics Commission.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1800** as follows:

(1) Amend Section 1, page 1 as follows:

SECTION 1. Section 305.033, Government Code, is amended by adding Subsection (f) to read as follows:

(f) A registration or report other than an activities report filed by a registrant is not considered to be late for purposes of this section if the registrant files a corrected or amended registration or report not later than the 14th business day after the date the registrant becomes aware of the error or omission in the registration or report originally filed.

(2) On page 1, between lines 13 and 14, insert the following:

Sec. 571.0771. CORRECTED STATEMENTS, REGISTRATIONS, AND REPORTS CONSIDERED TIMELY FILED. (a) A statement, registration, or report required that is filed with the commission is not considered to be late for purposes of any applicable civil penalty for late filing of the statement, registration, or report if:

(1) the statement, registration, or report as originally filed substantially complies with the applicable law; ~~and~~

(2) any error or omission in the statement, registration, or report as originally filed was made in good faith; and

(3) the person filing the statement, registration, or report files a corrected or amended statement, registration, or report not later than the 14th business day after the date the person learns that the statement, registration, or report as originally filed is inaccurate or incomplete.

(3) On page 1, line 16, between "error" and "other", insert "or omission".

(4) On page 1, line 16, strike "errors".

(5) On page 2, line 26, between "error" and "that", insert "or omission".

(6) On page 2, immediately after line 27, insert the following:

(b) This section does not apply to:

(1) a penalty imposed under Section 571.069 or Subchapter E or F; or

(2) a report required to be filed under Section 254.038, 254.039, 254.064(c), 254.124(c), or 254.154(c), Election Code.

(7) Renumber the sections of the bill accordingly.

The amendment to **HB 1800** 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 Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1800** 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 1800 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1800** 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 3568 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 3568** at this time on its second reading:

**HB 3568**, Relating to the creation of the San Patricio County Groundwater Conservation District; providing authority to impose a tax.

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 3568 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 3568** 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 3576 ON SECOND READING**

On motion of Senator Brimer and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3576** at this time on its second reading:

**HB 3576**, Relating to the powers, duties, administration, governance, and functions of the Benbrook Water and Sewer Authority.

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 3576 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 **HB 3576** 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 1826 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 1826** at this time on its second reading:

**HB 1826**, Relating to the use of school district resources for the maintenance of real property not owned or leased by the district.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1826** in Section 1 of the bill (Senate committee printing), as follows:

- (1) In proposed Subsection (a), Section 11.168, Education Code (page 1, line 14), strike "(a)".
- (2) In proposed Subsection (a), Section 11.168, Education Code (page 1, line 16), between "resources" and "for the design", insert "for the provision of materials or labor".
- (3) Strike proposed Subsection (b), Section 11.168, Education Code (page 1, lines 19-25).

The amendment to **HB 1826** 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 1826** 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 1826 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 1826** 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 2819 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2819** at this time on its second reading:

**HB 2819**, Relating to access to state electronic and information resources by individuals with disabilities.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2819** (Senate committee printing) as follows:

(1) In Section 1 of the bill, in the title to added Section 2054.453, Government Code (page 1, line 34), strike "FEDERAL STANDARDS" and substitute "FEDERAL STANDARDS AND LAWS".

(2) In Section 1 of the bill, in added Section 2054.453, Government Code (page 1, between lines 42 and 43), insert a new Subsection (c) to read as follows:

(c) This subchapter does not require the state to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent it is not required by federal law.

(3) In Section 1 of the bill, in added Section 2054.454(a), Government Code (page 1, line 43), strike "Each" and substitute "If required by the department, each".

(4) In Section 1 of the bill, in added Section 2054.456(a), Government Code, after the period (page 1, line 61), insert:

Subject to Section 2054.460, the agency shall take reasonable steps to ensure that a disabled employee has reasonable access to perform the employee's duties.

(5) In Section 1 of the bill, strike added Section 2054.456(b), Government Code (page 1, line 62 through page 2, line 3), and substitute:

(b) This section does not require a state agency to install specific accessibility-related software or attach an assistive technology device at a workstation of a state employee.

(6) In Section 1 of the bill, strike added Section 2054.460(a), Government Code (page 2, lines 32-44), and substitute:

(a) If compliance with a provision of this subchapter imposes a significant difficulty or expense on a state agency, the agency is not required to comply with that provision, but the agency may provide individuals with disabilities an alternate method of access under Subsection (b).

(7) In Section 1 of the bill, in added Section 2054.460(b)), Government Code (page 2, line 46), strike "shall" and substitute "may".

(8) In Section 1 of the bill, strike added Section 2054.460(d), Government Code (page 2, lines 57-63), and substitute:

(d) The department shall adopt rules to implement this section.

(e) The executive director of the state agency shall make the final decision on whether this section applies. The decision may not be appealed.

(9) In Section 1 of the bill, in added Subchapter M, Chapter 2054, Government Code (page 3, between lines 19 and 20), add a new Section 2054.465 to read as follows:

Sec. 2054.465. NO CAUSE OF ACTION CREATED. This subchapter does not create a cause of action.

The amendment to **HB 2819** 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 Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2819** 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 2819 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2819** 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 880 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 880** at this time on its second reading:

**HB 880**, Relating to attorney general review of certain contracts for health care purposes.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

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

Amend **HB 880** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION \_\_. (a) Section 572.051, Government Code, is amended to read as follows:

Sec. 572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY. (a) A state officer or employee shall ~~should~~ not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) Each state agency shall:

(1) adopt a written ethics policy consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and

(2) distribute a copy of the ethics policy and this subchapter to each new employee not later than the third business day after the date the person begins employment with the agency.

(c) The office of the attorney general shall develop in coordination with the ethics commission and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (b). A state agency is not required to adopt the model policy developed under this subsection.

(d) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(e) Not later than November 1, 2005, the office of the attorney general shall:

(1) develop a model ethics policy as required by Subsection (c); and

(2) distribute the policy to each state agency required to adopt an ethics policy under Subsection (b).

(f) Not later than January 1, 2006, each state agency shall:

(1) adopt an ethics policy as required by Subsection (b); and

(2) distribute a copy of the ethics policy and this subchapter to each employee of the agency.

(g) Subsections (e) and (f) and this subsection expire January 15, 2006.

(b) Section 572.051, Government Code, as amended by this Act, applies only to conduct of a state officer or employee that occurs on or after September 1, 2005. Conduct of a state officer or employee that occurs before September 1, 2005, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

The amendment to **HB 880** 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 880** 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 880 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 880** 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 260 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 260** at this time on its second reading:

**HB 260**, Relating to suits affecting the parent-child relationship and protective orders.

The bill was read second time.

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

#### Floor Amendment No. 1

Amend **HB 260** by inserting the following new SECTIONS, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter F, Chapter 153, Family Code, is amended by adding Section 153.3161 to read as follows:

Sec. 153.3161. LIMITED POSSESSION DURING MILITARY DEPLOYMENT. (a) In addition to the general terms and conditions of possession required by Section 153.316, if a possessory conservator or a joint managing conservator of the child without the exclusive right to designate the primary residence of the child is currently a member of the armed forces of the state or the United States or is reasonably expected to join those forces, the court shall:

(1) permit that conservator to designate a person who may exercise limited possession of the child during any period that the conservator is deployed outside of the United States; and

(2) if the conservator elects to designate a person under Subdivision (1), provide in the order for limited possession of the child by the designated person under those circumstances, subject to the court's determination that the limited possession is in the best interest of the child.

(b) If the court determines that the limited possession is in the best interest of the child, the court shall provide in the order that during periods of deployment:

(1) the designated person has the right to possession of the child on the first weekend of each month beginning at 6 p.m. on Friday and ending at 6 p.m. on Sunday;

(2) the other parent shall surrender the child to the designated person at the beginning of each period of possession at the other parent's residence;

(3) the designated person shall return the child to the other parent's residence at the end of each period of possession;

(4) the child's other parent and the designated person are subject to the requirements of Sections 153.316(5)-(9);

(5) the designated person has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and

(6) the designated person is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.

(c) After the deployment is concluded, and the deployed parent returns to that parent's usual residence, the designated person's right to limited possession under this section terminates and the rights of all affected parties are governed by the terms of any court order applicable when a parent is not deployed.

SECTION \_\_\_\_. Subchapter B, Chapter 156, Family Code, is amended by adding Section 156.105 to read as follows:

Sec. 156.105. MODIFICATION OF ORDER BASED ON MILITARY DEPLOYMENT. (a) The military deployment outside this country of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child.

(b) If the court determines that modification is in the best interest of the child, the court may modify the order or decree to provide in a manner consistent with Section 153.3161 for limited possession of the child during the period of the deployment by a person designated by the deployed conservator.

SECTION \_\_\_\_. Section 153.3161, Family Code, as added by this Act, applies only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION \_\_\_\_. Section 156.105, Family Code, as added by this Act, applies only to an action to modify an order in a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

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 **HB 260** 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 West offered the following amendment to the bill:

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

Amend **HB 260** as follows:

SECTION \_\_\_\_. Civil Practice and Remedies Code, is amended by adding a new Chapter 161, Collaborative Law, to read as follows:

#### CHAPTER 161

#### COLLABORATIVE LAW

Sec. 161.001. POLICY It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

Sec. 161.002. COLLABORATIVE LAW PROCEDURES.

(a) On a written agreement of the parties and their attorneys, a dispute may be conducted under collaborative law procedures.

(b) Collaborative law is a voluntary procedure in which the parties and their counsel agree in writing to use their best efforts and make a good faith attempt to resolve their dispute on an agreed basis without resorting to judicial intervention except to have the court approve the settlement agreement, make the legal pronouncements, and sign the orders required by law to effectuate the agreement of the parties as the court determines appropriate. The parties' counsel may not serve as litigation counsel except to ask the court to approve the settlement agreement.

(c) A collaborative law agreement must include:

(1) provisions for full and candid exchange of information between the parties and their attorneys as necessary to make a proper evaluation of the case;

(2) provisions for suspending court intervention in the dispute while the parties are using collaborative law procedures;

(3) provisions for hiring experts, as jointly agreed, to be used in the procedure;

(4) provisions for withdrawal of all counsel involved in the collaborative law procedure if the collaborative law procedure does not result in settlement of the dispute; and

(5) other provisions as agreed to by the parties consistent with a good faith effort to collaboratively settle the matter.

(d) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative law settlement agreement if the agreement:

(1) provides, in a prominently displayed statement that is boldfaced, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the attorney of each party.

(e) Subject to Subsection (g), a court that is notified 30 days before trial that the parties are using collaborative law procedures to attempt to settle a dispute may not, until a party notifies the court that the collaborative law procedures did not result in a settlement:

(1) set a hearing or trial in the case;

(2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the case.

(f) The parties shall notify the court if the collaborative law procedures result in a settlement. If a settlement has not been reached, the parties shall file:

(1) a status report with the court not later than the 180th day after the date of the written agreement to use the procedures; and

(2) a status report on or before the first anniversary of the date of the written agreement to use the procedures, accompanied by a motion for continuance that the court shall grant if the status report indicates the desire of the parties to continue to use collaborative law procedures.

(g) If the collaborative law procedures do not result in a settlement on or before the second anniversary of the date that the suit was filed, the court may set the suit for trial on the regular docket.

(h) This section does not apply to claim for personal injury or property damage in which the claim is being handled on a contingency fee basis.

Sec. 161.003. CONFIDENTIALITY OF COLLABORATIVE LAW PROCEDURES. The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154 apply equally to collaborative law procedures under Chapter 161 and Sections 6.603 and 153.0072, Family Code.

SECTION \_\_. This Chapter applies only to an action commenced: (1) on or after the effective date of this Act; or (2) before the effective date of this Act if the trial in the action has not begun before the effective date of this Act.

The amendment to **HB 260** 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 West offered the following amendment to the bill:

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

Amend **HB 260** by adding new sections to read as follows:

SECTION \_\_. Section 6.603, Family Code, is amended to add to new subsection (h) to read as follows: The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies Code, apply equally to collaborative law procedures under this Section.

SECTION \_\_. Section 153.0072, Family Code, is amended to add a new subsection (h) to read as follows: The provisions for confidentiality of alternative dispute resolution procedures as provided in Chapter 154, Civil Practice and Remedies Code, apply equally to collaborative law procedures under this Section.

The amendment to **HB 260** 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 West offered the following amendment to the bill:

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

Amend **HB 260** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_. Subchapter A, Chapter 154, Family Code, is amended by adding Section 154.015 to read as follows:

Sec. 154.015. PATERNITY TEST REQUIRED. (a) Except as provided by Subsections (b) and (c), a court may not render an order requiring the payment of child support unless the court finds that:

(1) the parties have completed a genetic test to determine parentage that complies with the requirements of Subchapter F, Chapter 160, and, based on the genetic test, the man named as the father in the suit affecting the parent-child relationship is rebuttably identified as the father of the child in accordance with Section 160.505(a); or

(2) the party being ordered to pay child support is an adoptive parent of the child.

(b) If the parties to a suit affecting the parent-child relationship in which child support is requested have not completed a genetic test that complies with the requirements of Subchapter F, Chapter 160, the court shall order the child, the child's mother, and the alleged father to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered. If an alleged father fails to submit to a genetic test ordered under this section, the court may render an order adjudicating the alleged father to be the father of the child and requiring the alleged father to pay child support.

(c) In a suit affecting the parent-child relationship, an alleged father of the child may file an affidavit with the court admitting paternity of the child. After receiving an affidavit under this subsection, the court may, without requiring a genetic test, render an order adjudicating the alleged father to be the father of the child and requiring the alleged father to pay child support. An alleged father who files an affidavit under this subsection may not challenge the adjudication of paternity.

(d) The parties, other than a governmental entity, shall bear the cost of the genetic test ordered under this section equally.

SECTION \_\_\_\_\_. Subsection (a), Section 160.308, Family Code, is amended to read as follows:

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding must be commenced before the child's 18th birthday ~~[fourth anniversary of the date the acknowledgment or denial is filed with the bureau of vital statistics].~~

SECTION \_\_\_\_\_. Section 160.607, Family Code, is amended to read as follows:

Sec. 160.607. TIME LIMITATION: CHILD HAVING PRESUMED FATHER. A ~~[(a) Except as otherwise provided by Subsection (b), a]~~ proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must ~~[shall]~~ be commenced before the child's 18th birthday ~~[not later than the fourth anniversary of the date of the birth of the child].~~

~~[(b) A proceeding seeking to disprove the father child relationship between a child and the child's presumed father may be maintained at any time if the court determines that:~~

~~[(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; and~~

~~[(2) the presumed father never represented to others that the child was his own.]~~

SECTION \_\_\_\_\_. Chapter 160, Family Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. PROCEEDINGS TO VACATE COURT ORDER

Sec. 160.801. MOTION TO VACATE COURT ORDER. (a) A person identified in a court order as the father of the child or the mother of the child may file a motion requesting the court to vacate the court order that states that the person identified in the order as the father of the child is the father of the child identified in the motion or that requires the person identified in the order as the father of the child to pay child support for the child. The motion may be filed at any time.

(b) The motion to vacate a court order must be accompanied by a certified copy of the court order to be vacated.

Sec. 160.802. GENETIC TESTING. (a) In a proceeding under this subchapter, the court, on application by or on behalf of either party, or on its own motion, shall order the child, the child's mother, and the person identified in the court order as the father of the child to submit to genetic testing not later than the 30th day after the date the order requiring genetic testing is rendered.

(b) Genetic testing under this section is subject to the same procedures as genetic testing ordered under Subchapter F.

Sec. 160.803. FAILURE TO SUBMIT TO GENETIC TEST. (a) If a mother fails to submit to a genetic test ordered under Section 160.802, the court may suspend the legal obligation of the person identified in the court order as the father of the child to pay child support until the mother submits to the genetic test.

(b) If the person identified in the court order as the father of the child fails to submit to a genetic test ordered under Section 160.802, the court may dismiss the person's motion to vacate with prejudice.

Sec. 160.804. GROUNDS FOR VACATING ORDER. (a) Except as otherwise provided by this section, the court shall vacate an order described by Section 160.801 if the court finds that the person identified in the court order as the father of the child:

(1) is not the child's adoptive parent;

(2) did not consent to assisted reproduction by his wife under Subchapter H;

and

(3) based on genetic testing, is not rebuttably identified as the father of the child in accordance with Section 160.505.

(b) The court may not grant a motion under this section if the court finds that at any time the person who filed the motion knew that the person identified in the court order as the father of the child was not the child's biological parent, and the person identified in the court order as the father of the child:

(1) consented to his name being entered as the child's biological father on the child's birth certificate;

(2) was determined to be the child's father in a proceeding to determine parentage; or

(3) filed an acknowledgment of paternity with the bureau of vital statistics.

Sec. 160.805. POSSESSION ORDER; CHILD SUPPORT ARREARAGE. (a) If the court vacates a parentage or support order in a proceeding under this subchapter and the moving party is also entitled under an order to the possession of or access to

the child who is the subject of the vacated order, the court shall determine whether the possession order should be terminated, modified, or continued based on the best interest of the child.

(b) If the court vacates a child support order under this subchapter and an arrearage exists under that child support order, the court may reduce the amount of the arrearage to zero. If the court eliminates an arrearage under this subsection, the court shall issue an order stating that the child support obligation, including any arrearage, is terminated.

(c) The elimination of an arrearage under a support order that is vacated as provided by this subchapter is for purposes of correcting a mistake and is not a retroactive modification.

Sec. 160.806. COURT COSTS. If the court does not grant the motion to vacate a court order under this subchapter, the court shall order the moving party to pay the costs of the action and each opposing party's reasonable attorney's fees.

Sec. 160.807. EXPIRATION. This subchapter expires September 1, 2007.

SECTION \_\_\_\_\_. Section 233.028, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The notice described in Subsection (a) and sent to a man alleged to be the father of a child shall include the following statement printed on the notice in boldfaced type, in capital letters, or underlined:

"YOU HAVE THE RIGHT TO REQUEST GENETIC TESTING TO DETERMINE THE PARENTAGE OF A CHILD WHOSE PARENTAGE HAS NOT BEEN ESTABLISHED. THE TITLE IV-D AGENCY WILL PAY FOR THE COSTS OF THE GENETIC TESTING, BUT IF THE RESULTS OF THE TESTING IDENTIFY YOU AS THE BIOLOGICAL FATHER OF THE CHILD, YOU MAY BE REQUIRED TO REIMBURSE THE AGENCY FOR THOSE COSTS."

SECTION \_\_\_\_\_. Subsection (b), Section 233.028, Family Code, is amended to read as follows:

(b) If all parties agree to the child's parentage, the agency may file an agreed child support review order as provided by this chapter. The agreed order shall include a statement signed by the parties entitled to genetic testing in the case that the parties have waived their rights to request genetic testing.

SECTION \_\_\_\_\_. Section 233.028, Family Code, as amended by this Act, applies only to an administrative proceeding under Chapter 233, Family Code, for the determination of parentage commenced on or after the effective date of this Act.

SECTION \_\_\_\_\_. If before implementing any provision of this Act the Title IV-D agency determines that a waiver or authorization from a federal agency is necessary for implementation of the change in law made by this Act, the agency shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION \_\_\_\_\_. Section 154.015, Family Code, as added by this Act, and the change in law made by this Act to Sections 160.308 and 160.607, Family Code, apply only to a suit affecting the parent-child relationship filed on or after September 1, 2005. A suit affecting the parent-child relationship filed before that date 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 260** 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 Averitt, on behalf of Senator Hinojosa, offered the following amendment to the bill:

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

Amend **HB 260** (Senate committee printing) by striking Section 1 of the bill, adding proposed Section 81.009, Family Code (page 1, lines 11-22), and substituting:  
SECTION 1. Chapter 81, Family Code, is amended by adding Section 81.009 to read as follows:

Sec. 81.009. APPEAL. (a) Except as provided by Subsections (b) and (c), a protective order rendered under this subtitle may not be appealed.

(b) A protective order rendered against a party in a suit for dissolution of a marriage may be appealed at the time the final decree of dissolution of the marriage becomes a final, appealable order.

(c) A protective order rendered against a party in a suit affecting the parent-child relationship may be appealed at the time an order providing for support of the child or possession of or access to the child becomes a final, appealable order.

The amendment to **HB 260** 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 Averitt and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 260** 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 260 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 260** be placed on its third reading and final passage.

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

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

**(Senator Brimer in Chair)**

#### **MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1579 ON THIRD READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSHB 1579** at this time on its third reading and final passage:

**CSHB 1579**, Relating to certain retired school employees and the powers and duties of the Teacher Retirement System of Texas.

The motion was lost by the following vote: Yeas 19, Nays 12. (Not receiving two-thirds vote of Members present)

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2145 ON THIRD READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2145** at this time on its third reading and final passage:

**CSHB 2145**, Relating to prohibiting changes in certain prescription drug orders without the approval of the prescribing health care practitioner.

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

**HOUSE BILL 3482 ON THIRD READING**

The Presiding Officer laid before the Senate **HB 3482** on its third reading. The bill had been read third time and further consideration postponed until after the Local and Uncontested Calendar Session:

**HB 3482**, Relating to the creation of the North Fort Bend Water Authority; providing authority to issue bonds; granting the power of eminent domain; providing an administrative penalty.

Question — Shall **HB 3482** be finally passed?

**HB 3482** was finally passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2876 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2876** at this time on its second reading:

**CSHB 2876**, Relating to certificates of public convenience and necessity for water service and sewer service.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2876** by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Section 13.182, Water Code, is amended by adding Subsection (e) to read as follows:

(e) Except as provided by Section 13.4133, a utility may not implement a rate change concerning which a hearing is set under Section 13.187 until the date on which the regulatory authority issues a final decision on the change.

SECTION \_\_. Section 13.187, Water Code, is amended by amending Subsections (a), (c), (d), (e), (f), (k), (l), (m), (n), and (o) and adding Subsections (e-1), (n-1), and (n-2) to read as follows:

(a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 120 [~~60~~] days before the proposed effective date of the proposed change. The proposed effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the proposed effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 3,000 gallons of water;

(B) 5,000 gallons of water;

(C) 10,000 gallons of water; and

(D) [~~(D)~~] 30,000 gallons of water; and

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons and 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) the proposed effective date and the deadline by which customers must file any protests of the proposed rates, provided that the protest period concludes 90 days after the statement of intent is provided to the ratepayers.

(c) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.

(d) If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the proposed effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the proposed effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [~~of this code~~].

(e) The regulatory authority shall set a hearing on the proposed rate increase if [~~H~~], before the 91st day after the [~~effective~~] date the statement of intent was provided to the authority and each ratepayer under Subsection (a) [~~of the rate change~~], the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction. A hearing under this subsection must be

set not later than the 120th day after the date the statement of intent was provided. The~~[-, the]~~ regulatory authority must provide notice to the utility and any affected municipality that a hearing is being set on the proposed rate increase ~~[shall set the matter for hearing].~~

(e-1) If the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall, not later than the 120th day after the date the utility files with the regulatory authority an application to change rates and delivers a statement of intent to each ratepayer, hold a public meeting to receive public comments on the proposed rate change. The regulatory authority may hold the public meeting in any location the regulatory authority determines is appropriate. The regulatory authority may require the utility to publish notice of the public meeting at least once in the newspaper of largest circulation in each county in which affected ratepayers are located. The notice must state:

(1) the time, location, and nature of the public meeting; and

(2) a description, including a telephone number, of the manner in which a person may contact the regulatory authority for further information.

(f) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the ~~[effective]~~ date the statement of intent was provided to the authority and each ratepayer under Subsection (a) ~~[of the rate change]~~. If more than half of the ratepayers of the utility receive service in a county with a population of more than 2.5 million, the hearing must be held at a location in that county.

(k) If the regulatory authority sets the matter for ~~[receives at least the number of complaints from ratepayers required for the regulatory authority to set]~~ a hearing under Subsection (e), the regulatory authority shall:

(1) ~~[may,]~~ pending the hearing and a decision, suspend the date the rate change would otherwise be effective until the date the regulatory authority issues a final decision on the matter; and

(2) fix interim rates as provided by Subsection (l). ~~[The proposed rate may not be suspended for longer than:~~

~~[(1) 90 days by a local regulatory authority; or~~

~~[(2) 150 days by the commission.]~~

(l) If the regulatory authority sets the matter for a hearing, the regulatory authority shall, not later than the 120th day after the date the statement of intent is filed, ~~[At any time during the pendency of the rate proceeding the regulatory authority may]~~ fix interim rates to remain in effect until a final determination is made on the proposed rate. The interim rates shall be based on the information contained in the rate change application and may not be lower than the rates on the utility's approved tariff immediately before filing the notice of intent to change the rates. If the regulatory authority is the commission, the executive director shall set the interim rates.

(m) If the regulatory authority sets a final rate that is lower than the interim rate, the utility shall refund or credit the difference between the interim rate and the final rate plus interest as determined by the regulatory authority unless otherwise agreed to by the parties to the rate proceeding. If the regulatory authority sets a final rate that is

higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) Except as provided by Subsection (o) [~~For good cause shown~~], the regulatory authority must make a final determination on the rates not later than:

(1) if the determination is made by a local regulatory authority, 150 days after the date the interim rates are established; or

(2) if the determination is made by the commission, 305 days after the effective date the interim rates are established [~~may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate~~].

(n-1) If the regulatory authority does not make the determination within the deadline provided by Subsection (n), the proposed rates are automatically approved.

(n-2) Notwithstanding Subsection (n-1), the deadline for making a determination under Subsection (n) may be extended by the agreement of all parties to the rate proceeding. A hearing shall be conducted in a timely manner to allow the commission to make its final determination on the proposed rates.

(o) If a local regulatory authority representing a municipality with a population of 1.7 million or more establishes interim rates under Subsection (l) [~~other than the commission] establishes interim rates or an escrow account~~, the local regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates [~~or escrowed rates~~] or the rates are automatically approved as requested by the utility. The local regulatory authority may extend the period during which the rates are suspended by two days for each day a hearing exceed 15 days. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the applicable suspension period, the proposed rate shall be considered approved. The approval is subject to the local regulatory authority's continuation of a hearing in progress.

SECTION \_\_. Subsections (i) and (j), Section 13.187, Water Code, are repealed.

SECTION \_\_. The changes in law made to Sections 13.182 and 13.187, Water Code, by this Act apply only to a statement of intent filed on or after the effective date of this Act. A rate change to which a statement of intent filed before the effective date of this Act applies is governed by the law in effect on the date the statement was filed, and that law is continued in effect for that purpose.

The amendment to **CSHB 2876** 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 Wentworth offered the following amendment to the bill:

## **Floor Amendment No. 2**

Amend **CSHB 2876** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.258 to read as follows:

Sec. 13.258. EMINENT DOMAIN. (a) A water and sewer utility that is operating pursuant to a valid certificate of convenience and necessity may acquire by condemnation any easements or lesser property interests reasonably necessary to comply with federal and state regulations.

(b) The right of eminent domain shall be exercised in the manner provided by Chapter 21, Property Code.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

(d) For purposes of this section, in a municipality of 1.7 million or more and its extraterritorial jurisdiction, the power of eminent domain may not be used for the condemnation of land in which the municipality owns a fee, easement or lesser property interest.

The amendment to **CSHB 2876** 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 Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2876** 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 2876 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2876** 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.

### **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 PASSED THE FOLLOWING MEASURES:

**HCR 154**, Designating the Lake Whitney area as the Getaway Capital of Texas.

**HCR 166**, Memorializing congress to increase funding to the fully authorized level and include advance funds for the Low Income Home Energy Assistance Program and to pursue a more equitable funding allocation formula for the program.

**HCR 172**, Designating Jim Hogg County as the official Vaquero Capital of Texas.

**HCR 187**, Designating the Hill Country as the Official Lavender Growing Region of Texas.

**HCR 188**, Designating the Blanco Lavender Festival as the Official Lavender Festival of Texas.

**SB 23**, Relating to subsidized child-care services and early childhood care and education program coordination.

(Amended)

**SB 34**, Relating to the tuition rebate program for certain undergraduates at certain public institutions of higher education.

(Amended)

**SB 40**, Relating to permanency planning procedures for children residing in state institutions.

(Amended)

**SB 52**, Relating to a competitive grant program for aging and disability services.

(Amended)

**SB 60**, Relating to the representation of certain defendants in capital cases and to the punishment for a capital felony or other felony punishable by a term of imprisonment exceeding 99 years.

(Committee Substitute/Amended)

**SB 111**, Relating to undergraduate course credit granted by public institutions of higher education for the completion of certain postsecondary-level programs by high school students.

(Amended)

**SB 327**, Relating to the installation, copying, or use of computer software for unauthorized purposes; providing a penalty.

(Committee Substitute/Amended)

**SB 451**, Relating to the qualifications for service as a grand or petit juror and challenges for cause.

(Amended)

**SB 573**, Relating to the award of certain highway maintenance contracts by the Texas Department of Transportation.

(Amended)

**SB 623**, Relating to the authorized charges for providing a copy of public information requested under the public information law.

(Amended)

**SB 630**, Relating to audits of providers in the medical assistance program.  
(Amended)

**SB 747**, Relating to establishing a demonstration project for women's health care services.  
(Amended)

**SB 757**, Relating to property in the custody of a pawnbroker; providing criminal penalties.  
(Amended)

**SB 805**, Relating to certain small and large employer health cooperatives.  
(Committee Substitute)

**SB 826**, Relating to a study examining the feasibility of providing health services for women with postpartum depression.  
(Committee Substitute)

**SB 827**, Relating to systems for identifying colonias and for tracking the progress of state-funded projects that benefit colonias and the submission of a related report to the legislature.  
(Committee Substitute)

**SB 837**, Relating to the insanity defense.  
(Amended)

**SB 882**, Relating to the Texas Council on Autism and Pervasive Developmental Disorders.  
(Amended)

**SB 890**, Relating to the amount of recovery in a civil action.  
(Committee Substitute)

**SB 921**, Relating to the designation of a portion of Interstate Highway 27 between Lubbock and Amarillo as the Marshall Formby Memorial Highway.  
(Committee Substitute)

**SB 988**, Relating to education courses required for a mortgage broker or loan officer license.  
(Committee Substitute/Amended)

**SB 995**, Relating to donees of anatomical gifts.  
(Committee Substitute)

**SB 1002**, Relating to creating a TexasOnline project concerning grant assistance provided by state agencies.

**SB 1045**, Relating to insurance or other coverage in lieu of a bond requirement for officers, employees, and consultants of certain conservation and reclamation districts.

**SB 1063**, Relating to the rates of certain retail public utilities.

**SB 1074**, Relating to the authority of the Department of Public Safety of the State of Texas or the public safety director to adopt rules in connection with commercial motor vehicles.

(Amended)

**SB 1090**, Relating to the powers and duties of a defense base development authority.

**SB 1105**, Relating to defense adjustment management authorities.

**SB 1106**, Relating to continuing education courses for a county treasurer.

**SB 1107**, Relating to the requirements for removal of a county treasurer.

**SB 1108**, Relating to the bond of a county treasurer.

**SB 1112**, Relating to debt management services; providing a penalty.

(Committee Substitute)

**SB 1113**, Relating to allowing a hospital to release protected health information of a patient to emergency medical services providers for treatment, payment, and health care operations.

**SB 1122**, Relating to the Board of Law Examiners board member compensation.

**SB 1130**, Relating to a requirement that a common carrier or pipeline owner or operator report contamination.

(Committee Substitute)

**SB 1133**, Relating to posting notice online of the meetings of certain governmental bodies.

**SB 1139**, Relating to monitoring by the Texas Building and Procurement Commission and the Legislative Budget Board of the transfer of surplus or salvage property by state agencies.

**SB 1147**, Relating to the appointment of visiting associate judges.

**SB 1149**, Relating to the electronic transmission of health benefit information between a health benefit plan issuer and a physician or health care provider.

(Amended)

**SB 1151**, Relating to the use of a voluntary acknowledgment of paternity under the Uniform Interstate Family Support Act.

**SB 1173**, Relating to the regulation of a perpetual care cemetery and the sale of interment rights in a mausoleum before completion of construction.

(Amended)

**SB 1189**, Relating to the creation, composition, jurisdiction, and procedure of certain judicial districts, to the selection of a local administrative district judge for certain counties, to the juvenile board in certain counties, and to the district courts in certain counties.

(Committee Substitute/Amended)

**SB 1202**, Relating to the coordination of colonia initiatives and services to colonia residents.

- SB 1204**, Relating to erecting an off-premise sign adjacent to and visible from certain roads.
- SB 1206**, Relating to erecting an off-premise sign adjacent to and visible from certain roads.
- SB 1226**, Relating to a study of the reporting requirements imposed on public institutions of higher education.
- SB 1238**, Relating to the creation of a public nuisance by the failure to properly maintain a drainage easement.
- SB 1247**, Relating to admission to the Joint Admission Medical Program.
- SB 1255**, Relating to the number of certain alcoholic beverage permits and licenses that may be issued for a single location.  
(Committee Substitute/Amended)
- SB 1264**, Relating to fees collected for services provided by the Commission on Jail Standards.  
(Committee Substitute)
- SB 1271**, Relating to fees for licenses issued by the Parks and Wildlife Department.
- SB 1275**, Relating to the issuance of certain court orders to protect victims of family violence.
- SB 1282**, Relating to insurance and regulatory requirements for certain amusement rides.
- SB 1283**, Relating to the application of certain laws to certain commercially domiciled insurers and insurers that are part of an insurance company holding system.  
(Committee Substitute/Amended)
- SB 1284**, Relating to certain requirements applicable to health maintenance organizations.
- SB 1297**, Relating to the elements of the criminal offense of discharging used oil into water in the state.  
(Amended)
- SB 1340**, Relating to the regulation and reimbursement of health care services provided through telehealth or telemedicine under the state Medicaid program.  
(Committee Substitute)
- SB 1345**, Relating to the amount of emergency leave granted by state agencies to state employees on unpaid military leave.
- SB 1351**, Relating to the appeal of certain ad valorem tax determinations through binding arbitration.
- SB 1353**, Relating to the powers and duties of the Town Center Improvement District of Montgomery County, Texas, and of governmental entities and peace officers that interact with the district; providing a penalty.
- SB 1370**, Relating to the disposition of certain tax revenue for the protection and development of grape and wine production.

**SB 1377**, Relating to certain fees imposed by the secretary of state and the maximum amount that may be imposed in connection with the adoption of a child in another country.

**SB 1395**, Relating to the establishment of high school diploma programs by Job Corps training programs under the United States Department of Labor.

**SB 1408**, Relating to wage claim disputes.

**SB 1413**, Relating to county brownfield cleanup and economic redevelopment programs.  
(Amended)

**SB 1426**, Relating to fees charged to persons applying for the expunction of certain offenses committed by minors.

**SB 1433**, Relating to the conditions of employment for firefighters employed by certain districts and entities; providing penalties.  
(Committee Substitute/Amended)

**SB 1440**, Relating to the use of sales tax revenue to pay or secure certain municipal public securities.

**SB 1448**, Relating to the applicability of certain laws relating to portability of certain health benefit coverage provided to school district employees.

**SB 1450**, Relating to judgment interest.

**SB 1455**, Relating to the establishment of regional habitat conservation plans by political subdivisions of this state.

**SB 1461**, Relating to the offenses for which the use of wire, oral, or electronic interception devices may be authorized.

**SB 1479**, Relating to deferred presentment transactions of certain military personnel or their spouses.

**SB 1491**, Relating to a fee charged for services provided by the staff of the state law library.

**SB 1498**, Relating to the requirement for water district consent to certain actions by municipalities that provide law enforcement or fire protection services.

**SB 1507**, Relating to the introduction of certain evidence in the sentencing phase of a capital felony case.

**SB 1524**, Relating to fees charged for a vital statistics record.

**SB 1525**, Relating to safe patient handling and movement practices of nurses in hospitals and nursing homes.  
(Committee Substitute)

**SB 1533**, Relating to parking by state employees in state-owned garages.

**SB 1564**, Relating to the repeal of the requirement for a surety bond or other proof of financial responsibility for licensure of surplus lines insurance agents.

**SB 1569**, Relating to audits of state agency expenditures to recover overpayments and lost discounts.

**SB 1570**, Relating to the rate of interest on certain tax refunds.  
(Amended)

**SB 1579**, Relating to the prohibition of signs on certain roads.  
(Committee Substitute)

**SB 1589**, Relating to fraudulent documents offered to the county clerk or the secretary of state for filing.

**SB 1591**, Relating to accountant practice requirements for certain audits of insurer financial reports.

**SB 1592**, Relating to special deposits required of certain insurers.

**SB 1604**, Relating to the Neches and Trinity Valleys Groundwater Conservation District.  
(Committee Substitute)

**SB 1652**, Relating to the administration of ad valorem taxation and to certain measures involving school district property values.  
(Amended)

**SB 1668**, Relating to the consideration of payments to an affiliate in computing rates for electric utilities.  
(Amended)

**SB 1673**, Relating to the creation of a sheriff's department civil service system in certain counties.

**SB 1686**, Relating to the interagency work group on rural issues.

**SB 1692**, Relating to storage of wine by the holder of a winery permit.

**SB 1693**, Relating to collateral for deposits of public school funds.

**SB 1704**, Relating to jury service.  
(Amended)

**SB 1707**, Relating to the regulation of poultry facilities.  
(Committee Substitute)

**SB 1710**, Relating to outdoor burning under the Texas Clean Air Act.  
(Amended)

**SB 1730**, Relating to the use of ad valorem taxes by a municipality or county for a sports and community venue project.

**SB 1740**, Relating to construction activities allowed while an application is pending with the Texas Commission on Environmental Quality.  
(Amended)

**SB 1769**, Relating to administrators of certain hospital districts.

**SB 1772**, Relating to the validation and confirmation of the boundaries and acts of Dallas County Water Control and Improvement District No. 6.  
(Amended)

**SB 1795**, Relating to the creation of the Fort Bend County Municipal Utility District No. 177; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**SB 1809**, Relating to statewide evaluation of tech-prep consortia.

**SB 1811**, Relating to the ability of certain water supply or sewer service corporations to dissolve and transfer assets to a municipality.

**SB 1821**, Relating to the creation of the Flatrock Springs Municipal Management District; granting authority for taxation and the issuance of bonds.  
(Amended)

**SB 1823**, Relating to the creation of the Schertz Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute)

**SB 1826**, Relating to the creation, administration, powers, duties, functions, operations, and financing of the Parker County Special Utility District; granting the power of eminent domain.

**SB 1840**, Relating to the Willacy County Drainage District No. 1; providing the authority to impose a tax.

**SB 1844**, Relating to scholarships for the fifth year of accounting programs at public and private institutions of higher education.

**SB 1846**, Relating to the powers and duties of the Karnes County Hospital District.

**SB 1853**, Relating to the distribution of assessments charged by Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1.

**SB 1866**, Relating to the creation of the Dickinson Management District No. 1; providing authority to impose an assessment, impose a tax, and issue bonds.

**SB 1867**, Relating to the creation of the NASA Area Management District; providing authority to impose an assessment, impose a tax, and issue bonds.

**SB 1870**, Relating to the board of directors of the Permian Basin Underground Water Conservation District; validating certain district actions and proceedings.

**SB 1871**, Relating to the creation of the Brazoria County Municipal Utility District No. 44; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute)

**SB 1875**, Relating to the creation of an additional county court at law in Hidalgo County.

**SB 1883**, Relating to the lands managed and controlled by the board of regents of The Texas A&M University System.

**SB 1888**, Relating to the creation of the Harris County Municipal Utility District No. 465; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**SB 1889**, Relating to the creation of the Harris County Municipal Utility District No. 464; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**SB 1894**, Relating to the creation, powers, management, and boundaries of certain utility districts and a water control and improvement district in Kaufman County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**SCR 36**, Honoring Paula C. Flowerday, executive director of the Texas Racing Commission, as she concludes her outstanding tenure with the agency.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **HOUSE BILL 1583 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 1583** at this time on its second reading:

**HB 1583**, Relating to the authority of an emergency services district to obtain information to determine whether the district's 9-1-1 emergency service fee is correctly billed, collected, and remitted.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

#### **Committee Amendment No. 1**

Amend **HB 1583** as follows:

On page 1, line 12, after "user," insert "This section does not apply to an incumbent local exchange company as defined in Section 51.002, Utilities Code."

On page 1, line 15, after "requires" insert the phrase "so long as that information and the format requested are readily available for the service provider's records".

The amendment to **HB 1583** 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.

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

**HB 1583** 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 1583 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 1583** 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 2233 ON THIRD 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 third reading and final passage:

**CSHB 2233**, Relating to state and certain local fiscal matters; providing a penalty.

The bill was read third time.

Senator Duncan offered the following amendment to the bill:

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

Amend Floor Amendment No. 1 on second reading to **CSHB 2233** on third reading on page 1, line 35 by striking "36" and replacing with "26".

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 on Third Reading.

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

**Floor Amendment No. 2 on Third Reading**

Amend **CSHB 2233** (Senate committee report) on third reading as follows:

(1) Immediately following SECTION 113 of the bill, insert the following appropriately numbered SECTION and renumber subsequent SECTIONS accordingly:

SECTION \_\_. Section 161.084, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) The sign must include the statement:

**PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTHWEIGHT.**

(f) The comptroller may accept gifts and grants from any public or private source to perform the comptroller's duties under this section.

(2) Insert the following appropriately numbered SECTION and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_. The comptroller shall adopt rules as necessary to implement Section 161.084, Health and Safety Code, as amended by this Act, not later than the 90th day 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. 2 on Third Reading.

Senator Wentworth offered the following amendment to the bill:

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

Amend **CSHB 2233** on third reading as follows:

On page \_\_, after line \_\_, insert the following appropriately numbered sections:

Section 1. Section 6.02(a), Tax Code, is amended to read as follows:

The ~~[(a) Except as otherwise provided by this section, the]~~ appraisal district's boundaries are the same as the county's boundaries. This section does not preclude the boards of directors of two or more adjoining appraisal districts from providing for the operation of a consolidated appraisal district by interlocal contract.

SECTION 2. Section 41.097(a), Education Code, is amended to read as follows:

(a) The total amount required under Section 41.093 for a district to purchase attendance credits under this subchapter for any school year is reduced by an amount equal to the product of the district's total costs under Section 6.06, Tax Code, for the ~~[central]~~ appraisal district or districts in which it participates multiplied by a percentage that is computed by dividing the total amount required under Section 41.093 by the total amount of taxes imposed in the district for that year less any amounts paid into a tax increment fund under Chapter 311, Tax Code.

SECTION 3. Section 41.210(b), Education Code, is amended to read as follows:

(b) As soon as practicable after the detachment and annexation of property, the chief appraiser of the appraisal district in which the property is located ~~[for the school district from which the property is detached]~~ shall send a written notice of the detachment and annexation to the owner of any property taxable in a different school district as a result of the detachment and annexation. The notice must include the name of the school district by which the property is taxable after the detachment and annexation.

SECTION 4. The following statutes are repealed:

- (1) Section 13.007, Education Code;
- (2) Sections 6.02(b)-(g), Tax Code;
- (3) Section 6.025, Tax Code; and
- (4) Section 6.03(m), Tax Code.

SECTION 5. (a) The changes in law made by this Act relating to the appraisal of property for ad valorem tax purposes apply only to the appraisal of property for a tax year that begins on or after January 1, 2006.

(b) The term of each appraisal district director in an appraisal district described by Section 6.025, Tax Code, as that law existed immediately before September 1, 2005, serving a staggered term that but for this subsection would expire after January 1, 2006, expires on January 1, 2006. The appraisal district board of directors shall fill the vacant directorships as soon as practicable after January 1, 2006, as provided by Section 6.03(l), Tax Code.

(c) Notwithstanding Section 6.03, Tax Code, a taxing unit is entitled to vote in 2005 for appraisal district directors for terms beginning on January 1, 2006, in each appraisal district in which the taxing unit will participate in 2006 under the law as amended by this Act. The voting entitlement of each taxing unit entitled to vote for directors in 2005 is determined for each appraisal district by dividing the total dollar amount of property taxes imposed by the taxing unit for the 2004 tax year in the county for which the appraisal district is established by the sum of the total dollar amount of property taxes imposed in that county for that year by each taxing unit that is entitled to vote for directors of that appraisal district under this subsection in 2005, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit located in two or more counties is entitled to vote in the appraisal district established for each county in which it is located, but only the taxes imposed in 2004 in the county for which a district is established are used to calculate the 2005 voting entitlement in that district.

(d) Notwithstanding Section 6.06, Tax Code, not later than September 15, 2005, the chief appraiser of each appraisal district shall revise the proposed 2006 budget for the district, if necessary, to account for the changes in law made by this Act.

(e) Notwithstanding Section 6.06, Tax Code, for the 2006 tax year, each taxing unit participating in an appraisal district in 2006 is allocated a portion of the amount of the 2006 budget for the district equal to the proportion that the total dollar amount of property taxes imposed in the county for which the district is established by the unit for the 2005 tax year bears to the sum of the total dollar amount of property taxes imposed in the county by each participating unit for that year. If a taxing unit participates in two or more appraisal districts in 2006, only the 2005 taxes imposed in the county for which a district is established are used to calculate the unit's cost allocations for 2006 in that district.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2006.

(b) Section \_\_ of this Act [beginning on page 2, line 11 of this amendment] takes effect September 1, 2005.

The amendment to **CSHB 2233** was read and failed of adoption by the following vote: Yeas 11, Nays 19.

Yeas: Barrientos, Eltife, Gallegos, Madla, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Lucio, Nelson, Ogdan, Staples, West, Williams.

Absent: Hinojosa.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 4 on Third Reading**

Amend **CSHB 2233** on third reading 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 5, Property Code, is amended by adding Section 5.014 to read as follows: Sec. 5.014. (a) This section applies only to property to which Section 1.04(2), Tax Code, applies. (b) A purchaser of property shall file a statement with the comptroller that specifies the purchase price of 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 **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 on Third Reading.

Senator Armbrister offered the following amendment to the bill:

### **Floor Amendment No. 5 on Third Reading**

Amend **CSHB 2233** on third reading by adding the following, 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 STAGES FOR THE SAN ANTONIO POOL

<u>INDEX WELL</u> <u>J-17 LEVEL</u> <u>MSL</u>	<u>COMAL</u> <u>SPRINGS</u> <u>FLOW CFS</u>	<u>CRITICAL</u> <u>PERIOD</u> <u>STAGE</u>	<u>WITHDRAWAL</u> <u>REDUCTION</u> <u>PERCENTAGE</u>
<u>&lt;665</u>	<u>N/A</u>	<u>I</u>	<u>10%</u>
<u>&lt;650</u>	<u>N/A</u>	<u>II</u>	<u>10%</u>
<u>&lt;640</u>	<u>&lt;150</u>	<u>III</u>	<u>10%</u>
<u>&lt;630</u>	<u>&lt;100</u>	<u>IV</u>	<u>10%</u>

TABLE 2 - CUMULATIVE CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES FOR THE UVALDE POOL

<u>INDEX WELL</u> <u>J-27 MSL FOR</u> <u>UVALDE POOL</u>	<u>CRITICAL</u> <u>PERIOD</u> <u>STAGE</u>	<u>WITHDRAWAL</u> <u>REDUCTION</u> <u>PERCENTAGE</u>
<u>N/A</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 reduce the volume of permitted withdrawals to 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 adjust 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, or the development board if the Environmental Flows Commission is not established, 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, or the development board if the Flows Commission is not 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 or the development board if the flows commission is not established, 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 or the development board if the flows commission is not established. 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 or the development board if the flows commission is not established 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 or the development board if the flows commission is not established 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 or the development board if the flows commission is not established 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 or the development board if the flows commission is not established 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 or the development board if the flows commission is not established, at intervals determined by the flows commission or the development board if the flows commission is not established, 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 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. 5 on Third Reading.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 6 on Third Reading**

Amend **CSHB 2233** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Chapter 202, Property Code, is amended by adding Section 202.008 to read as follows:

Sec. 202.008. REGULATION OF DISPLAY OF FLAG. (a) A property owners' association may not enforce a restrictive covenant that prohibits or restricts the display of the United States flag by a property owner on the owner's property unless the prohibition or restriction is clearly and specifically stated in the covenant.

(b) A restrictive covenant, rule, or other prohibition may not be adopted if the prohibition or restriction prevents a property owner from displaying the United States flag in a size not larger than three feet by five feet in a respectful manner on the owner's property.

(c) This section does not prohibit the adoption of a restrictive covenant or rule:

(1) allowing the display of the United States flag larger than three feet by five feet; or

(2) restricting the location of the display of the United States flag on an owner's property or the size of a flagpole that may be used for the display.

(d) For purposes of this section, the United States flag is displayed in a respectful manner if the flag is displayed in the manner provided by 4 U.S.C. Sections 6-8.

(e) A municipality or county may impose a fee of up to 50 dollars for any violation of subsection (a).

SECTION \_\_. Subsection (a), Section 202.008, Property Code, as added by this Act, applies to a restrictive covenant, rule, or other prohibition adopted before, 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 on Third Reading.

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

**CSHB 2233** as again amended was finally passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 120 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 120** at this time on its second reading:

**CSHB 120**, Relating to the creation of a donor education, awareness, and registry program, the establishment of an organ donor and tissue council, and anatomical gift donation.

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 120 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 120** 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 925 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 925** at this time on its second reading:

**HB 925**, Relating to creating an interagency work group on border issues.

The motion prevailed.

Senators Brimer, Deuell, and Estes 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 committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 925**, engrossed version, by adding a new SECTION 2 to read as follows and renumbering accordingly.

SECTION 2. Subtitle F, Title 4, Government Code, is amended by adding Chapter 490 to read as follows:

CHAPTER 490. TEXAS-MEXICO STRATEGIC  
INVESTMENT COMMISSION

Sec. 490.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas-Mexico Strategic Investment Commission.

(2) "Texas-Mexico border region" has the meaning assigned by Section 2056.002.

Sec. 490.002. PURPOSE. The ongoing economic stability and growth of Texas and the improved quality of life for all Texans is dependent in part on coordination with neighboring states. Texas and the Mexican border states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas face common challenges in the areas of infrastructure, health care, access to and availability of water, economic development and trade, and environmental protection. The commission will encourage a collaborative approach between Texas and neighboring Mexican states in specific areas so as to better address challenges and plan for the future.

Sec. 490.003. TEXAS-MEXICO STRATEGIC INVESTMENT COMMISSION; MEMBERS. (a) The Texas-Mexico Strategic Investment Commission is established.

(b) The commission is composed of:

(1) the border commerce coordinator or a designee;

(2) the executive director of the Texas Department of Transportation or a designee;

(3) the executive administrator of the Texas Water Development Board or a designee;

(4) the commissioner of state health services or a designee;

(5) the chair of the Railroad Commission or a designee; and

(6) the executive director of the Texas Commission on Environmental Quality or a designee.

(c) The border commerce coordinator shall serve as the chair of the commission.

Sec. 490.004. FUNCTIONS OF COMMISSION. (a) The commission shall:

(1) represent government agencies within the Texas-Mexico border region to help reduce regulations by improving communication and cooperation between federal, state, and local governments;

(2) examine trade issues between the United States and Mexico;

(3) study the flow of commerce at ports of entry between this state and Mexico, including the movement of commercial vehicles across the border, and establish a plan to aid that commerce and improve the movement of those vehicles;

(4) work with federal officials to resolve transportation issues involving infrastructure, including roads and bridges, to allow for the efficient movement of goods and people across the border between Texas and Mexico;

(5) work with federal officials to create a unified federal agency process to streamline border crossing needs;

(6) identify problems involved with border truck inspections and related trade and transportation infrastructure;

(7) work to increase funding for the North American Development Bank to assist in the financing of water and wastewater facilities;

(8) explore the sale of excess electric power from Texas to Mexico;

(9) identify areas of environmental protection that need to be addressed cooperatively between Texas and the Mexican states;

(10) identify common challenges to health care on which all states can collaborate; and

(11) develop recommendations, when possible, for addressing border challenges.

(b) The commission shall work with local governments, metropolitan planning organizations, and other appropriate community organizations in the Texas Department of Transportation's Pharr, Laredo, and El Paso transportation districts, and with comparable entities in Mexican states bordering those districts, to address the unique planning and capacity needs of those areas. The commission shall assist those governments, organizations, and entities to identify and develop initiatives to address those needs.

(c) The commission shall work with industries and communities on both sides of the Texas-Mexico border to develop international industry cluster initiatives to capitalize on resources available in communities located adjacent to each other across the border.

(d) The commission may meet at least once a year with representatives from the Mexican states of Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas during the Border Governors Conference to discuss issues and challenges of the Texas-Mexico border region and develop strategic collaborative approaches for addressing the challenges.

Sec. 490.005. FUNDING. (a) In addition to any amount appropriated by the legislature, the commission may request state agencies to apply for funds from the federal government or any other public or private entity. The commission may also solicit grants, gifts, and donations from private sources on the state's behalf. The use of a gift, grant, or donation solicited under this section must be consistent with the purposes of the commission.

(b) The commission shall review and may require reports of state agencies that receive appropriations, gifts, grants, donations, or endowments as a result of the commission's recommendations.

(c) A state agency may accept a gift, grant, donation, or endowment received as a result of the commission's recommendations.

The amendment to **HB 925** 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 Lucio offered the following amendment to the bill:

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

Amend **HB 925** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 772.010, Government Code, as added by Chapters 429 and 1339, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Sec. 772.010. BORDER COMMERCE COORDINATOR. (a) The governor shall designate a border commerce coordinator in the governor's office or the office of the secretary of state as determined by the governor. The coordinator shall:

- (1) examine trade issues between the United States, Mexico, and Canada;
- (2) act as an ombudsman for government agencies within the Texas and Mexico border region to help reduce regulations by improving communication and cooperation between federal, state, and local governments;

(3) study the flow of commerce at ports of entry between this state and Mexico, including the movement of commercial vehicles across the border,<sup>[5]</sup> and establish a plan to aid that commerce and improve the movement of those vehicles;

(4) [~~3~~] work with federal officials to resolve transportation issues involving infrastructure, including roads and bridges, to allow for the efficient movement of goods and people across the border between Texas and Mexico;

(5) [~~4~~] work with federal officials to create a unified federal agency process to streamline border crossing needs;

(6) [~~5~~] work to increase funding for the North American Development Bank to assist in the financing of water and wastewater facilities; and

(7) [~~6~~] explore the sale of excess electric power from Texas to Mexico.

(b) The governor shall appoint a border commerce coordinator to serve at the will of the governor in the governor's office or in the office of the secretary of state and may select the secretary of state as the coordinator.

(c) The coordinator shall work with the interagency work group established under Section 772.011, and with local governments, metropolitan planning organizations, and other appropriate community organizations adjacent to the border of this state with the United Mexican States, and with comparable entities in Mexican states adjacent to that border, to address the unique planning and capacity needs of those areas. The coordinator shall assist those governments, organizations, and entities to identify and develop initiatives to address those needs. Before January 1 of each year, the coordinator shall submit to the presiding officer of each house of the legislature a report of the coordinator's activities under this subsection during the preceding year.

(d) The coordinator shall:

(1) work with private industry and appropriate entities of Texas and the United States to require that low-sulfur fuel be sold along highways in Texas carrying increased traffic related to activities under the North American Free Trade Agreement; and

(2) work with representatives of the government of Mexico and the governments of those Mexican states bordering Texas to increase the use of low-sulfur fuel.

(b) Chapter 772, Government Code, is amended by adding Sections 772.0101 and 772.0102 to read as follows:

Sec. 772.0101. BORDER INSPECTION, TRADE, AND TRANSPORTATION ADVISORY COMMITTEE. (a) The border commerce coordinator shall establish and appoint the members of the Border Inspection, Trade, and Transportation Advisory Committee. The members must include representatives of the Texas Department of Transportation, the Department of Public Safety of the State of Texas, the Office of State-Federal Relations, the United States Department of Transportation, the Federal Motor Carrier Safety Administration, and other representatives of state and federal agencies involved in border crossing issues. Chapter 2110 does not apply to the size, composition, or duration of the Border Inspection, Trade, and Transportation Advisory Committee.

(b) The coordinator shall work with the advisory committee and the interagency work group established under Section 772.011 to:

(1) identify problems involved with border truck inspections and related trade and transportation infrastructure; and

(2) develop recommendations for addressing those problems.

(c) The coordinator shall work with the advisory committee and appropriate agencies of Texas, the United States, and Mexico to develop initiatives to mitigate congestion at ports of entry at the Mexican border by conducting in Mexico inspections of trucks entering Texas. In developing the initiatives, the coordinator shall give consideration to similar initiatives proposed or implemented at the border of the United States and Canada.

(d) The coordinator shall report quarterly to the presiding officer of each house of the legislature on the findings and recommendations of the advisory committee.

Sec. 772.0102. TRADE AND COMMERCE PLAN. (a) The border commerce coordinator shall develop, in conjunction with representatives of chambers of commerce, metropolitan planning organizations adjacent to the United Mexican States, and private industry groups, and with the advice of the interagency work group established under Section 772.011, a comprehensive trade and commerce plan for the region designed to:

(1) increase trade by attracting new business ventures;

(2) support expansion of existing industries; and

(3) address workforce training needs.

(b) The plan must cover five-year, 10-year, and 15-year periods.

(c) The coordinator shall work with industries and communities on both sides of the border to develop international industry cluster initiatives to capitalize on resources available in communities located adjacent to each other across the border.

(d) The coordinator shall conduct annual conferences of interested persons, working with chambers of commerce and universities of this state along the Texas and Mexico border region, and shall host those conferences at no cost to the coordinator.

The purposes of the conferences are to:

(1) make the trade and commerce plan public;

(2) report on updated findings and progress of implementation of the plan;

and

(3) develop new international industry cluster initiatives.

(c) This section takes effect only if a specific appropriation for the implementation of this section is provided in S.B. No. 1 (General Appropriations Act), Acts of the 79th Legislature, Regular Session, 2005. If no specific appropriation is provided in the General Appropriations Act, this section has no effect.

The amendment to **HB 925** 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 **HB 925** by adding the following section and numbering it appropriately:

SECTION .\_\_. Section 502.054(a), Transportation Code is amended to read as follows

(a) The department, through its director, may enter into an agreement with an authorized officer of another jurisdiction, including another state of the United States, a foreign country or a state, province, territory, or possession of a foreign country, to provide for:

(1) the registration of vehicles by residents of this state and nonresidents on an allocation or mileage apportionment plan, as under the International Registration Plan; and

(2) the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions.

The amendment to **HB 925** 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 Seliger offered the following amendment to the bill:

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

Amend **HB 925** in Section 1 of the bill, in added Section 772.011(c), Government Code (Senate committee printing page 3, line 57) as amended by House Committee Amendment No. 1 by Chavez (Senate committee printing page 2, lines 55-56), by striking "quarterly" and substituting "once each year".

The amendment to **HB 925** 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 Lucio offered the following amendment to the bill:

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

Amend **HB 925** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0197 to read as follows:

Sec. 411.0197. ADVISORY OVERSIGHT COMMUNITY OUTREACH COMMITTEE. (a) The commission shall establish an Advisory Oversight Community Outreach Committee in the department and may adopt rules for the implementation and operation of the committee. The committee shall meet at the times and places specified by commission rule or at the call of the presiding officer or any two members.

(b) The commission shall appoint the members of the committee, which must include border crossing bridge owners, persons serving in the capacity of director of entities governing ports of entry, community leaders, planning developers, mayors, or persons designated by mayors, of the major municipalities in the area of the border of this state and the United Mexican States, representatives of law enforcement agencies, and representatives of the general public.

(c) The commission shall designate the presiding officer of the committee from among the committee's members. The presiding officer serves at the will of the commission.

(d) The committee shall:

(1) document to the commission trade-related incidents involving department personnel;

(2) develop recommendations and strategies to improve community relations, department personnel conduct, and the truck inspection process at this state's ports of entry; and

(3) act as ombudsman between the department and the communities located and residents residing in the area of the border of this state and the United Mexican States and between the department and the department's personnel.

(e) In determining action to be taken on the information and recommendations received from the committee, the commission shall consider the importance of trade with the United Mexican States, the safety of the traveling public, preservation of the highway system, applicable federal laws and regulations, and the concerns expressed by communities.

(f) Not later than January 1 of each odd-numbered year the commission shall submit to the lieutenant governor, speaker of the house of representatives, and each other member of the legislature a report documenting the committee's recommendations and comments, incident reports received by the committee, and the actions taken by the commission and department to address those matters.

The amendment to **HB 925** 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 **HB 925** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 112.003, Health and Safety Code, is amended to read as follows:

Sec. 112.003. POWERS AND DUTIES. (a) The foundation shall raise money from other foundations, governmental entities, and other sources to finance health programs [~~in this state~~] in areas adjacent to the border with the United Mexican States.

(b) The foundation shall:

(1) identify and seek potential partners in the private sector that will afford this state the opportunity to maintain or increase the existing levels of financing of health programs and activities;

(2) engage in outreach efforts to make the existence of the office known to potential partners throughout this area [~~state~~]; and

(3) perform any other function necessary to carry out the purposes of this section.

(c) The department shall review programs from all agencies under its control to determine which projects should be available to receive money under Subsection (a).

(d) The foundation has the powers necessary and convenient to carry out its duties.

SECTION \_\_\_\_ . Section 112.004, Health and Safety Code, is amended to read as follows:

Sec. 112.004. ADMINISTRATION. (a) The foundation is governed by a board of five directors [~~appointed by the Texas Board of Health from individuals recommended by the commissioner~~]. Vacancies shall be filled by a vote of the board of directors of the foundation from individuals recommended by the department.

(b) Members of the board of directors serve for staggered terms of six years, with as near as possible to one-third of the members' terms expiring every two years.

(c) Appointments to the board of directors shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The board of directors shall ensure that the foundation remains eligible for an exemption from federal income tax under Section 501(a), Internal Revenue Code of 1986, as amended, by being listed as an exempt organization under Section 501(c)(3) of that code, as amended.

The amendment to **HB 925** 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 Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 925** 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, Deuell, Estes.

### HOUSE BILL 925 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 925** be placed on its third reading and final passage.

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

Yeas: Armbrister, Averitt, Barrientos, Carona, Duncan, Ellis, Eltife, 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, Estes.

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

### COMMITTEE SUBSTITUTE HOUSE BILL 2894 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2894** at this time on its second reading:

**CSHB 2894**, Relating to the marketing and sale of certain license plates by a private vendor.

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 2894 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2894** 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 1317 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1317** at this time on its second reading:

**CSHB 1317**, Relating to the licensing and regulation of certain electricians.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1317** (Senate committee printing) in SECTION 2 of the bill, by striking Subdivision (8), Subsection (a), Section 1305.003, Occupations Code (page 2, lines 1 through 7) and substituting the following:

(8) electrical ~~[maintenance]~~ work if:

(A) the work is performed by a person who does not engage in electrical work for the public ~~[regularly employed as a maintenance person at the building or premises];~~

(B) the work is performed by a person regularly employed as a maintenance person or maintenance electrician for a ~~[in conjunction with the] business [in which the person is employed];~~ and

(C) the ~~[person does not engage in]~~ electrical work does not involve the installation of electrical equipment during new construction as defined by rules adopted under Chapter 151, Tax Code ~~[for the public];~~

The amendment to **CSHB 1317** 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 1317** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Paragraphs (A) and (B), Subdivision (5), Subsection (a), Section 1305.003, Occupations Code (page 1, lines 44 and 46), strike "affiliated" each place the term appears.

(2) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 2, line 65), between "required for the" and "assembly", insert "construction or".

(3) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 2, line 68), strike "person licensed as an installer" and substitute "manufacturer or installer licensed".

(4) In SECTION 2 of the bill, in proposed Subdivision (20), Subsection (a), Section 1305.003, Occupations Code (page 3, line 1), strike "person's".

(5) In Subdivision (1), Subsection (b), SECTION 12, of the bill (page 4, line 62), between "on-the-job" and "experience", insert "electrical".

(6) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. In the event of a conflict between a provision of this Act and another Act passed by the 79th Legislature, Regular Session, 2005, that becomes law, this Act prevails and controls regardless of the relative dates of enactment.

The amendment to **CSHB 1317** 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 **CSHB 1317**, in SECTION 2 of the bill, by striking Section 1305.003(a)(20), Occupations Code, (Senate committee printing page 2, line 65 through page 3, line 2) and substituting the following:

(20) electrical work required for the construction and assembly of HUD-code manufactured housing or modular housing and building units, other than the installation of service entrance conductors, that is performed by a licensed manufacturer or installer under Chapter 1201 or 1202, as applicable, if work performed is within the scope of the license as defined by applicable statutes and administrative rules.

The amendment to **CSHB 1317** 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.

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

**CSHB 1317** 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 1317 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1317** 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 2221 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **HB 2221** at this time on its second reading:

**HB 2221**, Relating to the territory of a public junior college district and to the provision of services by a junior college district to students residing outside the district.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Barrientos, Carona, Deuell, Ellis, Eltife, Gallegos, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Williams.

Nays: Armbrister, Averitt, Brimer, Duncan, Estes, Fraser, Harris, Jackson, Staples, Zaffirini.

Absent: Janek.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2221** (Senate committee printing) by striking all beneath the enacting clause and substituting the following:

SECTION 1. Subchapter A, Chapter 130, Education Code, is amended by adding Section 130.0081 to read as follows:

Sec. 130.0081. AGREEMENT WITH JUNIOR COLLEGE DISTRICT. (a) A junior college district may enter into an agreement with any person, including an employer, political subdivision, or other entity, to provide educational services. The agreement must provide for the entity to cover at least any cost to the district of providing the services that exceeds the amount of tuition and fees that would be charged to a student who resides in the district and is enrolled in a substantially similar course.

(b) Students who are enrolled in a course under the agreement are entitled to pay tuition and fees at the rate applicable to a student who resides in the district.

SECTION 2. Subchapter D, Chapter 130, Education Code, is amended by adding Section 130.074 to read as follows:

Sec. 130.074. EXTENDING BOUNDARIES OF JUNIOR COLLEGE DISTRICT IN DISTRICT'S SERVICE AREA. (a) The governing board of a junior college district may order an election on the question of establishing expanded boundaries for the junior college district to encompass all of the territory located within the district's service area established by Subchapter J, other than territory located in the service area of another junior college district, if more than 35 percent of the total number of students who enrolled in the junior college district in the most recent academic year resided outside of the existing junior college district.

(b) The governing board of a junior college district may order an election on the question of establishing expanded boundaries for the junior college district to encompass part of the territory located within the district's service area established by Subchapter J, other than territory located in the service area of another junior college district, if more than 15 percent of the high school graduates for each of the preceding five academic years in the territory proposed to be added to the district have enrolled in the junior college district.

(c) Before the governing board of the junior college district may order an annexation election under this section, the board must hold a public hearing within the territory proposed for annexation. The hearing must be held not earlier than the 45th day and not later than the 30th day before the date the board issues the order for the election.

(d) Not later than the 30th day before the date of a public hearing held under Subsection (c), the board shall complete and publish a service plan for the territory proposed for annexation. The service plan is informational only and must include:

- (1) the maximum property tax rate that the board may adopt;
- (2) the most recent property tax rate adopted by the board and any tax rate increase proposed or anticipated to occur after the annexation;
- (3) the tuition rate that would apply after annexation for a student who resides in the district;
- (4) the tuition and fees that would apply to a student who resides outside the district;
- (5) plans for providing educational services in the territory, including proposed or contemplated campus and facility expansion in the territory;
- (6) plans for cooperation with local workforce agencies; and
- (7) any other elements consistent with this subchapter prescribed by rule of the Texas Higher Education Coordinating Board.

(e) The governing board shall issue an order for an election to be held in the territory proposed for annexation on a uniform election date that is not less than 45 days after the date of the order and that affords enough time to hold the election in the manner provided by law. The board shall give notice of the election in the manner provided by law for notice by the county judge of a general election.

(f) The governing board shall conduct the election in accordance with the Election Code.

(g) The election shall be held only in the territory proposed for annexation, and only those registered voters residing in that territory are permitted to vote.

(h) The ballot shall be printed to provide for voting for or against the proposition: "Annexation of the following territory for junior college purposes: \_\_\_\_\_", with the blank filled in with a description of the territory proposed for annexation.

(i) The measure is adopted if the measure receives a favorable vote of a majority of those voters voting on the measure.

(j) If the measure is adopted, the governing board of the district shall enter an order declaring the result of the election and that the territory is annexed to the junior college district on the date specified in the order.

(k) If the proposition is adopted and the governing board is elected from single-member districts, the governing board in the annexation order entered under Subsection (j) shall assign the new territory to one or more of the current single-member districts.

(l) The annexation of territory and any resulting change in the single-member districts from which members of the governing board are elected does not affect the term of a member of the governing board serving on the date the annexation or redistricting takes effect. The governing board shall provide that each member of the governing board representing a single-member district who is holding office on the date the annexation takes effect serve the remainder of the member's term and represent a single-member district in the expanded junior college district for that term regardless of whether the member resides in that single-member district.

(m) If the measure is not adopted at the election, another election to annex all or part of the same territory may not be held earlier than one year after the date of the election at which the measure is not approved.

SECTION 3. This Act does not affect the validity of an agreement entered into before the effective date of this Act between a junior college district and another person for the provision of educational services by the district.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment to **HB 2221** 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 Ellis offered the following amendment to the bill:

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

Amend **HB 2221** by adding a new appropriately numbered section to read as follows:

SECTION \_\_. Subchapter D, Chapter 130, Education Code, is amended by adding Section 130.0712 to read as follows:

Sec. 130.0712. ANNEXATION OF TERRITORY BY ELECTION FOR CERTAIN DISTRICTS. (a) Notwithstanding any other provision of this subchapter, a junior college district that includes within its territory all or part of a school district with a student enrollment of more than 170,000 may annex territory by election only as provided by this section. The territory to be annexed must be located within:

(1) the service area of the junior college district; or

(2) a municipality or school district that is partly located within the junior college district.

(b) The governing board of the junior college district may order an election on the question of establishing expanded boundaries for the junior college district by annexing all or part of the territory of a municipality or school district described by Subsection (a) if that territory is not currently located in the junior college district. The election shall be held only in the territory proposed for annexation. The order for the election must:

(1) describe the territory to be annexed; and

(2) set a date for the election, which must be the next uniform election date that is more than 65 days after the date of the order and that affords enough time to hold the election in the manner provided by law.

(c) The governing board shall conduct the election in accordance with the Election Code.

(d) Any registered voter residing within the territory proposed for annexation is entitled to vote at the election.

(e) The ballot shall be printed to provide for voting for or against the proposition: "Annexation by \_\_\_\_\_ (with the blank filled in with the name of the junior college district) of the following territory for junior college purposes: \_\_\_\_\_ (with the blank filled in with a description of the territory proposed for annexation)."

(f) The proposition is adopted if approved by a majority of the voters voting at the election. If the proposition is adopted, the governing board of the district shall enter an order declaring the result of the election and that the territory is annexed for junior college purposes.

(g) If the proposition is adopted and the governing board is elected from single-member districts, the governing board in the annexation order entered under Subsection (f) shall assign the new territory to one or more of the current single-member districts. The governing board shall divide the territory of the expanded junior college district into the appropriate number of single-member districts before the next election for members of the governing board.

(h) If the proposition is not adopted, another election to annex the same territory may not be held earlier than one year after the date of the election in which the proposition is defeated.

(i) The annexation of territory to a junior college district under this section and any resulting change in the single-member districts from which members of the governing board are elected does not affect the term of a member of the governing board serving on the date the annexation or redistricting takes effect. The governing board shall provide that each member of the governing board representing a single-member district who is holding office on the date the territory is annexed to the

district serves the remainder of the member's term and represents a new single-member district for that term regardless of whether the member resides in the single-member district.

(j) If the junior college district annexes under this section territory comprising all of a municipality or school district, the governing board by order may annex for junior college purposes any territory later annexed by or added to the municipality or school district.

(k) A junior college district may not annex under this section territory that is included within the boundaries of another junior college district.

The amendment was read.

Senator Ellis withdrew Floor Amendment No. 2.

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

**HB 2221** 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: Jackson, Zaffirini.

#### **HOUSE BILL 2221 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 2221** be placed on its third reading and final passage.

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

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

Nays: Armbrister, Brimer, Fraser, Harris, Staples, Zaffirini.

Absent: Averitt.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7.

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

Nays: Armbrister, Averitt, Brimer, Fraser, Harris, Staples, Zaffirini.

**(Senator Carona in Chair)**

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3001 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 3001** at this time on its second reading:

**CSHB 3001**, Relating to the amount of the annual constitutional appropriation to certain agencies and institutions of higher education and to the allocation of those funds to those agencies and institutions.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3001** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 62.021, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) In each state ~~[Each]~~ fiscal year beginning with the state fiscal year ending August 31, 2008, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated for that year by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation ~~[allocations]~~ for ~~[medical units and]~~ the Texas State Technical College System~~[-and an additional allocation for Texas Southern University for compliance with the Texas Desegregation Plan]~~. The annual amounts allocated by the formula are as follows:

(1) \$3,434,348 to ~~[\$5,256,817 Texas A&M University Commerce, including an allocation of \$1,027,070 to Texas A&M University Texarkana; \$8,818,023 Lamar University, including an allocation of \$491,946 to Lamar Institute of Technology, an allocation of \$743,967 to Lamar University at Orange and an allocation of \$2,336,605 to Lamar University at Port Arthur;~~

~~[\$3,007,669] Midwestern State University;~~

(2) \$26,137,233 to the ~~[\$18,021,033]~~ University of North Texas;

(3) \$8,139,391 to the University of North Texas Health Science Center at Fort Worth;

(4) \$12,882,348 to ~~[\$7,131,692]~~ The University of Texas–Pan American;

(5) \$4,186,790~~[-including an allocation of \$1,050,580]~~ to The University of Texas at Brownsville;

(6) \$7,025,771 to ~~[\$6,633,109]~~ Stephen F. Austin State University;

(7) to the following component institutions of the ~~[\$3,640,000 University of North Texas Health Science Center at Fort Worth;~~

~~[\$26,132,524] Texas State University System;~~

(A) \$11,210,508 to Lamar University;

(B) \$1,115,048 to Lamar State College–Orange;

(C) \$1,190,119 to Lamar State College–Port Arthur;

(D) \$3,585,802 ~~[Administration and the following component institutions, including an allocation of \$3,887,211]~~ to Angelo State University;

(E) \$9,916,306 [~~an allocation of \$5,864,608~~] to Sam Houston State University;

(F) \$19,799,276 [~~an allocation of \$14,479,112~~] to Texas State University–San Marcos;

(G) \$2,043,772 [~~an allocation of \$1,635,271~~] to Sul Ross State University; and

(H) \$379,831 [~~an allocation of \$266,322~~] to Sul Ross State University–Rio Grande College;

(8) \$11,156,463 to [~~\$7,191,493~~] Texas Southern University [~~(includes allocation of \$1,000,000 for compliance with Texas Desegregation Plan)~~];

(9) \$26,829,477 to [~~\$20,961,881~~] Texas Tech University;

(10) \$17,849,441 to [~~\$7,735,000~~] Texas Tech University Health Sciences Center;

(11) \$8,424,209 to [~~\$6,974,897~~] Texas Woman's University;

(12) to the following component institutions of the [~~\$36,952,989~~] University of Houston System:

(A) \$35,276,140 [~~Administration and the following component institutions, including an allocation of \$25,986,116~~] to the University of Houston;

(B) \$2,282,883 [~~an allocation of \$1,659,449~~] to the University of Houston–Victoria;

(C) \$6,001,337 [~~an allocation of \$3,853,447~~] to the University of Houston–Clear Lake; and

(D) \$9,628,151 [~~an allocation of \$5,453,977~~] to the University of Houston–Downtown;

(13) to the [~~\$12,692,873 The~~] following component institutions [~~components~~] of The Texas A&M University System:

(A) \$8,278,993 [~~including an allocation of \$3,687,722~~] to Texas A&M University–Corpus Christi;

(B) \$3,130,211 [~~an allocation of \$1,778,155~~] to Texas A&M International University;

(C) \$5,052,232 [~~an allocation of \$3,555,651~~] to Texas A&M University–Kingsville; [~~and~~]

(D) \$4,776,890 [~~an allocation of \$3,671,345~~] to West Texas A&M University;

(E) \$5,345,678 to Texas A&M University–Commerce; and

(F) \$1,646,352 to Texas A&M University–Texarkana; and

(14) \$5,775,000 to the [~~\$3,850,000~~] Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:

(A) Texas State Technical College–Harlingen;

(B) Texas State Technical College–Marshall;

(C) Texas State Technical College--West Texas [~~Sweetwater~~]; and

(D) Texas State Technical College–Waco.

(a-1) In each year of the state fiscal biennium ending August 31, 2007, an eligible institution is entitled to receive an amount allocated in accordance with this section from funds appropriated for that year by Section 17(a), Article VII, Texas

Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. The comptroller may not issue a warrant from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation for the Texas State Technical College System. The annual amounts allocated by the formula are as follows:

- (1) \$2,289,565 to Midwestern State University;
- (2) \$17,424,822 to the University of North Texas;
- (3) \$5,426,261 to the University of North Texas Health Science Center at

Fort Worth:

- (4) \$8,588,232 to The University of Texas–Pan American;
- (5) \$2,791,194 to The University of Texas at Brownsville;
- (6) \$4,683,847 to Stephen F. Austin State University;
- (7) to the following component institutions of the Texas State University

System:

- (A) \$7,473,672 to Lamar University;
- (B) \$743,365 to Lamar State College–Orange;
- (C) \$793,412 to Lamar State College–Port Arthur;
- (D) \$2,390,535 to Angelo State University;
- (E) \$6,610,870 to Sam Houston State University;
- (F) \$13,199,517 to Texas State University–San Marcos;
- (G) \$1,362,515 to Sul Ross State University; and
- (H) \$253,220 to Sul Ross State University–Rio Grande College;
- (8) \$7,437,642 to Texas Southern University;
- (9) \$17,886,318 to Texas Tech University;
- (10) \$11,899,627 to Texas Tech University Health Sciences Center;
- (11) \$5,616,139 to Texas Woman’s University;
- (12) to the following component institutions of the University of Houston

System:

- (A) \$23,517,427 to the University of Houston;
- (B) \$1,521,922 to the University of Houston–Victoria;
- (C) \$4,000,892 to the University of Houston–Clear Lake; and
- (D) \$6,418,767 to the University of Houston–Downtown;
- (13) to the following component institutions of The Texas A&M University

System:

- (A) \$5,519,329 to Texas A&M University–Corpus Christi;
- (B) \$2,086,807 to Texas A&M International University;
- (C) \$3,368,155 to Texas A&M University–Kingsville;
- (D) \$3,184,593 to West Texas A&M University;
- (E) \$3,563,785 to Texas A&M University–Commerce; and
- (F) \$1,097,568 to Texas A&M University–Texarkana; and

(14) \$3,850,000 to the Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:

- (A) Texas State Technical College-Harlingen;
- (B) Texas State Technical College-Marshall;
- (C) Texas State Technical College-West Texas; and
- (D) Texas State Technical College-Waco.

(a-2) Except as otherwise provided by this subsection, Subsection (a-1) and this subsection expire September 1, 2007. Notwithstanding Subsection (a), the annual allocation of funds made under Subsection (a) applies only if Section 62.024 is amended by the 79th Legislature, Regular Session, 2005, to increase the amount of the appropriation made under Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008. If Section 62.024 is not amended by the 79th Legislature, Regular Session, 2005, as described by this subsection, then the annual allocation provided by Subsection (a-1) continues to apply to each state fiscal year following the state fiscal biennium ending August 31, 2007, and Subsection (a-1) and this subsection do not expire.

SECTION 2. Section 62.024, Education Code, is amended to read as follows:

Sec. 62.024. AMOUNT OF ALLOCATION INCREASED. In accordance with ~~[Article VII,]~~ Section 17(a), Article VII, ~~[of the]~~ Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsection is increased to \$262.5 million. Before the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsection is \$175 million.

SECTION 3. Section 62.027(c), Education Code, is amended to read as follows:

(c) The increase provided by the amendment to Section 62.024 enacted by the 79th Legislature, Regular Session, 2005, in the amount of the appropriation made under Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008, constitutes the increase in accordance with Section 17(a) that the legislature considers appropriate for the five-year period ~~[is valid and effective]~~ beginning September 1, 2005 ~~[1995]~~.

SECTION 4. Section 62.021(e), Education Code, is repealed.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) Sections 2 and 3 of this Act take effect only if this Act is approved by a vote of two-thirds of the membership of each house of the legislature as required by Section 17(a), Article VII, Texas Constitution.

The amendment to **CSHB 3001** 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 3001** 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 3001 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 3001** be placed on its third reading and final passage.

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

Nays: Janek.

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

**BILLS AND RESOLUTIONS SIGNED**

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

**HB 56, HB 57, HB 68, HB 93, HB 209, HB 240, HB 248, HB 252, HB 258, HB 291, HB 322, HB 345, HB 352, HB 410, HB 422, HB 481, HB 540, HB 544, HB 549, HB 551, HB 598, HB 657, HB 788, HB 798, HB 841, HB 856, HB 874, HB 956, HB 993, HB 1045, HB 1059, HB 1095, HB 1098, HB 1107, HB 1137, HB 1170, HB 1179, HB 1213, HB 1224, HB 1232, HB 1235, HB 1267, HB 1283, HB 1318, HB 1339, HB 1346, HB 1394, HB 1403, HB 1458, HB 1481, HB 1485, HB 1586, HB 1599, HB 1630, HB 1642, HB 1645, HB 1685, HB 1697, HB 1705, HB 1734, HB 1747, HB 1791, HB 1833, HB 1892, HB 1938, HB 2017, HB 2018, HB 2019, HB 2039, HB 2080, HB 2108, HB 2172, HB 2193, HB 2200, HB 2223, HB 2272, HB 2275, HB 2331, HB 2371, HB 2390, HB 2587, HB 2701, HB 2746, HB 2868, HB 2885, HB 2900, HB 2902, HB 2921, HB 2932, HB 3010, HB 3098, HB 3111, HB 3113, HB 3163, HB 3195, HB 3199, HB 3263, HB 3481, HB 3527, HB 3534, HB 3546, HB 3547, HB 3569, HB 3574, HB 3582, HCR 6, HCR 195, HJR 87.**

**HOUSE BILL 1546 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1546** at this time on its second reading:

**HB 1546**, Relating to the administration and use of the Texas rail relocation and improvement fund and the issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of certain rail facilities.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1546** (committee printing version) as follows:

(1) In SECTION 1 of the bill, in added Section 201.973(f)(1), Transportation Code (page 2, line 69), strike "principal" and substitute "debt service".

(2) Add the following at the end of SECTION 1 of the bill (page 4, between lines 22-23):

Sec. 201.978. ACQUISITION AND DISPOSAL OF PROPERTY. (a) The department may acquire by purchase property or an interest in property necessary or convenient for one or more of the purposes for which obligations may be issued under Section 201.973(d).

(b) Property acquired under Subsection (a) may be used for any transportation purpose.

(c) Notwithstanding Chapter 202, the department may sell or lease property acquired under Subsection (a) that is no longer needed for a transportation purpose. Revenue from a sale or lease shall be deposited in the fund.

The amendment to **HB 1546** 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 Staples and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1546** 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 1546 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 1546** 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 54 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 54** at this time on its second reading:

**HJR 54**, Proposing a constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of certain rail facilities.

The resolution 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 JOINT RESOLUTION 54 ON THIRD READING**

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 54** 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 2815 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2815** at this time on its second reading:

**HB 2815**, Relating to the Concho River Watermaster Program.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2815** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 11, Water Code, is amended by adding Subchapter K to read as follows:

#### SUBCHAPTER K. CONCHO RIVER WATERMASTER PROGRAM

Sec. 11.551. DEFINITIONS. In this subchapter:

(1) "Advisory committee" means the Concho River Watermaster Advisory Committee appointed under Section 11.557.

(2) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(3) "Program" means the Concho River Watermaster Program, a division of the South Texas Watermaster established by the Texas Commission on Environmental Quality and operating pursuant to Rules and Regulations promulgated by the Texas Commission on Environmental Quality.

(4) "Water right holder" means a person who holds a certificated right in water under the jurisdiction of the watermaster acting under this subchapter.

(5) "Water user" means a person, including a water right holder, who uses water under the jurisdiction of the watermaster acting under this subchapter.

Sec. 11.552. CONCHO RIVER WATERMASTER PROGRAM. The Concho River Watermaster Program is established to ensure compliance with water rights in the area described by Section 11.553.

Sec. 11.553. JURISDICTION OF WATERMASTER. The geographical and jurisdictional boundaries of a watermaster acting under this subchapter shall be the Concho River segment of the Colorado River Basin that includes the Concho River and all of its tributaries, downstream on the main stem of the Concho River to a point on the Concho River prior to reaching, and upstream of the O.H. Ivie Reservoir located at and including the diversion point of Certificate of Adjudication No. 14-1393 (River Order No. 4954450000) in Concho County.

Sec. 11.554. WATERMASTER; APPOINTMENT OF DEPUTY WATERMASTER.

(a) The watermaster for the South Texas Watermaster Program shall serve as the watermaster for the program.

(b) The watermaster shall appoint a deputy watermaster, who must reside in the area described by Section 11.553.

(c) The watermaster or deputy watermaster may not be:

(1) a water right holder in the river basin or segment of the river basin under the program's jurisdiction;

(2) a purchaser of water from a water right holder in the river basin or segment of the river basin under the program's jurisdiction; or

(3) a landowner of any land adjacent to the river or segment of the river under the program's jurisdiction.

Sec. 11.555. DUTIES AND AUTHORITY OF WATERMASTER. The watermaster has the same duties and authority under the Concho River Watermaster Program as the watermaster has under the South Texas Watermaster Program.

Sec. 11.556. APPOINTMENT OF NONVOTING MEMBER OF SOUTH TEXAS WATERMASTER ADVISORY COMMITTEE. (a) The executive director shall appoint a person who resides in the area described by Section 11.553 to the South Texas Watermaster Advisory Committee.

(b) Except as otherwise provided by this section, Section 11.3261 applies to a member of the South Texas Watermaster Advisory Committee appointed under this section.

(c) A member of the South Texas Watermaster Advisory Committee appointed under this section may attend all meetings of that committee and enter into discussions at the meetings, but the person may not vote at the meetings.

Sec. 11.557. CONCHO RIVER WATERMASTER ADVISORY COMMITTEE.

(a) The Concho River Watermaster Advisor Committee consists of 13 members appointed by the executive director as follows:

(1) six members selected from nominations received one representing the City of Paint Rock and one representing each of the following stream segments or tributaries of the Concho River: Spring Creek, Dove Creek, South Concho, Middle Concho and main stem of the Concho below Certificate of Adjudication No. 14-1337 (River Order No. 5460010000);

(2) six members selected from a list of candidates submitted by the City of San Angelo; and

(3) one member selected at the executive director's discretion.

(b) If the executive director does not receive nominations or a list of candidates as specified under Subsection (a), after reasonable notice the executive director may appoint to the advisory committee the appropriate number of members selected at the executive director's discretion.

(c) If a vacancy occurs on the advisor committee, the executive director shall fill the vacancy for the unexpired term by appointing a person selected in the same manner as the person being replaced.

(d) An advisor committee member shall serve for a term of two years.

(e) An advisory committee member serves without compensation.

(f) The advisor committee shall:

(1) provide recommendations to the watermaster and deputy watermaster regarding activities of benefit to the water right holders in the administration and distribution of water;

(2) advise the watermaster and deputy watermaster on complaints and enforcement matters;

(3) review, hold a public hearing on, and make recommendations on the annual budget proposed by the watermaster so as to cover all costs of the Concho River Watermaster Program; and

(4) provide assistance as requested by the watermaster, deputy watermaster, or water right holders.

(g) Actions of the advisory committee in which a vote is taken must receive a two-thirds affirmative vote of the members present to be approved.

Sec. 11.558. FEES. Fees assessed under the Concho River Watermaster Program shall be of the same type and rate as those assessed under the South Texas Watermaster Program but may be adjusted as necessary to pay all expenses of the Concho River Watermaster Program. All costs of the Concho River Watermaster Program shall be assessed solely upon the water rights holders subject to the Concho River Watermaster Program.

Sec. 11.559. REFERENDUM. (a) On or after September 1, 2009, a water right holder may petition the advisory committee to conduct a referendum on the continuation of the program.

(b) The advisory committee shall conduct a referendum if it receives a petition signed by at least 50 percent of the water right holders.

(c) A referendum under this section must be held on a uniform election date, as provided by Section 41.001, Election Code.

(d) Only current water right holders are eligible to vote in the referendum.

(e) If at least 60 percent of the votes in the referendum favor discontinuing the program, the program shall be discontinued.

(f) A referendum under this section cannot be held more than once every four years.

(g) For purposes of this section, a water right holder shall be considered as one water rights holder regardless of the number or amount of water rights held under a permit or Certificate of Adjudication.

Sec. 11.560. COLORADO RIVER BASIN WATERMASTER PROGRAM. If a watermaster program is established for the entire Colorado River basin, the Concho River Watermaster Program is discontinued, and the area described by Section 11.553 is under the jurisdiction of the watermaster for the Colorado River Basin Watermaster Program.

Sec. 11.561. APPLICABILITY OF OTHER LAW AND COMMISSION RULES. A provision of this code or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of this subchapter applies to the program established under this subchapter.

SECTION 2. On the effective date of this Subchapter, the provisions of this Subchapter supersede any conflicting orders issued by the Texas Commission on Environmental Quality regarding a watermaster program for the Concho River segment described by Section 11.553, Water Code, as added by this Subchapter.

SECTION 3. The provisions added by this Subchapter take effect September 1, 2005.

The amendment to **HB 2815** 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 Madla and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2815** 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 2815 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2815** 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 1483 ON SECOND READING**

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1483** at this time on its second reading:

**HB 1483**, Relating to the method of payment for a concealed handgun license and the fee for a duplicate or modified license.

The bill was read second time.

Senator Eltife offered the following amendment to the bill:

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

Amend **HB 1483** (Senate committee printing) as follows:

(1) In the recital to SECTION 3 of the bill (page 1, line 60), strike "amending Subsection (d) and".

(2) In SECTION 3 of the bill, strike amended Subsection (d), Section 411.181, Government Code (page 1, lines 62-63).

(3) In the recital to SECTION 4 of the bill (page 2, line 7), strike " amending Subsection (a) and".

(4) In SECTION 4 of the bill, strike amended Subsection (a), Section 411.184, Government Code (page 2, lines 9-25).

The amendment to **HB 1483** 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.

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

**HB 1483** 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 1483 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 **HB 1483** 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.

**(President in Chair)**

**HOUSE BILL 2793 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 2793** at this time on its second reading:

**HB 2793**, Relating to the removal and collection of convenience switches from motor vehicles; providing penalties.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2793** (Senate committee printing) as follows:

(1) On page 3, beginning on line 19, strike proposed Sec. 375.055, Health and Safety Code;

(2) On page 5, beginning on line 12, strike proposed Subchapter F, Chapter 375, Health and Safety Code;

(3) On page 6, beginning on line 31, strike Section 3 of the bill and renumber remaining Sections accordingly.

The amendment to **HB 2793** 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 2793** 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 2793 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 2793** 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 1867 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 1867** at this time on its second reading:

**CSHB 1867**, Relating to the transfer of money appropriated to provide care for certain persons in nursing facilities to provide community-based services to those persons.

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 1867 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 1867** 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 2201 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 2201** at this time on its second reading:

**CSHB 2201**, Relating to implementing a clean coal project in this state.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2201** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, at the beginning of added Subdivision (2), Subsection (a), Section 2305.037, Government Code (page 2, line 19), between "(2)" and "photovoltaic", insert:

coal gasification projects;

(3) biomass gasification projects;

(4)

(2) In SECTION 2 of the bill, at the beginning of added Subdivision (3), Subsection (a), Section 2305.037, Government Code (page 2, line 21), strike "(3)" and substitute "(5)".

(3) In SECTION 4 of the bill, at the beginning of added Subdivision (3), Subsection (b), Section 313.024, Tax Code (page 3, line 11), between "(3)" and "a clean coal", insert:

coal gasification:(4) biomass gasification:(5)

(4) In SECTION 4 of the bill, at the beginning of added Subdivision (4), Subsection (b), Section 313.024, Tax Code (page 3, line 13), strike "(4)" and substitute "(6)".

The amendment to **CSHB 2201** 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 Estes offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2201** (committee printing) as follows:

(1) Strike SECTION 6 of the bill (page 4, lines 2 through 15) and substitute:

SECTION 6. Subchapter M, Chapter 5, Water Code, is amended by adding Section 5.558 to read as follows:

Sec. 5.558. CLEAN COAL PROJECT PERMITTING. (a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(b) When acting under a rule adopted under Subsection (a), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(c) A permit proceeding under the rules adopted under Subsection (a) is not a contested case hearing under Chapter 2001, Government Code, and is not subject to contested case hearing requirements of this chapter, Chapter 382, Health and Safety Code, or other law.

(2) Add a new section to the bill, numbered appropriately, to read:

SECTION \_\_. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.0565 to read as follows:

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) A permit proceeding under the rules adopted under Subsection (b) is not a contested case hearing under Chapter 2001, Government Code, and is not subject to contested case hearing requirements of this chapter, Chapter 5, Water Code, or other law.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

The amendment to **CSHB 2201** 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 2201** 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 2201 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 2201** 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 2667 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 2667** at this time on its second reading:

**HB 2667**, Relating to the election of a director of a municipal utility district.

The bill was read second time.

Senator Lindsay offered the following amendment to the bill:

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

Amend **HB 2667** (Senate committee printing) as follows:

1) In SECTION 1 of the bill, on page 1, lines 17 and 18, strike "perform the duties of the board in regard to", and replace with "administer".

2) In SECTION 1 of the bill, on page 1, at the end of line 18, insert: "This section shall not apply to an election in a district in which there are ten or fewer qualified voters at the time the election is called."

The amendment to **HB 2667** 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 2667** 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 2667 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 2667** 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 603 ON SECOND READING**

On motion of Senator Lindsay and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 603** at this time on its second reading:

**HB 603**, Relating to the suspension, removal, or expulsion of a public school student.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

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

Amend **HB 603** by adding the following appropriately numbered section and renumbering the subsequent sections of the bill accordingly:

SECTION \_\_. Section 11.163, Education Code, is amended by adding Subsection (d) to read as follows:

(d) The employment policy may not restrict the ability of a school district employee to communicate directly with a member of the board of trustees regarding a matter relating to the operation of the district, except that the policy may prohibit:

(1) communication during:

(A) the employee's regular working hours at the district; or

(B) the operating hours of a district campus; and

(2) ex parte communication relating to:

(A) a hearing under Subchapter E or F, Chapter 21; and

(B) another appeal or hearing in which ex parte communication would

be inappropriate pending a final decision by a school district board of trustees.

The amendment was read.

Senator Wentworth withdrew Floor Amendment No. 1.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 603** (committee printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS appropriately:

SECTION \_\_. Subsection (d), Section 37.002, Education Code, is amended to read as follows:

(d) A teacher shall remove from class and send to the principal for placement in a disciplinary alternative education program or for expulsion, as appropriate, a student who engages in conduct described under Section 37.006 or 37.007. The student may not be returned to that teacher's class without the teacher's consent unless the committee established under Section 37.003 determines that such placement is the best or only alternative available. If the teacher removed the student from class because the student has engaged in the elements of any offense listed in Section 37.006(a)(2)(B) or Section 37.007(a)(2)(A) or (b)(2)(C) against the teacher, the student may not be returned to the teacher's class without the teacher's consent. The teacher may not be coerced to consent.

SECTION \_\_. Section 37.006, Education Code, is amended by adding Subsection (o) to read as follows:

(o) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a principal or a principal's designee shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator who intentionally violates this subsection.

SECTION \_\_. Subsection (g), Section 37.007, Education Code, is amended to read as follows:

(g) In addition to any notice required under Article 15.27, Code of Criminal Procedure, a [A] school district shall inform each educator who has responsibility for, or is under the direction and supervision of an educator who has responsibility for, the instruction [teacher who has regular contact with a student through a classroom assignment of the conduct] of a student who has engaged in any violation listed in this section of the student's misconduct. Each educator [A teacher] shall keep the information received under [it] this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The State Board for Educator Certification may revoke or suspend the certification of an educator [a teacher] who intentionally violates this subsection.

SECTION \_\_. Subsection (j), Section 37.008, Education Code, is amended to read as follows:

(j) If a student placed in a disciplinary alternative education program enrolls in another school district before the expiration of the period of placement, the board of trustees of the district requiring the placement shall provide to the district in which the student enrolls, at the same time other records of the student are provided, a copy of the placement order. The district in which the student enrolls shall inform each educator who will have responsibility for, or will be under the direction and supervision of an educator who will have responsibility for, the instruction of the student of the contents of the placement order. Each educator shall keep the information received under this subsection confidential from any person not entitled to the information under this subsection, except that the educator may share the information with the student's parent or guardian as provided for by state or federal law. The district in which the student enrolls may continue the disciplinary alternative education program placement under the terms of the order or may allow the student to attend regular classes without completing the period of placement. A district may take any action permitted by this subsection if:

(1) the student was placed in a disciplinary alternative education program by an open-enrollment charter school under Section 12.131 and the charter school provides to the district a copy of the placement order; or

(2) the student was placed in a disciplinary alternative education program by a school district in another state and:

(A) the out-of-state district provides to the district a copy of the placement order; and

(B) the grounds for the placement by the out-of-state district are grounds for placement in the district in which the student is enrolling.

The amendment to **HB 603** 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 Lindsay and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 603** 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 603 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 **HB 603** 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 2199 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 2199** at this time on its second reading:

**HB 2199**, Relating to the salaries of a county elections administrator and the administrator's employees.

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 2199 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 2199** 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 467 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSHB 467** at this time on its second reading:

**CSHB 467**, Relating to the financing of water and sewer programs in disadvantaged areas.

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 Lucio offered the following amendment to the bill:

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

Amend **CSHB 467** by striking everything below the enacting clause and substituting:

SECTION 1. 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 17.921 [~~16.341 of this code~~].

SECTION 2. Subdivisions (1) and (2), Section 16.341, Water Code, are amended to read as follows:

(1) "Affected county" means a county[~~:-~~

~~[(A)] that has an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income [a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; or~~

~~[(B)] that is adjacent to an international border].~~

(2) "Economically distressed area" has the meaning assigned by Section 17.921 ~~[means an area in which:~~

~~[(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;~~

~~[(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and~~

~~[(C) an established residential subdivision was located on June 1, 1989, as determined by the board].~~

SECTION 3. Subsections (b) and (c), Section 16.343, Water Code, are amended to read as follows:

(b) The model rules must:

(1) assure that adequate drinking water is available to the residential areas in accordance with Chapter 341, Health and Safety Code, and the Rules and Regulations for Public Water Systems and the Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Supply Systems adopted by the commission ~~[Texas Board of Health]~~ and other law and rules applicable to drinking water; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005 ~~[1989]~~.

(c) The model rules must:

(1) assure that adequate sewer facilities are available to the residential areas through either septic tanks or an organized sewage disposal system that is a publicly or privately owned system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a valid waste discharge permit issued by the commission or private sewage facilities in accordance with Chapter 366, Health and Safety Code, and the Construction Standards for On-Site Sewerage Facilities adopted by the commission and other law and rules applicable to sewage facilities; and

(2) provide criteria applicable to tracts that were divided into two or more parts to lay out a subdivision and were not platted or recorded before September 1, 2005 ~~[1989]~~.

SECTION 4. Section 17.0112, Water Code, is amended to read as follows:

Sec. 17.0112. AUTHORIZATION OF CERTAIN BONDS FOR FINANCIAL ASSISTANCE. (a) The board may issue not more than \$25 million in bonds dedicated under Section 17.0111 of this code and may issue not more than \$50 million in bonds authorized under Article III, Texas Constitution, during a fiscal year to provide financial assistance for water supply and sewer services as provided under Subchapter K of this chapter.

(b) On request of the board, the bond review board by resolution may waive during any state fiscal year the limits ~~[limit]~~ provided by Subsection (a) ~~[of this section]~~ and authorize the board to issue an additional amount of bonds if the bond review board finds that the amount of bonds authorized for that state fiscal year has been exhausted or there is not a sufficient amount of bonds to meet needs of the program during the state fiscal year and that the public health and safety require

immediate authorization of additional bonds. Before the bond review board adopts such a resolution, it shall give notice and hold a hearing to determine whether the limits should be waived and the authorization given.

SECTION 5. Section 17.921, Water Code, is amended by amending Subdivision (1) and adding Subdivision (6) to read as follows:

(1) "Economically distressed area" means an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005 [~~1989~~], as determined by the board.

(6) "Economically distressed areas account" means the economically distressed areas account in the Texas Water Development Fund or the economically distressed areas program account in the Texas Water Development Fund II.

SECTION 6. Subsection (b), Section 17.922, Water Code, is amended to read as follows:

(b) To the extent practicable, the board shall use the funds in the economically distressed areas account in conjunction with the other financial assistance available through the board to encourage the use of cost-effective water supply and wastewater systems, including regional systems, to maximize the long-term economic development of counties eligible for financial assistance under the economically distressed areas program. Any savings derived from the construction of a regional system that includes or serves an economically distressed area project shall be factored into the board's determination of financial assistance for the economically distressed area in a manner that assures the economically distressed area receives appropriate benefits from the savings. In no event shall financial assistance provided from the economically distressed areas account be used to provide water supply or wastewater service to any area that is not [defined as] an economically distressed area [pursuant to Section 17.921(1)(A) of this code].

SECTION 7. Subsections (b), (c), and (d), Section 17.927, Water Code, are amended to read as follows:

(b) The application and plan must include:

(1) the name of the political subdivision and its principal officers [~~comply with board requirements~~];

(2) a citation of the law under which the political subdivision was created and operates [~~describe in detail the method for delivering water supply and sewer services and the persons to whom the services will be provided~~];

(3) a project plan, prepared and certified by an engineer registered to practice in this state, that must:

(A) describe the proposed planning, design, and construction activities necessary to provide water supply and sewer services that meet minimum state standards; and

(B) identify the households to which the water supply and sewer services will be provided [~~describe the method for complying with minimum state standards for water supply and sewer services adopted by the board under Section 16.342 of this code~~];

(4) [~~include~~] 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;

(5) a description of the [~~describe~~] existing water supply and sewer facilities located in the [~~economically distressed~~] area to be served by the proposed project, including a statement [~~and include with the description~~];

~~[(A) the county map required by Section 366.036, Health and Safety Code; or~~

~~[(B) a document]~~ prepared and certified by an engineer registered to practice in this state that the facilities do not meet minimum state standards [~~describing the plan for providing water supply and sewer services to the economically distressed area~~];

(6) documentation [~~provide proof~~] that the appropriate political subdivision has adopted the model rules developed under Section 16.343 [~~of this code~~];

(7) [~~include~~] information identifying the median household income for the area to be served by the proposed project [~~on the ability of potential customers to pay for the services provided by the project including composite data prepared by the applicant pursuant to board rules and guidelines from surveys of those potential customers covering income, family size, personal expenses, employment status, and other information required by board rule~~]; and

(8) the total amount of assistance requested from the economically distressed areas account [~~include an estimate of the per household cost of providing the services contemplated by the project with supporting data~~];

~~[(9) describe the procedures to be used to collect money from residents who use the proposed water supply and sewer services including procedures for collection of delinquent accounts;~~

~~[(10) include a requirement that a contractor who agrees to acquire, construct, extend, or provide water supply and sewer services executes a performance bond in the amount of 100 percent of the contract price;~~

~~[(11) contain an agreement to comply with applicable procurement procedures in contract awards for water supply and sewer services;~~

~~[(12) if located in the service area of a retail public utility or public utility that has a certificate of public convenience and necessity under Chapter 13 of this code, include a document in the form of an affidavit signed by the chief executive officer of the utility, which shall cooperate with the political subdivision, stating that the utility does not object to the construction and operation of the services and facilities in its service area;~~

~~[(13) include a map of the economically distressed area together with supporting information relating to dwellings in the area;~~

~~[(14) describe in detail the methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area;~~

~~[(15) include, on request of the board, a written determination by the commission on the managerial, financial, and technical capabilities of the applicant to operate the system for which assistance is being requested; and~~

~~[(16) include any other information required by the board].~~

~~(c) Before the board approves the application or provides any funds under an application, it shall require an applicant to adopt a program of water conservation for the more effective use of water that meets the criteria established under Section 17.125 [If an applicant is a district or nonprofit water supply corporation, the applicant must include with the application proof that the appropriate county and municipalities have given their consent].~~

~~(d) Before considering an application, the board may require the applicant to:~~

~~(1) provide documentation to the executive administrator sufficient to allow review of the applicant's managerial, financial, and technical capabilities to operate the system for which assistance is being requested;~~

~~(2) provide a written determination by the commission on 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 and, if the review is performed, provide the board with the results of the review; or~~

~~(4) provide any other information required by the board or the executive administrator [In an application to the board for financial assistance for a water supply project or for sewer services, the applicant shall 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 water supply project or the sewer services for which the financial assistance will be used;~~

~~(4) the estimated total cost of the water supply project or sewer services construction;~~

~~(5) the amount of state financial assistance requested;~~

~~(6) the plan for repaying the financial assistance provided for the water supply project or sewer services; and~~

~~(7) any other information the board requires].~~

SECTION 8. Section 17.929, Water Code, is amended to read as follows:

Sec. 17.929. 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 and 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 to the area to be served by the project of revenue or financial assistance from alternative sources for the payment of the cost of the proposed project [efforts by the residents of the economically distressed area to provide necessary water supply and sewer services];

~~(3) [the proposed use of labor from inside the political subdivision to perform contracts for providing water supply and sewer services;~~

~~[(4) the relationship of the proposed water supply and sewer services to minimum state standards for water supply and sewer services adopted under Section 16.343 of this code;~~

~~[(5)] the financing of the proposed water supply and sewer project including consideration of:~~

~~(A) the budget and repayment schedule submitted under Section 17.927(b)(4) [of this code];~~

~~(B) other items included in the application relating to financing; and~~

~~(C) other financial information and data available to the board;~~

~~(4) [(6) whether the applicant has proposed methods for incorporating water conservation into the provision of water and sewer services to the economically distressed area;~~

~~[(7)] whether the county and other appropriate political subdivisions have [has] adopted model rules pursuant to Section 16.343 [of this code] and the manner of enforcement of model rules;~~

~~[(8) the feasibility of creating a conservation and reclamation district under Article XVI, Section 59, of the Texas Constitution, to provide the services and finance the water supply and sewer services covered by the application with district bonds issued and sold through the regular bond market;~~

~~[(9) the percentage of the total project cost that the financial assistance will comprise;] and~~

~~(5) [(40)] the feasibility of achieving cost savings [by providing a regional facility for water supply or wastewater service and the feasibility of financing the facility by using funds from the economically distressed areas account or any other 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 that is not greater than 75 percent of the median state household income [an average per capita income that is at least 25 percent below the state average] for the most recent year ~~[three consecutive years]~~ for which statistics are available.

SECTION 9. Subsection (b), Section 17.930, Water Code, is amended to read as follows:

(b) After making the considerations provided by Section 17.929 ~~[of this code]~~, 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.

SECTION 10. Subsections (a) and (c), Section 17.933, Water Code, are amended to read as follows:

(a) The board may use money in the economically distressed areas account to provide financial assistance to a political subdivision ~~[to be repaid]~~ in the form of a loan, including a loan with zero interest, grant, or other type of financial assistance to be determined~~[, manner, and time provided]~~ by the board ~~[rules and in the agreement between the board and the political subdivision]~~ taking into consideration the information provided by Section 17.927(b)(7) ~~[of this code]~~.

(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 under Article III~~, Section 49-d-7~~ of the Texas Constitution, for purposes of this subchapter plus outstanding interest on those bonds.

SECTION 11. Section 17.952, Water Code, is amended to read as follows:

Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS.

The board by resolution may provide for the issuance of water financial assistance bonds, which shall be general obligation bonds of the state, in an aggregate principal amount not to exceed the principal amount authorized to be issued by the ~~[Section 49-d-8, Article III,]~~ Texas Constitution.

SECTION 12. Subsection (a), Section 17.993, Water Code, is amended to read as follows:

(a) The commission or the board may evaluate whether an operating entity needs training if the operating entity:

(1) requests financial assistance or an amendment to the project plan or budget ~~[additional funding];~~

(2) requests more time to meet its obligations under a repayment schedule;

(3) does not provide required documentation; or

(4) has a history of compliance problems, as determined by the commission.

SECTION 13. Subsection (a), Section 212.0105, Local Government Code, is amended to read as follows:

(a) This section applies only to a person who:

(1) is the owner of a tract of land in ~~[either:~~

~~[(A) a county that is contiguous to an international border; or~~

~~[(B) a county in which a political subdivision that is eligible for and has applied for [has received]~~ financial assistance through Subchapter K, Chapter 17, Water Code;

(2) divides the tract in a manner that creates any lots that are intended for residential purposes and are five acres or less; and

(3) is required under this subchapter to have a plat prepared for the subdivision.

SECTION 14. Section 232.071, Local Government Code, is amended to read as follows:

Sec. 232.071. APPLICABILITY. This subchapter applies only to the subdivision of land located:

- (1) outside the corporate limits of a municipality; and
- (2) in a county:

(A) in which is located a political subdivision that is eligible for and has applied for financial assistance under Section 15.407, Water Code, or Subchapter K, Chapter 17, Water Code; and

(B) to which Subchapter B does not apply.

SECTION 15. Subsection (i), Section 15.407, Subsection (f), Section 16.343, Sections 17.923 through 17.926, and Subsection (g), Section 17.933, Water Code, are repealed.

SECTION 16. The changes in law made by this Act apply only to an application for financial assistance pending or filed on or after the effective date of this Act.

SECTION 17. This Act takes effect on September 1, 2005.

The amendment to **CSHB 467** 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.

**CSHB 467** 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 467 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 **CSHB 467** 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)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 10 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 10** at this time on its second reading:

**CSHB 10**, Relating to making supplemental appropriations and reductions in appropriations.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 10** (Senate committee printing) as follows:

(1) In SECTION 1(a)(1) of the bill (page 1, line 23), strike "\$471,800,000" and substitute "\$121,800,000".

(2) In SECTION 1(a)(5) of the bill (page 1, line 32), strike "\$1,010,000,000" and substitute "\$485,000,000".

(3) In SECTION 3 of the bill, between "is appropriated out of the general revenue fund" and "to the" (page 1, line 53), insert "and the amount of \$128,400,000 in matching federal funds is appropriated".

(4) Strike SECTION 4 of the bill (page 2, lines 1 through 9) and substitute the following:

SECTION 4. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES: CHILD PROTECTIVE SERVICES PROGRAM REFORM. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the following amounts are appropriated to the Department of Family and Protective Services for the two-year period beginning on the effective date of this Act for the purpose of funding the reforms of the Child Protective Services Program:

(1) the amount of \$200,039,844 is appropriated out of the Economic Stabilization Fund and the amount of \$48,060,705 in matching federal funds is appropriated; and

(2) the amount of \$7,300,000 is appropriated out of the general revenue fund and the additional amount of \$2,900,000 in matching federal funds is appropriated.

(5) In SECTION 7 of the bill (page 2, line 30), strike "\$31,300,000" and substitute "\$66,300,000".

(6) Strike SECTION 8 of the bill (page 2, lines 34-42) and substitute the following:

SECTION 8. TEACHER RETIREMENT SYSTEM OF TEXAS: ADDITIONAL APPROPRIATION FOR RETIREMENT CONTRIBUTIONS. Contingent on the enactment of S.B. No. 1691 or similar legislation by the 79th Legislature, Regular Session, 2005, that becomes law, and in addition to the estimated amounts appropriated for the following purpose by any other Act of the 79th Legislature, Regular Session, 2005, that becomes law, the following additional estimated amounts are appropriated to the Teacher Retirement System of Texas for the state fiscal biennium beginning September 1, 2005, for the purpose of funding the state's retirement contributions for public education employees during the fiscal biennium in a manner that ensures that the state's contributions are based on a rate of 6.22 percent of payroll notwithstanding any other rate specified in an Act of the 79th Legislature, Regular Session, 2005, that makes appropriations for this purpose:

(1) \$100,000,000 is appropriated out of the general revenue fund;

(2) \$4,632,650 is appropriated out of the local funds, as defined by Section 51.009, Education Code, of institutions of higher education for the benefit of the employees of the respective institutions in accordance with Section 51.008(g), Education Code; and

(3) \$104,532 is appropriated out of the Teacher Retirement System Trust Account Fund No. 960.

(7) In SECTION 10 of the bill (page 2, line 53), strike "\$2,112,000" and substitute "\$400,000".

(8) Strike SECTION 12 of the bill (page 2, line 66 through page 3, line 4) and substitute the following:

SECTION 12. TEXAS EDUCATION AGENCY: TEXTBOOKS. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2005, the amount of \$175,000,000 is appropriated out of the Economic Stabilization Fund to the Texas Education Agency for the two-year period beginning on the effective date of this Act for the purpose of funding the purchase of textbooks.

(9) Strike SECTION 19 of the bill (page 4, lines 11-20) and substitute the following:

SECTION 19. CONTINGENCY APPROPRIATIONS: HOUSE BILL 2; HOUSE BILL 3. Contingent on the enactment of H.B. No. 2 or similar legislation relating to the public school finance system by the 79th Legislature, Regular Session, 2005, that becomes law, and in addition to other amounts appropriated by the 79th Legislature, Regular Session, 2005, for the Foundation School Program:

(1) the additional amount of \$872,000,000 is appropriated out of the Economic Stabilization Fund and the additional amount of \$1,528,000,000 is appropriated out of the general revenue fund to the Texas Education Agency for the state fiscal biennium beginning September 1, 2005, to implement the provisions of House Bill No. 2 or of that similar legislation that contemplate an increase in the amount of total state revenue provided under the Foundation School Program for the operation of school districts; and

(2) contingent on the enactment of H.B. No. 3 or similar legislation relating to the financing of public schools and property tax relief by the 79th Legislature, Regular Session, 2005, that becomes law, all the additional state revenue that is received during the state fiscal biennium beginning September 1, 2005, that as estimated by the comptroller is attributable to the changes in law made by H.B. No. 3 or by that similar legislation and that may be spent for the purposes of the Foundation School Program is appropriated to the Texas Education Agency for the period and for the purpose described by Subdivision (1) of this section.

(10) In Subsection (b), Section 28 of the bill, between "this section" and "are hereby automatically reduced on a pro-rata basis" (page 5, line 42), insert ", other than estimated appropriations,".

(11) Add the following appropriately numbered Sections to the bill and renumber subsequent Sections of the bill accordingly:

SECTION \_\_\_\_ . TRUSTEED PROGRAM WITHIN THE OFFICE OF THE GOVERNOR: TEXAS ENTERPRISE FUND. (a) In addition to other amounts appropriated for purposes of the trustee program within the office of the governor created by Section 481.078, Government Code (Texas Enterprise Fund), the amount

of \$10,000,000 together with any depository interest retained in the fund is appropriated out of Appropriated Fund No. 0869 (Other Events Trust Fund) to the trustee program within the office of the governor created by Section 481.078, Government Code, for the remainder of the state fiscal biennium ending August 31, 2005, for the purpose of awarding economic development grants described by Subsection (d) of this section.

(b) The amounts appropriated by this section are for the purposes of and are subject to the procedures described by Section 481.078, Government Code.

(c) In accordance with Section 481.078(b), Government Code, the amounts appropriated by Subsection (a) of this section shall be deposited in the Texas Enterprise Fund, and the amounts deposited are appropriated out of the Texas Enterprise Fund to the trustee program within the office of the governor created by Section 481.078, Government Code, for the periods and for the purposes described by this section.

(d) The amounts appropriated by this section for the remainder of the state fiscal biennium ending August 31, 2005, shall be used at the discretion of the governor in accordance with Section 481.078, Government Code, to award one or more economic development grants in relation to certain unique events sponsored by one or more of the following organizations: (1) the National Quarter Horse Association; (2) the National Cutting Horse Association; (3) the American Paint Horse Association; (4) the Automobile Competition Committee for the United States (ACCUS) that is affiliated with the Federation Internationale de l'Automobile; (5) the United States Olympic Committee; (6) the national governing body of a sport that is recognized by the United States Olympic Committee; (7) the International Olympic Committee; (8) the Pan American Sports Organization; (9) the National Football League; (10) the National Collegiate Athletic Association; (11) the National Basketball Association; (12) the National Hockey League; (13) Major League Baseball; (14) the Federation Internationale de Football Association (FIFA); or (15) the International World Games Association.

(e) Any unexpended balances of the amounts appropriated by the other provisions of this section for the remainder of the state fiscal biennium ending August 31, 2005, are appropriated to the trustee program within the office of the governor for purposes of Section 481.078, Government Code, for the state fiscal biennium beginning September 1, 2005, for use before the expiration of the two-year period beginning on the effective date of this Act.

SECTION \_\_\_\_. DEPARTMENT OF AGING AND DISABILITY SERVICES: PAYMENTS FOR AUGUST 2005 NURSING FACILITY AND MENTAL RETARDATION COMMUNITY CENTER SERVICES. The amount of \$62,200,000 is appropriated out of the general revenue fund and the amount of \$85,800,000 in matching federal funds is appropriated to the Department of Aging and Disability Services to make payments for nursing facility services and mental retardation community center services delivered in August 2005.

The amendment to **CSHB 10** 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 Ogden offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 10** as follows:

(1) Strike SECTION 17 of the bill (Senate committee printing, page 3, lines 38 through 54) and substitute the following:

SECTION 17. APPROPRIATION FOR ~~HIGHER EDUCATION FUND~~; CONTINGENCY APPROPRIATION FOR HOUSE BILL 1765 (EMERGING TECHNOLOGY FUND). (a) The appropriation made by this subsection is contingent on the enactment by the 79th Legislature, Regular Session, 2005, of H.B. No. 1765 or similar legislation that becomes law for funding emerging technology industries through a Texas Emerging Technology Fund administered as a trustee program within the office of the governor. If the actual amounts transferred to the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, exceed the amount that the comptroller estimated would be transferred to the Economic Stabilization Fund during that biennium:

(1) the first \$100,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, to the trustee program within the office of the governor for deposit into the Texas Emerging Technology Fund in accordance with the legislation creating the technology fund and is appropriated for the biennium for expenditure for the purposes and under the procedures prescribed by the legislation creating the technology fund;

(2) the next \$100,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, for deposit into the Higher Education Fund for use in accordance with Section 17(i), Article VII, Texas Constitution; and

(3) the next \$25,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal year beginning September 1, 2006, for equitable allocation to the agencies and institutions eligible to receive a portion of the annual appropriation made under Section 17(a), Article VII, Texas Constitution, to be used by those agencies and institutions for any purpose described by Section 17(a), Article VII, Texas Constitution.

(b) If the 79th Legislature, Regular Session, 2005, does not enact H.B. No. 1765 or similar legislation that becomes law for funding emerging technology industries through a Texas Emerging Technology Fund administered as a trustee program within the office of the governor, and if the actual amounts transferred to the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, exceed the amount that the comptroller estimated would be transferred to the Economic Stabilization Fund during that biennium:

(1) the first \$100,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal biennium beginning September 1, 2005, for deposit into the Higher Education Fund for use in accordance with Section 17(i), Article VII, Texas Constitution; and

(2) the next \$25,000,000 by which the amounts transferred to the Economic Stabilization Fund during the state fiscal biennium exceed the amount of the comptroller's estimate is appropriated out of the Economic Stabilization Fund during the state fiscal year beginning September 1, 2006, for equitable allocation to the agencies and institutions eligible to receive a portion of the annual appropriation made under Section 17(a), Article VII, Texas Constitution, to be used by those agencies and institutions for any purpose described by Section 17(a), Article VII, Texas Constitution.

(c) The Texas Higher Education Coordinating Board shall equitably allocate among the eligible agencies and institutions the amounts appropriated under Subsection (a)(3) or (b)(2) of this section as the coordinating board considers appropriate to address the needs of each institution or agency for additional resources to acquire, construct, improve, repair, rehabilitate, and equip the buildings, facilities, or other permanent improvements of the institution or agency to the extent of their use for educational and general activities, considering the amount that the agencies and institutions will receive during the state fiscal biennium beginning September 1, 2005, or in a subsequent biennium under the formula established under Section 17(d), Article VII, Texas Constitution.

(d) The comptroller's estimate described by this section is the estimate made by the comptroller under Subsection (h), Section 49-g, Article III, Texas Constitution.

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

SECTION \_\_\_\_ . TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER: IRMA RANGEL SCHOOL OF PHARMACY. The amount of \$10,000,000 is appropriated out of the general revenue fund to Texas A&M University System Health Science Center for the state fiscal biennium beginning September 1, 2005, to pay start-up costs and operational, instructional, and infrastructure support costs related to the Irma Rangel School of Pharmacy.

SECTION \_\_\_\_ . TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER: MEDICAL SCHOOL IN EL PASO. The amount of \$37,000,000 is appropriated out of the general revenue fund to the Texas Tech University Health Sciences Center for the state fiscal biennium beginning September 1, 2005, to pay start-up costs and operational, instructional, and infrastructure support costs related to a four-year medical school in El Paso.

The amendment to **CSHB 10** 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 Ogden offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 10** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. REIMBURSEMENT OF TUITION REVENUE BOND DEBT SERVICE FOR THE UNIVERSITY OF TEXAS AT DALLAS. (a) The appropriation made by this section is contingent on the enactment of provisions in H.B. No. 3 or H.B. No. 3540 or similar legislation by the 79th Legislature, Regular Session, 2005, that become law and that transfer the money in the permanent funds created by Chapter 63, Education Code, into dedicated accounts in the general revenue fund.

(b) The amount of \$15 million is appropriated out of the general revenue fund to The University of Texas at Dallas for the purpose of reimbursing the institution, during the state fiscal biennium beginning September 1, 2005, for debt service paid in relation to revenue bonds issued in connection with facilities at the institution.

SECTION \_\_\_\_\_. REIMBURSEMENT OF TUITION REVENUE BOND DEBT SERVICE FOR PUBLIC INSTITUTIONS OF HIGHER EDUCATION. (a) The appropriations made by this section are contingent on the enactment of provisions in H.B. No. 3 or H.B. No. 3540 or similar legislation by the 79th Legislature, Regular Session, 2005, that become law and that transfer the money in the permanent funds created by Chapter 63, Education Code, into dedicated accounts in the general revenue fund.

(b) Contingent on the enactment of H.B. 2329 or similar legislation by the 79th Legislature, Regular Session, 2005, that becomes law and that authorizes the issuance of revenue bonds to finance facilities at public institutions of higher education, the following amounts are appropriated out of the general revenue fund to the following institutions for the purpose of reimbursing the institutions, during the state fiscal year beginning September 1, 2006, for debt service paid in relation to revenue bonds issued under Section 55.1751, 55.1752, 55.1753, 55.1754, 55.1755, 55.1757, 55.1758, 55.1759, 55.17591, or 55.17593, Education Code, as added by that legislation and as applicable to each institution:

- (1) Tarleton State University System Center—Central Texas, \$2,619,600;
- (2) Texas A&M University—Commerce, \$1,746,400;
- (3) Texas A&M University—Corpus Christi, \$873,200;
- (4) Texas A&M University—Kingsville, \$3,929,400;
- (5) Texas A&M University—Texarkana, \$3,929,400;
- (6) The Texas A&M University System Health Science Center, \$3,056,200;
- (7) Texas A&M International University, \$1,746,400;
- (8) The University of Texas at Arlington, \$3,923,280;
- (9) The University of Texas at El Paso, \$2,615,520;
- (10) The University of Texas of the Permian Basin, \$2,615,520;
- (11) The University of Texas at San Antonio, \$3,923,305;
- (12) The University of Texas Medical Branch at Galveston, \$4,977,240;
- (13) The University of Texas Health Science Center at Houston, \$9,939,009;

- (14) The University of Texas Health Science Center at San Antonio, \$6,538,842;
- (15) The University of Texas Health Science Center at Tyler, \$1,743,680;
- (16) The University of Texas M. D. Anderson Cancer Center, \$3,923,280;
- (17) The University of Texas at Tyler, \$532,500;
- (18) the University of Houston, \$3,360,760;
- (19) the University of Houston–Downtown, \$1,680,380;
- (20) the University of Houston–Victoria, \$504,114;
- (21) Lamar University, \$2,218,750;
- (22) Lamar Institute of Technology, \$266,250;
- (23) Lamar State College–Orange, \$221,875;
- (24) Lamar State College–Port Arthur, \$221,875;
- (25) Texas State University–San Marcos, \$5,768,750;
- (26) the University of North Texas, \$3,520,160;
- (27) the University of North Texas Health Science Center at Fort Worth, \$2,640,120;
- (28) the University of North Texas System Center at Dallas, \$2,200,100;
- (29) Midwestern State University, \$649,960;
- (30) Sam Houston State University, \$1,775,000;
- (31) Stephen F. Austin State University, \$1,609,000;
- (32) Texas Tech University Health Sciences Center, \$1,080,000;
- (33) Texas Tech University, \$4,487,500; and
- (34) Texas Southern University, \$2,621,490.

The amendment to **CSHB 10** 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 Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 10** by adding the following section to the bill, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION \_\_\_\_ . "College For Texans" Campaign License Plate. The amount of general revenue funds appropriated by the 79th Legislature, Regular Session, 2005, for the state fiscal biennium beginning September 1, 2005, for the Higher Education Coordinating Board is increased by \$200,000 (estimated) for the biennium to implement the provisions of the legislation establishing the "College for Texans" specialty license plate. The funds provided to the "College for Texans" Campaign are appropriated in accordance with Transportation Code §505.647 for the purposes of the "College for Texans" Campaign. All receipts received during the biennium, estimated to be \$200,000, in the General-Revenue-Dedicated-"College for Texans" Campaign Account are hereby appropriated to the Coordinating Board for the biennium ending August 31, 2007. Any balances on hand at the end of fiscal year 2006 may be carried over to fiscal year 2007 and such funds are appropriated for fiscal year 2007 for the same purpose. This section only takes effect upon passage of S.B. 1227 or similar

legislation relating to the "College for Texans" Campaign specialty license plate for the Higher Education Coordinating Board by the 79th Legislature, Regular Session, 2005.

The amendment to **CSHB 10** 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 Janek offered the following amendment to the bill:

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

Amend **CSHB 10** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. HEALTH AND HUMAN SERVICES COMMISSION: REIMBURSEMENT TO UNIVERSITY OF HOUSTON FOR TOBACCO PREVENTION CONTRACT SERVICES. Notwithstanding anything to the contrary in the Acts making the appropriations, the Health and Human Services Commission is authorized to use any funds appropriated to the commissioner to another health and human services agency for the state fiscal year ending August 31, 2005, that may be used for this purpose to reimburse the University of Houston in the amount of \$551,504.14 for contract services provided during the state fiscal years beginning September 1, 2000, and September 1, 2001, under the Tobacco Prevention and Control Program. If necessary to effectively make the payment, the commission may transfer the money to an appropriate health and human services agency authorized to make the payment, and that agency shall use the money transferred to the agency to make the payment to the university in the amount specified by this section.

The amendment to **CSHB 10** 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 **CSHB 10** (Senate committee printing) by adding the following appropriately numbered Section to the bill and renumbering subsequent Sections of the bill accordingly:

SECTION \_\_\_\_\_. TRUSTEED PROGRAM WITHIN THE OFFICE OF THE GOVERNOR: TEXAS ENTERPRISE FUND. (a) In addition to other amounts appropriated for purposes of the trustee program within the office of the governor created by Section 481.078, Government Code (Texas Enterprise Fund), the amount of \$10,000,000 together with any depository interest retained in the fund is appropriated out of Appropriated Fund No. 0869 (Other Events Trust Fund) to the trustee program within the office of the governor created by Section 481.078, Government Code, for the remainder of the state fiscal biennium ending August 31, 2005, for the purpose of awarding economic development grants described by Subsection (d) of this section.

(b) The amounts appropriated by this section are for the purposes of and are subject to the procedures described by Section 481.078, Government Code.

(c) In accordance with Section 481.078(b), Government Code, the amounts appropriated by Subsection (a) of this section shall be deposited in the Texas Enterprise Fund, and the amounts deposited are appropriated out of the Texas Enterprise Fund to the trustee program within the office of the governor created by Section 481.078, Government Code, for the periods and for the purposes described by this section.

(d) The amounts appropriated by this section for the remainder of the state fiscal biennium ending August 31, 2005, shall be used at the discretion of the governor in accordance with Section 481.078, Government Code, to award one or more economic development grants in relation to certain unique events sponsored by one or more of the following organizations: (1) the National Quarter Horse Association; (2) the National Cutting Horse Association; (3) the American Paint Horse Association; (4) the Automobile Competition Committee for the United States (ACCUS) that is affiliated with the Federation Internationale de l'Automobile; (5) the United States Olympic Committee; (6) the national governing body of a sport that is recognized by the United States Olympic Committee; (7) the International Olympic Committee; (8) the Pan American Sports Organization; (9) the National Football League; (10) the National Collegiate Athletic Association; (11) the National Basketball Association; (12) the National Hockey League; (13) Major League Baseball; (14) the Federation Internationale de Football Association (FIFA); or (15) the International World Games Association.

(e) Any unexpended balances of the amounts appropriated by the other provisions of this section for the remainder of the state fiscal biennium ending August 31, 2005, are appropriated to the trustee program within the office of the governor for purposes of Section 481.078, Government Code, for the state fiscal biennium beginning September 1, 2005, for use before the expiration of the two-year period beginning on the effective date of this Act.

The amendment was read.

Senator Wentworth withdrew Floor Amendment No. 6.

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

**CSHB 10** 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 10 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 10** be placed on its third reading and final passage.

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

The bill was read third time.

Senator Shapiro offered the following amendment to the bill:

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

Amend **CSHB 10** (Senate committee printing) on third reading as follows:

(1) In Section 19 of the bill (page 4, line 12), before "Contingent", insert "(a)".

(2) Between Sections 19 and 20 of the bill (page 4, between lines 20 and 21), insert the following:

(b) Contingent on the enactment of House Bill 2 or similar legislation relating to the public school finance system by the 79th Legislature, Regular Session, 2005, that becomes law, the Texas Education Agency is appropriated out of funds in SECTION 1 of SECTION 19 \$73,750,000 in the state fiscal year beginning September 1, 2006, and \$73,750,000 in the state fiscal year beginning September 1, 2007, to fund the purchase of textbooks under Proclamation 2002.

The amendment to **CSHB 10** 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 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 10** as again amended was finally passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 1687 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **HB 1687** at this time on its second reading:

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

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 1687 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 1687** 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)

### HOUSE BILL 2795 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 2795** at this time on its second reading:

**HB 2795**, Relating to certain appointments made by the governor and the chief justice of the supreme court.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2795** (Senate committee printing) in SECTION 2 of the bill by striking amended Subsection (a), Section 815.002, Government Code (page 1, lines 23-30), and substituting the following:

(a) Three members of the board of trustees are appointed with the advice and consent of the senate, one each by:

(1) the governor;

(2) the lieutenant governor [~~chief justice of the Supreme Court of Texas~~];  
and

(3) the speaker of the house of representatives.

The amendment to **HB 2795** 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 2795** 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 2795 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 2795** 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  
COMMITTEE SUBSTITUTE  
HOUSE BILL 599 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 599** at this time on its second reading:

**CSHB 599**, Relating to erecting or maintaining certain outdoor signs or advertising; creating an offense; providing penalties.

The motion was lost by the following vote: Yeas 12, Nays 14.

Yeas: Barrientos, Ellis, Gallegos, Janek, Lindsay, Nelson, Shapiro, Shapleigh, Wentworth, West, Whitmire, Zaffirini.

Nays: Armbrister, Brimer, Carona, Deuell, Eltife, Estes, Fraser, Harris, Lucio, Madla, Ogden, Seliger, Van de Putte, Williams.

Absent: Averitt, Duncan, Hinojosa, Jackson, Staples.

**HOUSE BILL 183 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 183** at this time on its second reading:

**HB 183**, Relating to the prosecution of offenses involving the use of safety belts and child passenger safety seat systems.

The bill was read second time.

**(Senator Carona in Chair)**

Senator Staples offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 183** by striking below the enabling clause and substituting the following:

SECTION 1. Section 545.412(a), Transportation Code, as amended by Chapters 618 and 910, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) A person commits an offense if the person operates a passenger vehicle, transports a child who is younger than five [~~four~~] years of age and [~~or~~] less than 36 inches in height, and does not keep the child secured during the operation of the vehicle in a child passenger safety seat system according to the instructions of the manufacturer of the safety seat system.

SECTION 2. Section 545.412(e), Transportation Code, is amended to read as follows:

(e) This section does not apply to a person:

(1) operating a vehicle transporting passengers for hire, including third party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or

(2) transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

SECTION 3. Section 545.413(b), Transportation Code, is amended to read as follows:

(b) A person commits an offense if the person:

(1) operates a passenger vehicle that is equipped with safety belts; and

(2) allows a child who is [~~at least five years of age but~~] younger than 17 years of age [~~or who is younger than five years of age~~] and who is not required to be secured in a child passenger safety seat system under Section 545.412(a) [at least 36 inches in height] to ride in the vehicle without requiring the child to be secured by a safety belt, provided the child is occupying a seat that is equipped with a safety belt.

SECTION 4. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2005.

The amendment was read.

Senator Zaffirini offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **HB 183** by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill accordingly:

SECTION \_\_\_\_. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4121 to read as follows:

Sec. 545.4121. DEFENSE; POSSESSION OF CHILD PASSENGER SAFETY SEAT SYSTEM. (a) This section applies to an offense committed under Section 545.412.

(b) It is an defense to prosecution of an offense to which this section applies that the defendant provides to the court evidence satisfactory to the court that the defendant possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system under Section 545.412(a).

SECTION \_\_.

(a) The Department of Public Safety of the State of Texas shall conduct a study regarding legislative options to improve child passenger safety laws.

(b) In completing the study, the Department of Public Safety of the State of Texas shall seek input from:

(1) state agencies charged with developing child passenger laws;

(2) advocates for child safety;

(3) volunteer organizations providing child safety services to children;

(4) parents;

(5) automobile manufacturers and child passenger safety seat manufacturers; and

(6) other appropriate persons as determined by the department.

(c) The study must include:

(1) whether there are public safety benefits to increasing the age, height, or weight requirements for children to ride in a vehicle properly secured in a safety seat;

(2) the need for a grace period for drivers to learn of a potential change in child passenger safety seat laws;

(3) potential reduction of health care costs to treat seatbelt and other related injuries to children if child passenger safety laws are changed;

(4) options to educate parents and educators about the importance of child passenger safety laws; and

(5) other states' child safety laws;

(d) The Department of Public Safety of the State of Texas shall complete the study and report to the legislature on or before September 1, 2006.

(e) This SECTION expires September 1, 2007.

The amendment to Floor Amendment No. 1 to **HB 183** 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 Lucio offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **HB 183** by adding the following appropriately numbered SECTIONS to the amendment and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 45.0511, Code of Criminal Procedure, is amended by adding Subsection (u) to read as follows:

(u) The requirement of Subsection (b)(2) does not apply to a defendant charged with an offense under Section 545.412, Transportation Code, if the judge requires the defendant to attend and present proof that the defendant has successfully completed a specialized driving safety course that includes four hours of instruction that encourages the use of child passenger safety seat systems, and any driving safety course taken by the defendant under this section within the 12 months preceding the date of the offense did not include that training. The person's driving record under Subsection (c)(2) and the affidavit of the defendant under Subsection (c)(3) is required to include only previous or concurrent course that included that training.

SECTION \_\_. Section 708.052, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) For the purposes of this section, an offense under Section 545.412 is a moving violation of a traffic law.

The amendment to Floor Amendment No. 1 to **HB 183** 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.

Question recurring on the adoption of Floor Amendment No. 1 to **HB 183**, 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 Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 183** 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 183 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 183** 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 607 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 607** at this time on its second reading:

**CSHB 607**, Relating to the delivery of blank check forms; providing a civil penalty.

The motion prevailed.

Senators Estes and Staples 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: Estes, Staples.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 607 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 607** 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, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Estes, Staples.

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

(Thursday, May 26, 2005)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2161 ON SECOND READING**

Senator Seliger moved to suspend the regular order of business to take up for consideration **CSHB 2161** at this time on its second reading:

**CSHB 2161**, Relating to the power of the Railroad Commission of Texas to adopt and enforce safety standards and practices applicable to the transportation by pipeline of certain substances and to certain pipeline facilities; imposing an administrative penalty.

The motion prevailed.

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

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

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2161** (Senate committee printing) as follows:

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

SECTION \_\_. Section 81.116(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, [~~and~~] 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION \_\_. Section 81.117(d), Natural Resources Code, is amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 91.111 [~~of this code~~]. The exemptions and reductions set out in Sections 201.053, 201.057, [~~and~~] 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

SECTION \_\_. Section 89.044, Natural Resources Code, is amended to read as follows:

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

SECTION \_\_. Subchapter C, Chapter 89, Natural Resources Code, is amended by adding Sections 89.047 and 89.048 to read as follows:

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which the well is issued a permit.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of the nominated well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

(1) identify the orphaned well;

(2) state the name, address, and telephone number of the person;

(3) state the date the person intends to conduct the surface inspection;

(4) state the name of at least one representative of the person who will participate in the surface inspection; and

(5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the wellsite.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

(1) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;

(2) a completed certificate of compliance; and

(3) a nonrefundable fee in the amount of \$250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) a nontransferable exemption from severance taxes for all future production from the well as provided by Section 202.060, Tax Code;

(2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and

(3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

(1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed \$500,000. An operator may not receive:

(1) more than one payment under that subsection for the same well; or

(2) cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the commission under Section 91.104.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil-field cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

SECTION \_\_. Section 91.112(a), Natural Resources Code, is amended to read as follows:

(a) Money in the fund may be used by the commission or its employees or agents for:

(1) conducting a site investigation or environmental assessment to determine:

(A) the nature and extent of contamination caused by oil and gas wastes or other substances or materials regulated by the commission under Section 91.101; and

(B) the measures that should be taken to control or clean up the wastes, substances, or materials described in Paragraph (A);

(2) controlling or cleaning up oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 that are causing or are likely to cause the pollution of surface or subsurface water, consistent with Section 91.113;

(3) plugging abandoned wells and administering or enforcing permits, orders, and rules relating to the commission's authority to prevent pollution under this chapter, Chapter 89, or any other law administered or enforced by the commission under Title 3;

(4) implementing Subchapter N and enforcing rules, orders, and permits adopted or issued under that subchapter;

(5) implementing the voluntary cleanup program under Subchapter O; ~~and~~

(6) preparing the report required under Subsection (b);

(7) making payments to eligible operators under Section 89.047; and

(8) making payments to eligible surface estate owners under Section 89.048.

SECTION \_\_. Section 201.053, Tax Code, is amended to read as follows:

Sec. 201.053. GAS NOT TAXED. The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) produced from oil wells with oil and lawfully vented or flared;

(3) used for lifting oil, unless sold for that purpose; or

(4) produced in this state from a well that qualifies under Section 202.056 or  
202.060.

SECTION \_\_. Section 201.058(a), Tax Code, is amended to read as follows:

(a) The exemptions described by Sections 202.056, 202.057, ~~and~~ 202.059, and  
202.060 apply to the taxes imposed by this chapter as authorized by and subject to the certifications and approvals required by those sections.

SECTION \_\_. Subchapter B, Chapter 201, Tax Code, is amended by adding Section 201.059 to read as follows:

Sec. 201.059. CREDITS FOR QUALIFYING LOW-PRODUCING WELLS.

(a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Mcf" means 1,000 cubic feet of gas as measured in accordance with Section 91.052, Natural Resources Code.

(3) "Qualifying low-producing well" means a gas well whose production during a three-month period is no more than 90 mcf per day, excluding gas flared pursuant to the rules of the commission. For purposes of qualifying a gas well, production per well per day is determined by computing the average daily production from the well using the monthly well production report made to the commission.

(b) Each month, the comptroller shall certify the average taxable price of gas, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including prices reported by Henry Hub, Houston Ship Channel, Mississippi Barge Transport, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(c) An operator of a qualifying low-producing well is entitled to a 25 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than \$3 per mcf but not more than \$3.50 per mcf.

(d) An operator of a qualifying low-producing well is entitled to a 50 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is more than \$2.50 per mcf but not more than \$3 per mcf.

(e) An operator of a qualifying low-producing well is entitled to a 100 percent credit on the tax otherwise due on gas produced and saved from that well during a month if the average taxable price of gas certified by the comptroller under Subsection (b) for the previous three-month period is not more than \$2.50 per mcf.

(f) If the tax is paid on gas at the full rate provided by Section 201.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 202 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(g) This section expires September 1, 2007.

SECTION \_\_. Section 202.052(c), Tax Code, is amended to read as follows:

(c) The exemptions described by Sections 202.056, ~~and~~ 202.059, and 202.060 apply to oil produced in this state from a well that qualifies under Section 202.056, ~~or~~ 202.059, or 202.060, subject to the certifications and approvals required by those sections.

SECTION \_\_. Subchapter B, Chapter 202, Tax Code, is amended by adding Sections 202.058, 202.060, and 202.061 to read as follows:

Sec. 202.058. CREDITS FOR QUALIFYING LOW-PRODUCING OIL LEASES. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Qualifying low-producing oil lease" means a well classified as an oil well that is part of a lease whose production during a 90-day period is less than:

(A) 15 barrels of oil per day of production; or

(B) five percent recoverable oil per barrel of produced water.

(b) For purposes of qualifying a lease, production per well per day is determined by computing the average daily per well production from the lease using the monthly lease production report made to the commission. For purposes of qualifying a lease, production per well per day is measured by dividing the sum of lease production during the three-month period by the sum of the number of well-days, where a

well-day is one well producing for one day. The operator of a lease that is eligible for a credit under this section only on the basis of Subsection (a)(2)(B) must pay to the comptroller a filing fee of \$100 before the comptroller may authorize the credit.

(c) Each month, the comptroller shall certify the average taxable price of oil, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including the reported Texas Panhandle Spot Price, West Texas Intermediate Crude Spot Price, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(d) An operator of a qualifying low-producing lease is entitled to a 25 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than \$25 per barrel but not more than \$30 per barrel.

(e) An operator of a qualifying low-producing lease is entitled to a 50 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than \$22 per barrel but not more than \$25 per barrel.

(f) An operator of a qualifying low-producing lease is entitled to a 100 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is not more than \$22 per barrel.

(g) If the tax is paid on oil at the full rate provided by Section 202.052, the person paying the tax is entitled to a credit against taxes imposed by this chapter or Chapter 201 on the amount overpaid. To receive the credit, the person must apply to the comptroller for the credit not later than the expiration of the applicable period for filing a tax refund under Section 111.104.

(h) This section expires September 1, 2007.

Sec. 202.060. EXEMPTION FOR OIL AND GAS FROM REACTIVATED ORPHANED WELLS. (a) In this section:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Orphaned well" has the meaning assigned by Section 89.047, Natural Resources Code.

(b) The commission shall issue a certificate to a person who is designated by the commission under Section 89.047, Natural Resources Code, as the operator of an orphaned well. The certificate must identify the operator to whom and the well for which the certificate is issued.

(c) Hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption.

(d) The commission shall adopt all rules necessary to administer this section.

(e) To qualify for the tax exemption provided by this section, the person responsible for paying the tax must apply to the comptroller. The application must include a copy of the certificate issued by the commission. The comptroller shall approve the application if the person demonstrates that the hydrocarbon production is

eligible for a tax exemption. The comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The comptroller may establish procedures to comply with this section.

(f) The exemption takes effect on the first day of the month following the month in which the comptroller approves the application.

(g) If the person to whom the certificate is issued ceases to be the operator of the well as shown by the records of the commission, the commission shall notify the comptroller. The exemption expires on the date the notice is received.

(h) A person who makes or subscribes an application, report, or other document and submits it to the commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91, Natural Resources Code.

(i) A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by the records of the commission. The amount of the penalty may not exceed the sum of:

(1) \$10,000; and

(2) the difference between the amount of taxes paid or attempted to be paid and the amount of taxes due.

(j) The attorney general may recover a penalty under Subsection (i) in a suit brought on behalf of the state. Venue for the suit is in Travis County.

Sec. 202.061. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT.

(a) In this section:

(1) "Enhanced efficiency equipment" means equipment used in the production of oil that reduces the energy used to produce a barrel of fluid by 10 percent or more when compared to commonly available alternative equipment. The term does not include a motor or downhole pump. Equipment does not qualify as enhanced efficiency equipment unless an institution of higher education approved by the comptroller that is located in this state and that has an accredited petroleum engineering program evaluated the equipment and determined that the equipment does produce the required energy reduction.

(2) "Marginal well" means an oil well that produces 10 barrels of oil or less per day on average during a month.

(b) The taxpayer responsible for the payment of severance taxes on the production from a marginal well in this state on which enhanced efficiency equipment is installed and used is entitled to a credit in an amount equal to 10 percent of the cost of the equipment, provided that:

(1) the cumulative total of all severance tax credits authorized by this section may not exceed \$1,000 for any marginal well;

(2) the enhanced efficiency equipment installed in a qualifying marginal well must have been purchased and installed not earlier than September 1, 2005, or later than September 1, 2009;

(3) the taxpayer must file an application with the comptroller for the credit and must demonstrate to the comptroller that the enhanced efficiency equipment has been purchased and installed in the marginal well within the period prescribed by Subdivision (2);

(4) the number of applications the comptroller may approve each state fiscal year may not exceed a number equal to one percent of the producing marginal wells in this state on September 1 of that state fiscal year, as determined by the comptroller; and

(5) the manufacturer of the enhanced efficiency equipment must obtain an evaluation of the product under Subsection (a).

(c) The taxpayer may carry any unused credit forward until the credit is used.

SECTION \_\_. (a) Sections 201.059 and 202.058, Tax Code, as added by this Act, apply to gas and oil produced on or after the effective date of this Act. Gas and oil produced before the effective date of this Act are governed by the law in effect on the date the gas and oil were produced, and that law is continued in effect for that purpose.

(b) As soon as practicable after the effective date of this Act, the comptroller shall perform the initial certification determination required by Sections 201.059 and 202.058, Tax Code, as added by this Act. The initial certification determination must cover the three-month period beginning on June 1, 2005.

(c) Sections 201.059 and 202.058, Tax Code, as added by this Act, do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of tax due and for civil and criminal enforcement of the liability for those taxes.

(2) Strike SECTION 6 of the bill (page 3, line 17) and substitute the following appropriately numbered section:

SECTION \_\_. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2005.

(b) The following provisions take effect January 1, 2006:

(1) Sections 81.116(d), 81.117(d), 89.044, and 91.112(a), Natural Resources Code, as amended by this Act;

(2) Sections 89.047 and 89.048, Natural Resources Code, as added by this Act;

(3) Sections 201.053, 201.058(a), and 202.052(c), Tax Code, as amended by this Act; and

(4) Section 202.060, Tax Code, as added by this Act.

The amendment was read.

Senator Deuell offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **CSHB 2161** by adding the appropriate numbered section to read as follows and renumber subsequent sections accordingly:

SECTION \_\_\_\_\_. Section 201.102, Tax Code, is amended to read as follows:

Sec. 201.102. CASH SALES. If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts [~~unless the reimbursement amount for taxes due under this chapter is separately stated in the sales contract~~].

SECTION \_\_\_\_. The changes made by this article to Section 201.102, Tax Code, apply to a refund claim or a determination under Chapter 111, Tax Code, for which the comptroller has not issued a final order or decision on or before the effective date of this article without regard to whether the taxes that are the subject of the refund claim or determination are due before, on, or after the effective date of this article.

The amendment to Floor Amendment No. 1 to **CSHB 2161** 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:

Present-not voting: Ogden.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 2161**, 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 except as follows:

Present-not voting: Ogden.

Senator Armbrister offered the following amendment to the bill:

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

Amend **CSHB 2161** (Senate committee printing) by adding the following appropriately numbered sections and renumbering the subsequent sections of the bill accordingly:

SECTION \_\_\_\_. Section 89.043, Natural Resources Code, is amended by amending Subsections (c) and (f) and adding Subsection (g) to read as follows:

(c) Not later than the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 or 89.089 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085;

(3) if the commission forecloses its statutory lien under Section 89.089, the commission may dispose of the interest of the operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons;

(4) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs;

(5) [(4)] the commission has a statutory lien on all well-site equipment under Section 89.083 and on the interest of the operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons under Section 89.089; and

(6) [(5)] the lien described by Subdivision (5) [(4)] is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

(f) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (c)(4)(A) [(c)(3)(A)].

(g) The provisions of this section and Section 91.115 shall not apply to proceeds from the sale of hydrocarbons that would otherwise be directed to the permanent school fund or the permanent university fund.

SECTION \_\_. Section 89.083, Natural Resources Code, is amended by amending Subsection (g) and adding Subsection (g-1) to read as follows:

(g) The cause of action is:

(1) first, against the operator, to be secured by a first lien, superior to all preexisting and subsequent liens and security interests, on the operator's interest in:

(A) the oil and gas in the land;

(B) [~~and~~] the fixtures, machinery, and equipment found or used on the land where the well is located; and

(C) any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons; and

(2) second, against a nonoperator at the time the well should have been plugged, to be secured by a first lien, superior to all preexisting and subsequent liens and security interests, on the nonoperator's interest in the oil and gas in the land.

(g-1) A nonoperator may be made a party defendant in the suit against the operator.

SECTION \_\_. Subchapter D, Chapter 89, Natural Resources Code, is amended by adding Section 89.089 to read as follows:

Sec. 89.089. LIEN ON OPERATOR'S INTERESTS IN HYDROCARBON PRODUCTION AND PROCEEDS. (a) To secure the recovery of well-plugging costs paid with state money, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the interests of each operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons.

(b) The commission may foreclose the lien in the manner provided by Section 89.083.

(c) The commission may dispose of the property subject to the lien in the manner provided by Section 89.085.

(d) Section 89.086 applies to a claim of a person with a legal or equitable ownership or security interest in property that is described by this section and is disposed of under Section 89.085.

(e) The liens provided in this section and Section 91.115 as they relate to hydrocarbons in this state and the proceeds from the sale of those hydrocarbons shall be subject to and inferior to any lien in favor of the state to secure royalty payments.

SECTION \_\_. Subchapter A, Chapter 91, Natural Resources Code, is amended by adding Section 91.004 to read as follows:

Sec. 91.004. RECOVERY OF ESTIMATED PLUGGING COSTS. (a) The commission, in an enforcement action brought by the commission to compel an operator to plug or replug a well, may order the operator to pay the estimated plugging costs for the well if the operator has not plugged or replugged the well or commenced operations at the well site to plug or replug the well within 60 days after the date the commission's order requiring the well to be plugged or replugged becomes final.

(b) The estimate of the plugging costs must be based on:

(1) the amount of the bond required for the well under Section 91.1041; or

(2) proof of average plugging costs incurred by the commission in the district in which the well is located and any special conditions applicable to the well that is the subject of the proceeding.

(c) The proceeds recovered as estimated plugging costs for any particular well shall be deposited to the credit of the oil-field cleanup fund.

(d) If the actual costs to the commission of plugging the well are more than the proceeds received for the estimated plugging costs, the commission may recover its costs in an action brought under Section 89.083. If the actual costs to the commission of plugging the well are less than the proceeds received for the estimated plugging costs, the commission shall remit to the operator the amount by which the proceeds received exceed the actual costs. The commission is not required to pay interest on a refund under this subsection.

(e) If the operator does not pay the estimated plugging costs within 75 days after the date of the order requiring the well to be plugged, the attorney general, on request of the commission, shall file suit to collect the amount of the estimated plugging costs from the operator. Venue for the action lies in the district court for Travis County.

SECTION \_\_. The heading to Section 91.113, Natural Resources Code, is amended to read as follows:

Sec. 91.113. INVESTIGATION, ASSESSMENT, PREVENTION, CONTROL, OR CLEANUP OF POLLUTION BY COMMISSION.

SECTION \_\_. Subsections (a) through (d) and (f), Section 91.113, Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil-field cleanup fund to conduct a site investigation or environmental assessment or to take measures necessary to prevent the unauthorized discharge of, to control, or to clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to take measures necessary to prevent the unauthorized discharge of, to control, or to clean up the oil and gas wastes or other substances or materials [after notice and opportunity for hearing];

(2) the responsible person is unknown, cannot be found, or has no assets with which to take measures necessary to prevent the unauthorized discharge of, to control, or to clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing, or are likely to cause, the pollution of surface or subsurface water.

(b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to take measures necessary to prevent the unauthorized discharge of, to control, or to clean up the oil and gas wastes or other substances or materials.

(c) The commission or its employees or agents, on proper identification, may enter the land of another to conduct [~~for the purpose of conducting~~] a site investigation or environmental assessment or to take measures necessary to prevent the unauthorized discharge of, to control, [~~controlling~~] or to clean [~~cleaning~~] up oil and gas wastes or other substances or materials under this section.

(d) The conducting of a site investigation or environmental assessment or the taking of measures necessary to prevent the unauthorized discharge of, to control, or to clean up [~~cleanup of~~] oil and gas wastes or other substances or materials by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(f) If the commission conducts a site investigation or environmental assessment or takes measures necessary to prevent the unauthorized discharge of, to control, or to clean [~~controls or cleans~~] up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to take measures necessary to prevent the unauthorized discharge of, to control, or to clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. The commission has a first lien on the responsible person's equipment and hydrocarbons as provided by Section 91.115 to secure the recovery of the commission's costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the oil-field cleanup fund.

SECTION \_\_. Subsection (d), Section 91.114, Natural Resources Code, is amended to read as follows:

(d) The commission shall accept the report or application or approve the certificate if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the organization have agreed;

(2) as applicable:

(A) all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the state relating to those conditions are paid or are being paid in accordance with a payment schedule to which the commission and the organization have agreed; or

(B) the estimated plugging costs have been paid in accordance with a commission order; and

(3) the report, application, or certificate is in compliance with all other requirements of law and commission rules.

SECTION \_\_. The heading to Section 91.115, Natural Resources Code, is amended to read as follows:

Sec. 91.115. FIRST LIEN ON EQUIPMENT, ~~[AND] STORED HYDROCARBONS, OIL AND GAS, AND PRODUCED HYDROCARBONS.~~

SECTION \_\_. Subsections (a) through (f) and (h), Section 91.115, Natural Resources Code, are amended to read as follows:

(a) If a responsible person fails to clean up a site or facility [~~that has ceased oil and gas operations~~] under the commission's jurisdiction on or before the date the site or facility is required to be cleaned up by law or by a rule adopted or order issued by the commission or fails to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials as required by law or by a rule adopted or order issued by the commission, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the responsible person's interest in:

(1) any hydrocarbons stored at the site or facility;

(2) ~~[and in]~~ any equipment that is[

~~[+]~~ located at the site or facility; and

(3) any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons ~~[(2) used by the responsible person in connection with the activity that generated the pollution].~~

(b) The lien is in the amount of the total costs of taking measures necessary to prevent the unauthorized discharge of, to control, or to clean ~~[cleaning]~~ up the oil and gas wastes or other substances from the site or facility and arises on the date the measures are [site or facility is] required by law or by a rule or order of the commission [to be cleaned up].

(c) The commission may foreclose on the lien by entering into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a contract to clean up the site or facility. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders before entering into a contract for the taking of measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a contract to clean up the site or facility.

(d) The lien is extinguished if necessary measures are taken to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or the site or facility is cleaned up in accordance with commission rules by any person before the commission enters into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a contract to clean up the site or facility.

(e) The lien is extinguished as to any stored hydrocarbons or items of equipment that are lawfully removed by any person other than the operator or a nonoperator according to a lien, lease, judgment, written contract, or security agreement before the commission enters into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a cleanup contract. An item of equipment may not be removed from a ~~an abandoned~~ site or facility if the removal will cause the release of a substance that may cause pollution unless the substance is lawfully disposed of.

(f) Equipment or stored hydrocarbons subject to a lien under this section are presumed to have been abandoned on the date the commission enters into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials from the site or facility or a contract to clean up the site or facility on which the equipment or hydrocarbons are located. The commission may dispose of the equipment or ~~stored~~ hydrocarbons in accordance with the provisions of Sections 89.085, 89.086, and 89.087 ~~[of this code]~~ for the disposition of well-site equipment and hydrocarbons.

(h) The lien provided by this section, as it relates to stored hydrocarbons, the responsible person's interest in oil and gas in the land where the prevention, control, or cleanup measures are required, and the responsible person's interest in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons shall be subject to and inferior to any lien in favor of the State of Texas to secure royalty payments.

SECTION \_\_. Sections 89.043, 89.083, 91.113, 91.114, and 91.115, Natural Resources Code, as amended by this Act, and Sections 89.089 and 91.004, Natural Resources Code, as added by this Act, apply only to an administrative proceeding that is initiated on or after the effective date of this Act or a cause of action that is filed in connection with an administrative proceeding that is initiated on or after the effective date of this Act. An administrative proceeding that was initiated before the effective date of this Act or a cause of action that is filed in connection with an administrative proceeding that was initiated before the effective date of this Act is governed by the law in effect on the date the administrative proceeding was initiated, and the former law is continued in effect for that purpose.

The amendment to **CSHB 2161** 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:

Present-not voting: Ogden.

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

**CSHB 2161** 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: Ogden, Staples.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2161 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 2161** 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, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Seliger, Shapiro, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ogden, Staples.

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

**HOUSE BILL 2572 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 2572** at this time on its second reading:

**HB 2572**, Relating to the functions of local mental health and mental retardation authorities.

The bill was read second time.

Senator Janek offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2572** (House grossment) as follows:

(1) Strike SECTION 7 and SECTION 8 of the bill (page 10, line 23, through page 14, line 4).

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

SECTION \_\_. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0357 to read as follows:

Sec. 533.0357. LOCAL AUTHORITY PARTNERSHIP DEVELOPMENT. (a) The department shall encourage local authorities to develop partnerships and greater coordination of services to persons who have a physical illness as well as mental illness or chemical dependency.

(b) At the request of a local authority, the department shall approve a request for the development of an integrated physical health and behavioral health service delivery model that is developed in partnership with a public hospital, county health department, or other governmental entity and that furthers the following goals:

(1) establishing a health care services delivery system that integrates primary health care services and behavioral health care services delivery;

(2) involving consumers, families, and stakeholders fully in the development of a system that is oriented toward resiliency and recovery;

(3) protecting and enhancing the rights of people with mental illness or substance abuse problems;

(4) enhancing the implementation of the resiliency and disease management model for mental health services; and

(5) screening for co-occurring physical, mental, and substance abuse disorders and treating persons with integrated treatment strategies.

(c) A public hospital, county health department, or other governmental entity acting under a contract with the Department of State Health Services under this section may provide primary health care services and behavioral health care services as necessary to enhance the integration of physical and behavioral health care services delivery in the separate service delivery area.

(d) A contract developed under this section must be a performance-based contract that provides flexibility in the design of the behavioral health care services delivery system while assuring that the local authority will achieve improved performance outcomes.

SECTION \_\_. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0405 to read as follows:

Sec. 533.0405. RESOURCES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) The department shall ensure that local authorities design systems of care resources for children with serious emotional disturbances that recognize:

(1) the unique needs of those children;

(2) the various programs in this state through which a child may be directed to the authority for services; and

(3) the various programs available to the child, the child's family, and the authority through which the child and the child's family may receive behavioral health services or other services.

(b) A local authority shall develop formal partnerships and coordinate with entities to ensure that a child with a serious emotional disturbance receives the most appropriate and effective care and services, to the extent possible.

(c) As appropriate, the authority shall use teams composed of representatives of public and private service providers and members of the child's family to develop individual and family service plans that encompass, to the extent possible, appropriate services and direct interagency and provider cooperation as necessary to further the plans.

(d) This section does not affect a requirement of state or federal law for informed parental consent before a child receives or is assessed or is screened for health or mental health services.

SECTION \_\_. (a) The legislature shall establish a joint interim committee to study the local mental health and mental retardation services delivery system and to develop recommendations for improving the provision of services and increasing the accountability for funds management in the system.

(b) The committee should consider whether the current local system meets the following goals:

(1) improving the integration of services to persons who have physical illness as well as mental illness or chemical dependency and developing a continuum of services to all persons who are aging or who have physical or cognitive disabilities; and

(2) allowing the appropriate level of flexibility needed to meet unique community needs, while addressing state requirements and ensuring an appropriate level of budget certainty for the state.

(c) In developing recommendations for the improvement of services delivery the committee should consider:

(1) the role of a community center and whether a community center should be designated as a provider of public safety net services for jail diversion services, crisis services, certain community-oriented services, community hospital services, or other services necessary to ensure the statewide availability of services; and

(2) the findings and recommendations of the mental health services task force as reported to the Senate Health and Human Services interim committee of the 77th Legislature in March 2002 and the House Bill 1734 committee report from the 75th Legislature, Regular Session, 1997.

(d) Not later than January 1, 2007, the committee shall report its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) The lieutenant governor and the speaker of the house of representatives shall determine the composition of the committee. The committee must be composed of five members of the senate and five members of the house of representatives. The presiding officer of the committee must be a member designated from the senate.

(f) This section expires September 1, 2007.

The amendment was read.

Senator Janek offered the following amendment to Committee Amendment No. 1:

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

Amend Committee Amendment No. 1 to **HB 2572** as follows:

(1) In item (2) of the amendment, Section 533.0357(b), Health and Safety Code (page 1, line 24), between "entity" and "and" add "other than a public school".

(2) In item (2) of the amendment, Section 533.0357(b)(5), Health and Safety Code (page 1, line 36), strike "screening for" and substitute "determining whether a person has".

(3) In item (2) of the amendment, Section 533.0357(c), Health and Safety Code (page 1, line 40), between "entity" and "acting" add "other than a public school".

The amendment to Committee Amendment No. 1 to **HB 2572** 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: Shapleigh.

Senator Janek offered the following amendment to Committee Amendment No. 1:

**Floor Amendment No. 2**

Amend Committee Amendment No. 1 to **HB 2572** at the end of the unnumbered SECTION added by item (2) of the amendment (Senate committee printing, page 1, between lines 49 and 50) by inserting:

(e) If a service delivery model developed under this section incorporates individuals receiving services through a Medicaid Managed Care Organization or Children's Health Insurance Program Managed Care Organization, the Medicaid Managed Care Organization or Children's Health Insurance Program Managed Care Organization shall retain the responsibility for, and continue to provide services to those individuals as stipulated by their contract with the Commission.

(f) A Medicaid Managed Care Organization or Children's Health Insurance Program Managed Care Organization operation in an area with a service delivery model developed under this section, will attempt to coordinate with the local authority for delivery of services.

The amendment to Committee Amendment No. 1 to **HB 2572** 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:

Nays: Nelson.

Question recurring on the adoption of Committee Amendment No. 1 to **HB 2572**, 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 except as follows:

Nays: Nelson.

Senator Janek offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **HB 2572** (House engrossment) as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 20), strike ", (c),".

(2) In SECTION 2 of the bill, strike amended Section 533.035(c), Health and Safety Code (page 3, lines 9-22).

(3) In SECTION 2 of the bill, strike amended Section 533.035(e), Health and Safety Code (page 3, line 23, through page 4, line 7), and substitute the following:

(e) In assembling a network of service providers, a local mental health [~~and mental retardation~~] authority may serve as a qualified service provider only in accordance with Subsection (c) and [~~of services only as a provider of last resort and only if the authority demonstrates to the department that:~~

[(+) the authority shall make [~~has made~~] every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area[~~;~~ and

~~[(2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of the services is needed].~~

The amendment to **HB 2572** 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 except as follows:

Nays: Nelson.

Senator Janek offered the following amendment to the bill:

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

Amend **HB 2572** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 533.035(a), Health and Safety Code (page 3, line 43) between "2005" and ":", insert the following:  
, except on:

(1) a request from two or more local authorities; or

(2) a determination by the executive commissioner that a local authority has substantially failed to meet the terms and conditions of the performance contract

(2) In SECTION 2 of the bill, in added Section 533.035(b-1), Health and Safety Code (page 3, line 44) between "2007" and ":", insert ", and does not apply to rate setting or the payment rates for intermediate care facilities for the mentally retarded, home and community-based services, Texas home living, and mental retardation service coordination".

The amendment to **HB 2572** 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 Janek offered the following amendment to the bill:

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

Amend the Senate committee report printing for **HB 2572** by deleting (b-1) on page 3 lines 44 through 64 and renumbering the sections of the bill accordingly.

The amendment to **HB 2572** 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 Nelson offered the following amendment to the bill:

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

Amend **HB 2572** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 58.0071(f), Family Code, is amended to read as follows:

(f) This section does not affect the destruction of:

(1) physical records and files authorized by the Texas State Library Records Retention Schedule; or

(2) protected health information maintained by a covered entity, as that term is defined by privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION \_\_\_\_\_. Subsections (b) and (c), Section 82.010, Family Code, are amended to read as follows:

(b) Except as otherwise provided by law, an application for a protective order is confidential ~~and~~ is excepted from required public disclosure under Chapter 552, Government Code. A court ~~and~~ may not release an application ~~be released~~ to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

(c) Except as otherwise provided by law, an application requesting the issuance of a temporary ex parte order under Chapter 83 is confidential ~~and~~ is excepted from required public disclosure under Chapter 552, Government Code. A court ~~and~~ may not release an application ~~be released~~ to a person who is not a respondent to the application until after the date that the court or law enforcement informs the respondent of the court's order.

SECTION \_\_\_\_\_. Subsection (a), Section 107.006, Family Code, is amended to read as follows:

(a) ~~In~~ ~~[Except as provided by Subsection (e), in]~~ conjunction with an appointment under this chapter, other than an appointment of an attorney ad litem for an adult or a parent, the court shall issue an order authorizing the attorney ad litem, guardian ad litem for the child, or amicus attorney to have immediate access to:

(1) the child; and

(2) any otherwise privileged or confidential information ~~relating to the child.~~

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 162.018, Family Code, are amended to read as follows:

(a) The department, licensed child-placing agency, person, or entity placing a child for adoption shall provide to the ~~The~~ adoptive parents, upon request, ~~are entitled to receive~~ copies of the records and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption.

(b) The department, licensed child-placing agency, person, or entity placing the child for adoption shall, upon request, provide to the ~~The~~ adoptive parents and the adopted child, after the child is an adult, ~~are entitled to receive~~ copies of the records maintained by the entity that have been edited to protect the identity of the biological parents and any other person whose identity is confidential and other information relating to the history of the child ~~[maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption].~~

SECTION \_\_\_\_\_. Section 162.414, Family Code, is amended by adding Subsection (f) to read as follows:

(f) To the extent that Subsection (d) authorizes the use or disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and

Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the use or disclosure complies with all applicable requirements, standards, or implementation specifications of the privacy rule.

SECTION \_\_\_\_\_. Subsection (a), Section 264.408, Family Code, is amended to read as follows:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code. A center~~, and~~ may only disclose the files, reports, records, communications, and working papers developed in providing services under this chapter ~~[be disclosed]~~ for purposes consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

SECTION \_\_\_\_\_. Subsection (e), Section 420.031, Government Code, is amended to read as follows:

(e) Evidence collected under this section may not be released unless the survivor of the offense or a legal representative of the survivor signs a written consent to release the evidence. If a disclosure under this subsection is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent to the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. Section 825.507, Government Code, is amended by adding Subsection (h) to read as follows:

(h) If a disclosure under Subsection (b)(6) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. Section 81.103, Health and Safety Code, is amended by adding Subsection (k) to read as follows:

(k) If a disclosure under Subsection (d) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the

authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. Section 108.009, Health and Safety Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) For purposes of this section, the council or other entity as determined by the council under Subsection (a) is a public health authority, as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E. Data voluntarily submitted by a rural provider to the council under Subsection (c) is a use and disclosure for which an authorization or an opportunity to agree or object is not required.

SECTION \_\_\_\_\_. Section 142.009, Health and Safety Code, is amended by amending Subsection (g) and adding Subsection (m) to read as follows:

(g) After a survey of a home and community support services agency by the department, the department shall provide to the chief executive officer of the home and community support services agency:

(1) specific and timely written notice of the preliminary findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the home and community support services agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(m) If a disclosure under Subsection (d)(3) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent to the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. Section 162.006, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) If a disclosure under this section is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160

and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 162.007, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), a [A] blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other infectious disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; and [or]

(3) the recipient of the blood.

(d) If a blood bank is unable to report blood test results to a person listed in Subsection (a), the blood bank shall maintain a record of the blood bank's attempt to report to that person along with the blood test results.

SECTION \_\_\_\_\_. Section 181.051, Health and Safety Code, is amended to read as follows:

Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapters [Subchapter] D and E, this chapter does not apply to:

(1) a covered entity as defined by Section 602.001, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

SECTION \_\_\_\_\_. Section 241.103, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) This section applies to a hospital that is a covered entity, as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION \_\_\_\_\_. Section 241.152, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) If an authorization under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 241.153, Health and Safety Code, is amended to read as follows:

Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION.

(a) Subject to Subsection (b), a [A] patient's health care information may be disclosed without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the hospital not to make the disclosure or the directory information is otherwise protected by state or federal law;

(2) to a health care provider who is rendering health care to the patient when the request for the disclosure is made;

(3) to a transporting emergency medical services provider for the sole purpose of determining the patient's diagnosis and the outcome of the patient's hospital admission;

(4) to a clergy member [~~of the clergy~~] specifically designated by the patient;

(5) to a qualified organ or tissue procurement organization as defined in Section 692.002 for the purpose of making inquiries relating to donations according to the protocol referred to in Section 692.013(d);

(6) to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician;

(7) to a person authorized to consent to medical treatment under Chapter 313 or to a person in a circumstance exempted from Chapter 313 to facilitate the adequate provision of treatment;

(8) to an employee or agent of the hospital who requires health care information for health care education, quality assurance, or peer review or for assisting the hospital in the delivery of health care or in complying with statutory, licensing, accreditation, or certification requirements and if the hospital takes appropriate action to ensure that the employee or agent:

(A) will not use or disclose the health care information for any other purpose; and

(B) will take appropriate steps to protect the health care information;

(9) to a federal, state, or local government agency or authority to the extent authorized or required by law;

(10) to a hospital that is the successor in interest to the hospital maintaining the health care information;

(11) to the American Red Cross for the specific purpose of fulfilling the duties specified under its charter granted as an instrumentality of the United States government;

(12) to a regional poison control center, as the term is used in Chapter 777, to the extent necessary to enable the center to provide information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(13) to a health care utilization review agent who requires the health care information for utilization review of health care under Article 21.58A, Insurance Code;

(14) for use in a research project authorized by an institutional review board under federal law;

(15) to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient;

(16) to facilitate reimbursement to a hospital, other health care provider, or the patient for medical services or supplies;

(17) to a health maintenance organization for purposes of maintaining a statistical reporting system as required by a rule adopted by a state agency or regulations adopted under the federal Health Maintenance Organization Act of 1973, as amended (42 U.S.C. Section 300 et seq.);

(18) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code ~~[4.01(e), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes)]~~;

(19) to comply with a court order except as provided by Subdivision (20);  
or

(20) related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under:

(A) the Texas Rules of Civil Procedure or Code of Criminal Procedure;

or

(B) Chapter 121, Civil Practice and Remedies Code.

(b) A hospital that is a covered entity disclosing protected health information under this section, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, shall ensure that the disclosure complies with all applicable requirements, standards, or implementation specifications of the privacy rule, including provisions relating to disclosures for:

(1) facility directories under 45 C.F.R. Section 164.510(a);

(2) treatment, payment, or health care operations under 45 C.F.R. Section 164.506;

(3) cadaveric organ, eye, or tissue donation purposes under 45 C.F.R. Section 164.512(h);

(4) law enforcement purposes under 45 C.F.R. Section 164.512(f);

(5) health oversight activities under 45 C.F.R. Section 164.512(d);

(6) research purposes under 45 C.F.R. Section 164.512(i); and

(7) a judicial or administrative proceeding under 45 C.F.R. Section 164.512(e).

SECTION \_\_\_\_ . Section 241.154, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) Except as provided by Subsections ~~[Subsection]~~ (d) and (f), the hospital or its agent may charge a reasonable fee for providing the health care information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$30; and

(A) a charge for each page of:

(i) \$1 for the 11th through the 60th page of the provided copies;

(ii) 50 cents for the 61st through the 400th page of the provided

copies; and

(iii) 25 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$45; and

(A) \$1 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(f) A covered entity shall comply with the requirements of 45 C.F.R. Section 164.524, including the requirement that access to protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, for inspection purposes may not be denied to an individual or legally authorized representative for nonpayment of a fee.

SECTION \_\_\_\_\_. Section 247.065, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) Subsection (b)(7) does not authorize the disclosure or use of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the disclosure or use complies with all applicable requirements, standards, or implementation specifications of the privacy rule.

SECTION \_\_\_\_\_. Section 595.003, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) If consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 595.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

(1) the person is a client; and

(2) subject to Subsection (c), the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(c) A covered entity may not deny a request under this section for protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and

Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the qualified professional responsible for supervising the client's habilitation:

(1) determines that making the record available to the client is reasonably likely to endanger the life or physical safety of the client or another person; and

(2) complies with other requirements relating to denial of access to an individual's protected health information under 45 C.F.R. Section 164.524.

SECTION \_\_\_\_\_. Section 611.004, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) If a disclosure under Subsection (a)(4) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent to the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. Subsection (b), Section 611.0045, Health and Safety Code, is amended to read as follows:

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health. A covered entity may not deny a request under this subsection for protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the professional:

(1) determines that making the record available to the patient is reasonably likely to endanger the life or physical safety of the patient or another person; and

(2) complies with other requirements relating to denial of access to an individual's protected health information under 45 C.F.R. Section 164.524.

SECTION \_\_\_\_\_. Subsection (b), Section 611.008, Health and Safety Code, is amended to read as follows:

(b) Except as provided by this subsection, unless [Unless] provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency. A covered entity shall comply with the requirements of 45 C.F.R. Section 164.524, including the requirement that access to protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, for inspection purposes may not be denied to an individual or legally authorized representative for nonpayment of a fee.

SECTION \_\_\_\_\_. Section 773.093, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) If consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 8, Article 21.58A, Insurance Code, is amended by adding Subsection (j) to read as follows:

(j) If an authorization under Subsection (b) authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 546.104, Insurance Code, as effective April 1, 2005, is amended to read as follows:

Sec. 546.104. AUTHORIZED DISCLOSURE. (a) An individual or an individual's legal representative may authorize disclosure of genetic information relating to the individual by an authorization that:

- (1) is written in plain language;
- (2) is dated;
- (3) contains a specific description of the information to be disclosed;
- (4) identifies or describes each person authorized to disclose the genetic information to a group health benefit plan issuer;
- (5) identifies or describes the individuals or entities to whom the disclosure or subsequent redisclosure of the genetic information may be made;
- (6) describes the specific purpose of the disclosure;
- (7) is signed by the individual or legal representative and, if the disclosure is made to claim proceeds of an affected life insurance policy, the claimant; and
- (8) advises the individual or legal representative that the individual's authorized representative is entitled to receive a copy of the authorization.

(b) If an authorization under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 21.4032, Labor Code, is amended to read as follows:

Sec. 21.4032. AUTHORIZED DISCLOSURE. (a) An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

- (1) a description of the information to be disclosed;
- (2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

(b) If an authorization under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Subsection (c), Section 201.009, Local Government Code, is amended to read as follows:

(c) Subsection (b) does not apply to:

(1) a local government record whose public disclosure is prohibited by an order of a court or by another state law; or

(2) a local government that is a covered entity disclosing protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION \_\_\_\_\_. Section 58.104, Occupations Code, is amended to read as follows:

Sec. 58.104. AUTHORIZED DISCLOSURE. (a) An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

(b) If an authorization under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the authorization complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 159.005, Occupations Code, is amended by adding Subsection (f) to read as follows:

(f) If consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 159.006, Occupations Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Subject to Subsection (f), unless ~~Unless~~ the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information as provided by Section 159.005 shall furnish copies of the requested billing or medical records, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the patient.

(f) A physician who is a covered entity may not deny a request under this section for protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the physician:

(1) determines that making the information available to the patient is reasonably likely to endanger the life or physical safety of the patient or another person; and

(2) complies with other requirements relating to denial of access to an individual's protected health information under 45 C.F.R. Section 164.524.

SECTION \_\_\_\_\_. Section 159.008, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsections ~~Subsection~~ (b) and (c), a physician:

(1) may charge a reasonable fee, as prescribed by board rule, for copying billing or medical records; and

(2) is not required to permit examination or copying of the records until the fee is paid unless there is a medical emergency.

(c) A covered entity shall comply with the requirements of 45 C.F.R. Section 164.524, including the requirement that access to protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, for inspection purposes may not be denied to an individual or legally authorized representative for nonpayment of a fee.

SECTION \_\_\_\_\_. Section 201.405, Occupations Code, is amended by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) A chiropractor who determines that access to information requested under Subsection (f) would be harmful to the physical, mental, or emotional health of the patient may refuse to release the information requested under this section. A chiropractor who is a covered entity may not deny a request under this subsection for protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the chiropractor:

(1) determines that making the record available to the patient is reasonably likely to endanger the life or physical safety of the patient or another person; and

(2) complies with other requirements relating to denial of access to an individual's protected health information under 45 C.F.R. Section 164.524.

(h) If a consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 202.406, Occupations Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) A podiatrist shall furnish copies of podiatric records requested or a summary or narrative of the records under a written consent for release of the information as provided by this section unless the podiatrist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The podiatrist may delete confidential information about another person who has not consented to the release. A podiatrist who is a covered entity may not deny a request under this subsection for protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the podiatrist:

(1) determines that making the record available to the patient is reasonably likely to endanger the life or physical safety of the patient or another person; and

(2) complies with other requirements relating to denial of access to an individual's protected health information under 45 C.F.R. Section 164.524.

(f) If consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 258.104, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) If consent under this section authorizes the disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

SECTION \_\_\_\_\_. Section 32, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) If a disclosure under Subsection (a)(1)(D) is a disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160

and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the consent to the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information.

SECTION \_\_\_\_\_. The state auditor shall conduct an audit of state agencies to determine which agencies have designated themselves covered entities for the purposes of the federal Health Insurance Portability and Accountability Act and whether the agency should be designated as a hybrid of a covered entity. The auditor shall report the results of the audit to the office of the attorney general and the appropriate legislative committees not later than March 1, 2006. The report must include any recommendations for changes in agency designation.

SECTION \_\_\_\_\_. Subsection (c), Section 107.006, Family Code, is repealed.

The amendment to **HB 2572** 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 Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2572** 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 2572 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 2572** be placed on its third reading and final passage.

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

Nays: Nelson.

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

#### **HOUSE BILL 3556 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 3556** at this time on its second reading:

**HB 3556**, Relating to the creation of Las Lomas Municipal Utility District No. 4 of Kaufman County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

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

Amend **HB 3556**, Senate committee printing, by adding the following appropriately numbered sections:

SECTION 1. Section 204, Chapter 935, Acts of the 69th Legislature, Regular Session, 1985, is amended by adding Subsection (e) to read as follows:

(e) If the board levies an assessment to pay the cost of an improvement project and subsequently the improvement project is amended or canceled and replaced by a different improvement project, the board may amend the special assessment order and the assessments imposed in the order to reflect the change of projects, the costs of the revised improvement project, and the benefits of the revised improvement project. The amended assessment order may be adopted after a hearing is conducted in accordance with the procedures provided by Subsection (d) of this section.

SECTION 2. (a) The legislature validates and confirms in all respects any act or proceeding of the Falcon's Lair Utility and Reclamation District, of Dallas County, Texas, including elections and annexations, not excepted by Subsection (b) of this section and taken not more than two years before the effective date of this Act, effective as of the date on which the act or proceeding occurred.

(b) This section does not apply to an act or proceeding that is the subject of litigation pending on the effective date of this Act or to an act that, under a statute of this state or the United States, was a misdemeanor or a felony at the time the act occurred.

The amendment was read.

Senator Deuell offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **HB 3556**, Senate committee printing, by striking "Section 204" on line 3 and inserting "Section 20A"

The amendment to Floor Amendment No. 1 to **HB 3556** 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 3556**, 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.

Senator Nelson offered the following amendment to the bill:

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

Amend **HB 3556** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(b) Each director is [~~Directors are~~] elected at large to one of five numbered places by the qualified voters residing within the boundaries of LCMUA.

SECTION \_\_. (a) The directors serving on the board of directors of the Lake Cities Municipal Utility Authority on the effective date of this Act shall draw lots to determine in which place each director serves. The two directors whose terms expire in 2006 shall draw lots for places 1 and 2. The three directors whose terms expire in 2008 shall draw lots for places 3, 4, and 5.

(b) At the Lake Cities Municipal Utility Authority directors election in 2006 a candidate may file for place 1 or 2. At the directors election in 2008, a candidate may file for place 3, 4, or 5.

SECTION \_\_. Chapter 312, Acts of the 58th Legislature, Regular Session, 1963, is repealed.

SECTION \_\_. Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999, as amended by this Act takes effect September 1, 2005.

The amendment to **HB 3556** 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.

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

**HB 3556** 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 3556 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 3556** 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 2329 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 2329** at this time on its second reading:

**CSHB 2329**, Relating to authorizing the issuance of revenue bonds or other obligations to fund capital projects at public institutions of higher education.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

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

Amend **CSHB 2329** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter B, Chapter 55, Education Code, is amended by adding Sections 55.1751, 55.1752, 55.1753, 55.1754, 55.1755, 55.1757, 55.1758, 55.1759, 55.17591, and 55.17593 to read as follows:

Sec. 55.1751. THE TEXAS A&M UNIVERSITY SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The Texas A&M University System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board for the following institutions not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) Tarleton State University System Center—Central Texas, \$30 million for educational facilities for the Tarleton State University System Center—Central Texas at the location that may become Texas A&M University—Central Texas;

(2) Texas A&M University—Commerce, \$20 million for a music building;

(3) Texas A&M University—Corpus Christi, \$10 million for utility improvements;

(4) Texas A&M University—Kingsville, \$45 million for the System Center—San Antonio for educational and related facilities at the location proposed for Texas A&M University—San Antonio;

(5) Texas A&M University—Texarkana, \$45 million for educational and support facilities to complete the institution's campus master plan;

(6) The Texas A&M University System Health Science Center, \$35 million for a College of Medicine building and renovation of the Joe H. Reynolds Medical Building; and

(7) Texas A&M International University, \$20 million for a student success center.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The Texas A&M University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The Texas A&M University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.1752. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board for the following institutions not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) The University of Texas at Arlington, \$45 million for an engineering building;

(2) The University of Texas at El Paso, \$30 million for the renovation of an academic building and the completion of shell space in engineering and science buildings;

(3) The University of Texas of the Permian Basin, \$30 million for a science and technology complex;

(4) The University of Texas at San Antonio, \$45 million for an engineering building (phase II);

(5) The University of Texas Medical Branch at Galveston, \$57 million for facilities for the National Biocontainment Laboratory;

(6) The University of Texas Health Science Center at Houston:

(A) \$35 million for an adult stem cell research center at the Texas Medical Center to conduct stem cell and related biomedical research;

(B) \$60 million for educational and related facilities for The University of Texas Dental Branch; and

(C) \$19 million for educational and related facilities at the Brownsville Campus;

(7) The University of Texas Health Science Center at San Antonio:

(A) \$55 million for the South Texas Research Tower; and

(B) \$20 million for facilities for the Harlingen Medical Center;

(8) The University of Texas Health Science Center at Tyler, \$20 million for an academic center;

(9) The University of Texas M. D. Anderson Cancer Center, \$45 million for the renovation of the Lutheran Pavilion Patient Tower as an emergency center; and

(10) The University of Texas at Tyler, \$6 million for educational and related facilities at the Palestine Campus.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.1753. UNIVERSITY OF HOUSTON SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of the University of Houston System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board for the following institutions not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) the University of Houston, \$40 million to renovate the Science and Research I building and the Fleming building;

(2) the University of Houston–Downtown, \$20 million for a classroom building; and

(3) the University of Houston–Victoria, \$6 million for a student administration and support building.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the University of Houston System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the University of Houston System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.1754. TEXAS STATE UNIVERSITY SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of the Texas State University System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board for the following institutions not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) Lamar University, \$25 million for renovations of educational and related facilities to update the institution's campus master plan;

(2) Lamar Institute of Technology, \$3 million for the renovation of educational and related facilities and for chilled water facilities;

(3) Lamar State College–Orange, \$2,500,000 for the purchase and renovation of the Hibernia Bank facilities and the renovation of the Green Avenue Building;

(4) Lamar State College–Port Arthur, \$2,500,000 for a computer/learning resource center and a campus center plant; and

(5) Texas State University–San Marcos;

(A) \$30 million for an undergraduate academic center; and

(B) \$35 million for the Round Rock Higher Education Center (Phase II).

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the Texas State University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the Texas State University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.1755. UNIVERSITY OF NORTH TEXAS SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of the University of North Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board for the following institutions not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) the University of North Texas, \$40 million for a College of Business Administration building;

(2) the University of North Texas Health Science Center at Fort Worth, \$30 million for an osteopathic medical center; and

(3) the University of North Texas System Center at Dallas, \$25 million for educational and related facilities.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the University of North Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the University of North Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.1757. MIDWESTERN STATE UNIVERSITY; ADDITIONAL BONDS.

(a) In addition to the other authority granted by this subchapter, the board of regents of Midwestern State University may issue bonds in accordance with this subchapter in an aggregate principal amount not to exceed \$8 million to finance the renovation of campus facilities and utility infrastructure.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of Midwestern State University, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

Sec. 55.1758. STEPHEN F. AUSTIN STATE UNIVERSITY. (a) In addition to the other authority granted by this subchapter, the board of regents of Stephen F. Austin State University may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for an early childhood center, to be financed through the issuance of bonds in accordance with this subchapter in an aggregate principal amount not to exceed \$20 million.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of Stephen F. Austin State University, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

Sec. 55.1759. TEXAS TECH UNIVERSITY SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of the Texas Tech University System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for projects to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board not to exceed the following aggregate principal amounts for the projects specified as follows:

(1) Texas Tech University Health Sciences Center, \$13 million for educational and related facilities in the city of Midland for the Permian Basin OB-GYN residency program; and

(2) Texas Tech University:

(A) \$50 million for a College of Business building; and

(B) \$6 million for the renovation of facilities for the School of Law.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the Texas Tech University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the Texas Tech University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

Sec. 55.17591. TEXAS SOUTHERN UNIVERSITY; ADDITIONAL BONDS.

(a) In addition to the other authority granted by this subchapter, the board of regents of Texas Southern University may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for educational and related facilities for a satellite campus, to be financed through the issuance of bonds in accordance with this subchapter in an aggregate principal amount not to exceed \$30 million.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of Texas Southern University, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

Sec. 55.17593. SAM HOUSTON STATE UNIVERSITY. (a) In addition to the other authority granted by this subchapter, the board of regents of Sam Houston State University may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for the Woodlands Academic Center, to be financed through the issuance of bonds in accordance with this subchapter in an aggregate principal amount not to exceed \$20 million.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of Sam Houston State University, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

SECTION 2. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, ~~or~~ 55.1744, 55.1751-55.17591, or 55.17593, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION 3. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, ~~or~~ 55.1744, 55.1751-55.17591, or 55.17593, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

The amendment was read.

**Floor Amendment No. 2 was not offered.**

**Floor Amendment No. 3 was not offered.**

**Floor Amendment No. 4 was not offered.**

**Floor Amendment No. 5 was not offered.**

**Floor Amendment No. 6 was not offered.**

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 2329** by adding the following appropriately numbered SECTION to the bill and by renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. (a) Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.17521 to read as follows:

Sec. 55.17521. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, or other facilities, including roads and related infrastructure, for educational and related facilities at The University of Texas at Arlington, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, not to exceed the following aggregate principal amounts for the facilities specified as follows:

(1) \$76,600,000 for an Engineering Research Building and the renovation of three engineering facilities; and

(2) \$44,700,000 for a general academic building.

(b) The board of regents may pledge irrevocably to the payment of the bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board of regents to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(b) Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, ~~or~~ 55.1744, or 55.17521, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

(c) Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, ~~or~~ 55.1744, or 55.17521, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

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The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 7 to **CSHB 2329** was tabled by the following vote: Yeas 17, Nays 13.

Yeas: Barrientos, Deuell, Duncan, Ellis, Estes, Hinojosa, Lindsay, Lucio, Madla, Ogden, Shapiro, Shapleigh, Staples, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Eltife, Fraser, Gallegos, Harris, Jackson, Nelson, Seliger, Van de Putte, West.

Absent: Janek.

Senator Jackson offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 2329** by inserting a new appropriately numbered section to read as follows:

Section THE UNIVERSITY OF HOUSTON SYSTEM. (a) In addition to the other authority granted by this subchapter, the board of regents of the University of Houston System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for the University of Houston Clear Lake to be financed by the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board in an aggregate principal amount not to exceed \$38 million.

(b) The board may pledge irrevocably to the payment of those bonds all or any part of the revenue funds of an institution, branch, or entity of the University of Houston System, including student tuition charges required or authorized by law to be imposed on students enrolled at an institution, branch, or entity of the University of Houston System. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the University of Houston System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

The amendment was read.

On motion of Senator Ogden, Floor Amendment No. 8 to **CSHB 2329** was tabled by the following vote: Yeas 26, Nays 3.

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

Nays: Armbrister, Harris, Jackson.

Absent: Averitt, Brimer.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 2329**, the amendment 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 bill as amended.

**CSHB 2329** 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 2329 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 2329** 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 1771 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 1771** at this time on its second reading:

**CSHB 1771**, Relating to the Medicaid managed care delivery system.

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 1771 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 1771** 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.

**STATEMENT OF LEGISLATIVE INTENT**

Senator Zaffirini submitted the following statement of legislative intent for **HB 1771**:

As Chair of the Article II (Health and Human Services) Work Group for the Senate Finance Committee and the Senate Bill 1 Appropriations Conference Committee, I developed the Special Provisions Relating to all Health Care Health and Human Services Agencies Section 49, which is in Senate Bill 1 and on which **HB 1771** is based. Our intent was to ensure that the Health and Human Services

Commission will seek the necessary federal waiver for the Integrated Care Management model of Medicaid managed care laid out in **HB 1771**. We expect the ICM model developed in **HB 1771** to be piloted in the Dallas service area by September 1, 2006, and the appropriate public hospital and county officials to be consulted about whether the ICM model will be the model of managed care implemented in their respective service areas.

It is also my intent that the Health and Human Services Commission work closely with provider groups and consumer advocate groups to ensure that long term services and supports comparable to community based alternative waiver services will be offered under the ICM model to all who are eligible for that waiver. What's more, the Health and Human Services Commission should require the ICM contractor to subcontract with qualified local community based organizations for some or all care coordination, service coordination, recipient outreach and educational services, and relocation services under the Promoting Independence Initiative. Recipients should have the option of consumer directed services. Finally, a comprehensive outreach and educational initiative should be conducted at least 90 days prior to implementation of ICM to inform recipients and providers about the implementation.

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**MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
HOUSE BILL 2833 ON SECOND READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **CSHB 2833** at this time on its second reading:

**CSHB 2833**, Relating to the protection of private real property from regulatory takings.

**POINT OF ORDER**

Senator Barrientos raised a point of order against further consideration of **CSHB 2833**, stating that it is in violation of Senate Rule 7.12(b)(10) requiring that every committee report printing on a bill or resolution shall include a bill analysis, including any updated analysis to reflect any change made by amendment or substitute.

**POINT OF ORDER WITHDRAWN**

Senator Barrientos withdrew the point of order.

Senator Staples withdrew the motion to suspend the regular order of business.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2051 ON SECOND READING**

Senator Nelson moved to suspend the regular order of business to take up for consideration **CSHB 2051** at this time on its second reading:

**CSHB 2051**, Relating to the adoption of a state scenic byways program.

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

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

Nays: Brimer, Staples.

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.

**MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
HOUSE BILL 2051 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 2051** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 20, Nays 11. (Not receiving four-fifths vote of Members present)

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

Nays: Brimer, Ellis, Eltife, Estes, Harris, Jackson, Ogden, Seliger, Shapiro, Staples, Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1434 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1434** at this time on its second reading:

**CSHB 1434**, Relating to the continuation and functions of the Texas Lottery Commission.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1434** as follows:

(1) On page 46, line 25, between "school" and the period, insert the following: ", unless the racetrack received a license from the Texas Racing Commission prior to the original construction or expansion of a public school."

The amendment was read.

Senator Barrientos withdrew Floor Amendment No. 1.

Senator Armbrister offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1434** as follows:

Add the following SECTIONS, appropriately numbered, to read as follows:

SECTION 2.01. Section 466.002, Government Code, is amended by amending Subdivisions (2)-(10) and adding Subdivisions (11)-(36) to read as follows:

(2) "Communication technology" means the methods used and the components employed to facilitate the transmission of information, including transmission and reception systems that transmit information through wire, cable, radio, microwave, light, optics, or computer data networks.

(3) "Director" means a ~~the~~ director employed by the executive director under Section 467.033 ~~[of the division].~~

(4) "Disable" with respect to video lottery terminals means the process that causes a video lottery terminal to cease functioning on issuance of a shutdown command from the video lottery central system.

(5) "Distribute," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means the sale, lease, marketing, offer, or other disposition of any of those items.

(6) ~~(4)~~ "Division" means the lottery division established by the commission under Chapter 467.

(7) "Electronic storage medium," with respect to video lottery, means the electronic medium on which the operation software for a game playable on a video lottery terminal is stored in the form of erasable programmable read only memory, compact disc-read only memory, flash random access memory, or other technology medium the commission approves for use in a video lottery terminal.

(8) ~~(4)~~ "Executive director" means the executive director of the commission.

(9) "Gaming agreement" means an agreement authorized under Subchapter K between this state and a federally recognized Indian tribe under which this state allows the tribe to conduct limited gaming activities authorized under this chapter or applicable federal law.

(10) "House-banked game" means a game of chance in which:

(A) the house plays as a participant;

(B) the house competes against all players, collects from all losers, and pays all winners; and

(C) the house has an opportunity to win.

(11) "Indian lands" means:

(A) land located within an Indian reservation and occupied by an Indian tribe on January 1, 1998; and

(B) land occupied by an Indian tribe on January 1, 1998, over which an Indian tribe exercises governmental power and the title to which is:

(i) held in trust by the United States for the benefit of an Indian tribe or individual member of an Indian tribe; or

(ii) held by an Indian tribe or an individual member of an Indian tribe and subject to restriction by the United States against alienation.

(12) "Institutional investor" means:

(A) a state or federal government pension plan; or

(B) any of the following that meets the requirements of a "qualified institutional buyer" as defined in Rule 144A, Securities Act of 1933 (15 U.S.C. Sections 77a-77aa), and the rules and regulations adopted under that rule by the United States Securities and Exchange Commission:

(i) a bank as defined by Section 3(a)(6), Securities Exchange Act of 1934 (15 U.S.C. Sections 78a-78kk), and the rules and regulations adopted under that act by the United States Securities and Exchange Commission;

(ii) an insurance company as defined by Section 2(a)(17), Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iii) an investment company registered under Section 8, Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(iv) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the Securities and Exchange Commission;

(v) a group composed entirely of persons specified by this subdivision; or

(vi) any other person the commission recognizes as an institutional investor for reasons consistent with the policies expressed in this chapter.

(13) [~~5~~] "Lottery" means the state lottery established and operated in accordance with the Texas Constitution under this chapter and includes the operation of a state-controlled video lottery system [~~procedures operated by the state under this chapter through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize~~].

(14) [~~6~~] "Lottery game" means an activity conducted lawfully and in accordance with the Texas Constitution and this chapter that is controlled by this state as part of the lottery and through which prizes are awarded or distributed by chance to persons who have paid or unconditionally agreed to pay, or who otherwise participate in a game, for a chance or other opportunity to receive a prize [~~includes a lottery activity~~].

(15) [~~7~~] "Lottery operator" means a person selected under Section 466.014(b) to operate a lottery game.

(16) "Manufacture," with respect to a video lottery terminal, an electronic computer component of a video lottery terminal, the cabinet in which a video lottery terminal is housed, video lottery equipment, or video lottery game software intended for use or play in this state, including on Indian lands in this state, means to design, assemble, fabricate, produce, program, or make modifications to any of those items.

(17) "Net terminal income" means the total amount of money paid to play video lottery games less the value of all credits redeemed for money, including any progressive prizes and bonuses, by the players of the video lottery games. Promotional prizes unrelated to video lottery game wagers that are offered by a video lottery retailer or video lottery manager may not be deducted or otherwise considered credits redeemed for money by players for the purpose of determining net terminal income.

(18) "Pari-mutuel license holder" means a person licensed to conduct wagering on a greyhound race or a horse race under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(19) "Person" means, for purposes of video lottery operations, any natural person, corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature.

(20) [~~18~~] "Player" means a person who contributes any part of the consideration for a ticket or to play a video lottery game under this chapter.

(21) "Racetrack" means a racetrack as defined by Section 1.03(25), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(22) [~~19~~] "Sales agent" or "sales agency" means a person licensed under this chapter to sell tickets.

(23) "Slot machine" means a mechanical, electrical, or other type of device, contrivance, or machine that plays or operates on insertion of a coin, currency, token, or similar object or on payment of any other consideration, and the play or operation of which, through the skill of the operator, by chance, or both, may deliver to the person playing or operating the machine, or entitle the person to receive, cash, premiums, merchandise, tokens, or any other thing of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any equipment, machine, technological aid, or other device used or authorized in connection with the play of bingo under Chapter 2001, Occupations Code.

(24) "Substantial interest holder" means any of the following that is not a bona fide lender, bank, or other authorized or licensed lending institution that holds a mortgage or other lien acquired in the ordinary course of business or a vendor of the applicant or license holder that is not otherwise a substantial business holder:

(A) a person who directly, indirectly, or beneficially owns any interest in a privately owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(B) a person who directly, indirectly, or beneficially owns 10 percent or more of any publicly owned corporation, association, trust, partnership, limited partnership, joint venture, subsidiary, or other entity, regardless of its form, structure, or nature;

(C) a person associated with an applicant or license holder who the commission determines has the power or authority to:

(i) control the activities of the applicant or license holder; or

(ii) elect or select the executive director, the managers, the partners, or a majority of the board of directors of the applicant or license holder; and

(D) any key personnel of a video lottery retailer or video lottery manager, including an executive director, officer, director, manager, member, partner, limited partner, executive, employee, or agent, who the commission determines has the power to exercise significant influence over decisions concerning any part of the applicant's or license holder's business operation.

(25) [~~19~~] "Ticket" means any tangible evidence issued to provide participation in a lottery game authorized by this chapter other than a video lottery game.

(26) "Video lottery central system" means the system of procedures and facilities operated and controlled by the commission that is designed to link together all video lottery terminals operated in this state and allows the commission to continuously monitor the activity of each video lottery terminal and to disable any video lottery terminal in this state.

(27) "Video lottery central system provider" means a person that, under a contract with the commission, provides the video lottery central system.

(28) "Video lottery equipment" means:

(A) a video lottery terminal;

(B) equipment, a component, or a contrivance used remotely or directly in connection with a video lottery terminal to:

(i) affect the reporting of gross revenue and other accounting information, including a device for weighing and counting money;

(ii) connect video lottery terminals together for accounting or wide-area prize or progressive prize purposes;

(iii) monitor video lottery terminal operations; and

(iv) provide for the connection of video lottery terminals to the video lottery central system; or

(C) any other communications technology or equipment necessary for the operation of a video lottery terminal.

(29) "Video lottery game" means an electronically simulated game displayed on a video lottery terminal the outcome of which is determined solely by chance based on a computer-generated random selection of winning combinations of symbols or numbers other than roulette, dice, or baccarat game themes associated with casino gambling, except that game themes displaying symbols that appear to roll on drums to simulate a classic casino slot machine or themes of other card games and keno may be used.

(30) "Video lottery manager" means a person who:

(A) is licensed by the commission under this chapter to manage a video lottery terminal establishment at a racetrack; or

(B) provides management services for a video lottery terminal establishment on Indian lands.

(31) "Video lottery retailer" means a racetrack at which a video lottery terminal establishment is located and that holds a video lottery retailer license under Subchapter K.

(32) "Video lottery system" has the meaning assigned to that term by Section 47(f), Article III, Texas Constitution.

(33) "Video lottery terminal" means an interactive electronic device that is capable of displaying video lottery games.

(34) "Video lottery terminal establishment" means premises at which the operation of video lottery terminals is authorized by the commission under this chapter in accordance with a license or a gaming agreement.

(35) "Video lottery terminal provider" means a person in the business of manufacturing or distributing video lottery terminals in this state.

(36) "Video lottery ticket" means the tangible evidence issued by a video lottery terminal to reflect winnings from the play of a video lottery game.

SECTION 2.02. Section 466.003, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Any ~~[A]~~ contract or authorized agreement between the division and a lottery operator, the video lottery central system provider, a video lottery terminal provider, or a manufacturer or distributor of video lottery games under Section 466.014(b) must contain a provision allowing the contract or authorized agreement to be terminated without penalty should the division be abolished unless another state agency is assigned to regulate all video lottery game activity as required by this chapter.

(c) Notwithstanding Subsection (a), if any gaming agreement that allows video lottery is in effect, the commission or another state agency designated by the legislature must regulate video lottery games as necessary to comply with a gaming agreement under this chapter.

SECTION 2.03. Section 466.004(a), Government Code, is amended to read as follows:

(a) A political subdivision of this state may not impose:

(1) a tax on the sale of a ticket;

(2) a tax on the payment of a prize under this chapter; ~~[or]~~

(3) an ad valorem tax on tickets;

(4) a tax, fee, or other assessment on consideration paid to play a video

lottery game; or

(5) a tax or fee for attendance or admission to a video lottery establishment or a racetrack at which a video lottery establishment is located unless specifically authorized by statute.

SECTION 2.04. Section 466.014, Government Code, is amended to read as follows:

Sec. 466.014. POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR; CONTRACT AUTHORITY. (a) The commission and executive director have broad authority and shall exercise strict control and close supervision over ~~[all]~~ lottery games ~~[conducted in this state]~~ to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.

(b) The executive director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the executive director. A contract relating to the operation of video lottery must be consistent with Subchapter K. Except as provided by this subsection, a ~~[A]~~ person with whom the executive director contracts to operate a lottery game must be eligible for a sales agent license under Section 466.155. A person with whom the executive director contracts to provide the video lottery central system must be eligible under the same standards as those applicable to the registration or approval by the commission of a video lottery terminal provider in accordance with Subchapter K.

(c) The executive director may award a contract for lottery supplies, equipment, or services, including a contract under Subsection (b), pending the completion of any investigation and licensing, registration, or other approval authorized or required by this chapter. A contract awarded under this subsection must include a provision permitting the executive director to terminate the contract without penalty if the investigation reveals that the person to whom the contract is awarded would not be

eligible for a sales agent license under Section 466.155 or with regard to video lottery does not satisfy the applicable requirements for licensing, registration, or other approval under Subchapter K.

(e) In the acquisition or provision of facilities, supplies, equipment, materials, or services related to the implementation of video lottery, the commission is exempt from:

(1) procurement procedures prescribed under:

(A) Subtitle D, Title 10; and

(B) Section 466.101; and

(2) any bidding or contract requirements provided by any other law or by commission rules.

(f) Subsection (e) and this subsection expire January 1, 2008.

SECTION 2.05. Section 466.015(b), Government Code, is amended to read as follows:

(b) The commission shall adopt rules to the extent they are not inconsistent with Chapters 551 and 552 governing the:

(1) security for the lottery and the commission, including the development of an internal security plan;

(2) apportionment of the total revenues from the sale of tickets and from all other sources in the amounts provided by this chapter;

(3) enforcement of prohibitions on the sale of tickets to or by an individual younger than 18 years of age or the sale of a video lottery game to or by an individual younger than 21 years of age; ~~and~~

(4) enforcement of prohibitions on a person playing a lottery game by telephone; and

(5) enforcement of prohibitions provided by law on the sale of any purchase or play of a video lottery game.

SECTION 2.06. Section 466.017, Government Code, is amended to read as follows:

Sec. 466.017. AUDITS. (a) The commission ~~[executive director]~~ shall provide for a certified public accountant to conduct an independent audit of the commission's annual financial statements in accordance with generally accepted auditing standards that requires the accountant to express an opinion on the conformity of the financial statements with generally accepted accounting principles ~~[for each fiscal year of all accounts and transactions of the lottery]~~. The certified public accountant may not have ~~[, as determined by the executive director,]~~ a significant financial interest in a sales agent, lottery vendor, ~~[or]~~ lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider. The certified public accountant shall present an audit report to the executive director, the commission, the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report required by the General Appropriations Act. ~~[The report must contain recommendations to enhance the earnings capability of the lottery and improve the efficiency of lottery operations.]~~ The state auditor may review the results of and working papers related to the audit.

(b) The records of a [Each] lottery operator, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider [operator's and sales agent's records] are subject to audit by the commission and the state auditor. For the purpose of carrying out this chapter, the executive director or state auditor may examine all books, records, papers, or other objects that the executive director or state auditor determines are necessary for conducting a complete examination under this chapter and may also examine under oath any officer, director, or employee of a lottery operator, ~~[or]~~ sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider. The executive director or state auditor may conduct an examination at the principal office or any other office of the person subject to the audit [lottery operator or sales agent] or may require the person [lottery operator or sales agent] to produce the records at the office of the commission or state auditor. If a sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider refuses to permit an examination or to answer any question authorized by this subsection, the executive director may summarily suspend the license or registration of the sales agent, video lottery manager, video lottery retailer, or video lottery terminal provider under Section 466.160 or Subchapter K until the examination is completed as required. Section 321.013(h) does not apply to an audit of a lottery operator, ~~[or]~~ sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider.

SECTION 2.07. Section 466.018, Government Code, is amended to read as follows:

Sec. 466.018. INVESTIGATIONS. The attorney general, the district attorney for Travis County, or the district attorney, criminal district attorney, or county attorney performing the duties of district attorney for the county in which the violation or alleged violation occurred may investigate a violation or alleged violation of this chapter and of the penal laws of this state by the commission or its employees, a sales agent, a lottery vendor, ~~[or]~~ a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider.

SECTION 2.08. Sections 466.020(c), (d), and (e), Government Code, are amended to read as follows:

(c) A security officer or investigator employed by the department of security or a peace officer who is working in conjunction with the commission or the Department of Public Safety in the enforcement of this chapter may:

(1) ~~[r]~~ without a search warrant, ~~[may]~~ search and seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is located on premises for which a person holds a sales agent, video lottery retailer, or video lottery manager license issued under this chapter; or

(2) seize a lottery vending machine, lottery computer terminal, video lottery terminal, or other lottery or gaming equipment that is being used or is in the possession of any person in violation of this chapter.

(d) The Department of Public Safety or any other state or local law enforcement agency in this state, at the commission's request and in accordance with an interagency agreement, shall perform a full criminal background investigation of a

prospective deputy or investigator of the department of security. The commission shall reimburse the agency [~~Department of Public Safety~~] for the actual costs of an investigation.

(e) At least once every two years, the executive director shall employ an independent firm that is experienced in security, including computer security and systems security, to conduct a comprehensive study of all aspects of lottery security, including:

- (1) lottery personnel security;
- (2) sales agent security;
- (3) lottery operator and vendor security;
- (4) security against ticket counterfeiting and alteration and other means of fraudulent winning;
- (5) security of lottery drawings;
- (6) lottery computer, data communications, database, and systems security;
- (7) lottery premises and warehouse security;
- (8) security of distribution of tickets;
- (9) security of validation and payment procedures;
- (10) security involving unclaimed prizes;
- (11) security aspects of each lottery game;
- (12) security against the deliberate placement of winning tickets in lottery games that involve preprinted winning tickets by persons involved in the production, storage, transportation, or distribution of tickets; [~~and~~]
- (13) security of video lottery retailers, video lottery managers, video lottery terminal providers, and video lottery central system providers; and
- (14) other security aspects of lottery operations, including video lottery game operations.

SECTION 2.09. Section 466.021(a), Government Code, is amended to read as follows:

(a) The executive director shall, every two years, employ an independent firm experienced in demographic analysis to conduct a demographic study of lottery players. The study must examine [~~include~~] the income, age, sex, race, education, and frequency of participation of players. The study must distinguish between players of traditional lottery games and video lottery games.

SECTION 2.10. Section 466.022, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) In addition to commission records excepted from disclosure under Chapter 552, the following information is confidential and is exempt from disclosure:

- (1) security plans and procedures of the commission designed to ensure the integrity and security of the operation of the lottery;
- (2) information of a nature that is designed to ensure the integrity and security of the selection of winning tickets or numbers in the lottery, other than information describing the general procedures for selecting winning tickets or numbers; [~~and~~]
- (3) the street address and telephone number of a prize winner, if the prize winner has not consented to the release of the information; and

(4) information relating to all system operations of video lottery games, including the operation of the video lottery system, security related to video lottery games, and commission plans and procedures intended to ensure the integrity and security of the operation of video lottery games.

(c) Information that is confidential under Subsection (b)(4) includes information and data that:

(1) are furnished to the commission under Subchapter K or that may be otherwise obtained by the commission from any source;

(2) pertain to an applicant's criminal record, antecedents, and background and are furnished to or obtained by the commission from any source, including information obtained by the commission under Section 411.108(d);

(3) are provided to the commission, a commission employee, or an investigator acting on behalf of the commission by a governmental agency or an informer or on the assurance that the information will be held in confidence and treated as confidential;

(4) are obtained by the commission from a video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider; or

(5) are prepared or obtained by an agent or employee of the commission relating to a license, registration, or renewal application, a finding of suitability, or any approval required under Subchapter K.

(d) Information that qualifies as confidential under Subsection (b)(4) may be disclosed in whole or in part only as necessary to administer this chapter or under a court order. The commission, subject to appropriate procedures, may disclose the information and data to an authorized agent of a political subdivision of this state, the United States, another state or a political subdivision of another state, a tribal law enforcement agency, or the government of a foreign country.

(e) For the annual report required under Section 466.016, the commission may disclose a compilation of statistical information that is otherwise confidential under Subsection (b)(4) if the compilation does not disclose the identity of an applicant, license or registration holder, or video lottery establishment.

(f) Notwithstanding any other provision of state law, the information provided under Subsection (d) or (e) may not otherwise be disclosed without specific commission authorization.

SECTION 2.11. Section 466.024, Government Code, is amended to read as follows:

Sec. 466.024. PROHIBITED GAMES. (a) The executive director, ~~[or]~~ a lottery operator, a video lottery manager, a video lottery retailer, a video lottery terminal provider, or a video lottery central system provider may not establish or operate a lottery game in which the winner is chosen on the basis of the outcome of a live sports event.

(b) The ~~[commission shall adopt rules prohibiting the]~~ operation of any game using a video lottery machine, slot ~~[or]~~ machine, or other gambling device that is not connected to the video lottery central system and regulated by this state as required by Section 47, Article III, Texas Constitution, and this chapter is prohibited.

(c) In this section, "sports[+]

~~[(1) "Sports]~~ event" means a football, basketball, baseball, or similar game, or a horse or dog race on which pari-mutuel wagering is allowed.

~~[(2) "Video lottery machine" or "machine" means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens.]~~

SECTION 2.12. Section 466.025, Government Code, is amended to read as follows:

Sec. 466.025. REPORTS OF TICKETS SOLD, NET TERMINAL INCOME, AND PRIZES AWARDED. For each lottery game, other than a video lottery game, after the last date on which a prize may be claimed under Section 466.408(d), the director shall prepare a report that shows the total number of tickets sold and the number and amounts of prizes awarded in the game. The report must be available for public inspection. For video lottery games, the director shall prepare a weekly report that shows net terminal income for the preceding week.

SECTION 2.13. Section 466.103(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who:

(1) would be denied a license as a sales agent under Section 466.155; or

(2) with regard to video lottery equipment:

(A) is not a registered video lottery terminal provider if registration is required; or

(B) would be deemed unsuitable to be a video lottery terminal provider under Subchapter K.

SECTION 2.14. Section 466.110, Government Code, is amended to read as follows:

Sec. 466.110. PROHIBITED ADVERTISEMENTS. The legislature intends that advertisements or promotions sponsored by the commission or the division for the lottery not be of a nature that unduly influences any person to purchase a lottery ticket or number or play a video lottery game.

SECTION 2.15. Section 466.151(b), Government Code, is amended to read as follows:

(b) The executive director may establish a provisional license or other classes of licenses necessary to regulate and administer the quantity and type of lottery games provided at each licensed location of a sales agent.

SECTION 2.16. Section 466.158(a), Government Code, is amended to read as follows:

(a) Unless suspended or revoked, a license issued under this subchapter expires on the date specified in the license, which may not be later than the fifth ~~second~~ anniversary of its date of issuance.

SECTION 2.17. Section 466.201(a), Government Code, is amended to read as follows:

(a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) a sales agent or an applicant for a sales agent license;

(2) a person required to be named in a license application;

(3) a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider;

(4) an employee of a lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider or prospective lottery operator, video lottery manager, video lottery retailer, video lottery terminal provider, or video lottery central system provider, if the employee is or will be directly involved in lottery operations;

(5) a person who manufactures or distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;

(6) a person who has submitted a written bid or proposal to the commission in connection with the procurement of goods or services by the commission, if the amount of the bid or proposal exceeds \$500;

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license;

(8) a person who proposes to enter into or who has a contract with the commission to supply goods or services to the commission; or

(9) if a person described in Subdivisions (1) through (8) is not an individual, an individual who:

(A) is an officer or director of the person;

(B) holds more than 10 percent of the stock in the person;

(C) holds an equitable interest greater than 10 percent in the person;

(D) is a creditor of the person who holds more than 10 percent of the person's outstanding debt;

(E) is the owner or lessee of a business that the person conducts or through which the person will conduct lottery-related activities;

(F) shares or will share in the profits, other than stock dividends, of the person;

(G) participates in managing the affairs of the person; or

(H) is an employee of the person who is or will be involved in:

(i) selling tickets; or

(ii) handling money from the sale of tickets.

SECTION 2.18. Subchapter E, Chapter 466, Government Code, is amended by adding Section 466.206 to read as follows:

Sec. 466.206. CRIMINAL HISTORY INVESTIGATION FOR VIDEO LOTTERY. (a) Except as otherwise provided by this section, Sections 466.020 and 466.201, and Subchapter K, a criminal history investigation of a video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system

provider is governed by commission rules adopted under Subchapter K, which may consider a criminal history investigation conducted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(b) The Department of Public Safety or a state or local law enforcement agency in this state, in accordance with an interagency agreement with the commission, shall provide any assistance requested by the commission in the administration and enforcement of this chapter, including conducting background investigations of a person seeking a license, registration, or other commission authorization required under Subchapter K or of any person required to be named in an application for a license, registration, or other commission authorization under that subchapter.

(c) This section does not limit the commission's right to obtain criminal history record information from any other local, state, or federal agency. The commission may enter into a confidentiality agreement with the agency as necessary and proper.

(d) Except as otherwise provided by Section 411.108(d) or another provision of this chapter, criminal history record information obtained by the commission under this section may be disclosed only:

(1) to another law enforcement agency to assist in or further an investigation related to the commission's operation and oversight of video lottery; or

(2) under a court order.

SECTION 2.19. Section 466.252, Government Code, is amended to read as follows:

Sec. 466.252. PLAYER [PURCHASE OF TICKET] AGREEMENT TO ABIDE BY RULES AND INSTRUCTIONS. (a) By purchasing a ticket in a particular lottery game or participating as a player in a lottery game, a player agrees to abide by and be bound by the commission's rules and instructions, including the rules or instructions applicable to the particular lottery game involved. The player also acknowledges that the determination of whether the player is a valid winner is subject to:

(1) the commission's rules, instructions, and claims procedures, including those developed for the particular lottery game involved; ~~and~~

(2) any validation tests established by the commission for the particular lottery game involved; and

(3) the limitations and other provisions prescribed by this chapter.

(b) If the lottery uses tickets, an abbreviated form of the rules or a reference to the rules may appear on the tickets.

SECTION 2.20. Section 466.3011, Government Code, is amended to read as follows:

Sec. 466.3011. VENUE. Venue is proper in Travis County or any county in which venue is proper under Chapter 13, Code of Criminal Procedure, for:

(1) an offense under this chapter;

(2) an offense under the Penal Code, if the accused:

(A) is a lottery operator, lottery vendor, sales agent, video lottery manager, video lottery retailer, video lottery terminal provider, video lottery central system provider, or employee of the division; and

(B) is alleged to have committed the offense while engaged in lottery activities, including video lottery activities; or

(3) an offense that involves property consisting of or including lottery tickets under Title 7 or 11, Penal Code.

SECTION 2.21. Subchapter G, Chapter 466, Government Code, is amended by adding Section 466.3031 to read as follows:

Sec. 466.3031. UNAUTHORIZED OPERATION, USE, OR POSSESSION OF VIDEO LOTTERY TERMINAL. (a) A person may not operate, use, or possess a video lottery terminal unless the operation, use, or possession is expressly authorized by this chapter or other law.

(b) Except for transport to or from a video lottery establishment and as provided by this chapter, a person commits an offense if the person operates, uses, or possesses any video lottery terminal that is not at all times connected to the video lottery central system or that does not generate revenue for this state, except funds retained by the commission to pay administrative costs. An offense under this subsection is a felony of the third degree.

(c) Notwithstanding Subsection (b), a video lottery retailer, video lottery manager, or registered or approved video lottery terminal provider may store or possess a video lottery terminal as authorized by the commission, and the commission may possess video lottery terminals for study and evaluation.

(d) Nothing in this section shall be construed to prohibit the operation, use, or possession of equipment, machines, technological aids, or other devices allowed in connection with the play of bingo under Chapter 2001, Occupations Code.

SECTION 2.22. Section 466.305(a), Government Code, is amended to read as follows:

(a) A sales agent, video lottery manager, or video lottery retailer, or an employee of a sales agent, video lottery manager, or video lottery retailer, commits an offense if the person intentionally or knowingly sells a ticket to another person or allows the person to play or conduct a game on a video lottery terminal by extending credit or lending money to the person to enable the person to purchase the ticket or play the game.

SECTION 2.23. The heading to Section 466.3051, Government Code, is amended to read as follows:

Sec. 466.3051. SALE ~~[OF TICKET]~~ TO OR PURCHASE OF LOTTERY TICKET BY PERSON YOUNGER THAN 18; PLAY OF LOTTERY GAME BY PERSON YOUNGER THAN 21 [YEARS OF AGE].

SECTION 2.24. Section 466.3051, Government Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsections (b)-(f) to read as follows:

(a-1) A video lottery manager, a video lottery retailer, or an employee of a video lottery manager or video lottery retailer commits an offense if the person intentionally or knowingly allows a person younger than 21 years of age to play a video lottery game.

(b) An individual who is younger than 18 years of age commits an offense if the individual:

- (1) purchases a lottery ticket; or
- (2) falsely represents the individual to be 18 years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to purchase a lottery ticket.

(b-1) An individual who is younger than 21 years of age commits an offense if the individual:

(1) plays a video lottery game; or

(2) falsely represents the individual to be 21 years of age or older by displaying evidence of age that is false or fraudulent or misrepresents in any way the individual's age in order to play a video lottery game.

(c) A person 18 years of age or older may purchase a lottery ticket to give as a gift to another person, including an individual younger than 18 years of age.

(d) It is a defense to the application of Subsection (b) that the individual younger than 18 years of age is participating in an inspection or investigation on behalf of the commission or other appropriate governmental entity regarding compliance with this section. It is a defense to the application of Subsection (b-1) that the individual younger than 21 years of age is participating in an inspection or investigation on behalf of the commission or other appropriate governmental entity regarding compliance with this section.

(e) An offense under Subsection (a) or (a-1) is a Class C misdemeanor.

(f) An offense under Subsection (b) or (b-1) is punishable by a fine not to exceed \$250.

SECTION 2.25. Section 466.3053, Government Code, is amended to read as follows:

Sec. 466.3053. PURCHASE OF TICKET OR VIDEO LOTTERY GAME WITH PROCEEDS OF AFDC CHECK OR FOOD STAMPS. (a) A person commits an offense if the person intentionally or knowingly purchases a ticket or plays a video lottery game with:

(1) the proceeds of a check issued as a payment under the Aid to Families with Dependent Children program administered under Chapter 31, Human Resources Code; or

(2) a food stamp coupon issued under the food stamp program administered under Chapter 33, Human Resources Code.

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

SECTION 2.26. Section 466.306, Government Code, is amended to read as follows:

Sec. 466.306. FORGERY; ALTERATION OF TICKET. (a) A person commits an offense if the person intentionally or knowingly alters or forges a ticket or video lottery ticket.

(b) An offense under this section is a felony of the third degree unless it is shown on the trial of the offense that the prize alleged to be authorized by the ticket or video lottery ticket forged or altered is greater than \$10,000, in which event the offense is a felony of the second degree.

SECTION 2.27. Section 466.309(a), Government Code, is amended to read as follows:

(a) A person commits an offense if the person intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, video lottery terminal or other video lottery equipment, or other mechanical device used in a lottery game.

SECTION 2.28. The heading to Section 466.317, Government Code, is amended to read as follows:

Sec. 466.317. PROHIBITION AGAINST SALE OF CERTAIN LOTTERY TICKETS OR OPERATION OF CERTAIN VIDEO LOTTERY SYSTEMS.

SECTION 2.29. Section 466.317, Government Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) A person may not control or operate a video lottery system in this state except as provided by this chapter.

(b) The state may enter into a compact with another state or state government ~~or an Indian tribe or tribal government~~ to permit the sale of lottery tickets of this state in the state's~~, tribe's,~~ or government's jurisdiction and to allow the sale of the state's~~, tribe's,~~ or government's lottery tickets in this state.

(c) A person commits an offense if the person violates this section. An offense under this section is a felony of the third degree ~~[Class A misdemeanor].~~

SECTION 2.30. Section 466.355(a), Government Code, is amended to read as follows:

(a) The state lottery account is a special account in the general revenue fund. The account consists of all revenue received from the sale of tickets, license and application fees under this chapter, other than Subchapter K, and all money credited to the account from any other fund or source under law. Interest earned by the state lottery account shall be deposited in the unobligated portion of the general revenue fund.

SECTION 2.31. Subchapter H, Chapter 466, Government Code, is amended by adding Section 466.360 to read as follows:

Sec. 466.360. VIDEO LOTTERY TERMINAL REVENUE. Revenue generated from the operation of video lottery terminals is governed by Subchapter K and commission rules.

SECTION 2.32. Section 466.402, Government Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to the payment of prizes for video lottery games governed by Subchapter K.

SECTION 2.33. Chapter 466, Government Code, is amended by adding Subchapter K to read as follows:

#### SUBCHAPTER K. VIDEO LOTTERY

Sec. 466.501. LEGISLATIVE FINDINGS AND DECLARATIONS. The legislature finds and declares the following:

(1) The purpose and intent of this chapter is to carry out the intent of the voters as established by the approval of Section 47(f), Article III, Texas Constitution, to expand the revenue-generating ability of the state lottery by authorizing this state to operate a video lottery system consistent with public policy strictly limiting the expansion of gambling in this state.

(2) Except for the operation of video lottery terminals on certain Indian lands as defined by the Texas Constitution, the people of this state intend to allow only state-controlled video lottery games to be conducted in this state and only in locations at which pari-mutuel wagering is conducted at racetracks.

(3) This state has the authority and responsibility to control the proliferation of gambling by:

(A) limiting the total number of video lottery terminals permitted at authorized locations in this state;

(B) limiting video lottery licensing to specific licensed racetracks;

(C) extending strict and exclusive state oversight and supervision to all persons, locations, practices, and associations related to the operation of video lottery games; and

(D) providing comprehensive law enforcement supervision of video lottery game activities.

(4) This state's ability to monitor and control the operation of all video lottery terminals ensures the integrity of the system and provides for the most efficient oversight and supervision. Costs incurred for oversight and supervision of gambling will be significantly less than if video lottery terminals were not operated as part of the video lottery system. In addition, providing for the state-controlled system will defend against criminal infiltration of gambling operations.

(5) The video lottery games operated at racetracks under this chapter are controlled by this state in a manner that allows this state to continuously monitor all video lottery terminals and to disable any video lottery terminal for the protection of the public and this state.

(6) Through the video lottery system this state will monitor the network of video lottery terminals to ensure maximum security unique to state-operated gambling. Except as may otherwise be required by federal law governing Indian lands, each operating video lottery terminal in this state will be connected to a video lottery central system.

(7) The authorization for state-controlled video lottery terminals to fund governmental programs is consistent with this state's public policy prohibiting gambling provided the gambling is not, in any way, expanded beyond that directly controlled by this state. Expanded gambling beyond this limited form of state-controlled gambling would compromise the public safety, law, and long-standing policy against gambling in this state. In addition, such expanded gambling could impose prohibitive cost on this state's regulatory system and, therefore, defeat the effort to raise revenue for state governmental programs through authorized video lottery terminals. For these reasons, any interpretation that allows for casino gaming of the type operating in Nevada and New Jersey in 2005 to be conducted in this state at racetracks or on Indian lands as a result of the authorization of video lottery terminals would have severe adverse consequences on this state's efforts to raise revenue to fund governmental programs through the operation of video lottery terminals and would violate the public policy against gambling in such a way that would clearly outweigh any potential positive economic consequences.

(8) In authorizing only a state-controlled and state-operated video lottery system and state-controlled video lottery terminals in limited locations and continuing the general prohibition on gambling in this state as a matter of public policy, this state is protecting the state's legitimate interests by restricting such vice activity. By limiting the operation of video lottery terminals to those connected to the state-controlled video lottery system and to certain lands and certain types of games,

the legislature seeks to foster this state's legitimate sovereign interest in regulating the growth of gambling activities in this state. Historically, this state has banned commercial gambling altogether and, therefore, it is in this state's best interest to limit the placement of commercial gambling operations to certain locations. Limiting video lottery terminals to those controlled by this state and located on racetracks where regulated gambling occurs is reasonably designed to defend against the criminal infiltration of gambling operations and adverse impacts on communities statewide. By restricting gambling such as video lottery terminals to carefully limited locations and video lottery terminals controlled by this state that may be disabled by this state if necessary to protect the public, this state furthers the state's purpose of ensuring that such gambling activities are free from criminal and undesirable elements.

(9) This chapter is game-specific and may not be construed to allow the operation of any other form of gambling unless specifically allowed by this chapter. This chapter does not allow the operation of slot machines, dice games, roulette wheels, house-banked games, including house-banked card games, or games in which winners are determined by the outcome of a sports contest that are expressly prohibited under other state law.

(10) In considering limitations on expanded gambling in this state, it is a critical factor to effectuate the will of the voters that any gaming on lands of the Ysleta del Sur Pueblo and Alabama-Coushatta Indian tribes must be in strict compliance with state law. The Kickapoo Traditional Tribe of Texas is only entitled to operate video lottery terminals in strict compliance with state law, unless otherwise required by federal law, and in accordance with a gaming agreement negotiated with the governor and ratified by the legislature. A tribe may not under any circumstances operate Class III gaming as defined by federal law other than video lottery terminals connected to a video lottery central system controlled and operated by this state.

(11) The voters have conferred a substantial economic benefit on federally recognized Indian tribes by allowing operation of video lottery terminals on lands held in trust by the Ysleta del Sur Pueblo and Alabama-Coushatta Indian tribes at the time of the ratification and approval of Section 47(f), Article III, Texas Constitution, and on Indian lands of the Kickapoo Traditional Tribe of Texas on which gaming is allowed under applicable federal law. These tribes have the exclusive right to operate video lottery terminals at locations on the Indian lands in this state without incurring the investment necessary to construct, maintain, and operate racetracks for live racing, and through revenue-sharing both the policy of self-governance for the tribes and this state's interests in generating additional revenue to fund governmental programs can be promoted.

(12) The public has an interest in video lottery game operations, and lottery operations conducted under Section 47(f), Article III, Texas Constitution, and this chapter represent an exception to the general policy of this state prohibiting wagering for private gain. Therefore, participation in a video lottery game by a holder of a license, registration, or approval under this chapter is considered a privilege conditioned on the proper and continued qualification of the holder and on the discharge of the affirmative responsibility of each holder to provide to the commission or other regulatory and investigatory authorities established by this chapter any

assistance and information necessary to assure that the policies declared by this chapter are achieved. Consistent with this policy, the legislature intends this chapter to:

(A) preclude the creation of any property right in any license, registration, or approval issued or granted by this state under this chapter, the accrual of any value to the privilege of participation in any video lottery game operation, or the transfer of a license or permit; and

(B) require that participation in video lottery game operations be solely conditioned on the individual qualifications of persons seeking this privilege.

(13) Only video lottery terminals lawfully operated in connection with a video lottery system authorized by this subchapter may be lawfully operated on Indian lands under the Johnson Act (15 U.S.C. Section 1175).

Sec. 466.502. CONSTRUCTION; APPLICABILITY OF OTHER LAWS. (a) This subchapter applies uniformly throughout this state and all political subdivisions of this state.

(b) To the extent of any inconsistency between Chapter 2003 and this subchapter or a commission rule governing video lottery terminals, this subchapter or the commission rule controls in all matters related to video lottery terminals, including hearings before the State Office of Administrative Hearings.

(c) Video lottery equipment operated under commission authority and this chapter is exempt from 15 U.S.C. Section 1172.

Sec. 466.505. AUTHORITY TO OPERATE VIDEO LOTTERY SYSTEM. (a) The commission may implement and operate a video lottery system and regulate the operation of video lottery terminals at racetracks in accordance with this chapter and the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes). This chapter supersedes any conflicting or inconsistent provision of the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or other state law.

(b) The commission may allow the operation of video lottery terminals pursuant to this chapter at locations on Indian lands in accordance with an effective gaming agreement and in compliance with applicable federal law.

Sec. 466.506. VIDEO LOTTERY GAMES; STATE OWNERSHIP AND PROPRIETARY INTEREST. (a) This state owns all video lottery games, regardless of ownership of the video lottery terminal. This state possesses a proprietary interest in:

(1) the main logic boards and any electronic storage medium used in video lottery equipment or games; and

(2) software consisting of computer programs, documentation, and other related materials necessary for the operation of the video lottery system.

(b) For purposes of this chapter, this state may acquire a proprietary interest in video lottery game software through:

(1) ownership of the software; or

(2) an exclusive product license agreement with a provider in which the provider retains copyrighted ownership of the software but the license granted to this state is nontransferable and authorizes this state to operate the software program, solely for the state's own use, on the video lottery central system and video lottery terminals connected to the video lottery central system.

Sec. 466.507. STATE CONTROL OF VIDEO LOTTERY SYSTEM. (a) In accordance with Section 47(f), Article III, Texas Constitution, the commission shall control and regulate the video lottery system and the video lottery central system through which this state has the exclusive and unilateral ability to monitor activity of video lottery terminals and remotely disable video lottery terminals for the public safety, health, and welfare or the preservation of the integrity of the lottery and to prevent any financial loss to this state.

(b) This section does not affect or restrict the ability of a video lottery manager or video lottery retailer to monitor activity of video lottery terminals and to disable video lottery terminals in accordance with commission rules.

(c) The commission may disable a video lottery terminal if a video lottery retailer's or video lottery manager's license is revoked, surrendered, or summarily suspended under this subchapter and to prevent any financial loss to this state.

Sec. 466.510. VIDEO LOTTERY CENTRAL SYSTEM. (a) The commission shall establish or cause to be established a video lottery central system to link all video lottery terminals in the video lottery system. The video lottery central system must provide the auditing and other information required by the commission.

(b) The commission shall provide to a registered video lottery terminal provider or an applicant applying for registration as a video lottery terminal provider the protocol documentation data necessary to enable the provider's or applicant's video lottery terminals to communicate with the commission's video lottery central system for transmission of auditing program information and for activation and disabling of video lottery terminals.

(c) The video lottery central system may not limit or preclude potential providers from providing the video lottery terminals, except providers that fail to meet specifications established by the commission.

(d) The commission shall determine whether a video lottery central system provider may sell or distribute video lottery terminals in this state as the commission considers appropriate to ensure the efficiency, integrity, and security of the video lottery system.

(e) The commission may contract with a video lottery central system provider to establish the video lottery central system.

Sec. 466.511. VIDEO LOTTERY TERMINAL PROVIDER: REGISTRATION OR APPROVAL REQUIRED. (a) A person may not manufacture or distribute video lottery equipment for use or play in this state unless the person is registered as a video lottery terminal provider or is otherwise approved by the commission to manufacture or distribute video lottery equipment in this state.

(b) Unless suspended or revoked, the registration or approval expires on the date specified by the commission, which may not be later than the fifth anniversary of the date of the registration or approval. A person may renew an unexpired registration or approval by paying the required renewal fee and complying with the requirements of this subchapter and commission rule.

(c) To be eligible for registration or commission approval as required by this section, an applicant must satisfy all applicable requirements under this subchapter.

Sec. 466.512. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION; CHANGE IN INFORMATION. (a) The commission shall adopt rules governing the registration or approval of video lottery terminal providers. The rules must require the application and any other form or document submitted to the commission by or on behalf of the applicant to determine the applicant's qualification under this section to be sworn to or affirmed before an officer qualified to administer oaths.

(b) An applicant for a video lottery terminal provider registration or approval must provide the following information:

(1) the full name and address of the applicant;  
(2) the full name and address of each location at which video lottery equipment is or will be manufactured or stored in this state;

(3) the name, home address, and share of ownership of the applicant's substantial interest holders;

(4) a full description of each separate type of video lottery equipment that the applicant seeks to manufacture or distribute in this state;

(5) the brand name under which each type of video lottery equipment is to be distributed;

(6) if the applicant is incorporated under law other than the laws of this state, the applicant's irrevocable designation of the secretary of state as the applicant's resident agent for service of process and notice in accordance with the law of this state;

(7) a list of all businesses or organizations in this state in which the applicant has any financial interest and the details of that financial interest, including all arrangements through which a person directly or indirectly receives any portion of the profits of the video lottery terminal provider and indebtedness between the license holder and any other person, other than a regulated financial institution, in excess of \$5,000;

(8) a list of all affiliated businesses or corporations in which the applicant or an officer, director, or substantial interest-holder of the applicant, either directly or indirectly, owns or controls as a sole proprietor or partner more than 10 percent of the voting stock of a publicly traded corporation;

(9) a list of all businesses or corporations licensed to conduct gambling activities or to supply gambling-related equipment, supplies, or services in which the applicant or an officer, director, or substantial interest-holder of the applicant has any interest;

(10) a list of all jurisdictions in which the applicant or an officer, director, or substantial interest-holder of the applicant has been licensed, registered, qualified, or otherwise approved to conduct gambling-related activities during the 10 years preceding the date of the filing of the application;

(11) a statement, including all related details, indicating whether the applicant or an officer, director, or substantial interest-holder of the applicant has ever had a license, registration, qualification, or other approval for gambling-related activities denied, revoked, or suspended by any jurisdiction or has been fined or otherwise required to pay penalties or monetary forfeitures for gambling-related activities in any jurisdiction; and

(12) a statement acknowledging that the applicant will make available for review at the time and place requested by the commission all records related to the ownership or operation of the business.

(c) The commission may require the following information from an applicant:

(1) personal financial and personal history records of all substantial interest-holders;

(2) all records related to the scope of activity, including sales of product, purchases of raw materials and parts, and any contracts, franchises, patent agreements, or similar contracts or arrangements related to manufacturing or distributing video lottery terminals; and

(3) records related to any financial or management control of or by customers and suppliers.

(d) The applicant must demonstrate the ability to comply with all manufacturing, quality control, and operational restrictions imposed on authorized video lottery equipment, patented or otherwise restricted video lottery games, or other video lottery equipment that the applicant seeks to manufacture or distribute for use in this state. The registration or approval process must include an on-site review of the applicant's manufacturing equipment and process for each separate type of authorized video lottery equipment to ensure compliance with the requirements of this chapter and commission rules.

(e) Not later than the 10th day after the date of any change in the information submitted on or with the application form, the applicant shall notify the commission of the change, including a change that occurs after the registration or other commission approval has been granted.

(f) The applicant shall comply with all federal and state laws, local ordinances, and rules.

Sec. 466.513. VIDEO LOTTERY TERMINAL PROVIDER: APPLICATION FEE. (a) An applicant seeking registration or approval or renewal of registration or approval as a video lottery terminal provider must pay a nonrefundable application fee in the amount prescribed by commission rule that is sufficient to pay the costs to the commission of administering and licensing video lottery terminals.

(b) Application fees paid under this section shall be retained by the commission to defray costs incurred in the administration and enforcement of this chapter relating to the operation of video lottery terminals.

(c) The commission may not issue a video lottery terminal provider registration or approval to a person that on January 1, 2005, owned any interest in a racetrack or pari-mutuel license in this state.

Sec. 466.520. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE REQUIRED. Except as provided by a gaming agreement, a person may not own or operate a video lottery terminal if the person does not satisfy the requirements of this subchapter and is not licensed by the commission to act as a video lottery retailer or video lottery manager.

Sec. 466.521. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION AND QUALIFICATION. (a) An applicant for a video lottery retailer or video lottery manager license must apply to the commission

under rules adopted by the commission, provide the information necessary to determine the applicant's eligibility for a license, and provide other information considered necessary by the commission. The applicant must:

(1) hold a valid pari-mutuel license granted by the Texas Racing Commission under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) have a valid and executed contract with a racetrack that satisfies the requirements of Subdivision (1) to act as a video lottery manager for the racetrack subject to licensing under this chapter; or

(3) demonstrate to the commission's satisfaction that the applicant seeks to act as a video lottery manager for a federally recognized Indian tribe that has entered into a gaming agreement with this state that is in effect and governs the regulation of video lottery terminals on Indian lands in this state.

(b) Each officer, partner, director, key employee, substantial interest-holder, video lottery game operation employee, and owner of video lottery game operations must be eligible and maintain eligibility in accordance with this subchapter to be involved in video lottery games in this state.

(c) An applicant for a video lottery retailer or video lottery manager license has the burden of proving qualification for a license by clear and convincing evidence. In addition to satisfying minimum requirements established by commission rules, an applicant for a video lottery retailer or video lottery manager license must:

(1) be a person of good character, honesty, and integrity;

(2) be a person whose background and prior activities, including criminal record, reputation, habits, and associations, do not pose a threat to the security and integrity of video lottery or to the public interest of this state or to the effective operation and control of video lottery, or do not create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of video lottery or in the carrying on of the business and financial arrangements incidental to video lottery;

(3) if applying for a new license, provide fingerprints for a criminal records evaluation by the Texas Department of Public Safety or other law enforcement agency, including fingerprints for each person required to be named in an application, accompanied by a signed authorization for the release of information to the commission by the department of public safety and the Federal Bureau of Investigation;

(4) not have been convicted of an offense under this chapter or of any crime related to theft, bribery, or gambling or involving moral turpitude;

(5) demonstrate adequate business probity, competence, experience, and financial stability as defined by the commission;

(6) demonstrate adequate financing for the operation of the facility at which the video lottery terminals will be operated from a source that meets the requirements of this subchapter and is adequate to support the successful performance of the duties and responsibilities of the license holder and disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery equipment in the degree of detail requested by the commission;

(7) when applying for a new license or renewing a license under this chapter, present evidence to the commission of the existence and terms of any agreement regarding the proceeds from the operation of video lottery terminals;

(8) demonstrate that each substantial interest-holder in the applicant meets all applicable qualifications under this subchapter;

(9) provide all information, including financial data and documents, consents, waivers, identification of surety and insurance providers, and any other materials, requested by the commission for purposes of determining qualifications for a license; and

(10) as part of its application, expressly waive any and all claims against the commission, this state, and a member, officer, employee, or authorized agent of the commission or this state for damages resulting from any background investigation, disclosure, or publication relating to an application for a video lottery retailer or video lottery manager license.

(d) An application or disclosure form and any other document submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery retailer or video lottery manager license must be sworn to or affirmed before an officer qualified to administer oaths.

(e) An applicant who knowingly fails to reveal any fact material to qualification for a license, finding of suitability, or other approval or who knowingly submits false or misleading material information is ineligible for a video lottery retailer or video lottery manager license.

(f) An applicant for a license or renewal of a license as a video lottery retailer or video lottery manager shall notify the commission of any change in the application information for a license or renewal of a license not later than the 10th day after the date of the change, except that a publicly traded corporation or other business association or entity applicant is not required to notify the commission of a transfer by which any person directly or indirectly becomes the beneficial owner of less than 10 percent of the stock of the corporation or association.

(g) Except as provided by Section 466.525(e), the commission shall deny an application for a license or shall suspend or revoke a license if the commission finds that the applicant would be subject to denial or revocation of a sales agent license under Section 466.155.

Sec. 466.522. VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER: APPLICATION FEE. (a) An applicant for a video lottery retailer or video lottery manager license shall submit a nonrefundable application processing fee in the amount prescribed by commission rule that is sufficient and reasonable to pay the costs of determining the applicant's eligibility, not to exceed \$50,000.

(b) An application may not be processed until the applicant pays the application fee. If the application fee is not received by the 30th day after the date the commission notifies the applicant of the amount of the fee, the application is considered withdrawn and may not be considered by the commission.

Sec. 466.525. VIDEO LOTTERY TERMINAL ESTABLISHMENT LICENSE: REQUIREMENTS; LOCATION. (a) An applicant for a video lottery terminal establishment license must ensure that the facility for the establishment will comply

with all applicable building codes and rules of the commission. The rules adopted by the commission relating to facilities for video lottery establishments must relate solely to this state's interest in the operation of video lottery terminals.

(b) A video lottery terminal establishment shall provide office space for the commission sufficient for at least one commission employee.

(c) An applicant for a video lottery terminal establishment license or a license holder shall provide the information required by commission rule relating to the applicant's or license holder's video lottery terminal establishment and update the information at least annually.

(d) The commission may not issue a video lottery terminal establishment license to a racetrack if as of January 1, 2005, a property line of the licensed premises of the racetrack is located within one-half mile of the property line of a public school.

(e) Notwithstanding Section 466.155, the commission may not deny, suspend, or revoke a license under this subchapter based on the fact that a video lottery terminal establishment or a proposed video lottery terminal establishment is a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit, issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code.

Sec. 466.526. LICENSE HOLDER AS SALES AGENT. The holder of a video lottery retailer or video lottery manager license may operate as a sales agent for lottery tickets in accordance with this chapter.

Sec. 466.527. LICENSE TERM; RENEWAL ELIGIBILITY. (a) Unless suspended or revoked, a license issued under this subchapter, other than a video lottery retailer license, expires on the date specified in the license, which may not be later than the fifth anniversary of the date of issuance.

(b) A video lottery retailer license is valid for the same term as a pari-mutuel license and until suspended or revoked. The commission may charge an annual fee not to exceed \$50,000 to the holder of a video lottery retailer license.

(c) To be eligible for renewal of a license, an applicant must satisfy all applicable licensing requirements under this subchapter.

Sec. 466.528. RULES FOR ADDITIONAL LICENSE QUALIFICATIONS. The commission by rule may establish other license qualifications the commission determines are in the public interest and consistent with the declared policy of this state.

Sec. 466.529. APPLICATION AS REQUEST FOR CHARACTER DETERMINATION. An application under this subchapter to receive or renew a license, registration, or approval or to be found suitable constitutes a request for a determination of the applicant's general character, integrity, and ability to participate or engage in or be associated with the operation of video lottery terminals.

Sec. 466.530. IMMUNITY FOR STATEMENT MADE IN PROCEEDING OR INVESTIGATION. Any written or oral statement made in the course of an official commission proceeding or investigative activities related to an application for commission licensing, registration, or other approval under this subchapter, by any member or agent or any witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

Sec. 466.531. SUITABILITY FINDING. To promote the integrity and security of the lottery, the commission in its discretion may require a suitability finding for any person doing business with or in relation to the operation of video lottery terminals who is not otherwise required to obtain a license, registration, or approval from the commission for the person's video lottery-related operations.

Sec. 466.532. SUMMARY SUSPENSION OF VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER LICENSE; TERMINAL DISABLED. (a) The commission may summarily suspend the license of a video lottery retailer or video lottery manager without notice or hearing if the commission finds the action is necessary to maintain the integrity, security, honesty, or fairness of the operation or administration of the lottery or to prevent financial loss to this state and:

(1) the license holder fails to deposit money received from video lottery terminal operations as required by this chapter or commission rule;

(2) an event occurs that would render the license holder ineligible for a license under this subchapter;

(3) the license holder refuses to allow the commission, the commission's agents, or the state auditor, or their designees, to examine the license holder's books, records, papers, or other objects under Section 466.017; or

(4) the executive director learns the license holder failed to disclose information that would, if disclosed, render the video lottery retailer or video lottery manager ineligible for a license under this subchapter.

(b) A summary suspension under this section must comply with the notice and procedure requirements provided by Section 466.160.

(c) The commission may disable a video lottery terminal operated by a license holder under this subchapter at the time:

(1) a proceeding to summarily suspend the license is initiated;

(2) the commission discovers the license holder failed to deposit money received from video lottery terminal operation as required if the license is being summarily suspended under this section; or

(3) an act or omission occurs that, under commission rules, justifies the termination of video lottery terminal operations to:

(A) protect the integrity of the lottery or the public health, welfare, or safety; or

(B) prevent financial loss to this state.

(d) The commission shall immediately disable a video lottery terminal if necessary to protect the public health, welfare, or safety.

Sec. 466.5321. TRANSFER RESTRICTIONS. (a) A video lottery retailer or video lottery manager license is not transferable.

(b) A pari-mutuel license holder that sells, transfers, assigns, or otherwise conveys any interest or control in the pari-mutuel license or the racetrack owned or managed by the license holder before video lottery operations begin at the racetrack or before the third anniversary of the commencement of video lottery operations shall remit to this state a transfer fee equal to 75 percent of the sales, transfer, assignment, or other conveyance price or other consideration received by the pari-mutuel license

holder. A transfer or conveyance of an interest or control under this subsection is subject to Section 6.21, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(c) A sale, transfer, assignment, or conveyance of interest or control to which Subsection (b) applies may not be approved by the commission until this state receives the transfer fee.

(d) This section does not apply to a transfer or assignment the commission determines is necessary to secure financing for the construction or operation of the racetrack. The commission may adopt rules to implement this section.

Sec. 466.533. LICENSING, REGISTRATION, SUITABILITY, AND REGULATORY APPROVAL AS REVOCABLE PERSONAL PRIVILEGES. (a) An applicant for a license, registration, suitability, or other affirmative regulatory approval under this subchapter does not have any right to the license, registration, suitability, or approval sought.

(b) Any license, registration, or suitability or other regulatory approval granted under this subchapter is a revocable privilege, and a holder of the privilege does not acquire any vested right in or under the privilege.

(c) The courts of this state do not have jurisdiction to review a decision to deny, limit, or condition the license, registration, suitability, or approval unless the judicial review is sought on the ground that the denial, limitation, or condition is based on a suspect classification, such as race, color, religion, sex, or national origin, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. If a state court has jurisdiction over a claim under this section, then this state's sovereign immunity is waived only to the extent expressly provided by Section 466.601.

(d) A license, registration, suitability, or regulatory approval granted or renewed under this subchapter may not be transferred or assigned to another person, and a license, registration, suitability, or approval may not be pledged as collateral. The purchaser or successor of a person who has been granted a license, registration, suitability, or regulatory approval must independently qualify for a license, registration, suitability, or approval required by this subchapter.

(e) The following acts void the license, registration, suitability, or other regulatory approval of the holder unless approved in advance by the commission:

(1) the transfer, sale, or other disposition of an interest in the holder that results in a change in the identity of a substantial interest holder; or

(2) the sale of the assets of the holder, other than assets bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined to have met the applicable qualifications of this subchapter.

Sec. 466.535. CAPITAL INVESTMENTS AND IMPROVEMENT REQUIREMENTS FOR VIDEO LOTTERY TERMINAL ESTABLISHMENT. A video lottery retailer or video lottery manager shall provide all necessary capital investments and required improvements at a video lottery terminal establishment operated by the retailer or manager.

Sec. 466.536. VIDEO LOTTERY TERMINAL. The commission shall provide all video lottery retailers or video lottery managers with a list of registered video lottery terminal providers, video lottery games, and video lottery terminals authorized for operation under this subchapter.

Sec. 466.537. VIDEO LOTTERY TERMINAL: DISTRIBUTION AND COMMISSION APPROVAL. (a) A video lottery terminal provider may not distribute a video lottery terminal or other video lottery equipment for placement at a video lottery terminal establishment in this state unless the video lottery terminal has been approved by the commission.

(b) Only a video lottery terminal provider registered with or approved by the commission may apply for approval of a video lottery terminal or other video lottery equipment.

(c) Not later than the 10th day before the date of shipment to a location in this state, a video lottery terminal provider shall file a report with the commission itemizing all video lottery terminals and other video lottery equipment to be provided to a video lottery retailer or video lottery manager in the shipment.

Sec. 466.538. VIDEO LOTTERY TERMINAL: TESTING; REPORT. (a) A video lottery terminal provider shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or other video lottery equipment.

(b) The commission may require a working model of a video lottery terminal to be provided to the commission unless the video lottery terminal provider provides a certification from an independent, commission-approved testing laboratory that the video lottery terminal is compatible with the state's video lottery system and functions as required by the commission.

Sec. 466.539. VIDEO LOTTERY TERMINAL: INSTALLATION; MODIFICATION REQUEST. (a) A video lottery terminal provider is responsible for the assembly and installation of all video lottery terminals and other video lottery equipment.

(b) A video lottery terminal provider or a video lottery retailer or video lottery manager may not change the assembly or operational functions of a video lottery terminal authorized by the commission for placement in this state unless a request for modification of an existing video lottery terminal prototype is approved by the commission. The request must contain:

- (1) a detailed description of the type of change;
- (2) a detailed description of the reasons for the change; and
- (3) technical documentation of the change.

(c) A video lottery terminal approved by the commission for placement at a video lottery terminal establishment must conform to the specifications of the video lottery terminal prototype tested or approved by the commission.

Sec. 466.540. VIDEO LOTTERY TERMINAL REMOVAL. (a) If any video lottery terminal that has not been approved by the commission is distributed by a video lottery terminal provider or operated by a video lottery retailer or video lottery manager or if an approved video lottery terminal malfunctions, the commission shall require the terminal to be removed from use and play.

(b) The commission may order that an unapproved terminal be seized and destroyed.

(c) The commission may suspend or revoke the license of a video lottery retailer or video lottery manager or the registration of a video lottery terminal provider for the distribution, possession, or operation of an unauthorized video lottery terminal.

(d) A video lottery retailer or video lottery manager may retain on the premises of a video lottery establishment a number of machines that the retailer or manager determines is necessary for spare parts or repair purposes or as replacements. The retailer or manager must provide to the commission each month a list of the terminals retained under this subsection.

Sec. 466.541. VIDEO LOTTERY TERMINAL SPECIFICATIONS. (a) The commission shall adopt rules for approval of video lottery terminals, including requirements for video lottery game tickets, maximum and minimum payout, and maximum wagers.

(b) A commission-approved video lottery terminal must meet the following minimum specifications:

(1) the terminal must:

(A) operate through a player's insertion of a coin, currency, voucher, or token into the video lottery terminal that causes the video lottery terminal to display credits that entitle the player to select one or more symbols or numbers or cause the video lottery terminal to randomly select symbols or numbers;

(B) allow the player to win additional game play credits, coins, or tokens based on game rules that establish the random selection of winning combinations of symbols or numbers and the number of free play credits, coins, or tokens to be awarded for each winning combination; and

(C) allow the player at any time to clear all game play credits and receive a video lottery ticket entitling the player to receive the cash value of those credits;

(2) a surge protector must be installed on the electrical power supply line to each video lottery terminal, a battery or equivalent power backup for the electronic meters must be capable of maintaining the accuracy of all accounting records and video lottery terminal status reports for a period of 180 days after power is disconnected from the video lottery terminal, and the power backup device must be in the compartment specified in Subdivision (4);

(3) the operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference;

(4) the main logic boards of all electronic storage mediums must be located in a separate compartment in the video lottery terminal that is locked and sealed by the commission;

(5) the instructions for play of each game must be displayed on the video lottery terminal face or screen, including a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols;

(6) communication equipment and devices must be installed to enable each video lottery terminal to communicate with the video lottery central system through the use of a communications protocol provided by the commission to each registered video lottery terminal provider, which must include information retrieval and programs to activate and disable the terminal; and

(7) a video lottery terminal may be operated only if connected to the video lottery central system, and play on the terminal may not be conducted unless the terminal is connected to the video lottery central system.

(c) The commission may reject any instructions for play required under Subsection (b)(5) that the commission determines to be incomplete, confusing, or misleading.

Sec. 466.542. VIDEO LOTTERY TERMINALS: HOURS OF OPERATION; COMMUNICATION; LOCATION. (a) Except as otherwise provided by the commission, the hours of operation for video lottery terminals are subject to restrictions only as provided by commission rules.

(b) The commission by rule may prescribe restrictions on the hours of video lottery terminal operations for purposes determined by the commission, including accounting for and collecting revenue generated by video lottery terminal operations and performing other operational services on the video lottery system.

(c) Communication between the video lottery central system and each video lottery terminal must be continuous and on a real-time basis as prescribed by the commission.

(d) Except as provided by a gaming agreement or commission rule, placement or movement of video lottery terminals in a video lottery terminal establishment must be consistent with a video lottery terminal establishment floor plan filed with the commission.

Sec. 466.543. VIDEO LOTTERY TERMINAL: TRANSPORT; DISPOSITION OF OBSOLETE TERMINAL. (a) The transportation and movement of video lottery terminals into or within this state is prohibited, except as permitted by this subchapter and approved by the commission.

(b) An obsolete video lottery terminal or a video lottery terminal that is no longer in operation must be promptly reported to the commission.

Sec. 466.545. TRAVEL AND INVESTIGATION COSTS. The commission shall pay the travel and investigative expenses incurred under this chapter from money appropriated to the commission.

Sec. 466.546. CONSENT TO COMMISSION DETERMINATION. (a) An application for a license, registration, finding of suitability, or other approval under this chapter constitutes a request to the commission for a decision on the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with the lottery in the manner or position sought.

(b) By filing an application with the commission, the applicant specifically consents to the commission's decision at the commission's election when the application, after filing, becomes moot for any reason other than death.

Sec. 466.547. ABSOLUTE AUTHORITY OF COMMISSION. To protect the integrity of the lottery or the public health, welfare, or safety, or to prevent financial loss to this state, the commission has full and absolute power and authority to:

(1) deny any application or limit, condition, restrict, revoke, or suspend any license, registration, or finding of suitability or approval; and

(2) fine any person licensed, registered, found suitable, or approved for any cause deemed reasonable by the commission.

Sec. 466.548. WAIVER OF REQUIREMENTS. (a) The commission may waive, either selectively or by general rule, one or more of the requirements of Sections 466.512 and 466.521 if the commission makes a written finding that the waiver is consistent with the policy of this state, the public health, safety, and welfare, and the integrity of the lottery.

(b) The commission may waive any requirement under this chapter for a finding of suitability of an institutional investor that is a substantial interest holder with respect to the beneficial ownership of the voting securities of a publicly traded corporation if the institutional investor holds the securities for investment purposes only and applies for a waiver in compliance with Section 466.549 and commission rules.

(c) An institutional investor is not eligible for the waiver, except as otherwise provided by Subsection (f), if the institutional investor beneficially owns, directly or indirectly, more than 15 percent of the voting securities and if any of the voting securities were acquired other than through a debt restructuring.

(d) Voting securities acquired before a debt restructuring and retained after a debt restructuring or as a result of an exchange, exercise, or conversion after a debt restructuring, or any securities issued to the institutional investor through a debt restructuring, are considered to have been acquired through a debt restructuring.

(e) A waiver granted under Subsection (b) is effective only as long as the institutional investor's direct or indirect beneficial ownership interest in the voting securities meets the limitations set forth in this section, and if the institutional investor's interest exceeds the limitation at any time, the investor is subject to the suitability findings required under this subchapter.

(f) An institutional investor that has been granted a waiver under Subsection (b) may beneficially own more than 15 percent, but not more than 19 percent, of the voting securities of a publicly traded corporation registered with or licensed by the commission only:

(1) if the additional ownership results from a stock repurchase program conducted by the publicly traded corporation; and

(2) on the conditions that:

(A) the institutional investor does not purchase or otherwise acquire any additional voting securities of the publicly traded corporation that would result in an increase in the institutional investor's ownership percentage; and

(B) the institutional investor reduces its ownership percentage of the publicly traded corporation to 15 percent or less before the first anniversary of the date the institutional investor receives constructive notice that it exceeded the 15 percent threshold, based on any public filing by the corporation with the United States Securities and Exchange Commission.

(g) The one-year time period under Subsection (f)(2)(B) may be extended for a reasonable time on commission approval.

(h) An institutional investor may not be considered to hold voting securities of a publicly traded corporation for investment purposes only unless the voting securities were acquired and are held in the ordinary course of business as an institutional investor and not for the purpose of causing, directly or indirectly, the election of a majority of the members of the board of directors, any change in the corporate charter, bylaws, management, policies, or operations of the corporation registered with or licensed by the commission or any of its gaming affiliates, or any other action which the commission finds to be inconsistent with investment purposes only. The following activities may not be considered to be inconsistent with holding voting securities for investment purposes only:

(1) voting, directly or indirectly through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of the voting securities;

(2) serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;

(3) nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;

(4) accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term;

(5) making financial and other inquiries of management of the type normally made by securities analysts for information purposes and not to cause a change in management, policies, or operations; and

(6) any other activity the commission determines to be consistent with the investment intent.

(i) For purposes of this section, "debt restructuring" means:

(1) a proceeding under the United States Bankruptcy Code; or

(2) any out-of-court reorganization of a person that is insolvent or generally unable to pay the person's debts as they become due.

Sec. 466.549. WAIVER APPLICATION REQUIREMENTS. An application for a waiver under Section 466.548(b) must include:

(1) a description of the institutional investor's business and a statement as to why the institutional investor meets the definition of an institutional investor set forth in this chapter;

(2) a certification, made under oath and penalty of perjury, that:

(A) states that the voting securities were acquired and are held for investment purposes only in accordance with Section 466.548;

(B) provides that the applicant agrees to be bound by and comply with this chapter and the rules adopted under this chapter, to be subject to the jurisdiction of the courts of this state, and to consent to this state as the choice of forum in the event any dispute, question, or controversy arises regarding the application or any waiver granted under Section 466.548(b); and

(C) includes a statement by the signatory explaining the basis of the signatory's authority to sign the certification and bind the institutional investor to its terms;

(3) a description of all actions, if any, taken or expected to be taken by the institutional investor related to the activities described in Section 466.548(f);

(4) the names, addresses, telephone numbers, dates of birth, and social security numbers of:

(A) the officers and directors of the institutional investor or the officers' and directors' equivalents; and

(B) the persons that have direct control over the institutional investor's holdings of voting securities of the publicly traded corporation registered with or licensed by the commission;

(5) the name, address, telephone number, date of birth, and social security number or federal tax identification number of each person who has the power to direct or control the institutional investor's exercise of its voting rights as a holder of voting securities of the publicly traded corporation registered with or licensed by the commission;

(6) the name of each person that beneficially owns more than five percent of the institutional investor's voting securities or other equivalent;

(7) a list of the institutional investor's affiliates;

(8) a list of all securities of the publicly traded corporation registered with or licensed by the commission that are or were beneficially owned by the institutional investor or its affiliates in the preceding year, including a description of the securities, the amount of the securities, and the date of acquisition or sale of the securities;

(9) a list of all regulatory agencies with which the institutional investor or any affiliate that beneficially owns voting securities of the publicly traded corporation registered with or licensed by the commission files periodic reports, and the name, address, and telephone number of the person, if known, to contact at each agency regarding the institutional investor;

(10) a disclosure of all criminal or regulatory sanctions imposed during the preceding 10 years and of any administrative or court proceedings filed by any regulatory agency during the preceding five years against the institutional investor, its affiliates, any current officer or director, or any former officer or director whose tenure ended within the preceding 12 months, except that for a former officer or director, the information need be provided only to the extent that it relates to actions arising out of or during the person's tenure with the institutional investor or its affiliates;

(11) a copy of the institutional investor's most recent Schedule 13D or 13G and any amendments to that schedule filed with the United States Securities and Exchange Commission concerning any voting securities of the publicly traded corporation registered with or licensed by the commission;

(12) a copy of any filing made under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) with respect to the acquisition or proposed acquisition of voting securities of the publicly traded corporation registered with or licensed by the commission; and

(13) any additional information the commission may request.

Sec. 466.550. CHANGE IN INVESTMENT FOLLOWING WAIVER; NOTICE. (a) An institutional investor that has been granted a waiver of a finding of suitability under Section 466.548 and that subsequently intends not to hold the investor's voting securities of the publicly traded corporation for investment purposes

only or that intends to take any action inconsistent with the investor's prior intent shall, not later than the second business day after the date of the decision, deliver notice to the commission in writing of the change in the investor's investment intent. The commission may then take any action the commission deems appropriate.

(b) If the commission finds that an institutional investor has failed to comply with this chapter or should be subject to a finding of suitability to protect the public interest, the commission may require the institutional investor to apply for a finding of suitability.

(c) Any publicly traded corporation registered with or licensed by the commission shall immediately notify the commission of any information about, fact concerning, or actions of an institutional investor holding any of its voting securities that may materially affect the institutional investor's eligibility to hold a waiver under Section 466.548.

Sec. 466.551. EFFECT OF DENIAL OF LICENSE OR REGISTRATION. (a) A person whose application for a license or registration has been denied may not have any interest in or association with a video lottery retailer or video lottery manager or any other business conducted in connection with video lottery without prior approval of the commission.

(b) Any contract between a person holding a license or registration and a person denied a license or registration must be terminated immediately on receipt of notice from the commission. If the person denied a license or registration has previously been granted a temporary license or registration, the temporary license or registration expires immediately on denial of the permanent license or registration.

(c) Except as otherwise authorized by the commission, a person denied a license or registration may not reapply for any license or registration before the second anniversary of the date of the denial.

Sec. 466.553. PRACTICE BY VIDEO LOTTERY RETAILER OR VIDEO LOTTERY MANAGER. A video lottery retailer or video lottery manager must:

(1) be aware of patron conditions and prohibit play by visibly intoxicated patrons;

(2) comply with state alcoholic beverage control laws;

(3) at all times maintain sufficient change and cash in denominations accepted by video lottery terminals;

(4) promptly report all video lottery terminal malfunctions and down-time;

(5) install, post, and display prominently any material required by the commission;

(6) prohibit illegal gambling and any related paraphernalia;

(7) except as otherwise provided by this subchapter, at all times prohibit money lending or other extensions of credit at the video lottery terminal establishment;

(8) supervise employees and activities to ensure compliance with all commission rules and this chapter;

(9) maintain continuous camera coverage of all aspects of video lottery game operations, including video lottery terminals; and

(10) maintain an entry log for each video lottery terminal on the premises of the video lottery terminal establishment and maintain and submit complete records on receipt of each video lottery terminal on the premises as determined by the commission.

Sec. 466.554. RACETRACK REQUIREMENTS. (a) A video lottery retailer at all times must hold a valid pari-mutuel wagering license, except that the commission may allow a video lottery retailer whose pari-mutuel wagering license has lapsed or been revoked, suspended, or surrendered to reapply for a license in order to operate the video lottery terminal establishment or by rule may establish a period not to exceed two years during which time the video lottery terminal establishment may be operated pending acquisition by a person qualified and licensed under this chapter to operate video lottery terminals.

(b) If a video lottery retailer is not licensed as required by Subsection (a) before the second anniversary of the date a license lapses or is revoked, suspended, or surrendered or a new video lottery manager or video lottery retailer is not licensed and authorized to operate the facility before the second anniversary, the pari-mutuel license holder shall permanently lose eligibility under this subchapter to operate video lottery terminals.

(c) Subject to the commission's discretion, a video lottery retailer may continue to operate the video lottery terminal establishment after the second anniversary of the date a license lapses or is revoked, suspended, or surrendered only to satisfy the establishment's existing outstanding debt attributable to video lottery operation.

Sec. 466.556. PRIZE RULES. The commission shall adopt rules governing:

(1) the range of amounts a player may be charged to play each video lottery game; and

(2) the range of prizes and credits that may be awarded to the player of a video lottery game.

Sec. 466.557. VIDEO LOTTERY CENTRAL SYSTEM: COMMUNICATION TECHNOLOGY. The video lottery central system provider shall pay for the installation and operation of commission-approved communication technology to provide real-time communication between each video lottery terminal and the video lottery central system.

Sec. 466.558. RESPONSIBILITY FOR VIDEO LOTTERY GAME OPERATIONS. (a) A video lottery retailer or a video lottery manager, if applicable, is responsible for the management of video lottery game operations, including:

(1) the validation and payment of prizes; and

(2) the management of cashiers, food and beverage workers, floor workers, security personnel, the security system, building completion, janitorial services, landscaping design, and maintenance.

(b) Nothing in Subsection (a) limits the authority of the commission, the Department of Public Safety, or another law enforcement agency to administer and enforce this chapter as related to video lottery.

(c) In addition to other requirements under this chapter relating to video lottery, a video lottery retailer or a video lottery manager at all times shall:

(1) operate only video lottery terminals that are distributed by a registered video lottery terminal provider and provide a secure location for the placement, operation, and play of the video lottery terminals;

(2) prevent any person from tampering with or interfering with the operation of a video lottery terminal;

(3) ensure that communication technology from the video lottery central system to the video lottery terminals is connected at all times and prevent any person from tampering or interfering with the operation of the connection;

(4) ensure that video lottery terminals are in the sight and control of designated employees of the video lottery retailer or video lottery manager and in the sight of video cameras as required under this subchapter;

(5) ensure that video lottery terminals are placed and remain placed in the locations in the video lottery terminal establishment that are consistent with the retailer's or manager's floor plan;

(6) monitor video lottery terminals to prevent access to or play by persons who are under 21 years of age or who are visibly intoxicated;

(7) refuse to accept a credit card payment from a player for the exchange or purchase of video lottery game credits or for an advance of coins, currency, vouchers, or tokens to be used by a player to play video lottery games, refuse to extend credit, in any manner, to a player that enables the player to play a video lottery game, and ensure that any person doing business at the video lottery terminal establishment, including a person operating or managing an auxiliary service such as a restaurant, refuses to accept a credit card payment or to extend credit to a person to play a video lottery game in a manner prohibited by this subdivision, except that:

(A) a license holder may cash a check for a player if the license holder exercises reasonable caution cashing the check and does not cash checks for any player in an amount not to exceed \$1,000 in any 24-hour period; and

(B) automated teller machines may be located at a video lottery terminal establishment in compliance with the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) or an effective gaming agreement;

(8) pay all credits won by a player on presentment of a valid winning video lottery game ticket;

(9) conduct only the video lottery game advertising and promotional activities consistent with criteria prescribed by the commission, which must prohibit undue influence, offensive language, and anything that would affect the integrity of video lottery operation;

(10) install, post, and display prominently at the licensed location redemption information and other informational or promotional materials as required by the commission;

(11) maintain general liability insurance coverage for the video lottery terminal establishment and all video lottery terminals in the amounts required by the commission;

(12) assume liability for money lost or stolen from any video lottery terminal; and

(13) annually submit an audited financial statement to the commission in accordance with generally accepted accounting principles.

Sec. 466.560. TECHNICAL STANDARDS FOR VIDEO LOTTERY EQUIPMENT. The commission by rule shall establish minimum technical standards for video lottery equipment that may be operated in this state.

Sec. 466.561. INCIDENT REPORTS. (a) A video lottery retailer or video lottery manager shall record all unusual occurrences related to gaming activity in a video lottery terminal establishment operated by the retailer or manager.

(b) A video lottery retailer or video lottery manager shall assign each material incident, without regard to materiality, a sequential number and, at a minimum, provide the following information in a permanent record prepared in accordance with commission rules to ensure the integrity of the record:

(1) the number assigned to the incident;

(2) the date and time of the incident;

(3) the nature of the incident;

(4) each person involved in the incident; and

(5) the name of the employee or other agent of the video lottery retailer or video lottery manager who investigated the incident.

Sec. 466.562. EXCLUSION OF PERSONS. (a) The commission shall compile a list of persons that a video lottery retailer or video lottery manager must bar from a video lottery terminal establishment based on a person's criminal history or association with criminal offenders or because the person poses a threat to the integrity of the lottery.

(b) A video lottery retailer or video lottery manager shall employ the retailer's or manager's best efforts to exclude such persons from entry into the establishment.

(c) A video lottery retailer or video lottery manager may exclude a person for any reason not related to the person's race, sex, national origin, physical disability, or religion.

(d) A person who believes the person may be playing video lottery games on a compulsive basis may request that the person's name be placed on the list compiled by the commission under Subsection (a).

(e) All video lottery game employees shall receive training in identifying players with a compulsive playing problem. Signs and other materials shall be readily available to direct compulsive players to agencies that offer appropriate counseling.

Sec. 466.563. REPORT ON LITIGATION. (a) A video lottery retailer or video lottery manager shall report to the commission any litigation relating to the retailer's or manager's video lottery terminal establishment, including a criminal proceeding, a proceeding involving an issue related to racing activities that impact video lottery operations, or a matter related to character or reputation relevant to a person's suitability under this subchapter.

(b) The report required under Subsection (a) must be filed not later than the fifth day after acquiring knowledge of the litigation.

Sec. 466.564. COMMISSION APPROVAL REQUIRED FOR PROCEDURES AND ADMINISTRATIVE AND ACCOUNTING CONTROLS. (a) The commission's approval is required for all internal procedures and administrative and accounting controls of a video lottery retailer or video lottery manager.

(b) The commission by rule shall establish general accounting and auditing requirements and internal control standards for video lottery retailers and video lottery managers.

Sec. 466.566. VIDEO LOTTERY TERMINAL EVENTS. A video lottery retailer or video lottery manager shall keep a database of video lottery terminal events. The commission by rule shall determine what constitutes a video lottery terminal event for purposes of this section.

Sec. 466.567. EMPLOYEE REPORTING. (a) On or before the 15th day of each month, a video lottery retailer or video lottery manager shall submit to the commission an employee report for the video lottery terminal establishment operated by the retailer or manager. For each employee of the retailer or manager, the report must provide the employee's name, job title, date of birth, and social security number.

(b) The employee report is confidential and may not be disclosed except under commission order or in accordance with Section 466.022(d).

(c) The commission may conduct criminal history investigations for employees of video lottery retailers and video lottery managers.

(d) The commission may prohibit an employee from performing any act relating to video lottery terminals if the commission finds that an employee has:

(1) committed, attempted, or conspired to commit any act prohibited by this chapter;

(2) concealed or refused to disclose any material fact in any commission investigation;

(3) committed, attempted, or conspired to commit larceny or embezzlement;

(4) been convicted in any jurisdiction of an offense involving or relating to gambling;

(5) accepted employment in a position for which commission approval is required after commission approval was denied for a reason involving personal unsuitability or after failing to apply for a license or approval on commission request;

(6) been prohibited under color of governmental authority from being present on the premises of any gaming establishment or any establishment where pari-mutuel wagering is conducted for any reason relating to improper gambling activity or for any illegal act;

(7) wilfully defied any legislative investigative committee or other officially constituted body acting on behalf of the United States or any state, county, or municipality that sought to investigate alleged or potential crimes relating to gaming, corruption of public officials, or any organized criminal activities; or

(8) been convicted of any felony or any crime involving moral turpitude.

(e) The commission may prohibit an employee from performing any act relating to video lottery terminals based on a revocation or suspension of any gaming or wagering license, permit, or approval or for any other reason the commission finds appropriate, including a refusal by a regulatory authority to issue a license, permit, or other approval for the employee to engage in or be involved with the lottery or with regulated gaming or pari-mutuel wagering in any jurisdiction.

(f) In this section, "employee" includes any person connected directly with or compensated by an applicant or license holder as an agent, personal representative, consultant, or independent contractor for activities directly related to video lottery operations.

Sec. 466.568. REPORT OF VIOLATIONS. A person who holds a license or registration under this subchapter shall immediately report a violation or suspected violation of this chapter or a rule adopted under this chapter by any license or registration holder, by an employee of a license or registration holder, or by any person on the premises of a video lottery terminal establishment, whether or not associated with the license or registration holder.

Sec. 466.569. SECURITY. (a) In addition to the security provisions applicable under Section 466.020, a video lottery retailer or video lottery manager shall comply with the following security procedures:

(1) all video lottery terminals must be continuously monitored through the use of a closed-circuit television system that records activity for a continuous 24-hour period and all video tapes or other media used to store video images shall be retained for at least 30 days and made available to the commission on request;

(2) access to video lottery terminal areas shall be restricted to persons who are at least 21 years of age;

(3) the video lottery retailer or video lottery manager must submit for commission approval a security plan that includes a floor plan of the area where video lottery terminals are to be operated showing video lottery terminal locations and security camera mount locations; and

(4) each license holder shall employ at least the minimum number of private security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery terminal establishment and the safety and well-being of the players.

(b) Private security personnel must be present during all hours of operation at each video lottery terminal establishment.

(c) An agent or employee of the commission or the Department of Public Safety or other law enforcement personnel may be present at a video lottery terminal establishment at any time.

(d) The commission may adopt rules to impose additional surveillance and security requirements related to video lottery terminal establishments and the operation of video lottery terminals.

Sec. 466.570. VIDEO LOTTERY TERMINAL ESTABLISHMENT: COMMISSION RIGHT TO ENTER. The commission, the commission's representative, the Texas Racing Commission, or a representative of the Texas Racing Commission, after displaying appropriate identification and credentials, has the free and unrestricted right to enter the premises of a video lottery terminal establishment and to enter any other locations involved in operation or support of video lottery at all times to examine the systems and to inspect and copy the records of a video lottery retailer or video lottery manager pertaining to the operation of video lottery.

Sec. 466.587. INDEMNIFICATION, INSURANCE, AND BONDING REQUIREMENTS. (a) A license or registration holder shall indemnify and hold harmless this state, the commission, and all officers and employees of this state and

the commission from any and all claims which may be asserted against a license or registration holder, the commission, this state, and the members, officers, employees, and authorized agents of this state or the commission arising from the license or registration holder's participation in the video lottery system authorized under this subchapter.

(b) Surety and insurance required under this subchapter shall be issued by companies or financial institutions financially rated "A" or better as rated by A.M. Best Company or other rating organization designated by the commission and duly licensed, admitted, and authorized to conduct business in this state, or by other surety approved by the commission.

(c) The commission shall be named as the obligee in each required surety and as an additional insured in each required insurance contract.

(d) A video lottery retailer or video lottery manager may not be self-insured with regard to video lottery terminal operations under this section.

(e) The commission by rule shall establish minimum insurance coverage requirements for a video lottery retailer, video lottery manager, or video lottery terminal provider.

Sec. 466.588. LIABILITY FOR CREDIT AWARDED OR DENIED; PLAYER DISPUTE. (a) This state and the commission are not liable for any video lottery terminal malfunction or error by a video lottery retailer, video lottery manager, or video lottery terminal provider that causes credit to be wrongfully awarded or denied to players.

(b) Any dispute arising between a player and a video lottery retailer or video lottery manager shall be resolved by the commission as follows:

(1) if the fair market value of the prize is less than \$1,000, the dispute shall be resolved in accordance with the commission-approved written policies of the video lottery retailer or video lottery manager and without any relief available from the commission or this state; or

(2) if the fair market value of the prize is \$1,000 or more, the dispute shall be resolved by the commission in the commission's sole discretion in accordance with commission rules.

(c) A court of this state does not have jurisdiction to review the decision of the commission resolving a dispute between a player and a video lottery retailer, video lottery manager, or video lottery terminal provider.

Sec. 466.589. STATE VIDEO LOTTERY ACCOUNT. (a) The commission shall deposit funds received under this subchapter to the state video lottery account. The state video lottery account is a special account in the general revenue fund. The account consists of all revenue received by this state from the operation of video lottery terminals.

(a-1) Except as provided by Subsection (b), all revenue received by this state from the operation of the video lottery system shall be distributed solely to reimburse the commission until the \$5 million authorized under this subsection is repaid to the state lottery account. From funds previously appropriated to the commission for the state fiscal biennium ending August 31, 2007, and notwithstanding Section 466.355(b), the commission is authorized to expend an amount not to exceed \$5 million from the state lottery account during that biennium to establish the video

lottery system in accordance with this chapter. From revenue deposited in the state video lottery account during that biennium, the commission is hereby appropriated the amount necessary to reimburse the state lottery account for the total amount of funds expended to establish the video lottery system from the appropriation to the state lottery account, and the commission shall deposit that amount to the state lottery account. This subsection expires January 1, 2009.

(b) Two percent of the net terminal income received by this state under Section 466.590 shall be allocated to the commission to defray expenses incurred in administering this chapter related to video lottery, including expenses incurred to operate the video lottery central system. All money allocated to the commission under this subsection may be retained by the commission to defray expenses of administering this chapter related to video lottery and shall be deposited in the state video lottery account.

Sec. 466.590. ALLOCATION OF NET TERMINAL INCOME; TRANSFER OF MONEY. (a) Net terminal income derived from the operation of video lottery games in this state is allocated as follows:

(1) a portion of the net terminal income generated in each calendar year shall be remitted to this state by the video lottery retailer or video lottery manager in an amount equal to 30 percent of the net terminal income for that year; and

(2) the remainder shall be retained by the video lottery retailer or video lottery manager.

(b) Net terminal income derived from the operation of video lottery terminals on Indian lands under a gaming agreement authorized under this subchapter shall be distributed as set forth in the gaming agreement, provided that the agreement must provide that this state shall receive no more than 25 percent of the net terminal income.

(c) One-quarter of one percent of the net terminal income received by this state under Subsections (a) and (b) shall be transferred to the Texas Commission on Alcohol and Drug Abuse for use in the compulsive gambling program under Section 461.018, Health and Safety Code, if that program is in operation.

(d) One-quarter of one percent of the net terminal income received by this state under Subsections (a) and (b) shall be transferred to the Equine Research Program at the College of Veterinary Medicine at Texas A&M University for use in equine research under Subchapter F, Chapter 88, Education Code.

(e) The commission shall require a video lottery retailer or video lottery manager to establish a separate electronic funds transfer account for depositing money from video lottery terminal operations, making payments to the commission or its designee, and receiving payments from the commission or its designee.

(f) A video lottery retailer or video lottery manager may not make payments to the commission in cash. As authorized by the commission, a video lottery retailer or video lottery manager may make payments to the commission by cashier's check.

(g) The commission at least weekly shall transfer this state's share of net terminal income of a video lottery retailer or video lottery manager to the commission through the electronic transfer of the money.

(h) The commission by rule shall establish the procedures for:

(1) depositing money from video lottery terminal operations into electronic funds transfer accounts; and

(2) handling money from video lottery terminal operations.

(i) Unless otherwise directed by the commission, a video lottery retailer or a video lottery manager shall maintain in its account this state's share of the net terminal income from the operation of video lottery terminals, to be electronically transferred by the commission on dates established by the commission. On a license holder's failure to maintain this balance, the commission may disable all of a license holder's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged under Section 111.060, Tax Code. The interest shall begin to accrue on the date payment is due to the commission.

(j) In the commission's sole discretion, rather than disable a license holder's video lottery terminals under Subsection (i), the commission may elect to impose a fine on a license holder in an amount determined by the commission not to exceed \$250,000 for each violation. If the license holder fails to remedy the violation, including payment of any amounts assessed by or due to this state, within 10 days, the commission may disable the license holder's video lottery terminals or use any other means for collection as provided by the penalty chart established by the commission.

(k) A video lottery retailer or video lottery manager is solely responsible for resolving any income discrepancies between actual money collected and the net terminal income reported by the video lottery central system. Unless an accounting discrepancy is resolved in favor of the video lottery retailer or video lottery manager, the commission may not make any credit adjustments. Any accounting discrepancies which cannot otherwise be resolved shall be resolved in favor of the commission.

(l) A video lottery retailer and video lottery manager shall remit payment as directed by the commission if the electronic transfer of money is not operational or the commission notifies the license holder that other remittance is required. The license holder shall report this state's share of net terminal income, and remit the amount generated from the terminals during the reporting period.

Sec. 466.591. COMMISSION EXAMINATION OF FINANCIAL RECORDS. The commission may examine all accounts, bank accounts, financial statements, and records in the possession or control of a person licensed under this subchapter or in which the license holder has an interest. The license holder must authorize and direct all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

Sec. 466.592. FINANCIAL INFORMATION REQUIRED. (a) A video lottery retailer or video lottery manager shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of money to the commission.

(b) A video lottery retailer or video lottery manager must provide the commission advance notice of any proposed account changes in information and bank authorizations to assure the uninterrupted electronic transfer of money.

(c) The commission is not responsible for any interruption or delays in the transfer of money. The video lottery retailer or video lottery manager is responsible for any interruption or delay in the transfer of money.

Sec. 466.593. DEDUCTIONS FROM VIDEO LOTTERY PROCEEDS AT RACETRACKS. (a) Unless otherwise agreed to under Subsection (c) by the pari-mutuel license holder that owns or operates a horse racetrack at which video lottery games are conducted under this subchapter and the officially recognized horsemen's organization representing the horsemen at the racetrack, the license holder shall allocate 6.5 percent of the net terminal income generated from the operation of video lottery terminals at the racetrack to purses.

(b) Unless otherwise agreed to under Subsection (c) by the pari-mutuel license holder that owns or operates a greyhound racetrack at which video lottery games are conducted under this subchapter and the state breed registry representing the greyhound breeders at the racetrack, the license holder shall allocate 6.5 percent of the net terminal income generated from the operation of video lottery terminals at the racetrack to purses.

(c) The pari-mutuel license holder that owns or operates a racetrack at which video lottery games are conducted under this subchapter and the officially recognized horsemen's organization representing the horsemen at the racetrack or the state breed registry representing the greyhound breeders at the racetrack may enter into a written agreement to allocate a different percentage of net terminal income to be used for purses at that racetrack.

(d) A state breed registry may use a portion, not to exceed 10 percent, of the amount allocated for purses under this section for administration as determined reasonable by the commission.

(e) The commission shall adopt rules to administer this section. A matter considered by the commission under this section is a contested case under Chapter 2001, Government Code, and requires a public hearing.

Sec. 466.595. LIABILITY OF VIDEO LOTTERY RETAILER AND VIDEO LOTTERY MANAGER. (a) A video lottery retailer, video lottery manager, or both, are jointly and severally liable to the commission for the state's share of net terminal income reported by the video lottery central system.

(b) Net terminal income received by the video lottery retailer or video lottery manager is held in trust for the benefit of this state before delivery of the state's share to the commission or electronic transfer to the state treasury, and the video lottery retailer or video lottery manager, or both, are jointly and severally liable to the commission for the full amount of the money held in trust.

(c) If the video lottery retailer or video lottery manager is not an individual, each officer, director, or owner of the video lottery retailer or video lottery manager is personally liable to the commission for the full amount of the money held in trust, except that shareholders of a publicly held corporation shall be liable in an amount not to exceed the value of their equity investment.

Sec. 466.596. PRIZE PAYMENT AND REDEMPTION. (a) Payment of prizes is the sole and exclusive responsibility of the video lottery retailer or video lottery manager. A prize may not be paid by the commission or this state except as otherwise authorized.

(b) Nothing in this subchapter limits the ability of a video lottery retailer or video lottery manager to provide promotional prizes in addition to prize payouts regulated by the commission.

(c) A video lottery ticket must be redeemed not later than the 180th day following the date of issuance. If a claim is not made for prize money on or before the 180th day after the date on which the video lottery ticket was issued, the prize money becomes the property of the video lottery terminal establishment.

(d) The commission shall enact rules consistent with this section governing the use and redemption of prizes and credits recorded on electronic player account records, such as players' club cards and smart cards.

Sec. 466.597. REVOCATION OF LICENSE, REGISTRATION, OR OTHER REGULATORY APPROVAL. (a) The commission shall revoke or suspend a license, registration, or other regulatory approval issued under this subchapter if the holder of the license, registration, or approval at any time fails to meet the eligibility requirements set forth in this subchapter.

(b) Failure to timely remit revenue generated by video lottery terminals to the commission or any tax or other fee owed to this state as demonstrated by report from the applicable taxing authority or to timely file any report or information required under this subchapter as a condition of any license, registration, or other approval issued under this subchapter may be grounds for suspension or revocation, or both, of a license, registration, or other approval issued under this subchapter.

Sec. 466.598. HEARING FOR REVOCATION OR SUSPENSION OF REGISTRATION OR LICENSE. (a) Before the commission revokes or suspends a video lottery terminal provider's registration or video lottery retailer's or video lottery manager's license, or imposes monetary penalties for a violation of this subchapter, the commission shall provide written notification to the license or registration holder of the revocation, the period of suspension, or the monetary penalty. The notice shall include:

(1) the effective date of the revocation or the period of suspension or the amount of the monetary penalty, as applicable;

(2) each reason for the revocation, suspension, or penalty;

(3) an explanation of the evidence supporting the reasons;

(4) an opportunity to present the license or registration holder's position in response on or before the 15th day after the effective date of the revocation; and

(5) a statement explaining the person's right to an administrative hearing to determine whether the revocation, suspension, or penalty is warranted.

(b) The notice required under Subsection (a) must be made by personal delivery or by mail to the person's mailing address as it appears on the commission's records.

(c) To obtain an administrative hearing on a suspension, revocation, or penalty under this section, a person must submit a written request for a hearing to the commission not later than the 20th day after the date notice is delivered personally or is mailed.

(d) If the commission receives a timely request under Subsection (c), the commission shall provide the person with an opportunity for a hearing as soon as practicable. If the commission does not receive a timely request under Subsection (c), the commission may impose the penalty, revoke or suspend a license or registration, or sustain the revocation or suspension without a hearing.

(e) Except as provided by Subsection (g), the hearing must be held not earlier than the 11th day after the date the written request is submitted to the commission.

(f) The commission may provide that a revocation or suspension takes effect on receipt of notice under Subsection (a) if the commission finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare. The commission by rule shall establish a nonexclusive list of violations that present a threat to the public health, safety, or welfare.

(g) A hearing on a revocation or suspension that takes effect on receipt of notice must be held not later than the 14th day after the date the commission receives the request for hearing under this section. The revocation or suspension continues in effect until the hearing is completed. If the hearing is continued, the revocation or suspension shall continue in effect beyond the 14-day period at the request of the license or registration holder or on a finding of good cause by the commission or administrative law judge.

(h) To prevail in a post-deprivation administrative hearing under this section, the license or registration holder must demonstrate by clear and convincing evidence that the deprivation or imposition of a penalty was unwarranted or otherwise unlawful. The post-deprivation hearing may be conducted by the commission or referred to the State Office of Administrative Hearings.

(i) The administrative record created by the hearing conducted by the State Office of Administrative Hearings shall be provided to the commission for review and determination on the revocation or suspension.

(j) If an administrative law judge of the State Office of Administrative Hearings conducts a hearing under this section and the proposal for decision supports the commission's position, the administrative law judge shall include in the proposal a finding of the costs, fees, expenses, and reasonable and necessary attorney's fees this state incurred in bringing the proceeding.

(k) The commission may adopt the findings for costs, fees, and expenses and make the finding a part of the final order entered in the proceeding. Proceeds collected from a finding made under this section shall be paid to the commission.

Sec. 466.599. JUDICIAL REVIEW OF REVOCATION, SUSPENSION, OR PENALTY IMPOSITION. (a) A person aggrieved by a final decision of the commission to revoke or suspend a registration or license or to impose any monetary penalty may obtain judicial review before a district court in Travis County.

(b) The judicial review must be instituted by serving on the commission and filing a petition not later than the 20th day after the effective date of the final decision and must identify the order appealed from and the grounds or reason why the petitioner contends the decision of the commission should be reversed or modified.

(c) The review must be conducted by the court sitting without jury, and must not be a trial de novo but is confined to the record on review. The reviewing court may only affirm the decision, remand the case for further proceedings, or reverse the decision if the substantial rights of the petitioner have been violated.

Sec. 466.600. LICENSE OR REGISTRATION: AGREEMENT TO WAIVE ENFORCEABILITY. A license or registration holder by virtue of accepting the license or registration agrees that the privilege of holding a license or registration under this subchapter is conditioned on the holder's agreement to Sections 466.597-466.599 and waives any right to challenge or otherwise appeal the enforceability of those sections.

Sec. 466.601. LIMITED WAIVER OF SOVEREIGN IMMUNITY; NO LIABILITY OF STATE FOR ENFORCEMENT. (a) This state does not waive its sovereign immunity by negotiating gaming agreements with Indian tribes or other persons for the operation of video lottery terminals or other lottery games under this chapter. An actor or agent on behalf of this state does not have any authority to waive the state's sovereign immunity absent an express legislative grant of the authority. The only waiver of sovereign immunity relative to video lottery terminal operations is that expressly provided for in this section.

(b) With regard to video lottery terminal operations on Indian lands, this state consents to the jurisdiction of the District Court of the United States with jurisdiction in the county where the Indian lands are located, or if the federal court lacks jurisdiction, to the jurisdiction of a district court in Travis County, solely for the purpose of resolving disputes arising from a gaming agreement authorized under this subchapter for declaratory or injunctive relief or contract damages of \$100,000 or more. Any disputes relating to damages or other awards valued at less than \$100,000 shall be arbitrated under the rules of the American Arbitration Association, provided, however, that application of the rules may not be construed as a waiver of sovereign immunity.

(c) All financial obligations of the commission are payable solely out of the income, revenues, and receipts of the commission and are subject to statutory restrictions and appropriations.

(d) This state and the commission are not liable if performance by the commission is compromised or terminated by acts or omissions of the legislature or the state or federal judiciary.

(e) This state and the commission are not liable related to any enforcement of this chapter.

Sec. 466.602. ABSOLUTE PRIVILEGE OF REQUIRED COMMUNICATIONS AND DOCUMENTS. (a) Any communication, document, or record of a video lottery central system provider, video lottery terminal provider, video lottery retailer, or video lottery manager, an applicant, or a license or registration holder or holder of a regulatory approval that is made or transmitted to the commission or any of its employees to comply with any law, including a rule of the commission, to comply with a subpoena issued by the commission, or to assist the commission or its designee in the performance of their respective duties is absolutely privileged, does not impose liability for defamation, and is not a ground for recovery in any civil action.

(b) If a communication, document, or record provided under Subsection (a) contains any information that is privileged under state law, that privilege is not waived or lost because the communication, document, or record is disclosed to the commission or any of the commission's employees.

(c) The commission shall maintain all privileged information, communications, documents, and records in a secure place as determined in the commission's sole discretion that is accessible only to members of the commission and authorized commission employees.

Sec. 466.603. INTELLECTUAL PROPERTY RIGHTS OF COMMISSION.

The legislature finds and declares that the commission has the right to establish ownership of intellectual property rights for all lottery products, including video lottery terminals and related video lottery equipment.

Sec. 466.604. MODEL GAMING AGREEMENT. (a) The governor shall execute, at the governor's discretion as chief executive officer of this state and on behalf of this state, a gaming agreement with the Ysleta del Sur Pueblo Indian tribe, the Alabama-Coushatta Indian tribe, or the Kickapoo Traditional Tribe of Texas containing the terms set forth in Subsection (b), as a ministerial act, without preconditions, not later than the 30th day after the date the governor receives a request from the tribe, accompanied by or in the form of a duly enacted resolution of the tribe's governing body, to enter into the gaming agreement.

(b) A gaming agreement executed under Subsection (a) must contain substantially the terms set forth in a model gaming agreement adopted by the attorney general and filed with the secretary of state. The attorney general shall adopt a model gaming agreement for purposes of this section, consistent with the applicable provisions of this chapter, and shall file the agreement with the secretary of state.

(c) An Indian tribe may operate video lottery games and video lottery terminals in accordance with a gaming agreement entered into under this section.

(d) The governor may not amend, alter, or otherwise modify an agreement under this section until after the 10th anniversary of the date the governor signed the original agreement.

Sec. 466.605. VIDEO LOTTERY GAMES BY INDIAN TRIBES AUTHORIZED. (a) Notwithstanding any other law, an Indian tribe may operate video lottery games and video lottery terminals as authorized by this subchapter pursuant to a compact with the governor.

(b) To operate video lottery games under this section, an Indian tribe must be an Indian tribe as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 on or before January 1, 1998, and must, on or before January 1, 1998, have had Indian lands within the boundaries of this state. At any time there may not be more than three Indian tribes operating video lottery games on Indian lands in this state.

(c) An Indian tribe may operate video lottery games under this section only on or immediately adjacent to Indian lands placed into trust by the United States for the benefit of the Indian tribe on or before January 1, 1998, that were held and occupied by the Indian tribe on or before January 1, 1998.

(d) A compact or agreement entered into under this section must contain provisions for the monitoring and auditing of the operation of video lottery games and any other gaming activity. The compact must:

(1) provide that the commissioner may inspect all public and nonpublic areas of the premises where the Indian tribe operates video lottery games or other gaming activity;

(2) require the conduct of an annual audit by the commission or an auditor selected by the commission of the Indian tribe's video lottery game operations; and

(3) provide that the commission may examine and review all financial records of the Indian tribe's video lottery game operations at any reasonable time.

(e) An agreement entered into under this section with a federally recognized Indian tribe, or an affiliated entity, to allow the tribe or entity to operate video lottery games must provide that the tribe agrees to collect and remit to the comptroller all state sales and use taxes for all taxable goods and services sold on the tribe's Indian lands in this state and all state taxes on motor fuels, alcoholic beverages, cigarettes and tobacco products, and hotel occupancy sold on the tribe's Indian lands. In the case of a federally recognized Indian tribe, the requirement to collect and remit these state taxes does not apply to taxes on the sale, use, or consumption of an item by a member of the tribe. The agreement shall provide a method to secure payment of these taxes to this state.

(f) The comptroller may adopt rules to ensure that the exemption from the collection and remission of state taxes under Subsection (e) applies only to members of the tribe owning that tribal land.

SECTION 2.34. Section 467.001, Government Code, is amended by amending Subdivision (9) and adding Subdivision (12) to read as follows:

(9) "Person that has a significant financial interest in the lottery" means:

(A) a person or a board member, officer, trustee, or general partner of a person that manufactures, distributes, sells, or produces lottery equipment, video lottery equipment, video lottery games, video lottery central systems, supplies, services, or advertising;

(B) an employee of a video lottery terminal provider, video lottery central system provider, or person that manufactures, distributes, sells, or produces lottery equipment, supplies, services, or advertising or video lottery equipment or games and that employee is directly involved in the manufacturing, distribution, selling, or production of lottery equipment, supplies, services, or advertising or video lottery equipment or games;

(C) a person or a board member, officer, trustee, or general partner of a person that has made a bid to operate the lottery in the preceding two years or that intends to make a bid to operate the lottery or an employee of the person if the employee is directly involved in making the bid; or

(D) a sales agent, video lottery retailer, video lottery manager, video lottery terminal provider, or video lottery central system provider.

(12) "Video lottery central system," "video lottery equipment," "video lottery game," "video lottery manager," "video lottery retailer," and "video lottery terminal provider" have the meanings assigned by Section 466.002.

SECTION 2.35. Section 467.027(a), Government Code, is amended to read as follows:

(a) A commission member is [~~not~~] entitled to compensation for serving on the commission. The annual salary of the commission members is set by legislative appropriation.

SECTION 2.36. Section 467.031, Government Code, is amended to read as follows:

Sec. 467.031. DIVISIONS. The commission shall establish separate divisions to oversee bingo and the state lottery. The commission may create a division to oversee video lottery and delegate responsibilities in the administration of Chapter

466 to the executive director, the director of the appropriate division, and the division's staff; provided, however, that the commission may not delegate the following actions:

- (1) a final determination in any application or request for licensing or registration under Chapter 466;
- (2) a final determination in any proceeding involving the suspension or revocation of a registration or license under Chapter 466;
- (3) a final determination that Chapter 466 has been violated; or
- (4) a final determination or imposition of an assessment of fines or penalties under a law administered by the commission.

SECTION 2.37. Section 467.035(a), Government Code, is amended to read as follows:

(a) The commission may not employ or continue to employ a person who owns a financial interest in:

- (1) a bingo commercial lessor, bingo distributor, or bingo manufacturer; or
- (2) a lottery sales agency, ~~or~~ a lottery operator, a video lottery retailer, a video lottery manager, a video lottery terminal provider, a video lottery central system provider, or a manufacturer of video lottery games.

SECTION 2.38. Section 467.108, Government Code, is amended to read as follows:

Sec. 467.108. REPRESENTATION BY FORMER OFFICER OR EMPLOYEE. (a) A former commission member, former executive director, or former director may not:

- (1) ~~[for compensation,]~~ represent a person, either with or without compensation, [that has made or intends to make a bid to operate the lottery] before the commission before the fifth [second] anniversary of the date that the person's service in office or employment with the commission ceases;
- (2) represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of service or employment with the commission, either through personal involvement or because the matter was within the scope of the officer's or employee's official responsibility; or
- (3) ~~[for compensation]~~ communicate on behalf of any person, whether compensated or not compensated, directly with a member of the legislative branch to influence legislation on behalf of a person that has any [a significant financial] interest in the lottery, before the fifth [second] anniversary of the date that the person's service in office or employment with the commission ceases.

(b) A person commits an offense if the person violates this section. An offense under this section is a felony of the third degree [Class A misdemeanor].

SECTION 2.39. Section 411.108, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Lottery Commission may obtain from the department, subject to an interagency agreement entered into under Section 466.020(d) or 466.206, criminal history record information maintained by the department that relates to any natural person, corporation, association, trust, partnership, limited partnership, joint venture, government, subsidiary, or other entity, regardless of its form, structure, or nature that

the commission has the authority to investigate under Chapter 466 as related to the commission's operation and oversight of video lottery. Criminal history record information obtained by the commission under this subsection may be released or disclosed only as provided in Sections 466.022(d) and 466.206.

SECTION 2.40. Section 47.01(4), Penal Code, is amended to read as follows:

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, slot machines, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if:

(i) the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less;

(ii) any merchandise or a representation of value received by a player may be exchanged only at the same business and business location at which the contrivance operated by the player is located and may not be exchanged for a gift certificate or similar conveyance that is redeemable at another business or business location; and

(iii) the contrivance or device does not resemble a slot machine or any other casino game.

SECTION 2.41. Section 47.06(e), Penal Code, is amended to read as follows:

(e) An offense under this section is a felony of the third degree [~~Class A misdemeanor~~].

SECTION 2.42. Section 47.09, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) Subsection (a)(3) applies to a person manufacturing, distributing, possessing, or operating a gambling device with the authorization of the Texas Lottery Commission under Subchapter K, Chapter 466, Government Code.

SECTION 2.43. Chapter 47, Penal Code, is amended by adding Section 47.095 to read as follows:

Sec. 47.095. INTERSTATE OR FOREIGN COMMERCE DEFENSE. It is a defense to prosecution under this chapter that a person sells, leases, transports, possesses, stores, or manufactures a gambling device with the authorization of the Texas Lottery Commission under Subchapter K, Chapter 466, Government Code, for transportation in interstate or foreign commerce.

SECTION 2.44. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Sections 6.20-6.22 to read as follows:

Sec. 6.20. LIVE RACING REQUIREMENT. (a) The commission by rule shall require a person who holds a horse racetrack license and operates a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, and that conducted live racing in 2002 to conduct at least the same number of live racing days in each calendar year after 2005 that the racetrack conducted in 2002.

(b) The commission by rule shall require a person who holds a greyhound racetrack license and operates a video lottery terminal establishment under Subchapter K, Chapter 466, Government Code, and that conducted live racing in 2004 to conduct not less than 420 live greyhound racing performances in each calendar year after 2005 unless otherwise agreed to by the official state breed registry.

Sec. 6.21. TRANSFER FEE. The commission may not approve the sale, transfer, assignment, or other conveyance of any interest or control in a pari-mutuel license or the racetrack owned or managed by the license holder if the license holder holds a video lottery retailer license under Subchapter K, Chapter 466, Government Code, until the transfer fee required by Section 466.5321, Government Code, is fully paid to this state.

Sec. 6.22. BREED SPLITS AT VIDEO LOTTERY TERMINAL ESTABLISHMENTS. The commission shall adopt rules to require a horse racetrack that holds a video lottery retailer license under Subchapter K, Chapter 466, Government Code, to allocate from the amount set aside for purses under Section 466.593(a) or (c), Government Code, 30 percent to quarter horse purses and 70 percent to thoroughbred purses.

SECTION 2.45. The Legislature finds and declares the following:

(1) Contingent on the approval of the voters, a limited and narrow exception to the constitutional prohibition on lotteries has been proposed to authorize a state-controlled and state-operated video lottery system in accordance with this article.

(2) In light of the financial emergency faced by the state, in the event the voters approve this limited state-controlled and state-operated video lottery system, the Texas Lottery Commission must be authorized to commence operation of the video lottery system in accordance with this article at the earliest possible date, consistent with the intent of the voters and legislative directive.

(3) The implementation of the video lottery system will require significant time for application investigations and determinations and for video lottery terminal and video lottery central system providers and manufacturers of video lottery games to develop prototypes for testing for the video lottery central system and video lottery terminals and games.

(4) The state's budget crisis constitutes an imminent peril to the public welfare, requiring the adoption of rules and authorization for the Texas Lottery Commission to conduct certain limited pre-implementation activities related to the establishment of the video lottery system to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of the video lottery system.

(5) In order to commence operation of the video lottery system at the earliest possible date and to maintain the integrity of state-controlled and state-operated video lottery established by this article, the Texas Lottery Commission

may conduct limited pre-implementation acts before the constitutional amendment proposed by the 79th Legislature, Regular Session, 2005, to authorize the state video lottery system is submitted to the voters for approval.

SECTION 2.46. (a) As soon as practicable after the constitutional amendment to authorize the state video lottery system proposed by the 79th Legislature, Regular Session, 2005, is approved by the voters and becomes effective, the Texas Lottery Commission shall adopt the rules necessary to implement video lottery in accordance with Subchapter K, Chapter 466, Government Code, as added by this article.

(b) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may expend money from the commission's appropriation for the 2006-2007 biennium for purposes of conducting pre-implementation activities to establish the state video lottery system in accordance with Subchapter K, Chapter 466, Government Code, as added by this article. Notwithstanding Section 466.355, Government Code, the money authorized to be expended under this section may be withdrawn from the state lottery account and considered a part of the transfer of funds from the state lottery account authorized under Section 466.589, Government Code, as added by this article, to fund the establishment of the state video lottery system.

(c) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may develop and approve forms for applications for licensing and registration required under Subchapter K, Chapter 466, Government Code, as added by this article.

(c-1) Not later than July 1, 2005, or as soon after the effective date of this section as practicable and before the proposed constitutional amendment is submitted to the voters, the attorney general shall adopt and file a model gaming agreement with the secretary of state as described by Section 466.604, Government Code, as added by this article.

(d) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may accept pre-implementation applications for video lottery retailers and video lottery managers under Subchapter K, Chapter 466, Government Code, as added by this article. On receipt of a complete application, completion of all investigations, and submittal of the nonrefundable investigatory fees the commission requires consistent with Subchapter K, Chapter 466, Government Code, as added by this article, the commission may make preliminary findings of suitability for an applicant and location of a video lottery terminal establishment. If the commission determines that all the requirements under Subchapter K, Chapter 466, Government Code, have been satisfied, the commission may issue a letter advising the applicant of the status of approval of the application pending approval by the voters of the proposed constitutional amendment. If the commission determines that any requirements under Subchapter K, Chapter 466, Government Code, have not been satisfied, the commission may request additional information or conduct further investigations the commission considers necessary and may issue a letter advising the applicant of the status of the application.

(e) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may request and receive information related to applications for licensing and registration under Subchapter K, Chapter 466,

Government Code, as added by this article. An applicant's failure to comply with any requests made by the Texas Lottery Commission under this subsection may be considered grounds for denial of an application.

(f) The Texas Lottery Commission may not issue any license, registration, or temporary license related to the state video lottery system under Subchapter K, Chapter 466, Government Code, as added by this article, unless and until the constitutional amendment is approved by the voters and becomes effective.

(g) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may conduct investigations and collect investigative fees related to information requested and received for pre-implementation applications under this section and necessary for the commission's evaluation and determination of an application for any licensing, registration, or commission approval required under Subchapter K, Chapter 466, Government Code, as added by this article.

(h) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may conduct preregistration of potential video lottery terminal providers. To qualify for preregistration under this subsection, an applicant must satisfy the minimum application requirements under Section 466.512, Government Code, as added by this article, except that the application fee required under Section 466.513(a), Government Code, as added by this article, is not due until the applicant files an application for registration under Subchapter K, Chapter 466, Government Code, as added by this article. A preregistration application must be accompanied by a nonrefundable deposit to the Texas Lottery Commission in the amount of \$25,000. A preregistration applicant shall submit additional money not later than the 10th day after the date the applicant receives notice from the commission that it has incurred actual costs for the preregistration investigation in excess of the initial deposit required under this subsection. If the commission does not receive the additional money from the applicant on or before the 15th day after the date the applicant receives the commission's notice, the commission shall suspend the application until the money is received by the commission. Any deposit or other nonrefundable money provided under this subsection shall be credited toward an application fee required under Section 466.513(a), Government Code, as added by this article.

(i) The Texas Lottery Commission may not register any video lottery terminal providers unless and until the constitutional amendment is approved by the voters and becomes effective.

(j) Notwithstanding Section 466.513, Government Code, as added by this article, a video lottery terminal provider that has been preregistered by the Texas Lottery Commission in accordance with this section, a video lottery central system provider, or a manufacturer of video lottery games, under a contract with the commission, may manufacture and test prototypes of or existing video lottery equipment for a video lottery central system, video lottery terminals, and video lottery games for the commission's consideration.

(k) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may negotiate contracts with preregistered video lottery terminal providers. The commission may enter into contracts with preregistered video lottery terminal providers, video lottery central system providers, and manufacturers of video lottery games as required for the creation and testing of a video lottery central system, video lottery terminals, and video lottery games for the commission's consideration.

(l) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may negotiate and enter contracts as necessary to establish the video lottery system. The commission is exempt from the procurement procedures prescribed under Subtitle D, Title 10, Government Code; Section 466.101, Government Code; Chapter 2161, Government Code; and any and all bidding requirements or contract requirements provided by any other law or by rules of the commission for the acquisition or provision of facilities, supplies, equipment, materials, or services related to the implementation of video lottery under this section.

(m) Before the proposed constitutional amendment is submitted to the voters, the Texas Lottery Commission may employ additional full-time equivalent employees to administer this article and establish the video lottery system.

SECTION 2.47. The change in law made by this article applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense was committed before that date.

SECTION 2.48. Sections 2.1 through 2.44 and 2.47 of this article take effect on the date the amendment to Section 47, Article III, Texas Constitution, authorizing a state video lottery system proposed by the 79th Legislature, Regular Session, 2005, becomes effective. Sections 2.45 and 2.46 of this article and this section take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 2.45 and 2.46 of this article and this section take effect on the 91st day after the last day of the legislative session. Sections 2.45 and 2.46(m) of this article expire March 1, 2006.

The amendment was read.

### POINT OF ORDER

Senator Nelson raised a point of order that further consideration of **CSHB 1434** was in violation of Senate Rule 7.25 in that the Senate was past the 135th calendar day of the regular session.

### POINT OF ORDER RULING

The Presiding Officer, Senator Carona in Chair, ruled that the point of order was well-taken and sustained.

### STATEMENT OF LEGISLATIVE INTENT ON HOUSE BILL 2866

Senator Whitmire submitted the following statement of legislative intent:

It was my intent in authoring, and the intent of the Texas Legislature in passing, **HB 2866**, Acts of the 79th Legislature, Regular Session, 2005, that the City of Houston have the authority to adopt reasonable rules to prevent the city from wasting its time and taxpayer money by accepting a petition for recognition under Section 146.004, Local Government Code, from an organization that clearly does not meet the definition of "employee association" in Section 146.002(2), Local Government Code.

Section 146.002(2), Local Government Code, as added by **HB 2866**, defines "employee association" as follows:

(2) "Employee association" means an organization in which municipal employees participate and that exists for the purpose, wholly or partly, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees and whose members pay dues by means of an automatic payroll deduction.

(Emphasis added.) By defining "employee association" as an organization "in which municipal employees participate . . . and whose members pay dues by means of an automatic payroll deduction[,]" it was my intent and the intent of the Texas Legislature to require as a prerequisite to an organization being recognized by the City of Houston as an "employee association" for purposes of Chapter 146, Local Government Code, that employees of the city participate in the organization and pay dues by means of automatic payroll deduction in accordance with any rules or procedures adopted by the city relating to automatic payroll deduction.

It was further my intent and the intent of the Texas Legislature that the City of Houston have the authority to adopt reasonable requirements for the validity of a petition for recognition under Section 146.004, Local Government Code.

WHITMIRE

### 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 PASSED THE FOLLOWING MEASURES:

**HCR 157**, Directing the Texas Building and Procurement Commission to have a Texas Youth Commission facility in San Saba County named after John Shero.

**HCR 193**, Supporting Texas' application for a Mental Health Transformation State Incentive Grant from the U.S. Department of Health and Human Services.

**HCR 208**, Encouraging the board of regents of Texas Southern University to name a building, an outdoor plaza, or an interior space of honor on the campus after the Honorable Joe E. Moreno.

**SB 9**, Relating to homeland security; providing a penalty.  
(Committee Substitute/Amended)

**SB 14**, Relating to rates for certain property and casualty insurance and regulation of insurer market conduct.  
(Committee Substitute/Amended)

**SB 30**, Relating to a pilot project to award incentives to students contracting to graduate in a timely manner from public institutions of higher education.  
(Amended)

**SB 42**, Relating to health education, physical activity, and food products in public primary and secondary schools.

(Committee Substitute/Amended)

**SB 45**, Relating to the establishment of an advisory committee on health care information technology.

(Committee Substitute/Amended)

**SB 89**, Relating to electronically readable information on a driver's license, commercial driver's license, or personal identification certificate.

(Amended)

**SB 132**, Relating to goals and strategies concerning the number of graduates from professional nursing education programs and incentives to recruit and retain professional nursing program faculty.

(Amended)

**SB 151**, Relating to students enrolled in certain high school and junior college programs for which students may receive both high school and higher education academic credit; creating the Texas Academy of International Studies.

(Amended)

**SB 155**, Relating to the quality assurance accreditation process for certain entities that offer health benefit plans and the provisional credentialing process for health benefit plans.

(Amended)

**SB 183**, Relating to the appointment, operation, and recommendations of the Border Trade Advisory Committee.

(Amended)

**SB 265**, Relating to certain continuing education requirements for insurance agents.

(Amended)

**SB 296**, Relating to the operation of Texas A&M University–San Antonio, including the student enrollment required for operation as an independent general academic teaching institution and supplemental funding of the university.

(Amended)

**SB 307**, Relating to a mental health court program.

(Committee Substitute)

**SB 330**, Relating to the creation of a stroke committee and the development of a statewide stroke emergency transport plan and stroke facility criteria.

(Committee Substitute/Amended)

**SB 331**, Relating to the powers and duties of the North Harris County Regional Water Authority.

(Committee Substitute)

**SB 343**, Relating to the regulation of the placement of water wells and the installation and maintenance of well pumps and equipment and to the performance of certain electrical work; providing a penalty.

(Committee Substitute/Amended)

**SB 444**, Relating to registration fee credits for the owners of certain dry cleaning facilities that do not participate in the dry cleaning facility release fund.

(Committee Substitute)

**SB 526**, Relating to a county's authority to impose a records archive fee and to certain fees for records management and preservation.

(Amended)

**SB 532**, Relating to tuition and other charges and fees imposed by the governing board of a junior college district.

(Committee Substitute)

**SB 565**, Relating to the posting of a list of employees in certain child-care facilities and family homes.

**SB 567**, Relating to requiring a taxing unit to include in the public notice of a hearing on the adoption of an ad valorem tax rate certain information relating to the taxing unit's budget and appraisal roll.

(Amended)

**SB 568**, Relating to private security and personal emergency response system providers; providing penalties.

(Amended)

**SB 578**, Relating to the authority of certain honorably retired peace officers to carry certain weapons.

**SB 658**, Relating to the scheduling of certain University Interscholastic League competitions.

(Committee Substitute)

**SB 712**, Relating to the legislature's goal for energy efficiency and related energy efficiency programs.

(Committee Substitute/Amended)

**SB 716**, Relating to payroll deductions for certain employees who are peace officers.

(Committee Substitute)

**SB 732**, Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.

(Committee Substitute)

**SB 771**, Relating to tax increment financing.

(Committee Substitute/Amended)

**SB 784**, Relating to the acceptance by the Texas Commission on Environmental Quality of certain emissions reductions in exchange for other emissions reductions.

**SB 806**, Relating to appointed members of the State Soil and Water Conservation Board.

(Committee Substitute)

**SB 809**, Relating to the Texas Health Insurance Risk Pool.

(Committee Substitute/Amended)

**SB 825**, Relating to the TexasOnline Authority's use of TexasOnline revenue.

(Amended)

**SB 851**, Relating to a financial literacy pilot program in public schools.

(Amended)

**SB 874**, Relating to quality-of-care monitoring visits to long-term care facilities.

(Committee Substitute)

**SB 982**, Relating to certain practices to improve energy conservation in state buildings.

(Amended)

**SB 990**, Relating to a training and examination program on sexual abuse and child molestation for certain persons who work at youth camps.

**SB 993**, Relating to the creation of the Harris County Improvement District No. 5; providing authority to impose a tax and issue a bond or similar obligation.

(Committee Substitute/Amended)

**SB 1037**, Relating to tuition rates for Olympic athletes residing and training in Texas.

(Amended)

**SB 1038**, Relating to authorizing a special events trust fund to support certain Olympic events, including training and development activities.

(Amended)

**SB 1044**, Relating to efforts to mitigate coastal erosion and improve public access to public beaches; authorizing the issuance of bonds by coastal counties.

(Amended)

**SB 1055**, Relating to alternative methods of satisfying certain licensing requirements for assisted living facilities and to consumer choice for assisted living facilities.

(Amended)

**SB 1142**, Relating to the creation of a film industry incentive program.

(Committee Substitute/Amended)

**SB 1146**, Relating to an early college education program to provide at-risk and other students accelerated high school graduation and college credit.

(Amended)

**SB 1170**, Relating to the regulation of gas production by the Railroad Commission of Texas.

(Committee Substitute)

**SB 1175**, Relating to the regulation of oil and gas production by the Railroad Commission of Texas.

(Committee Substitute)

**SB 1188**, Relating to the medical assistance program and other health and human services.

(Committee Substitute/Amended)

**SB 1192**, Relating to stamps for migratory and upland game bird hunting; providing a penalty.

(Amended)

**SB 1195**, Relating to the authority of peace officers to conduct certain searches.

(Committee Substitute/Amended)

**SB 1227**, Relating to public and private postsecondary educational institutions, including enrollment in those educational institutions, payment of the costs of attending those educational institutions, and financial aid and other measures to assist students to pay those costs.

(Committee Substitute/Amended)

**SB 1246**, Relating to local option elections in certain populous areas on the sale of mixed beverages by food and beverage establishments.

(Amended)

**SB 1290**, Relating to the sale or use of certain refrigerants.

(Committee Substitute)

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

(Amended)

**SB 1481**, Relating to powers and duties of the Texas Military Preparedness Commission.

(Committee Substitute)

**SB 1528**, Relating to the payment of tuition and fees at public institutions of higher education and the determination of Texas residency for that purpose.

(Amended)

**SB 1551**, Relating to the continuation of certain offenses and certain statutes involving the interception of certain communications.

(Committee Substitute)

**SB 1626**, Relating to local option elections to legalize or prohibit the sale of alcoholic beverages.

(Committee Substitute)

**SB 1663**, Relating to emergency communication district participation in state travel services contracts.

**SB 1751**, Relating to the powers and board of directors of the Lubbock Reese Redevelopment Authority; authorizing a bond or similar obligation.

(Committee Substitute)

**SB 1798**, Relating to the creation of the North Fort Bend Water Authority; providing authority to issue bonds; granting the power of eminent domain; providing an administrative penalty.

(Committee Substitute)

**SB 1807**, Relating to the power and duties of the Galveston County Municipal Utility District No. 52.

(Committee Substitute)

**SB 1820**, Relating to the creation of the West Fort Bend Management District; providing authority to levy an assessment, impose a tax, and issue bonds.

(Committee Substitute)

**SB 1831**, Relating to the creation of the Corpus Christi Aquifer Storage and Recovery Conservation District.

(Committee Substitute)

**SB 1872**, Relating to the addition of road district powers to the Fort Bend County Municipal Utility District No. 134.

(Committee Substitute)

**SB 1873**, Relating to the creation of the Fort Bend County Municipal Utility District No. 167; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

(Committee Substitute)

**SB 1881**, Relating to the validation, annexation, powers, and duties of the Parker Creek Municipal Utility District of Rockwall County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute)

**SB 1891**, Relating to the creation of the La Salle Water Control and Improvement District No. 1; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute)

**SB 1892**, Relating to the creation of the Espada Development District; providing authority to impose taxes and issue bonds.  
(Committee Substitute/Amended)

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**SB 368**, The House has reappointed Conferees. House Conferees: Hartnett - Chair / Crabb / Dutton / Hughes / Luna

Respectfully,  
/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 747**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 25, 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 747** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES	MCREYNOLDS
BRIMER	CASTEEL
LINDSAY	T. KING
SHAPLEIGH	KRUSEE
WENTWORTH	PHILLIPS
On the part of the Senate	On the part of the House

The Conference Committee Report on **HB 747** was filed with the Secretary of the Senate.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolution**

**SR 1018** by Williams, In memory of Wesley Robert Riggs of Beach City.

**Congratulatory Resolutions**

**SR 1019** by Hinojosa, Recognizing Ruben Villescas on the occasion of his retirement as chief of police of Pharr.

**SR 1020** by Wentworth, Recognizing Guadalupe River Trout Unlimited for its achievements.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 2:04 a.m. Thursday, May 26, 2005, adjourned, in memory of Brad Bourland, until 12:00 noon today.

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**APPENDIX**

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**SENT TO GOVERNOR**

May 24, 2005

**SCR 40, SCR 41**

May 25, 2005

**SB 48, SB 261, SB 316, SB 335, SB 485, SB 679, SB 736, SB 833, SB 863, SB 898, SB 912, SB 945, SB 1214, SB 1257, SB 1330, SB 1378, SB 1465, SB 1792, SB 1800, SB 1801, SB 1802, SB 1803, SB 1804, SB 1805, SB 1808, SB 1810, SB 1855, SB 1864, SB 1865, SB 1882, SB 1884.**