

SEVENTY-NINTH DAY

THURSDAY, MAY 26, 2005

PROCEEDINGS

The Senate met at 1:15 p.m. pursuant to adjournment and was called to order by Senator Carona.

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

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

The Reverend Charles Whitmire, Crestview Baptist Church, Austin, offered the invocation as follows:

O great and merciful God, we thank You that today You have given us another opportunity to serve the great people of Texas. We are humbled by the scope of the work before us, and as we start this session today, we request Your involvement and guidance in our lives. You know, O Lord, that the decisions we make today are very important. Please help us to lead with wisdom and courage. Give us clear minds, articulate voices, and passionate hearts. Give us the strength to do what we feel as right even when we may be acting alone. Help us to protect those we are elected to serve, especially the weak, the poor, and our Texas children. You have placed a tremendous responsibility in our hands and we are very much honored by this task. To You be all glory and honor and power. 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.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 26, 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 7, Memorializing Congress to preserve the community development block grant program and its funding at the U.S. Department of Housing and Urban Development.

HCR 222, Congratulating Francis Vernon Ruble and Aimer Loutency Ruble on their 63rd wedding anniversary.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 1028

Senator Averitt offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize United States Olympic swimmer Dana Vollmer of Granbury for her momentous achievement of winning a gold medal at the 2004 Olympic Games in Athens, Greece, as a member of the women's 800-meter freestyle relay team; and

WHEREAS, Dana swam the third leg of the relay, helping her team set a world record of 7:53.42 in the Olympic finals; their time shattered a 17-year-old record by more than two seconds; and

WHEREAS, Dana also placed sixth in the individual 200-meter freestyle; she was the only American to reach the finals in that event and was the first American to do so in eight years; Dana's other accomplishments include winning the 200-meter freestyle at the 2003 Pan American Games and at the 2004 Olympic Trials; and

WHEREAS, Dana has been swimming competitively at a very high level for many years; she holds several age-group records in Texas, and she was the youngest competitor at the 2000 Olympic Trials at the age of 12; and

WHEREAS, Dana is recognized for her courage; she competes daily with an ongoing, serious heart condition that sometimes causes her heart to stop without warning; and

WHEREAS, An exemplary young woman with a promising future, Dana inspires others with her spirit, tenacity, and athleticism, and her accomplishments are a source of pride to her family, her community, and her state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Dana Vollmer for her outstanding achievements in the Olympic Games; and, be it further

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

SR 1028 was read and was adopted without objection.

GUESTS PRESENTED

Senator Averitt was recognized and introduced to the Senate Olympic Gold Medal Winner Dana Vollmer; her parents, Les and Kathy Vollmer; accompanied by her swimming coach, Ron Forrest.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Fraser was recognized and presented Dr. Robert Hogue of Brownwood as the Physician of the Day.

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

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate the Texas Legislative Internship Program Class of 2005: Keith Brooks, Melisha Craft, Derrick Davis, Mary Dean, Orianna Diaz, Carlos Doroteo, Melissa Duncan, Patrick Embry, Shannon Garth-Rhodes, John Guess IV, Terry James, Amy-Kristen Jones, Darrell Jordan, Jr., Emily King, Hendrik Maison, Akilah Mance, Dolly Marchena, Kelechi Meremikwu, Gulani Moeti, Xolisile Moloi, Shelley Morrison, Vanessa McMahan, Nicholas Ngcobo, Ephraim Ngoasheng, Henal Patel, Simeon Popoff, English Pratts, Monica Ramasehla, Nicholas Reed, Hamilton Rucker, Geneza Simoes, Valerie Simpson, Candice Smith, Christopher Smith, Nikki Starr, Anthony Stewart, Kevin Vickers, Rebecca Walton, and Courtney White; accompanied by honorary interns Rachel Grove, Wendolynn Montoya, and Justin Schwartz.

The Senate welcomed its guests.

SENATE RESOLUTION 987

Senator Van de Putte offered the following resolution:

WHEREAS, Brigadier General Charles G. Rodriguez of San Antonio has been appointed by Governor Rick Perry to serve as Texas adjutant general; and

WHEREAS, The first Hispanic to hold that office, General Rodriguez assumes his new post in June 2005; in that capacity, he will lead more than 18,000 members of the Texas Army and Air National Guard, the Texas State Guard, and the Adjutant General's Department; and

WHEREAS, Presently, General Rodriguez serves as assistant adjutant general for homeland defense in the Texas Joint Forces Headquarters, a position he has held since November 2004; and

WHEREAS, This distinguished Texan graduated from the U.S. Military Academy at West Point in 1975 and began his military career in the Signal Corps; during his eight years of active duty, he served with the 101st Airborne Division at Fort Campbell in Kentucky and with the 1st Armored Division in Ansbach, Germany; he subsequently spent 11 years in the U.S. Army Reserve, during which time his assignments included tours with the National Security Agency, the U.S.A. Command, and West Point; and

WHEREAS, Since joining the Texas National Guard in 1995, General Rodriguez has commanded the 136th Signal Battalion and the 136th Regiment; in 2002, he was made deputy commander of the 71st Troop Command; and

WHEREAS, Along with a bachelor of science degree, General Rodriguez has earned a master's degree in communications research from Wheaton College Graduate School, a master of business administration degree from Keller Graduate School of Management, and a doctorate in philanthropic leadership from The Union Institute and University; and

WHEREAS, Charles Rodriguez currently serves as assistant vice president for university relations and as deputy director of the Center for Public Health Preparedness and Biomedical Research at The University of Texas Health Science Center at San Antonio; he and his wife, Cappy, are the parents of a son, Christopher, and a daughter, Johnny Marie; and

WHEREAS, In these challenging times, the State of Texas is indeed fortunate to have an officer of such outstanding ability to oversee the training of its military forces, and it is a privilege to recognize General Rodriguez as he prepares to take the helm of the Adjutant General's Department; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby congratulate Brigadier General Charles G. Rodriguez on his appointment as adjutant general of Texas; and, be it further

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

SR 987 was read and was adopted without objection.

GUEST PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Brigadier General Charles G. Rodriguez of San Antonio.

The Senate welcomed its guest.

SENATE RESOLUTION 1027

Senator Averitt offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Robert B. Sloan, Jr., who served as president of Baylor University from June 1, 1995 through May 31, 2005, during a time of great change and progress in the state's oldest institution of higher education; and

WHEREAS, One of President Sloan's greatest achievements has been implementing Baylor 2012, the university's 10-year plan that calls for Baylor to become a nationally recognized research institution and at the same time strengthen its Christian mission; and

WHEREAS, During President Sloan's tenure, the Baylor faculty has grown from 644 to 780, and faculty research has greatly increased; and

WHEREAS, Numerous new schools have been established at Baylor since 1995, including the School of Engineering and Computer Science, the Honors College, and the School of Social Work; and a number of new doctoral programs were developed during this time; and

WHEREAS, Minority student enrollment has increased to 30.3 percent in the 2004 fall semester freshman class, and graduate student enrollment has grown to an all-time high of 1,297 students; and

WHEREAS, Baylor's operating budget and its endowment have more than doubled; campus size has increased from 450 acres to almost 750 acres, and many new facilities have been built; and

WHEREAS, President Sloan set high standards for his faculty, administrative officers, and students and provided an environment conducive to excellence in teaching and learning; he has had a positive impact on the lives of many students, and Baylor University will long benefit from his leadership; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Robert B. Sloan, Jr., for his outstanding achievements as president of Baylor University and his many contributions to the educational system of this state and extend to him best wishes in his new role as university chancellor; 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 1027 was read and was adopted without objection.

SENATE RESOLUTION 995

Senator Ellis offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Dr. Margaret Penn Sherrod for creating and directing the Black Foxes, the majorette dancing line that performs with the Prairie View A&M University Marching Storm Band; and

WHEREAS, Dr. Sherrod has directed the popular dance troupe for 30 years, and she works closely with band director George Edwards to provide entertainment at local athletic events, as well as throughout the state and nation; under her tutelage, the Black Foxes has grown from eight to 20 dancers, and the group has a reputation around the country for first-class precision and showmanship; and

WHEREAS, Performing with the Marching Storm Band, the Black Foxes have danced in numerous high-profile events, such as inaugural parades for President George W. Bush, the nationally televised Dallas Cowboys 2004 Thanksgiving Day game, and the Honda Battle of the Bands in Atlanta, Georgia; and

WHEREAS, A former Miss Prairie View A&M University, Margaret Sherrod was the first African-American contestant in the Miss Texas and Miss America Pageants; and

WHEREAS, She expects performance excellence, good grades, character development, and community involvement from the members of the Black Foxes program; and

WHEREAS, The Prairie View A&M University Marching Band and the Black Foxes are a source of great pride to the university and our state, and Dr. Margaret Penn Sherrod deserves recognition for creating the Black Foxes and making the dancers the tremendous success they are today; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Dr. Margaret Penn Sherrod for her exceptional achievements and congratulate her on her outstanding work as director of the Black Foxes; and, be it further

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

ELLIS
ARMBRISTER

SR 995 was read.

SENATE RESOLUTION 996

Senator Ellis offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize George Edwards, who is the director of the widely acclaimed Prairie View A&M University Marching Storm Band; and

WHEREAS, Under the leadership and direction of Professor Edwards, the Marching Storm Band has earned a reputation as one of the best bands in the country and has won many accolades for its outstanding performances and showmanship; and

WHEREAS, Members of the band and of its majorette dance program, the Black Foxes, perform at athletic competitions and at such high-profile events as President George W. Bush's 2001 Presidential Inaugural Parade in Washington, D.C., and the Dallas Cowboys' 2004 Thanksgiving Day game; and

WHEREAS, One of the top 10 marching bands in the country selected by the Historically Black Colleges and Universities to participate in the Honda Battle of the Bands Invitational Showcase in Atlanta, Georgia, the Prairie View A&M Band has proved to be an audience favorite; and

WHEREAS, George Edwards has directed the Marching Storm Band for 20 years, and in that time span, it has grown from a band with 25 instruments to nearly 300; in addition to developing his students' musical and performing talents, he coaches them in personal conduct and character development; and

WHEREAS, The Prairie View A&M University Marching Storm Band is renowned for its excellence and is a source of tremendous pride to the university and to our state, and George Edwards deserves recognition for making the band such a success; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend George Edwards for his exceptional achievements and his outstanding success as director of the Prairie View A&M University Marching Storm Band; and, be it further

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

ELLIS
ARMBRISTER

SR 996 was read.

SR 995 and **SR 996** were adopted without objection.

GUESTS PRESENTED

Senator Ellis, joined by Senator Armbrister, was recognized and introduced to the Senate Margaret Sherrod, Kaneisha Black, George Edwards, and Samuel Towsel.

The Senate welcomed its guests.

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

On motion of Senator Deuell and by unanimous consent, Senate Rule 11.13 was suspended to grant all conference committees permission to meet while the Senate is meeting today.

CONFERENCE COMMITTEE ON HOUSE BILL 969

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 969** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 969** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Whitmire, Duncan, Carona, and Seliger.

SENATE BILL 624 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 624** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Carona in Chair, laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 624** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED
AN ACT**

relating to the regulation of bail bond sureties.

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

SECTION 1. Section 1704.001(4), Occupations Code, is amended to read as follows:

(4) "Bonding business" or "bail bond business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety.

SECTION 2. Section 1704.002, Occupations Code, is amended to read as follows:

Sec. 1704.002. APPLICATION OF CHAPTER. This chapter applies only in a county with a population of:

(1) 50,000 [~~110,000~~] or more; or

(2) less than 50,000 [~~110,000~~] in which a board is created.

SECTION 3. Section 1704.051, Occupations Code, is amended to read as follows:

Sec. 1704.051. MANDATORY CREATION OF BOARD. A board is created in each county with a population of 50,000 [~~110,000~~] or more.

SECTION 4. Section 1704.052, Occupations Code, is amended to read as follows:

Sec. 1704.052. DISCRETIONARY CREATION OF BOARD. A board may be created in a county with a population of less than 50,000 [~~110,000~~] if a majority of the persons who would serve as members of the board under Section 1704.053, or who would designate the persons who would serve as members of the board, determine to create a board.

SECTION 5. Section 1704.152(a), Occupations Code, is amended to read as follows:

(a) To be eligible for a license under this chapter, an individual, including an agent designated by a corporation in an application, must:

(1) be a resident of this state and a citizen of the United States;

(2) be at least 18 years of age;

(3) possess the financial resources required to comply with Section 1704.160, unless the individual is acting only as agent for a corporation holding a license under this chapter; and

(4) submit documentary evidence that [have], in the two years preceding the date a license application is filed, the individual:

(A) has been continuously employed by a person licensed under this chapter for at least one year and for not less than 30 hours per week, excluding annual leave, and has performed duties that encompass all phases of the bonding business [of continuous work experience in the bail bond business]; and

(B) completed in person at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and that are offered by an accredited institution of higher education in the state.

SECTION 6. Section 1704.163, Occupations Code, is amended to read as follows:

Sec. 1704.163. ATTORNEY EXEMPTION. (a) Except as provided by this section, a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:

(1) is licensed to practice law in this state; and

(2) at the time the bond is executed or the person acts as a surety, files a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided or submits proof that the person has previously filed with the court in which the criminal case is pending the notice of appearance as counsel of record [represents the other person in the criminal case for which the bond was given].

(b) A person executing a bail bond or acting as a surety under this section may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation. If the board determines that a person has violated this subsection, the board may suspend or revoke the person's authorization

to post a bond under this section or may bar the person from executing [person may not execute] a bail bond or acting [act] as a surety under this section until the person has remedied the violation.

(c) A person executing a bail bond or acting as a surety under this section ~~[who has been paid a fee for executing the bond or acting as the surety]~~ is not relieved of liability on the bond solely because the person is later replaced as attorney of record in ~~[has not been employed to represent the principal on the merits of]~~ the criminal case.

SECTION 7. Notwithstanding Section 1704.051, Occupations Code, as amended by this Act, a county with a population of 50,000 or more that has not established a county bail bond board under Chapter 1704, Occupations Code, as amended by this Act, is not required to establish a county bail bond board before January 1, 2006.

SECTION 8. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 624** (House committee report) by striking SECTIONS 2, 3, 4, and 7 of the bill (page 1, line 9, through page 2, line 4, and page 4, lines 4 through 9) and renumbering subsequent SECTIONS of the bill accordingly.

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 624**.

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

SENATE BILL 427 WITH HOUSE AMENDMENTS

Senator Van de Putte called **SB 427** 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 427** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to providing notification to a county voter registrar of the change in boundaries of a political subdivision located in the county.

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

SECTION 1. Subchapter C, Chapter 42, Election Code, is amended by adding Section 42.0615 to read as follows:

Sec. 42.0615. NOTICE TO REGISTRAR OF BOUNDARY CHANGE OF POLITICAL SUBDIVISION. A political subdivision that changes its boundaries or the boundaries of districts used to elect members to the governing body of the political subdivision shall not later than the 30th day after the date the change is adopted:

(1) notify the voter registrar of the county in which the area subject to the boundary change is located of the adopted boundary change; and

(2) provide the voter registrar with a map of an adopted boundary change in a format that is compatible with the mapping format used by the registrar's office.

SECTION 2. This Act takes effect September 1, 2005.

Floor Amendment No. 2

Amend **CSSB 427** (House committee printing) as follows:

(1) Between the enacting clause and SECTION 1 of the bill (page 1, between lines 5 and 6), insert:

ARTICLE 1. AMENDMENT OF ELECTION CODE

(2) Redesignate SECTION 1 of the bill as SECTION 1.01.

(3) Strike SECTION 2 of the bill (page 1, line 19), and substitute the following:

**ARTICLE 2. AMENDMENT OF RED BLUFF WATER POWER CONTROL
DISTRICT LOCAL LAW**

SECTION 2.01. DEFINITIONS. In this article, "Red Bluff District" means the Red Bluff Water Power Control District.

SECTION 2.02. NATURE AND COMPOSITION OF DISTRICT. (a) The Red Bluff Water Power Control District is a water power control district in Loving, Pecos, Reeves, and Ward Counties:

(1) created under Section 59, Article XVI, Texas Constitution; and

(2) governed by:

(A) Chapter 76, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 7807d, Vernon's Texas Civil Statutes);

(B) Chapter 19, General Laws, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 7807dd, Vernon's Texas Civil Statutes); and

(C) other provisions of general law.

(b) The Red Bluff District is composed of the seven following member districts regardless of whether a district is a water improvement district operating under Chapter 55, Water Code, or an irrigation district operating under Chapter 58, Water Code:

(1) Loving County Water Improvement District No. 1;

(2) Pecos County Water Improvement District No. 2;

(3) Pecos County Water Improvement District No. 3;

(4) Reeves County Water Improvement District No. 2;

(5) Ward County Irrigation District No. 1;

(6) Ward County Irrigation District No. 3; and

(7) Ward County Water Improvement District No. 2.

SECTION 2.03. RED BLUFF DISTRICT BOARD OF DIRECTORS. (a) The Red Bluff District is governed by a board of seven directors.

(b) The board of directors of each member district shall appoint one director to serve on the board of directors of the Red Bluff District. Each director represents the member district from which the director was appointed and serves at the pleasure of the directors of that member district.

(c) A person who is an elected director of a member district may be appointed to serve as a director of the Red Bluff District.

(d) If a vacancy occurs on the board of directors of the Red Bluff District, the member district that appointed the director to the vacated position shall appoint a person to fill the vacancy.

SECTION 2.04. TERRITORY OF RED BLUFF DISTRICT; COUNTY NOTIFICATION. (a) The territory of the Red Bluff District is only that territory included in the combined territory of the member districts listed under Section 2.02(b) of this article.

(b) The Red Bluff District shall notify the registrars of the counties named in Section 2.02(a) of this article of the change in district boundaries not later than the 30th day after the effective date of this article.

SECTION 2.05. EFFECTIVE DATE OF ARTICLE. This article takes effect on the later of the effective date of this Act or the date on which this article is precleared under Section 5, Voting Rights Act of 1965 (42 U.S.C. Section 1973c).

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 427** on third reading by striking Article 2 of the bill, as added by the Hardcastle amendment, and renumbering the remaining articles as appropriate.

The amendments were read.

Senator Van de Putte moved to concur in the House amendments to **SB 427**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 167

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 167** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 167** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Brimer, Fraser, Madla, and Lucio.

CONFERENCE COMMITTEE ON HOUSE BILL 182

Senator Janek called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 182** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 182** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Janek, Chair; Wentworth, Williams, Eltife, and Duncan.

SENATE BILL 1828 WITH HOUSE AMENDMENT

Senator Estes called **SB 1828** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1828** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of the Smiley Road Water Control and Improvement District; providing authority to impose a tax and issue bonds.

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

SECTION 1. Subtitle I, Title 6, Special District Local Laws Code, is amended by adding Chapter 9001 to read as follows:

CHAPTER 9001. SMILEY ROAD WATER CONTROL AND IMPROVEMENT DISTRICT SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9001.001. 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 Smiley Road Water Control and Improvement

District.

Sec. 9001.002. NATURE OF DISTRICT. The district is a water control and improvement district in Denton County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution. The district is created to serve a public use and benefit.

Sec. 9001.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 9001.023 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 Denton 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. 9001.004. 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 ad valorem taxes; or

(3) the legality or operation of the district or the board.

Sec. 9001.005. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this chapter, Chapters 49 and 51, Water Code, apply to the district.

[Sections 9001.006-9001.020 reserved for expansion]

SUBCHAPTER A1. TEMPORARY PROVISIONS

Sec. 9001.021. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) Brett Blakey;

(2) Michael Cummings;

(3) Shane Jordan;

(4) Mike Miller; and

(5) Mike Mollo.

(b) If a temporary director fails to qualify for office, the Texas Commission on Environmental Quality shall appoint a person to fill the vacancy.

(c) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 9001.023; or

(2) the date this chapter expires under Section 9001.003.

Sec. 9001.022. 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 and elect officers from their membership.

Sec. 9001.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. Before September 1, 2007, 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. 9001.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 9001.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors under Section 9001.052 and which three shall serve until the second regularly scheduled election of directors.

Sec. 9001.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010.

[Sections 9001.026-9001.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9001.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 9001.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 9001.053-9001.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 9001.101. GENERAL POWERS. (a) The district has:

(1) all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 49 and 51, Water Code, applicable to water control and improvement districts created under Section 59, Article XVI, Texas Constitution; and

(2) subject to Section 9001.105, the rights, authority, privileges, and functions of a road district operating under Section 52(b)(3), Article III, Texas Constitution, Chapter 257, Transportation Code, and other general laws of this state relating to road districts.

(b) The district may provide water, sanitary sewer, drainage, and, subject to Section 9001.105, road services to each part of the district not receiving those services on the effective date of the Act creating this chapter.

Sec. 9001.102. AUTHORITY TO CONTRACT WITH OWNERS OF REAL PROPERTY IN DISTRICT. The district may enter into a contract with an owner of real property in the district for the construction, acquisition, financing, ownership, maintenance, and operation of a work or project described by Section 9001.101(b).

Sec. 9001.103. CONTRACTS WITH CITY OF CELINA. The district shall use its best efforts to acquire water, sewer, and other powers permitted by law and, if successful, to enter into a contract with the City of Celina to provide water, sewer, and other services to the city.

Sec. 9001.104. PROHIBITION ON DIVISION OF DISTRICT. The district may not divide into two or more districts in the manner specified by Section 51.748 or 53.029, Water Code.

Sec. 9001.105. VOTER APPROVED ROAD DISTRICT POWERS. (a) If a majority of the voters of the district vote in favor of the district's assumption of road district powers in the manner provided by Section 53.029, Water Code, at an election held for that purpose, the district shall assume the rights, authority, privileges, and functions of a road district as described by Section 9001.101(a)(2).

(b) If the voters approve road district powers under Subsection (a), the district may provide for, or provide aid for, the construction, acquisition, financing, maintenance, and operation of macadamized, graveled, or paved roads inside the district. Road district powers under this section do not include any powers related to the construction, acquisition, financing, maintenance, or operation of a turnpike or toll road.

(c) 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 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.

(d) The district may not undertake a road project unless each municipality in whose corporate limits or extraterritorial jurisdiction the district is located consents by ordinance or resolution. If the district is located outside the extraterritorial jurisdiction of a municipality, the district may not undertake a road project unless the county in which the district is located consents by ordinance or resolution.

(e) If the district assumes road district powers under this section, construction plans and specifications for all roads must be submitted to Denton County for approval.

(f) Section 49.182, Water Code, does not apply to a project undertaken by the district under this section.

Sec. 9001.106. ADDITION OF LAND TO DISTRICT. The district may add land to the district in the manner provided by Section 49.301, Water Code, if the owner of the land submits a petition to the district for the addition of the land to the district and the land is adjacent to the territory of the district or is separated from the district only by public land or a right-of-way.

[Sections 9001.107-9001.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9001.151. AD VALOREM PLAN OF TAXATION. The district shall use the ad valorem plan of taxation, subject to voter approval at an election held in the district for that purpose.

Sec. 9001.152. AD VALOREM TAX FOR ROAD PROJECTS. The district may impose an ad valorem tax to pay the principal of or interest on bonds issued under Section 9001.201(b) to finance projects under Section 9001.105.

Sec. 9001.153. UTILITY EXEMPTION FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, equipment, rights-of-way, facilities, or improvements of:

(1) an electric utility 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 cable operator as defined by 47 U.S.C. Section 522.

[Sections 9001.154-9001.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 9001.201. AUTHORITY TO ISSUE BONDS. (a) The district may issue bonds as provided by Chapter 49 or 51, Water Code, or Section 53.029, Water Code, the general laws of this state, or this section.

(b) Except as provided by Subsection (c) and Section 9001.202, the district may issue bonds, notes, or other obligations as provided by Section 53.029, Water Code, to finance, or assist in the financing of, projects under Section 9001.105.

(c) The district may not issue bonds under Subsection (b) unless the issuance is authorized by two-thirds of the district's voters voting at an election called for that purpose.

(d) Section 49.181, Water Code, does not apply to a bond issued by the district under Section 53.029, Water Code.

Sec. 9001.202. LIMIT ON BONDS AND OTHER OBLIGATIONS. (a) Bonds, notes, or other obligations issued or incurred by the district under Section 53.029, Water Code, may not exceed one-fourth of the assessed value of the real property in the district.

(b) The district may not issue bonds until a development agreement between the City of Celina and the district has been signed.

Sec. 9001.203. USE OF BOND PROCEEDS. The district may use proceeds from the sale of bonds to acquire improvements or facilities:

(1) from a private water supply corporation to provide water or sanitary sewer services to territory in the district; or

(2) to provide services described by Section 9001.101(b).

SECTION 2. The Smiley Road Water Control and Improvement District initially includes all the territory contained in the following described area:

All that certain tract or parcel of land lying and being situated in Denton County, Texas, a part of the ROBERT COWAN SURVEY, ABSTRACT NO. 211, and being comprised of the following:

1) All of an 85.17 acre tract described in a Deed to Celina West 637, Ltd., recorded in Volume 5140, Page 827 of the Real Property Records of Denton County

2) All of an 101.42 acre tract described in a Deed to Celina West 637, Ltd., recorded in Volume 5140, Page 821 of the Real Property Records of Denton County,

3) All of a tract said to contain 252.905 acres as described under the caption "Second Tract" in a Deed to Celina West 637, Ltd., recorded in Volume 5120 page 2232 of the Real Property Records of Denton County.

4) All of an 150.69 acre tract described in a Deed to Celina West 637, Ltd. Recorded in Volume 5167, Page 2788 of the Real Property Records of Denton County, and

5) All of a tract said to contain 35.426 acres as described in a deed to Underwood Financial, L.P., et al, recorded under Clerk's File No. 04-0029789, said tract or parcel of land is herein described as follows; to wit:

BEGINNING at point at the intersection of Carey Road (a county road running in an easterly and westerly direction) with Smiley Road (a county road running in a northerly and southerly direction) for the southwest corner of the premises herein described;

THENCE along Smiley Road North 00 degrees 30 minutes 10 seconds East, a distance of 2127.78 for the northwest corner of said 85.17 acre tract and an angle point of this tract;

THENCE continuing along Smiley road North 00 degrees 47 minutes 09 seconds East 891.20 to a point in said road at the northwest corner of said called 35.426 acre tract for the most westerly northwest corner hereof;

THENCE South 89 degrees 02 minutes 45 seconds East 1742.21 feet to a point in the west line of said 150.69 acre tract for the northeast corner of said called 35.426 acre tract and a re-entrant corner hereof;

THENCE along the west line of said 150.69 acre tract, North 00 degrees 30 minutes 47 seconds East, a distance of 249.99 feet to a point for corner;

THENCE North 00 degrees 03 minutes 52 seconds West, a distance of 57.13 feet to a point at the southwest corner said record 252.905 acre tract;

THENCE along the west line of last named tract, North 00 degrees 46 minutes 57 seconds East, a distance of 393.91 feet to a point at the southeast corner of MEADOW VISTA PHASE 2, an addition to Denton County according to the Plat thereof recorded in Cabinet Q, page 271 of the Denton County Plat Records;

THENCE North 00 degrees 36 minutes 12 seconds East, a distance of 2078.90 feet to a point for the most westerly northwest corner of said record 252.905 acre tract;

THENCE South 88 degrees 07 minutes 27 seconds East, a distance of 2457.17 feet to a point for corner;

THENCE North 00 degrees 15 minutes 45 seconds West, a distance of 862.00 feet to a point in the south line of F.M. Highway No. 428;

THENCE South 89 degrees 44 minutes 26 seconds East, along the south line of said FM. Highway No. 428, a distance of 834.25 feet to point in the easterly radius of the Extraterritorial Jurisdiction of the Town of Celina;

THENCE departing said south line, and said easterly radius, due South, a distance of 2620.43 feet to a point;

THENCE North 90 degrees 00 minutes 00 seconds East, a distance of 3347.18 feet to a point in the paved surface of said County Line Road;

THENCE South 00 degrees 27 minutes 20 seconds West, a distance of 662.33 feet to a point t in the paved surface of said County Line Road for the southeast corner of said 101.42 acre tract and an ell corner hereof:

THENCE North 89 degrees 46 minutes 54 seconds West, a distance of 2668.49 feet to a point for the southwest corner of said 101.42 acre tract, same being the southeast corner of said record 252.905 acre tract;

THENCE along the south line of last named tract, North 89 degrees 40 minutes 55 seconds West, a distance of 1999.64 feet to a point for the northeast corner of said 150.69 acre tract, said corner being a re-entrant corner hereof;

THENCE South 00 degrees 31 minutes 41 seconds West, a distance of 3304.39 feet to a point in Carey Road at the southeast corner of said 150.69 acre tract, said corner being the most southerly southeast corner hereof:

THENCE with the south line of said Carey Road, North 89 degrees 43 minutes 05 seconds West, a distance of 3731.89 feet to the PLACE OF BEGINNING and containing 522.25 acres of land of which approximately 1.0 acre is subject to the 100 year flood per FEMA Maps and which 4.00 acres are subject to existing County Road rights-of-way leaving a net area of 517.25 acres of land.

SECTION 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.

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.

Senator Estes moved to concur in the House amendment to **SB 1828**.

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

SENATE BILL 1421 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 1421** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1421** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 143.023(c), Local Government Code, is amended to read as follows:

(c) A person who is 45 years of age or older may not be certified for a beginning position in a police department. ~~[A person who is 36 years of age or older and under 45 may not be certified as eligible for a beginning position in a police department unless the person has at least five years' experience as a peace officer or at least five years of military experience.]~~

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 1421**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 468

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 468** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 468** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Estes, Staples, Madla, and Van de Putte.

SENATE BILL 408 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 408** 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 408** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation, administration, and operations of the Public Utility Commission of Texas.

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

SECTION 1. The heading to Subtitle A, Title 2, Utilities Code, is amended to read as follows:

SUBTITLE A. GENERALLY ~~[PROVISIONS]~~ APPLICABLE PROVISIONS ~~[TO ALL UTILITIES]~~

SECTION 2. Sections 11.002(a) and (b), Utilities Code, are amended to read as follows:

(a) This title is enacted to protect the public interest inherent in the delivery of ~~[rates and]~~ services and deployment of networks by telecommunications providers ~~[public utilities]~~. The purpose of this title is to establish an appropriate ~~[a comprehensive and adequate]~~ regulatory system for communications service ~~[public utilities to assure rates, operations, and services that are just]~~ and network providers ~~for [reasonable to] the benefit of consumers [and to the utilities]~~.

(b) Electric ~~[Public]~~ utilities traditionally are by definition monopolies in the areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition.

SECTION 3. Sections 11.003(1), (2), (3), (8), (10), (13), (16), (19), (20), and (21), Utilities Code, are amended to read as follows:

(1) "Affected person" means:

(A) a public utility, provider, or electric cooperative affected by an action of a regulatory authority;

(B) a person whose ~~[utility]~~ service or rates are affected by a proceeding before a regulatory authority; or

(C) a person who:

(i) is a competitor of a public utility or provider with respect to a service delivered ~~[performed]~~ by the utility or provider; or

(ii) wants to enter into competition with a public utility or provider.

(2) "Affiliate" means:

(A) a person who directly or indirectly owns or holds at least five percent of the voting securities of a public utility or provider;

(B) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility or provider;

(C) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by a public utility or provider;

(D) a corporation that has at least five percent of its voting securities owned or controlled, directly or indirectly, by:

(i) a person who directly or indirectly owns or controls at least five percent of the voting securities of a public utility or provider; or

(ii) a person in a chain of successive ownership of at least five percent of the voting securities of a public utility or provider;

(E) a person who is an officer or director of a public utility or provider or of a corporation in a chain of successive ownership of at least five percent of the voting securities of a public utility or provider; or

(F) a person determined to be an affiliate under federal law or Section 11.006.

(3) "Allocation" means the division among municipalities or among municipalities and unincorporated areas of the plant, revenues, expenses, taxes, and reserves of an electric [a] utility used to provide electric [public utility] service in a municipality or for a municipality and unincorporated areas.

(8) "Counselor [Counselor]" means the public utility counsel.

(10) "Facilities" means all of the plant and equipment of a public utility or provider, and includes the tangible and intangible property, without limitation, owned, operated, leased, licensed, used, controlled, or supplied for, by, or in connection with the business of the public utility or provider.

(13) "Order" means all or a part of a final disposition by a regulatory authority in a matter other than rulemaking, without regard to whether the disposition is affirmative or negative or injunctive or declaratory. The term includes:

(A) the issuance of a certificate or registration [~~of convenience and necessity~~]; and

(B) the setting of a rate.

(16) "Rate" includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility or provider for a service, product, or commodity described in the definition of utility in Section 31.002 or 51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(19) "Service" includes:

(A) basic local telecommunications service as defined by Section 51.002;

(B) interexchange telecommunications service as defined by Section 51.002;

(C) local exchange telephone service as defined by Section 51.002;

(D) transmission service as defined by Section 31.002; and

(E) a service provided by a utility or electric utility that is described in the definition of utility or electric utility in Section 31.002 or 51.002 [has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under this title to its patrons, employees, other public utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory].

(20) "Test year" means the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility or provider are available.

(21) "Trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional persons who are employed by public utilities, ~~[or] utility competitors, or providers to assist [the public utility industry, a utility competitor, or the industry's or competitor's employees]~~ in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 4. Chapter 11, Utilities Code, is amended by adding Sections 11.0042 and 11.0045 to read as follows:

Sec. 11.0042. DEFINITION OF AFFILIATE. (a) The term "person" or "corporation" as used in the definition of "affiliate" provided by Section 11.003(2) does not include:

(1) a broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(2) a bank or insurance company as defined under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(3) an investment adviser registered under state law or the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-20 et seq.);

(4) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-51 et seq.); or

(5) an employee benefit plan, pension fund, endowment fund, or other similar entity that may, directly or indirectly, own, hold, or control five percent or more but not more than 15 percent of the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(A) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(B) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(b) For the purpose of determining whether a person is an affiliate under Section 11.006(a)(3), the term "person" does not include an entity that may, directly or indirectly, own, hold, or control five percent or more but not more than 15 percent of the voting securities of a public utility or the parent corporation of a public utility if the entity did not acquire the voting securities:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

(c) A report filed by an entity described by Subsection (a)(5) or (b) with the Securities and Exchange Commission is conclusive evidence of the entity's intent if the report confirms that the voting securities were not acquired:

(1) for the purpose of or with the effect of changing or influencing the control of the issuer of the securities; or

(2) in connection with or as a participant in any transaction that changes or influences the control of the issuer of the securities.

Sec. 11.0045. DEFINITION OF PROVIDER. In Subtitle A "provider" means:

(1) a service provider; and

(2) a network provider.

SECTION 5. Section 11.006, Utilities Code, is amended to read as follows:

Sec. 11.006. PERSON DETERMINED TO BE AFFILIATE. (a) The commission may determine that a person is an affiliate for purposes of this title if the commission after notice and hearing finds that the person:

(1) actually exercises substantial influence or control over the policies and actions of a public utility or provider;

(2) is a person over which a public utility or provider exercises the control described by Subdivision (1);

(3) is under common control with a public utility or provider; or

(4) together with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of a public utility or provider even though neither person may qualify as an affiliate individually.

(b) For purposes of Subsection (a)(3), "common control with a public utility or provider" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of another, without regard to whether that power is established through ownership or voting of securities or by any other direct or indirect means.

SECTION 6. Chapter 11, Utilities Code, is amended by adding Section 11.010 to read as follows:

Sec. 11.010. REPRESENTATION. (a) Except as provided by Subsection (b), an individual who represents an entity in a contested proceeding before the commission must be an attorney licensed to practice law in this state or in another state.

(b) The commission may make an exception to Subsection (a) based on the circumstances of a particular proceeding.

SECTION 7. Section 12.004, Utilities Code, is amended to read as follows:

Sec. 12.004. REPRESENTATION BY ~~[THE]~~ ATTORNEY GENERAL. The attorney general shall represent the commission in a matter before a state court, a court of the United States, or a federal public utility or service regulatory commission.

SECTION 8. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2011 ~~[2005]~~.

SECTION 9. Section 12.051(a), Utilities Code, is amended to read as follows:

(a) The commission is composed of five ~~[three]~~ commissioners appointed by the governor with the advice and consent of the senate.

SECTION 10. Section 12.053(b), Utilities Code, is amended to read as follows:

(b) A person is not eligible for appointment as a commissioner if the person:

(1) at any time during the two years preceding appointment[-

~~[(A)]~~ personally served as an officer, director, owner, employee, partner, or legal representative of a [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider; ~~[or]~~

(2) owns ~~[(B) owned]~~ or controls ~~[controlled]~~, directly or indirectly, stocks or bonds of any class with a value of \$10,000 or more in a ~~[public]~~ utility, provider, affiliate, or direct competitor of a ~~[public]~~ utility or provider; or

(3) ~~[(2)]~~ is not qualified to serve under Section 12.151, 12.152, or 12.153.

SECTION 11. Section 12.054(a), Utilities Code, is amended to read as follows:

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

(1) does not have at the time of appointment or maintain during service on the commission the qualifications required by Section 12.053;

(2) violates a prohibition provided by Section 12.053 or by Subchapter D;

(3) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; ~~or~~

(4) is absent from more than half of the regularly scheduled commission meetings that the commissioner is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission; or

(5) personally serves as an officer, director, owner, employee, partner, or legal representative of a utility, provider, affiliate, or direct competitor of a utility or provider.

SECTION 12. Section 12.059, Utilities Code, is amended by adding Subsection (c) to read as follows:

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

SECTION 13. Section 12.102, Utilities Code, is amended to read as follows:

Sec. 12.102. DUTIES OF EMPLOYEES. The commission shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the commission and the management responsibilities of the commission employees.

SECTION 14. Section 12.152(a), Utilities Code, is amended to read as follows:

(a) A person is not eligible for appointment as a commissioner or executive director of the commission if:

(1) the person serves on the board of directors of a company that supplies fuel, utility-related services, or utility-related products to a utility or provider ~~[regulated or unregulated electric or telecommunications utilities]; or~~

(2) 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

(ii) a utility, provider, affiliate, or direct competitor of a ~~[supplier,]~~ utility ~~[supplier,]~~ or provider ~~[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, other than compensation or reimbursement authorized by law 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 at the time of appointment is in a single utility, provider, affiliate, or direct [utility] competitor of a [~~or~~ utility or provider [supplier] in this state and the person does not disclose this information to the governor, senate, commission, or other entity, as appropriate.

SECTION 15. Section 12.153, Utilities Code, is amended to read as follows:

Sec. 12.153. RELATIONSHIP WITH TRADE ASSOCIATION. A person may not serve as a commissioner or be a commission employee who is 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.), [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 trade association; or
- (2) the spouse of an officer, manager, or paid consultant of a trade association.

SECTION 16. Sections 12.154(a), (b), (c), (d), (f), and (h), Utilities Code, are amended to read as follows:

(a) During the period of service with the commission, a commissioner or commission employee may not:

(1) have a pecuniary interest, including an interest as an officer, director, partner, owner, employee, attorney, or consultant, in:

(A) a ~~[public]~~ utility, provider, [or] affiliate, or direct competitor of a utility or provider; or

(B) a person a significant portion of whose business consists of furnishing goods or services to a utility, provider, affiliate, or direct competitor of a utility or provider [public utilities or affiliates];

(2) directly or indirectly own or control securities in a ~~[public]~~ utility, provider, affiliate, or direct competitor of a [public] utility or provider; or

(3) accept a gift, gratuity, or entertainment from:

(A) a ~~[public]~~ utility, provider, affiliate, or direct competitor of a [public] utility or provider;

(B) a person a significant portion of whose business consists of furnishing goods or services to ~~[public]~~ utilities, providers, affiliates, or direct competitors of [public] utilities or providers; or

(C) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Paragraph (A) or (B).

(b) A commissioner or a commission employee may not directly or indirectly solicit, request from, or suggest or recommend to a ~~[public]~~ utility, provider, affiliate, or direct competitor of a utility or provider or an agent, representative, attorney, employee, officer, owner, director, or partner of a ~~[public]~~ utility, provider, affiliate, or

direct competitor of a utility or provider the appointment to a position or the employment of a person by the [public] utility, provider, ~~or~~ affiliate, or direct competitor of a utility or provider.

(c) A person may not give or offer to give a gift, gratuity, employment, or entertainment to a commissioner or commission employee if that person is:

(1) a [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider;

(2) a person who furnishes goods or services to a [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider; or

(3) an agent, representative, attorney, employee, officer, owner, director, or partner of a person described by Subdivision (1) or (2).

(d) A [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider or a person furnishing goods or services to a [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider may not aid, abet, or participate with a commissioner, commission employee, or former commission employee in conduct that violates Subsection (a)(3) or (c).

(f) It is not a violation of this section if a commissioner or commission employee, on becoming the owner of stocks, bonds, or another pecuniary interest in a [public] utility, provider, affiliate, or direct competitor of a [public] utility or provider otherwise than voluntarily, informs the commission and the attorney general of the ownership and divests the ownership or interest within a reasonable time.

(h) This section does not apply to a contract for a [public utility] product or service from ~~or equipment for use of~~ a [public] utility, provider, affiliate, or direct competitor of a utility or provider [product] when a commissioner or commission employee is acting as a consumer.

SECTION 17. Sections 12.155(a) and (c), Utilities Code, are amended to read as follows:

(a) A commissioner, a commission employee, or an employee of the State Office of Administrative Hearings involved in hearing utility or provider cases may not:

(1) be employed by a [public] utility or provider that was in the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or the State Office of Administrative Hearings; or

(2) represent a person before the commission or State Office of Administrative Hearings or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the commission or State Office of Administrative Hearings; or

(B) that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission or State Office of Administrative Hearings.

(c) The prohibition of Subsection (a)(2) applies while a commissioner, commission employee, or employee of the State Office of Administrative Hearings involved in hearing utility or provider cases is associated with the commission or State Office of Administrative Hearings and at any time after.

SECTION 18. Section 12.252, Utilities Code, is amended to read as follows:

Sec. 12.252. COMMISSION AUTHORITY. The commission, after notice and hearing, may require each utility or provider subject to regulation under this title to make an effort to overcome the underuse of historically underutilized businesses.

SECTION 19. Section 12.253, Utilities Code, is amended to read as follows:

Sec. 12.253. REPORT REQUIRED. The commission shall require each utility or provider subject to regulation under this title to prepare and submit to the commission a comprehensive annual report detailing its use of historically underutilized businesses.

SECTION 20. Section 14.001, Utilities Code, is amended to read as follows:

Sec. 14.001. POWER TO REGULATE AND SUPERVISE. The commission has the general power to regulate and supervise the business of each [public] utility and provider within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction.

SECTION 21. Subchapter A, Chapter 14, Utilities Code, is amended by adding Section 14.0025 to read as follows:

Sec. 14.0025. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission 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 commission's jurisdiction.

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

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

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

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

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

SECTION 22. Section 14.008(a), Utilities Code, is amended to read as follows:

(a) Except as otherwise provided by this title, this ~~[This]~~ title does not restrict the rights and powers of a municipality to grant or refuse a franchise to use the streets and alleys in the municipality or to make a statutory charge for that use.

SECTION 23. Section 14.058, Utilities Code, is amended to read as follows:

Sec. 14.058. FEES FOR ELECTRONIC ACCESS TO INFORMATION. The fees charged by the commission for electronic access to information that is stored in the system established by the commission using funds from the Texas Public Finance Authority and approved by the Department of Information Resources shall be established:

(1) by the commission in consultation with the Texas Building and Procurement ~~[General Services]~~ Commission; and

(2) in an amount reasonable and necessary to retire the debt to the Texas Public Finance Authority associated with establishing the electronic access system.

SECTION 24. Subchapter B, Chapter 14, Utilities Code, is amended by adding Section 14.059 to read as follows:

Sec. 14.059. TECHNOLOGY POLICY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

SECTION 25. Section 14.101(d), Utilities Code, is amended to read as follows:

(d) This section does not apply to:

(1) the purchase of a unit of property for replacement;
(2) an addition to the facilities of a public utility by construction; ~~[or]~~
(3) transactions that facilitate unbundling, asset valuation, minimization of ownership or control of generation assets, or other purposes consistent with Chapter 39;

(4) transactions of or relating to:

(A) an electing company under Chapter 58 or 59; or

(B) a company holding a certificate of operating authority or a service provider certificate of operating authority on August 31, 2005; or

(5) transactions that are reported to or reviewed by a federal agency, another state, or another state agency.

SECTION 26. Subchapter B, Chapter 15, Utilities Code, is amended by adding Section 15.0205 to read as follows:

Sec. 15.0205. DEFINITION. In this subchapter, "person" includes a municipally owned utility and an electric cooperative for the purposes of enforcing compliance with and providing penalties for violations of Sections 39.151(i) and 39.157(a).

SECTION 27. Section 15.023, Utilities Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(b) Except as otherwise provided by this title, the ~~[The]~~ penalty for a violation may be in an amount not to exceed \$10,000 ~~[\$5,000]~~. Each day a violation continues or occurs is not a separate violation for purposes of imposing a penalty, except as otherwise provided by this title. Each settlement interval in the wholesale electric market during which a violation continues or occurs is not a separate violation for purposes of imposing a penalty.

(c) The commission by rule shall establish a classification system for violations that includes a range ~~[The amount]~~ of ~~[an]~~ administrative penalties that may be assessed for each class of violation ~~[penalty shall be]~~ based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a 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 future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require, including the amount of a penalty imposed on a similarly situated person.

(d) The classification system established under Subsection (c) shall provide that the penalty for a violation may exceed \$10,000 only if the violation is included in the highest class of violations in the classification system.

(e) Notwithstanding the classification system established under Subsection (c), a person regulated under this title who wilfully and knowingly violates this title or a rule or order adopted under this title may be assessed a penalty included in the range of penalties that may be assessed for the highest class of violations in the classification system.

(f) The commission may not initiate the process for assessing an administrative penalty after the second anniversary of the later of:

(1) the date on which the violation occurred; or

(2) the date on which the commission knew that the violation occurred.

SECTION 28. Section 15.024, Utilities Code, as amended by Chapters 1212 and 1579, Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

Sec. 15.024. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

(a) If the executive director contends ~~[determines]~~ that a violation has occurred, the executive director shall ~~[may]~~ issue to the commission a report that states the facts on which the contention ~~[determination]~~ is based, including whether service to an end-user consumer is the basis of the contention, and the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person against whom the penalty may be assessed. The notice shall be given by certified mail, return receipt requested. The notice must:

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

(2) state whether service to an end-user consumer is the basis of the alleged violation, including instruction or information on how to contact the end-user consumer;

(3) state the amount of the recommended penalty, including the reasons why that penalty is recommended, considering the classification system created under Section 15.023; and

(4) ~~[(3)]~~ inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) A penalty may not be assessed under this section if the person against whom the penalty may be assessed remedies the violation before the 31st day after the date the person receives the notice under Subsection (b). A person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent. This subsection does not apply to a violation of Chapter ~~[47]~~ 55~~[5]~~ or 64.

(d) Not later than the 60th ~~[20th]~~ day after the date the person receives the notice, the person may accept or agree not to contest the contention ~~[determination]~~ and recommended penalty of the executive director in writing or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(e) If the person accepts, agrees not to contest, or fails to timely respond to the notice of the executive director's contention ~~[determination]~~ and recommended penalty, the commission by order shall approve the contention ~~[determination]~~ and impose the recommended penalty.

(f) If the person requests a hearing ~~[or fails to timely respond to the notice]~~, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with Subchapter B, Chapter 14. If a hearing is conducted by ~~[an administrative law judge of]~~ the State Office of Administrative Hearings, the ~~[-The]~~ administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(g) The notice of the commission's order shall be given to the person as provided by Chapter 2001, Government Code, and must include a statement of the right of the person to judicial review of the order.

SECTION 29. Section 15.027(c), Utilities Code, is amended to read as follows:

(c) The executive director may delegate any power or duty relating to an administrative penalty given the executive director by this subchapter to the deputy ~~[a person designated by the]~~ executive director.

SECTION 30. Section 15.032, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c), a ~~[A]~~ suit for the recovery of a penalty does not:

- (1) bar or affect the recovery of any other penalty; or
- (2) bar a criminal prosecution or an action for civil damages against any person.

(c) An action for civil damages may not be brought against a person if the commission has acted under Section 39.151(j) or 39.157(a) to address the conduct that is the subject of the proposed action for civil damages.

SECTION 31. Section 15.033, Utilities Code, is amended to read as follows:

Sec. 15.033. DISPOSITION OF CERTAIN AMOUNTS ~~[FINES AND PENALTIES]~~. (a) A fine or penalty collected under this title, other than a ~~[fine or penalty collected in a criminal proceeding or a]~~ penalty collected under Section 15.027(a), shall be paid to the commission.

(b) Notwithstanding any other law, a disgorgement or refund amount collected under Section 39.151(j) or 39.157(a) shall be paid to the independent organization certified by the commission under Section 39.151 for distribution according to commission order.

SECTION 32. Sections 15.051(a) and (b), Utilities Code, are amended to read as follows:

(a) An affected person may complain to the regulatory authority in writing setting forth an act or omission by a ~~[public]~~ utility or provider in violation or claimed violation of a law that the regulatory authority has jurisdiction to administer or of an order, ordinance, or rule of the regulatory authority.

(b) The commission shall keep for a reasonable period information about each complaint filed with the commission that the commission has authority to resolve. The information shall include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;

and

(6) if the commission took no action on the complaint, an explanation of the reason the complaint was closed without action.

SECTION 33. The heading to Subchapter A, Chapter 16, Utilities Code, is amended to read as follows:

SUBCHAPTER A. ASSESSMENT ON [PUBLIC] UTILITIES, RETAIL ELECTRIC PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS

SECTION 34. Section 16.001, Utilities Code, is amended to read as follows:

Sec. 16.001. ASSESSMENT ON [PUBLIC] UTILITIES, RETAIL ELECTRIC PROVIDERS, ELECTRIC COOPERATIVES, AND PROVIDERS. (a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each ~~[public]~~ utility, retail electric provider, provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer~~[-, including each interexchange telecommunications carrier].~~

(b) An assessment under this section may not exceed ~~[is equal to]~~ one-sixth of one percent of the ~~[public utility's, retail electric provider's, or electric cooperative's]~~ gross receipts from services over which the commission has jurisdiction, including a service for which a provider receives interconnection under Chapter 60 ~~[rates charged to the ultimate consumer in this state].~~

(c) ~~Each utility and provider [An interexchange telecommunications carrier that does not provide local exchange telephone service]~~ may collect the fee imposed under this section as an additional item separately stated on the customer bill as "public utility commission gross receipts assessment."

SECTION 35. Section 16.002(b), Utilities Code, is amended to read as follows:

(b) A ~~[public]~~ utility, retail electric provider, provider, or electric cooperative may instead make quarterly payments due August 15, November 15, February 15, and May 15.

SECTION 36. Section 39.262(c), Utilities Code, is amended to read as follows:

(c) After January 10, 2004, at a schedule and under procedures to be determined by the commission, each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company shall jointly file to finalize stranded costs under Subsections (h) and (i) and reconcile those costs with the

estimated stranded costs used to develop the competition transition charge in the proceeding held under Section 39.201. Any resulting difference shall be applied to the nonbypassable delivery rates of the transmission and distribution utility, except that at the utility's option, any or all of the amounts recovered under this section [~~remaining stranded costs~~] may be securitized under Subchapter G.

SECTION 37. Section 39.301, Utilities Code, is amended to read as follows:

Sec. 39.301. PURPOSE. The purpose of this subchapter is to enable utilities to use securitization financing to recover regulatory assets, all other amounts determined under Section 39.262, and any amounts being recovered under a competition transition charge determined as a result of a proceeding under Section 39.201 or 39.262. It is the policy of this state to encourage electric utilities and transmission and distribution utilities to use securitization financing [~~stranded costs,~~] because this type of debt will lower the carrying costs of the assets relative to the costs that would be incurred using conventional utility financing methods. The proceeds of the transition bonds shall be used solely for the purposes of reducing the amount of recoverable regulatory assets and other amounts [~~stranded costs~~], as determined by the commission in accordance with this chapter, through the refinancing or retirement of utility debt or equity. The commission shall ensure that securitization provides tangible and quantifiable benefits to ratepayers, greater than would have been achieved absent the issuance of transition bonds. The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order. The amount securitized may not exceed the present value of the revenue requirement over the life of the proposed transition bond associated with the regulatory assets or stranded costs sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

SECTION 38. Section 39.302(4), Utilities Code, is amended to read as follows:

(4) "Qualified costs" means 100 percent of an electric utility's regulatory assets and 75 percent of its recoverable costs determined by the commission under Section 39.201 and any remaining amounts [~~stranded costs~~] determined under Section 39.262 together with the costs of issuing, supporting, and servicing transition bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of transition bonds. The term includes the costs to the commission of acquiring professional services for the purpose of evaluating proposed transactions under Section 39.201 and this subchapter.

SECTION 39. Sections 39.303(a) and (b), Utilities Code, are amended to read as follows:

(a) The commission shall adopt a financing order, on application of a utility to recover the utility's regulatory assets and other amounts determined [~~eligible stranded costs~~] under Section 39.201 or 39.262, on making a finding that the total amount of revenues to be collected under the financing order is less than the revenue requirement that would be recovered over the remaining life of the stranded costs using conventional financing methods and that the financing order is consistent with the standards in Section 39.301.

(b) The financing order shall detail the amount of regulatory assets and other amounts [~~stranded costs~~] to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years.

SECTION 40. Subtitle C, Title 2, Utilities Code, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. STATEWIDE CABLE AND VIDEO FRANCHISE

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "Cable service" is defined as set forth in 47 U.S.C. Section 522(6).

(2) "Cable service provider" means a person who provides cable service.

(3) "Certificated provider" means a person who has been issued a certificate under Chapter 54.

(4) "Communications facility" means the equipment and components of a communications network provider, and includes the property owned, operated, or controlled in connection with the provider's business operations.

(5) "Communications network" means a component or facility that is, in whole or in part, physically located within a public right-of-way and that is used to provide video programming, cable, voice, or data services.

(6) "Communications service" means the transmission, conveyance, or routing of a cable service or video programming as defined in this chapter, voice service, or data service by or through any communications network regardless of the protocol used for such transmission or conveyance.

(7) "Communications service provider" means a person or group of persons engaged in the provision of communications services, without regard to ownership of a communications network.

(8) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a communications network in the public rights-of-way.

(9) "Franchise fee" means the amount of compensation paid to a franchising authority by a franchisee under the terms of the franchise.

(10) "Franchisee" means a communications service provider that has been granted a franchise.

(11) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

(12) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(13) "Video service" means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video service provided by a commercial mobile service provider as defined in 47 U.S.C. Section 332(d).

(14) "Video service provider" means a video programming distributor that distributes video programming services through wireline facilities located at least in part in the public right-of-way without regard to delivery technology. This term does not include a cable service provider.

(15) "Voice service" means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology.

Sec. 65.002. STATE AUTHORIZATION TO PROVIDE CABLE OR VIDEO SERVICE. (a) Any entity or person seeking to provide cable or video service in this state shall file an application for a state franchise with the commission as required by this section.

(b) The commission shall issue and review a certificate of franchise authority to offer cable or video service within this state upon receiving from the applicant an affidavit signed by an officer or general partner of the applicant entity affirming the following representations and information:

(1) that, if applicable, the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service;

(2) that the applicant agrees to comply with all applicable federal and state statutes and regulations;

(3) a description of the geographic areas to be served by the applicant, which may include unincorporated areas, which description shall be promptly updated by the applicant if service is expanded to a previously undesignated geographic area; and

(4) the location of the principal place of business and the names of the principal executive officers of the applicant.

(c) The certificate of franchise authority issued by the commission shall contain the following:

(1) a grant of authority to provide cable or video service as requested in the application;

(2) a grant of authority to use and occupy the public rights-of-way in the delivery of that service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered; and

(3) a statement that the grant of authority is subject to lawful operation of the cable or video service by the applicant or its successor in interest.

(d) The certificate of franchise authority issued by the commission is fully transferable to any successor in interest to the applicant to which it is initially granted. A notice of transfer shall be promptly filed with the commission upon the completion of such transfer.

Sec. 65.003. TERMINATION OF MUNICIPAL FRANCHISE BY CABLE SERVICE PROVIDER. (a) Beginning September 1, 2005, a cable service provider may elect to terminate any municipal franchise by providing written notice to the commission and the affected municipality. The termination shall be effective as of the date the commission receives the notice.

(b) A cable service provider electing to terminate an existing municipal franchise shall be responsible for remitting to the affected municipality within 90 days of the effective date of termination any accrued but unpaid franchise fees due under the franchise being terminated. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

Sec. 65.004. REQUIREMENTS APPLICABLE TO CABLE SERVICE PROVIDERS AND VIDEO SERVICE PROVIDERS. (a) Not later than 120 days after a request by a municipality served by the cable or video service provider as specified in the certificate issued by the commission, entities, to extent required by 47 U.S.C. Section 531, shall provide the municipality, where technically capable, with capacity in its communications network to allow public, educational, and governmental (PEG) access channels for noncommercial programming as follows. If a municipality did not have any public, educational, and governmental access channels as of September 1, 2005, then the cable or video service provider shall furnish:

(1) up to three PEG channels for a municipality with a population of at least 50,000; and

(2) up to two PEG channels for a municipality with a population of less than 50,000.

(b) Notwithstanding Subsection (a), the number of PEG channels required to be provided by each cable or video service provider shall not be less than the number of PEG channels a municipality has activated under the terms of any franchise, contract, or other agreement, including any channels received as of September 1, 2005, in lieu of public, educational, or governmental channels, regardless of whether the municipal franchise is terminated under this chapter. The following conditions shall apply to the provision of any PEG channels carried in accordance with this subsection or Subsection (a):

(1) the cable or video service provider may, at its sole discretion, place any channel utilized by a municipality on any tier of service following September 1, 2005, except that the municipality may, at its sole discretion, designate up to three PEG channels (or, in the case of a municipality with a population of less than 50,000, up to two PEG channels) utilized by the municipality, which shall remain on the lowest service tier for which no equipment is required to receive the channel; provided, however, if service is provided only in digital format, the PEG channels shall be made available in that format;

(2) after a cable or video service provider has commenced commercial delivery of cable or video services in a municipality and no later than 120 days after a written request from a municipality, a cable or video service provider shall, as applicable, either provide the initial access channel allowed in Subsection (a) if a municipality did not have any PEG channels as of September 1, 2005, or shall continue to provide the channels in service as of September 1, 2005, subject to the terms of this section. In the event a municipality has not utilized the minimum number of access channels as permitted in Subsection (a), access to the additional channel capacity allowed in Subsection (a) shall be provided upon 90 days' written notice if the municipality meets the following standard: if a municipality has one active PEG

channel and wishes to activate an additional PEG channel, the initial channel shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day. In addition, at least 40 percent of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. Nonrepeat programming shall include the first three video-castings of a program. If a municipality is entitled to three PEG channels under Subsection (a) and has in service two active PEG channels, each of the two active channels shall be considered to be substantially utilized when 12 hours are programmed on each channel each calendar day and at least 50 percent of the 12 hours of programming for each business day on average over each calendar quarter is nonrepeat programming for three consecutive calendar quarters;

(3) a municipality shall bear the cost of any construction required to establish a connection between a municipality's origination point and the cable or video service provider's communication network;

(4) the operation of any PEG channel provided pursuant to this section shall be the responsibility of the municipality receiving the benefit of such channel, and the cable or video service provider shall have no obligation to operate such channel other than the transmission of such channel; and

(5) any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours a day shall no longer be made available to the municipality, but may be programmed at the cable or video service provider's discretion. At such time as the municipality can certify to the cable or video service provider a schedule for at least eight hours of daily programming, the cable or video service provider shall restore the previously lost channel but shall be under no obligation to carry that channel on a basic or analog tier.

(6) The commission shall oversee the requirements of this Section to ensure compliance with federal law.

(c) The requirements of Subsections (a) and (b) shall apply equally to all cable or video service providers that own a communications network or lease or otherwise use a third-party communications network, including that of an affiliate, to deliver cable or video service within a municipality, subject to Subsection (e).

(d) Only a municipality may seek enforcement of the requirements of Subsections (a), (b), and (c) by initiating a proceeding with the commission.

(e) It is the sole responsibility of the municipality to ensure that any and all transmissions, content, or programming to be transmitted over a channel or facility are provided or submitted to the cable or video service provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in content by the provider, over the particular network of the cable or video service provider, which is compatible with the technology or protocol utilized by the cable or video service provider to deliver services.

(f) Pursuant to a franchise issued by the Commission, and to the extent required by 47 U.S.C. Section 541(a)(3), a cable or video service provider may not deny access to service to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides. A provider may satisfy the requirements of this subsection through the use of an alternative technology notwithstanding differences in the specific content or functionality provided.

(g) An affected person may seek enforcement of the requirement described in Subsection (f) by initiating a proceeding with the commission. A municipality within which the potential residential cable or video subscribers referenced in Subsection (f) reside shall be an affected person for purposes of this section.

(h) Pursuant to a franchise issued by the commission, a cable or video service provider shall comply with customer service requirements consistent with 47 C.F.R. Section 76.309(c) until there are more than two providers offering service including direct-to-home satellite service in the affected area.

(i) This state, the commission, or a political subdivision shall not require a mandatory build out on either a cable or video service provider except as specifically required by federal law.

(j) Should a cable or video service provider be found by the commission to be in noncompliance with the requirements of this section, the commission shall order such provider, within a reasonable period of time, to cure such noncompliance. Failure to comply shall subject the provider to such penalties as the commission shall reasonably impose, up to and including revocation of any state franchise granted under this chapter. A municipality within which the provider offers cable or video service shall be an appropriate party in any such litigation.

(k) The commission may not prefer or give advantage to any cable or video service provider operating under a state franchise or discriminate against any cable or video service provider operating under a state franchise in any manner in the requirements provided in this subsection. Any requirements shall be uniformly applied to all cable or video service providers operating under a state franchise within the municipality. A municipality's authority to regulate the activities of a cable or video service provider is limited to the requirements imposed on a cable or video service provider operating under a state franchise by this subsection. Specifically, the commission shall allow a municipality the authority to:

(1) require that a communications service provider that is providing cable or video service within the municipality register with the municipality and maintain a point of contact;

(2) establish reasonable guidelines regarding the use of the public, educational, and governmental access channels; and

(3) submit reports within 30 days on the customer service standards referenced in Subsection (h) if the provider is subject to those standards and has continued and unresolved customer service complaints indicating a clear failure on the part of the provider to comply with the standards. If the reports are not provided or are incomplete, or if they verify noncompliance, then the municipality, after providing appropriate due process and a right to be heard, may file an appropriate proceeding in the municipal court.

(l) The commission shall adopt a policy whereby it receives service quality complaints from customers of franchised cable and video providers. The commission shall post on its internet website each calendar quarter the number of complaints lodged against each franchise holder.

(m) Nothing in this section prohibits a municipality from exercising its nondiscriminatory police power with respect to a communications service provider's use of the public rights-of-way. The commission shall have jurisdiction to enforce and determine the lawfulness of any ordinance adopted by a municipality under this section.

(n) Except as provided in this chapter, a municipality may not require any monetary compensation, nonmonetary compensation, facilities, value, in-kind support, free service, or other thing of value for the right or privilege of a cable provider or video service provider to provide service or to occupy or use a public right-of-way.

(o) Upon written notice to the Commission, a cable or video service provider electing to terminate an existing municipal franchise or initiating service after September 1, 2005, shall pay each municipality in which it provides service a fee equal to five percent of the provider's gross revenues.

(p) For purposes of this section, "gross revenues" means:

(1) all consideration of any kind or nature, including without limitation cash, credits, property, and in-kind contributions (services or goods) derived by the provider from the operation of the provider's system to provide cable or video service within the municipality;

(2) all fees charged to subscribers for any and all cable or video service provided by the provider, and compensation received by the provider or its affiliates that is derived from the operation of the provider's system to provide cable or video service with respect to commissions that are paid to the provider as compensation for promotion or exhibition of any products or services on its system, such as a "home shopping" or a similar channel, subject to Subsection (p)(5); and

(3) a pro rata portion of all revenue derived by the cable or video provider or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the provider's system to provide cable or video service within the municipality, subject to Subsection (p)(3). The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(q) For purposes of this section, "gross revenues" does not include:

(1) revenues not actually received, even if billed, such as bad debt;

(2) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable or video service;

(3) refunds, rebates, or discounts made to subscribers, leased access providers, advertisers, or the municipality;

(4) any revenues from services classified as non-cable or non-video service under federal or state law, including without limitation revenue received from telecommunications services, revenue received from information services, and any other revenues attributed by the provider to non-cable or non-video service in accordance with commission or Federal Communications Commission rules, regulations, standards, or orders;

(5) any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable or video service;

(6) the sale of cable or video service for resale in which the purchaser is required to collect the five percent fee from the purchaser's customer;

(7) any tax of general applicability imposed upon the provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the provider and remitted to the taxing entity, including, but not limited to, sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes;

(8) the provision of cable service to customers at no charge as required or allowed by a municipality, including without limitation the provision of cable service to public institutions, public schools, or governmental entities;

(9) any foregone revenue from the provider's provision of free or reduced-cost cable service to any person, including without limitation the municipality and other public institutions or other institutions;

(10) sales of capital assets or sales of surplus equipment;

(11) reimbursement by programmers of marketing costs incurred by the provider for the introduction of new programming; or

(12) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

(r) The fee payable under this section is to be paid to the municipality quarterly, 45 days after the end of the quarter. Each payment shall be accompanied by a summary as to the basis for the calculation of the fee. A municipality and the commission may review the business records of the cable provider or video service provider to the extent necessary to ensure compensation in accordance with this chapter. Each party shall bear the party's own costs of the examination. The municipality may, in the event of a dispute as to proper compensation under this chapter, bring an action in a court of competent jurisdiction.

(s) For purposes of this section, a provider's system shall consist solely of the optical spectrum wavelength(s), bandwidth, or other current or future technological capacity used for the transmission of video programming over wireline directly to subscribers within the geographic area within the municipality as designated by the provider in its franchise.

(t) The commission shall not permit a municipality to require a cable service provider or video service provider to pay the municipality any fee or assessment, including any application, permit, excavation, or inspection fee or any fee for the support of public, educational, or governmental access channels. This subsection does not preclude the assessment of generally applicable taxes or fees.

(u) The commission shall permit a cable service provider or a video service provider may recover from the provider's customers the fee imposed by this chapter.

(v) Notwithstanding that a municipal cable franchise may be terminated pursuant to Section 65.003, the following services shall continue to be provided by the cable provider that was furnishing services pursuant to its terminated franchise until 2015 or until the term of the franchise was to expire, whichever is sooner:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise, but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the termination.

Sec. 65.005. APPLICABILITY OF OTHER LAWS. Nothing herein shall be interpreted to prevent a voice provider, cable service provider or video service provider, or municipality from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

SECTION 41. The Public Utility Commission of Texas shall conduct a study and shall file a report with the legislature not later than September 1, 2006, containing the commission's revenue-neutral, technology-neutral, and competitive-neutral recommendations concerning compensation flowing to the cities from voice, video, and cable providers. The report shall identify the following:

(1) all sources of compensation that have been received by the cities historically from providers of voice, video, and cable;

(2) the providers of voice, video, and cable services available to consumers within municipalities without regard to the technology used to deliver such services;

(3) alternative funding mechanisms, including an additional municipal sales tax or any other additional municipally imposed alternatives, which would be revenue-neutral to the municipalities, and technology-neutral and competitive-neutral in application to providers, their services, and their customers; and

(4) the payment mechanism of the fees, including all municipal fees and franchise fees.

SECTION 42. (a) Promptly after this Act takes effect, the Public Utility Commission of Texas shall conduct a comprehensive review of the reporting requirements relating to telecommunications providers that are prescribed by statute or commission rules to determine the necessity for the required reports.

(b) In conducting the review, the Public Utility Commission of Texas shall:

(1) solicit input and assistance from interested parties;

(2) establish criteria for when and in what manner the information included in a report will be used;

(3) ensure that information included in a report is not duplicative of information included in a different report;

(4) eliminate a report required by rule that the commission determines is unnecessary; and

(5) change the requirements relating to a report the commission determines is necessary to make the reporting process more efficient.

(c) The Public Utility Commission of Texas shall conclude the review required by this section not later than September 1, 2006, and shall report to the legislature in the biennial report required by Section 52.006, Utilities Code, on the results of the review. The report must include:

(1) the results of the review and the actions the commission has taken to amend commission rules to reflect the results of the review; and

(2) recommendations on any legislation the commission determines is necessary or appropriate to eliminate or change reporting requirements prescribed by statute.

SECTION 43. The following provisions of the Utilities Code are repealed on the effective date of this Act:

- (1) Section 11.008;
- (2) Section 15.003(c);
- (3) Section 15.028;
- (4) Section 15.030;
- (5) Section 15.052;
- (6) Chapter 17; and
- (7) Chapter 62.

SECTION 44. Promptly after this Act takes effect, the governor shall appoint two additional members to the Public Utility Commission of Texas. Of those members, the governor shall designate one to serve a term expiring September 1, 2009, and one to serve a term expiring January 1, 2011. Until all appointees have taken office, a quorum of the commission is a majority of the number of members who are qualified.

SECTION 45. The repeal by this Act of Section 15.003(c), Utilities Code, does not apply to a suit commenced before the effective date of the repeal. A suit commenced before the effective date of the repeal is governed by the law as it existed immediately before the effective date of the repeal, and that law is continued in effect for that purpose.

SECTION 46. The repeal by this Act of Sections 15.028 and 15.030, Utilities Code, does not apply to a violation of those sections that occurs before the effective date of the repeal. A violation that occurs before the effective date of the repeal is governed by the law as it existed immediately before the effective date of the repeal, and that law is continued in effect for that purpose.

SECTION 47. The change in law made by this Act relating to qualifications and eligibility to serve as a commissioner or to be employed with the Public Utility Commission of Texas applies only to a commissioner or employee appointed or employed after the effective date of this Act. A commissioner or employee of the Public Utility Commission of Texas 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 48. The changes in law made by this Act to Sections 15.023 and 15.024, Utilities Code, apply only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 49. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 408** as follows:

(1) In Section 11.0042(a)(5), Utilities Code, as added by SECTION 4 of the bill (page 6, lines 9-10), strike "but not more than 15 percent".

(2) In Section 11.0042(b), Utilities Code, as added by SECTION 4 of the bill (page 6, line 22), strike "five percent or more but not more than 15 percent of".

(3) In Section 11.010(a), Utilities Code, as added by SECTION 6 of the bill (page 8, line 17), strike "contested proceeding before" and substitute "contested proceeding hearing before".

(4) In Section 11.010(a), Utilities Code, as added by SECTION 6 of the bill (page 8, line 20), insert the following after the period:

This subsection does not affect the ability of an entity to hire or contract for other persons to provide services, including professional services, to the entity in relation to a contested proceeding, including a hearing related to a contested proceeding.

(5) Strike SECTION 9 (page 9, lines 7-11) and SECTION 44 of the bill (page 46, lines 17-23).

(6) In Section 14.101(d)(5), Utilities Code, as added by SECTION 25 of the bill (page 19, line 14), strike ", another state, or another state agency".

(7) In the recital to SECTION 27 of the bill (page 19, lines 22 and 23), strike "Subsections (d), (e), and (f)" and substitute "Subsections (d) and (e)".

(8) In Section 15.023(b), Utilities Code, as amended by SECTION 27 of the bill (page 19, line 25), strike "\$10,000" and substitute "\$25,000".

(9) Strike Subsection (f), Section 15.023, Utilities Code, as added by SECTION 27 of the bill (page 21, lines 5-10).

(10) In Section 16.001(b), Utilities Code, as amended by SECTION 34 of the bill (page 26, lines 5 and 6), strike "[public utility's, retail electric provider's, or electric cooperative's]" and substitute "[public] utility's, retail electric provider's, provider's, or electric cooperative's".

(11) In Section 39.301, Utilities Code, as amended by SECTION 37 of the bill (page 27, lines 14-17), strike "It is the policy of this state to encourage electric utilities and transmission and distribution utilities to use securitization financing [stranded costs,] because this" and substitute "This [stranded costs, because this]".

(12) Insert the following appropriately numbered SECTIONS to the bill and renumber following SECTIONS as appropriate:

SECTION __. Section 31.003, Utilities Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may include with the report required by this section any other report required to be made to the legislature before January 15 of an odd-numbered year. A report included with the report required by this section must be clearly distinct from the report required by this section.

SECTION _____. Section 32.001(b), Utilities Code, is amended to read as follows:

(b) The commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction under this subtitle, including under Chapter 33.

SECTION __. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules [An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,] relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are]. The procedures shall be subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) To maintain certification as an independent organization under this section, an organization's [If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the] governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;

(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer [director] of the independent organization [system operator] as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives ~~[four representatives of the power generation sector as voting members];~~

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term ~~[four representatives of the transmission and distribution sector as voting members];~~

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term ~~[four representatives of the power sales sector as voting members]; and~~

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms ~~[the following people as voting members, appointed by the commission:~~

~~[(A) one representative of residential customers;~~

~~[(B) one representative of commercial customers; and~~

~~[(C) one representative of industrial customers].~~

~~[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]~~

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION __. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511 and 39.1512 to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on

urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

SECTION __. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

SECTION __. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1515 to read as follows:

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred

under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

SECTION _____. Section 39.205, Utilities Code, is amended to read as follows:

Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD. At the conclusion of the freeze period, any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service rate regulation and shall be included as a nonbypassable charge to retail customers. The commission may adopt rules necessary to ensure that money for decommissioning is prudently collected, managed, and spent for its intended purpose and that money that remains unspent after decommissioning is completed is returned to retail customers.

SECTION ___. Chapter 51, Utilities Code, is amended by adding Section 51.011 to read as follows:

Sec. 51.011. RECOVERY OF TAXABLE TELECOM RECEIPT ASSESSMENT. (a) To the extent an annual assessment is imposed on each telecommunications provider, including each commercial mobile service provider, doing business in this state, a certificated telecommunications provider may, beginning June 1, 2005, recover from the provider's customers, an assessment imposed on the provider under this title.

(b) A certificated telecommunications provider may recover only the amount of the assessment imposed and may recover the assessment through a monthly billing process.

SECTION _____. Section 52.006, Utilities Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may include with the report required by this section any other report required to be made to the legislature before January 15 of an odd-numbered year. A report included with the report required by this section must be clearly distinct from the report required by this section.

Floor Amendment No. 2

Amend Floor Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 9, strike lines 12 through 31.

(2) Strike page 10.

(3) On page 11, strike lines 1 through 10.

(4) Add the following new SECTIONS and renumber accordingly: Add the following new SECTIONS and renumber accordingly:

SECTION _____. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1515 to read as follows:

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with an entity selected by the commission to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market.

(b) The independent organization shall provide to the personnel of the market monitor:

(1) full access to the organization's main operations center and the organization's records that concern operations, settlement, and reliability; and

(2) other support and cooperation the commission determines is necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and authority necessary to monitor the wholesale electric market effectively and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title, and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities, including reporting obligations and limitations;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor; and

(4) ethical standards for the market monitor and the personnel of the market monitor.

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the monitoring, analysis, and reporting responsibilities of the market monitor.

(f) The market monitor immediately shall report directly to the commission any potential market manipulations and any discovered or potential violations of commission rules or rules of the independent organization.

(g) The personnel of the market monitor may communicate with commission staff on any matter without restriction.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall review the report and evaluate whether changes to rules of the commission or the independent organization should be made.

Floor Amendment No. 3

Amend Floor Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 2, strike lines 29 through 31.

(2) Strike pages 3 through 8.

(3) On page 9, strike lines 1 through 11.

(4) Add the following new SECTIONS and renumber accordingly:

SECTION _____. Section 39.151, Utilities Code, is amended by amending Subsections (b) through (e), (g), and (h) and adding Subsections (d-1) and (g-1) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission shall apply the provisions of this section and Sections 39.1511, 39.1512, and 39.1515 so as to avoid conflict with a ruling of a federal regulatory body.

(d) The commission shall adopt and enforce rules [An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules,] relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken

by the organization are [- The procedures shall be] subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that the organization adequately performs the organization's functions and duties. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may take appropriate action against an organization that does not adequately perform the organization's functions or duties or does not comply with this section, including decertifying the organization or assessing an administrative penalty against the organization. The commission by rule shall adopt procedures governing decertification of an independent organization, selecting and certifying a successor organization, and transferring assets to the successor organization to ensure continuity of operations in the region. The commission may not implement, by order or by rule, a requirement that is contrary to an applicable federal law or rule.

(d-1) The commission may:

(1) require an independent organization to provide reports and information relating to the independent organization's performance of the functions prescribed by this section and relating to the organization's revenues, expenses, and other financial matters;

(2) prescribe a system of accounts for an independent organization;

(3) conduct audits of an independent organization's performance of the functions prescribed by this section or relating to its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit;

(4) inspect an independent organization's facilities, records, and accounts during reasonable hours and after reasonable notice to the independent organization;

(5) assess administrative penalties against an independent organization that violates this title or a rule or order adopted by the commission and, at the request of the commission, the attorney general may apply for a court order to require an independent organization to comply with commission rules and orders in the manner provided by Chapter 15; and

(6) resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.

(e) The commission may authorize an independent organization that is certified under this section to charge a reasonable and competitively neutral rate to wholesale buyers and sellers to cover the independent organization's costs. The commission shall investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and may require the organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or to evaluate the effectiveness or efficiency of the organization. The commission shall work with the organization to establish the detail of information, both current and historical, and the time frames the commission needs to effectively evaluate a rate or a rate request.

(g) To maintain certification as an independent organization under this section, an organization's [If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the] governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The bylaws or protocols must be approved by the commission and must reflect the input of the commission. The bylaws must specify the process by which appropriate stakeholders elect members and, for unaffiliated members, prescribe professional qualifications for selection as a member. The bylaws must require the use of a professional search firm to identify candidates for membership of unaffiliated members. The process must allow for commission input in identifying candidates. The governing body must be composed of:

(1) the chairman of the commission as an ex officio nonvoting member;
(2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;

(3) the chief executive officer [director] of the independent organization [system operator] as an ex officio voting member;

(4) six market participants elected by their respective market segments to serve one-year terms, with:

(A) one representing independent generators;

(B) one representing investor-owned utilities;

(C) one representing power marketers;

(D) one representing retail electric providers;

(E) one representing municipally owned utilities; and

(F) one representing electric cooperatives [four representatives of the power generation sector as voting members];

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term [four representatives of the transmission and distribution sector as voting members];

(6) one member representing large commercial consumer interests selected in accordance with the bylaws to serve a one-year term [four representatives of the power sales sector as voting members]; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms [the following people as voting members, appointed by the commission:

[(A) one representative of residential customers;

[(B) one representative of commercial customers; and

[(C) one representative of industrial customers].

[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(h) The ERCOT independent system operator may meet the criteria relating to the other functions of an independent organization provided by Subsection (a) by adopting procedures and acquiring resources needed to carry out those functions, consistent with any rules or orders of the commission.

SECTION _____. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511 and 39.1512, to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF THE GOVERNING BODY OF AN INDEPENDENT ORGANIZATION. (a) Meetings of the governing body of an independent organization certified under Section 39.151 and meetings of a subcommittee that includes a member of the governing body must be open to the public. The bylaws of the independent organization and the rules of the commission may provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, or other information related to the security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings. The bylaws and commission rules governing meetings of the governing body may provide for a shorter period of advance notice and for meetings by teleconference technology for governing body meetings to take action on urgent matters. The bylaws and rules must require actions taken on short notice or at teleconference meetings to be ratified at the governing body's next regular meeting. The notice requirements may be met by a timely electronic posting on the Internet.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member has a direct interest in that matter or is employed by or has a substantial financial interest in a person who has a direct interest in that matter, that member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

SECTION _____. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act, not later than September 1, 2006. On or after September 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Subsection (g), Section 39.151, Utilities Code, as amended by this Act.

Floor Amendment No. 4

Amend Floor Amendment No. 1 by King to **CSSB 408** as follows:

(1) In item (12) of the amendment, in the recital to the unnumbered SECTION that amends Section 39.151, Utilities Code (page 2, line 31), strike "Subsections (d-1) and (g-1)" and substitute "Subsection (g-1)".

(2) In item (12) of the amendment, strike Subsections (c), (d), (d-1), and (e), Section 39.151, Utilities Code, as amended by the unnumbered SECTION (page 3, line 9, through page 5, line 18), and substitute the following:

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission has complete authority to oversee, require the commission's approval of, and order modifications of any part of the finances, budget, or operations of an independent organization certified under this section.

(d) An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules, relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants. The procedures shall be subject to commission oversight and review. An independent organization certified by the commission is directly responsible and accountable to the commission. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may decertify an organization that does not adequately perform the organization's functions or duties or does not comply with this section.

(e) The commission by rule shall require an independent organization certified under this section to provide the commission with sufficiently detailed information to allow the commission to review and approve or disapprove the independent organization's budget for cost efficiencies and for the reasonableness and necessity of budget items. The rules must include a timetable for an independent organization to file its budget for review under the rules. The commission's budget review must include a review of salaries, employee benefits, and the independent organization's use of debt financing. After determining the overall reasonableness and necessity of an independent organization's budget, the [The] commission, in the same proceeding, may authorize the [an] independent organization [that is certified under this section] to charge [a reasonable and competitively neutral rate] to wholesale buyers and sellers a reasonable and competitively neutral rate determined by the commission to allow [cover] the independent organization a reasonable opportunity to take in a reasonable and necessary amount of revenue, as determined by the commission in the budget review process. The independent organization may change the rate established by the commission in the budget review process only with the commission's approval. On the commission's own initiative or on receiving a complaint, the commission may inquire into the reasonableness of an independent organization's budget or rate [costs].

Floor Amendment No. 5

Amend Floor Amendment No. 1 by King to **CSSB 408** as follows:

(1) On page 1, strike lines 27 through 29 and insert the following:

(8) In Section 15.023(b), Utilities Code, as amended by SECTION 27 of the bill, strike lines 24 through 27 on page 19 and lines 1 through 4 on page 20, and insert the following:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 [~~\$5,000~~]. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty."

Floor Amendment No. 6

Amend Floor Amendment No. 1 by King to **CSSB 408** by adding the following appropriately numbered item to read as follows:

() Insert the following appropriately numbered SECTION to read as follows and renumber subsequent SECTIONS accordingly:

SECTION __. (a) The Public Utility Commission of Texas, as part of the commission's continuing analysis of reserve margins and capacity needs for the ERCOT system, shall consider creating and may establish a new alternative market mechanism to allow a potential interruptible industrial load that is greater than one megawatt and that is not participating in the ERCOT market as a load acting as a resource to provide the benefits of interruptible load to the system and to be compensated for that service.

(b) The legislature finds that businesses in this state that are able to participate in an alternative interruptible service compete in interstate and global markets and that the opportunity for the businesses to be compensated for their interruptible loads is essential to the businesses' ability to remain competitive and to provide significant benefits to the economy of this state. The Public Utility Commission of Texas shall consider these economic benefits in analyzing the potential of interruptible service.

(c) Not later than January 1, 2006, The Public Utility Commission of Texas shall report any actions taken regarding interruptible service and the results of its analysis of interruptible service to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative committee with jurisdiction over electric services.

Floor Amendment No. 9

Amend **CSSB 408** as follows:

(1) In SECTION 4 of the bill (page 6, lines 13-14), by striking "but not more than 15 percent"; and

(2) In SECTION 4 of the bill (page 6, line 26), by striking "five percent or more but not more than 15 percent of".

Floor Amendment No. 16

Amend **CSSB 408** (House committee printing) in SECTION 40 of the bill, as follows:

(1) Strike added Subsection (b), Section 65.003, Utilities Code (page 33, lines 4-12), and substitute the following:

(b) A cable service provider electing to terminate an existing municipal franchise shall be responsible for continuing to remit to the affected municipality any franchise fees otherwise due under the franchise being terminated until the date the term of the franchise was to expire.

(2) Strike Subsection (o), Section 65.004, Utilities Code (page 39, line 26 through page 40, line 3), and substitute the following:

(o) On written notice to the commission, a cable or video service provider shall pay to each municipality in which it provides service a fee equal to five percent of the provider's gross revenues. This subsection does not apply to a cable service provider required to pay a fee under Section 65.003(b) until the date the provider is no longer required to pay that fee.

Floor Amendment No. 17

Amend **CSSB 408** (House committee printing) in SECTION 40 of the bill, in added Subdivision (3), Subsection (b), Section 65.004, Utilities Code (page 35, line 25), between "network" and the semicolon, by inserting ", provided that the cable or video service provider may credit that amount against any fee the provider is required to pay a municipality under this chapter".

Floor Amendment No. 23

Amend **CSSB 408** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS as appropriate:

SECTION _____. Section 32.001(b), Utilities Code, is amended to read as follows:

(b) The commission has exclusive appellate jurisdiction to review an order or ordinance of a municipality exercising exclusive original jurisdiction under this subtitle, included but not limited to Chapter 33.

Floor Amendment No. 24

Amend **CSSB 408** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 39, Subchapter E, Utilities Code, is amended to read as follows:

Section 39.2025 DEFAULT SERVICE STUDY. (a) It is the policy of this state to ensure that all electric customers in ERCOT, including low-income customers and customers in rural and other high-cost areas, have access to electric energy service at reasonable rates.

(b) The Public Utility Commission of Texas shall conduct a study to determine methods or mechanisms to ensure that residential customers who are currently being served by an affiliated retail electric provider at the "price-to-beat" rate will continue to have default electric service available at reasonable rates. On September 1, 2005, the commission shall begin the review required by this subsection. The review must include the methods other competitive regions, including Ohio, Maine, Maryland, Massachusetts, and New Jersey, use to provide default services to residential customer classes at reasonable rates.

(c) The study required by Subsection (b) of this section must:

(1) evaluate:

(A) competitive procurement load auctions; and

(B) local governmental aggregation, including municipal "opt-out" mechanisms; and

(2) compare, regarding various mechanisms or methods considered:

(A) resulting prices for service at wholesale;

(B) resulting prices for service at retail;

(C) key features of each mechanism or method and key differences between the mechanisms or methods;

(D) the level of wholesale supplier competition under each mechanism or method, measured by factors such as:

(i) numbers of participants;

(ii) volumes bid; or

(iii) other relevant factors; and

(E) any other factors or variables the commission considers necessary to arrive at a conclusion and to make recommendations under this section.

(d) The Public Utility Commission of Texas shall conclude the study under this section not later than February 1, 2006, and shall determine at that time a mechanism by which residential customers served by an affiliated retail electric provider will be able to receive the lowest cost default electric service on and after January 1, 2007.

(e) The Public Utility Commission of Texas shall present a report of the study and the recommendations made as a result of the study to the Joint Electric Utility Restructuring Legislative Oversight Committee on or before March 1, 2006.

(f) The Joint Electric Utility Restructuring Legislative Oversight Committee shall hold hearings on the study and recommendations in each region of the state served by an affiliated retail electric provider and, following the hearings, shall make recommendations to the 80th Legislature on the best means to provide residential customers default electric service at the lowest cost.

Floor Amendment No. 29

Amend **CSSB 408** by adding a new section, numbered appropriately, to read as follows:

SECTION __. Subchapter C, Chapter 57, Utilities Code, is repealed.

Floor Amendment No. 30

Amend **CSSB 408** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS as appropriate:

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

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

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

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

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

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

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

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

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

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

(9) finance the program established under Subchapter H.

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

SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

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

Floor Amendment No. 31

Amend **CSSB 408** by adding the following appropriately numbered SECTION:

SECTION ___. Subchapter E, Chapter 36, Utilities Code, is amended by adding Section 36.209 to read as follows:

Sec. 36.209. RESEARCH AND DEVELOPMENT COST RECOVERY. (a) The commission by rule shall adopt a mechanism for an electric utility to recover research and development costs incurred regarding technologies and business practices related to:

(1) producing, transmitting, distributing, storing, metering, and using electricity;

(2) mitigating risks in competitive energy markets;

(3) minimizing environmental impacts of production and delivery of electricity; and

(4) developing uniform commercial standards for the energy industry.

(b) The rules must be designed to encourage electric utilities to take advantage of research and development resources in this state, including state institutions, to:

(1) contribute to economic development and the production of employment opportunities; and

(2) provide this state and state residents with:

(A) the benefits of advanced technologies, systems, and processes;

(B) increased efficiency and reliability in electricity production, delivery, and use;

(C) reduced costs for providing electricity; and

(D) reduced environmental impacts from electricity production and delivery.

Floor Amendment No. 35

Amend **CSSB 408** on page ___, line ___, to add a new section as follows and renumber the remaining sections:

SECTION _____. Section 39.107(g), Utilities Code, is struck to read as follows:

~~(g) Metered electric service sold to residential customers on a prepaid basis may not be sold at a price that is higher than the price charged by the provider of last resort.~~

Floor Amendment No. 1 on Third Reading

Amend **CSSB 408** on third reading in Section 65.003(b), Utilities Code, as added by Floor Amendment No. 16 by Dutton, by inserting the following between "provider" and "electing":
, other than a cable service provider serving fewer than 35 percent of the total cable customers in a municipality,

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 408** 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, Carona, Whitmire, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 2481

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2481** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2481** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Armbrister, Shapiro, Jackson, and Ellis.

SENATE BILL 1137 WITH HOUSE AMENDMENTS

Senator Madla called **SB 1137** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1137** by striking SECTION 3 of the bill (page 6, line 21, through page 7, line 7, House committee report) and renumbering SECTIONS of the bill appropriately.

Floor Amendment No. 2

Amend **SB 1137** as follows:

Add the following appropriately numbered Section:

SECTION _____. Subsection (c), Section 45.03, Alcoholic Beverage Code, is amended to read as follows:

(c) Except as provided by this subsection, a [A] storage permit may not be issued for a location outside the county in which the permittee's business is located. Subject to Section 45.04, the holder of a winery permit may obtain a storage permit for a location inside or outside the county in which the permit holder's business is located.

The amendments were read.

Senator Madla moved to concur in the House amendments to **SB 1137**.

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

(Senator Eltife in Chair)

SENATE BILL 1850 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 1850** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1850** (House committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 11.13(b), Alcoholic Beverage Code (page 1, line 19), between "permittee" and "may", insert ", as determined under Chapter 573, Government Code,".

(2) In SECTION 1 of the bill, in added Section 11.13(b), Alcoholic Beverage Code (page 1, lines 22 and 23), strike "whose current licensee or permittee is charged with a violation of this code", and substitute "against whose current licensee or permittee a charge of a violation of this code is pending".

(3) In SECTION 1 of the bill, in added Section 11.13(c), Alcoholic Beverage Code (page 2, line 2), strike "licensee or permittee whose license was canceled", and substitute "licensee or permittee, as determined under Chapter 573, Government Code, whose license or permit was canceled".

(4) In SECTION 2 of the bill, in added Section 11.321, Alcoholic Beverage Code (page 2, line 19), strike "a permittee that makes" and substitute "a licensee or permittee who makes".

(5) In SECTION 3 of the bill, in added Section 11.61(b-1), Alcoholic Beverage Code (page 3, line 14), strike "Before the suspended license may be reinstated" and substitute "Before the suspended license or permit may be reinstated".

(6) In SECTION 3 of the bill, in added Section 11.61(b-1), Alcoholic Beverage Code (page 3, lines 19 and 20), strike "Before the suspended license may be reinstated" and substitute "Before the suspended license or permit may be reinstated".

(7) In SECTION 3 of the bill, in added Section 11.61(i), Alcoholic Beverage Code (page 4, line 5), after the period, insert the following:

This subsection applies only to a hearing in connection with a wine and beer retailer's permit, other than a permit held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

(8) In SECTION 8 of the bill (page 5, line 15), strike "as added by this Act, applies" and substitute "and Subsection (k), Section 61.71, Alcoholic Beverage Code, as added by this Act, apply".

(9) Insert the following appropriately numbered SECTIONS and renumber SECTIONS of the bill appropriately:

SECTION _____. Subchapter A, Chapter 61, Alcoholic Beverage Code, is amended by adding Section 61.15 to read as follows:

Sec. 61.15. CERTAIN APPLICATIONS PROHIBITED. Section 11.13 applies to an application for a license under this subtitle.

SECTION _____. Subchapter B, Chapter 61, Alcoholic Beverage Code, is amended by adding Section 61.52 to read as follows:

Sec. 61.52. ADMINISTRATIVE PENALTY IN CERTAIN COUNTIES. Section 11.321 applies to an original or renewal application for a retail dealer's on-premise license, other than a license with a food and beverage certificate, for an establishment located in a county with a population of 1.4 million or more.

SECTION _____. Section 61.71, Alcoholic Beverage Code, is amended by adding Subsections (j) and (k) to read as follows:

(j) Section 11.61(b-1) applies to a retail dealer's on-premise license, other than a license held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

(k) A hearing under Subsection (a) must be concluded not later than the 60th day after the date notice is provided under that subsection. The provisions of this subsection may not be waived by the license holder or the commission. This subsection applies only to a hearing in connection with a retail dealer's on-premise license, other than a license held with a food and beverage certificate, for premises located in a county with a population of 1.4 million or more.

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 1850**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 1358

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1358** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1358** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Hinojosa, Jackson, Seliger, and Madla.

SENATE BILL 810 WITH HOUSE AMENDMENTS

Senator Averitt called **SB 810** 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 810** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to the regulation of the sale and inspection of real estate.

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

SECTION 1. Subsection (b), Section 1101.152, Occupations Code, is amended to read as follows:

(b) The commission may set and collect reasonable fees to implement the continuing education requirements for license holders, including the following fees:

(1) for an application for approval of a continuing education provider, not more than \$400;

(2) for an application for approval of a continuing education course of study, not more than \$100; ~~[and]~~

(3) for an application for approval of an instructor of continuing education courses, not more than \$40; and

(4) for attendance at a program to train instructors of a continuing education course prescribed under Section 1101.455, not more than \$100.

SECTION 2. Subsection (c), Section 1101.204, Occupations Code, is amended to read as follows:

(c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 ~~[license holder]~~ in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the complaint.

SECTION 3. Section 1101.353, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may issue a provisional moral character determination. The commission by rule shall adopt reasonable terms for issuing a provisional moral character determination.

SECTION 4. Subsection (a), Section 1101.358, Occupations Code, is amended to read as follows:

(a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 14 ~~[12]~~ semester hours, or equivalent classroom hours, of postsecondary education, including:

(1) at least four semester hours of core real estate courses on principles of real estate;

(2) at least two semester hours of each of the following core real estate courses:

(A) agency law; ~~[and]~~

(B) contract law; and

(C) one additional core real estate course; and

(3) at least four semester hours of core real estate courses or related courses.

SECTION 5. Subsection (a), Section 1101.454, Occupations Code, is amended to read as follows:

(a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 ~~[14]~~ semester hours, or equivalent classroom hours, of postsecondary education, including 14 ~~[10]~~ hours of core real estate courses.

SECTION 6. Subsections (e) and (h), Section 1101.455, Occupations Code, are amended to read as follows:

(e) At least six of the continuing education hours required by Subsection (b) must cover the following legal topics:

- (1) commission rules;
- (2) fair housing laws;
- (3) Property Code issues, including landlord-tenant law;
- (4) agency law;
- (5) antitrust laws;
- (6) Subchapter E, Chapter 17, Business & Commerce Code;
- (7) disclosures to buyers, landlords, tenants, and sellers;
- (8) current contract and addendum forms;
- (9) unauthorized practice of law;
- (10) case studies involving violations of laws and regulations;
- (11) current Federal Housing Administration and Department of Veterans Affairs regulations;

- (12) tax laws;
- (13) property tax consulting laws and legal issues; or
- (14) other legal topics approved by the commission.

(h) The commission shall automatically approve the following courses as courses that satisfy the mandatory continuing education requirements of Subsection (f) [courses]:

- (1) core real estate courses; and
- (2) real estate-related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit.

SECTION 7. Section 1101.557, Occupations Code, is amended to read as follows:

Sec. 1101.557. ACTING AS AGENT. A broker ~~[license holder]~~ who represents a party in a real estate transaction is [acts as] that party's agent.

SECTION 8. Section 1101.561, Occupations Code, is amended to read as follows:

Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL. (a) The duties of a license holder acting as an intermediary under this subchapter supersede the duties of a license holder established under any other law, including common law.

(b) A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction:

- (1) a buyer or tenant; and
- (2) a seller or landlord.

SECTION 9. Subsection (a), Section 1101.652, Occupations Code, is amended to read as follows:

(a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

(2) procures or attempts to procure a license under this chapter for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(3) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the ~~[license holder's own]~~ name of:

(A) the license holder;

(B) the license holder's spouse; or

(C) a person related to the license holder within the first degree by consanguinity;

(4) fails to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the license holder's last known business address according to commission records;

(5) fails or refuses to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder;

(6) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter;

(7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(8) fails to use a contract form required by the commission under Section 1101.155; ~~[or]~~

(9) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of nolo contendere, that the person has been convicted of or entered a plea of nolo contendere to a felony or a criminal offense involving fraud; or

(10) disregards or violates this chapter.

SECTION 10. Subsection (c), Section 1101.655, Occupations Code, is amended to read as follows:

(c) A person ~~[whose license or certificate is revoked under this section]~~ is not eligible for a ~~[new]~~ license or certificate until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

SECTION 11. Subchapter C, Chapter 1102, Occupations Code, is amended by adding Section 1102.1035 to read as follows:

Sec. 1102.1035. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES. (a) To be eligible for a professional inspector license under this chapter:

(1) a corporation must designate one of its officers as its agent for purposes of this chapter; and

(2) a limited liability company must designate one of its managers as its agent for purposes of this chapter.

(b) A corporation or limited liability company may not act as a professional inspector unless the entity's designated agent is a licensed professional inspector according to the commission's records.

SECTION 12. Subsection (b), Section 1102.205, Occupations Code, is amended to read as follows:

(b) As a prerequisite for renewal of a real estate inspector license, ~~or~~ professional inspector license, or apprentice inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least 16 ~~[the following number of]~~ classroom hours of core real estate inspection courses for each year of the license period ~~[during the year]~~ preceding the renewal[;

~~[(1) eight hours for a real estate inspector license renewal; or~~

~~[(2) 16 hours for a professional inspector license renewal].~~

SECTION 13. Subchapter E, Chapter 1102, Occupations Code, is amended by adding Section 1102.2051 to read as follows:

Sec. 1102.2051. ADDITIONAL RENEWAL REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES. (a) To renew a professional inspector license under this chapter:

(1) a corporation must designate one of its officers or employees as its agent for purposes of this chapter; and

(2) a limited liability company must designate one of its managers or employees as its agent for purposes of this chapter.

(b) A corporation or limited liability company may not renew a professional inspector license unless the entity's designated agent is a licensed professional inspector according to the commission's records.

SECTION 14. Subsections (b) and (c), Section 1101.454, Occupations Code, are repealed.

SECTION 15. (a) The Texas Real Estate Commission shall adopt rules necessary to administer the changes in law made by this Act not later than January 1, 2006.

(b) The change in law made by this Act to Section 1101.358, Occupations Code, applies only to an application for a salesperson license filed on or after January 1, 2006. An application for a salesperson license filed before January 1, 2006, is covered by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Section 1101.454, Occupations Code, applies only to the first renewal of a salesperson license that expires on or after January 1, 2006. The first renewal of a salesperson license that expires before January 1, 2006, is covered by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(d) The change in law made by this Act to Section 1101.652, Occupations Code, 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 covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) The change in law made by this Act to Section 1102.205, Occupations Code, applies only to an application for renewal of a real estate inspector license, professional inspector license, or apprentice inspector license that expires on or after January 1, 2006. A real estate inspector license, professional inspector license, or apprentice inspector license that expires before January 1, 2006, is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

Floor Amendment No. 1

Amend **CSSB 810** (House committee printing) as follows:

(1) Strike SECTION 7 of the bill (page 4, lines 5-9) and substitute the following:

SECTION 7. Section 1101.557, Occupations Code, is amended to read as follows:

Sec. 1101.557. ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS. (a) A broker ~~[license holder]~~ who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is ~~[acts as]~~ that party's agent.

(b) A broker described by Subsection (a):

(1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22); and

(2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker.

(c) For the purposes of this section:

(1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;

(2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person does not have the authority to bind the employer to the contract; and

(3) the sole delivery of an offer to a party does not violate Section 1101.652(b)(22) if:

(A) the party's broker consents to the delivery;

(B) a copy of the offer is sent to the party's broker, unless a governmental agency using a sealed bid process does not allow a copy to be sent; and

(C) the person delivering the offer does not engage in another activity that directly or indirectly violates Section 1101.652(b)(22).

(2) In SECTION 11 of the bill, in added Section 1102.1035, Occupations Code (page 6, line 22), immediately after "officers", insert "or employees".

(3) In SECTION 11 of the bill, in added Section 1102.1035, Occupations Code (page 6, line 25), immediately after "managers", insert "or employees".

Floor Amendment No. 2

Amend **CSSB 810** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering existing SECTIONS of the bill appropriately:

SECTION _____. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.014 to read as follows:

Sec. 5.014. PROHIBITED FEES. A person who has a right of first refusal in real property may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

SECTION _____. Except as provided by a contract entered into before the effective date of this Act, Section 5.014, Property Code, as added by this Act, applies only to a fee that is solicited on or after the effective date of this Act for declining the exercise of a right of first refusal.

Amendment No. 1 on Third Reading

Amend Floor Amendment No. 1 by Pickett to **CSSB 810** (House committee printing) on third reading as follows:

(1) Page 1, line 12, strike "and".

(2) Page 1, line 16, before the ":", add "; and (3) shall, at a minimum, answer the party's questions and present any offer to or from the party".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 810** on third reading in SECTION 5.014, Property Code, as added by second reading Floor Amendment No. 2 (page 1, line 6 of amendment), by striking "real property" and substituting "real property that is a condominium subject to Chapter 81 or Chapter 82".

The amendments were read.

Senator Averitt moved to concur in the House amendments to **SB 810**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 905

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 905** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 905** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Janek, West, Eltife, and Zaffirini.

SENATE BILL 495 WITH HOUSE AMENDMENT

Senator Williams called **SB 495** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 495** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the fee paid to the attorney general for examining the record of proceedings authorizing the issuance of a public security or related credit agreement.

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

SECTION 1. Section 1202.001, Government Code, is amended by amending Subdivision (4) and adding Subdivision (5) to read as follows:

(4) "Record of proceedings" means the record of an issuer's proceedings relating to the authorization of a public security or a credit agreement relating to a public security.

(5) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase a public security, purchase or sale agreement, interest rate swap agreement, or commitment or other agreement authorized by an issuer in connection with the authorization, issuance, sale, resale, security, exchange, payment, purchase, remarketing, or redemption of a public security, interest on a public security, or both.

SECTION 2. Section 1202.004, Government Code, is amended to read as follows:

Sec. 1202.004. FEE FOR EXAMINATION ~~[OF PUBLIC SECURITY]~~ BY ATTORNEY GENERAL. (a) ~~When [Except as provided by this section, when]~~ an issuer submits a record of proceedings ~~[public security]~~ to the attorney general for examination and approval as provided by law, the issuer shall pay a nonrefundable examination fee to the attorney general in accordance with this section. ~~[in an amount computed according to the principal amount of the public security, as follows:~~

<u>Principal Amount</u>	<u>Fee</u>
<u>[not more than \$500,000]</u>	<u>\$500</u>
<u>[more than \$500,000 but not more than \$5 million]</u>	<u>\$750</u>
<u>[more than \$5 million but not more than \$20 million]</u>	<u>\$1,000</u>
<u>[more than \$20 million]</u>	<u>\$1,250]</u>

(b) ~~[If a nonprofit corporation or governmental entity issuing the public security for the benefit of nongovernmental entities submits the public security to the attorney general as required by law, the fee is \$1,250.]~~

~~[(e)]~~ If the issuer is issuing multiple series of a single public security issue, the issuer shall pay the fee prescribed by this section ~~[Subsection (a) or (b)]~~ for each series~~[, not to exceed \$2,500 for one issue in which all series are issued simultaneously].~~

(c) Except as provided by Subsection (d), the nonrefundable examination fee required by this section is equal to the lesser of:

(1) one-tenth of one percent of the principal amount of the public security to which the record of proceedings relates; or

(2) \$9,500.

(d) The minimum examination fee required by this section is \$750.

(e) The attorney general may adopt rules necessary to administer this section.

SECTION 3. The examination fee prescribed by Section 1202.004, Government Code, as amended by this Act, applies only to a record of proceedings submitted to the office of the attorney general on or after the effective date of this Act. The examination fee for a record of proceedings submitted to the office of the attorney general before 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 4. This Act takes effect September 1, 2005.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 495**.

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

HOUSE CONCURRENT RESOLUTION 215

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, **HB 1544** has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED by the 79th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct House Bill No. 1544 in SECTION 3 of the bill, by striking "Subchapter B, Section 521.405" and substituting "Section 521.405".

ELLIS

HCR 215 was read.

On motion of Senator Ellis 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.

SENATE BILL 293 WITH HOUSE AMENDMENT

Senator Shapleigh, on behalf of Senator Zaffirini, called **SB 293** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 293** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to meetings between representatives of the Department of Public Safety of the State of Texas and Mexican states on transportation and truck inspection issues.

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

SECTION 1. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0097 to read as follows:

Sec. 411.0097. TRANSPORTATION AND INSPECTIONS MEETING WITH REPRESENTATIVES OF MEXICAN STATES. (a) The department shall initiate efforts to meet at least quarterly with the department's counterparts in the Mexican states bordering this state to discuss issues relating to truck inspections and transportation and infrastructure involved in truck inspections and transportation.

(b) To assist the department in carrying out this section, the department shall contact the border commerce coordinator designated under Section 772.010 and the mayors of each municipality in this state in which a port of entry for land traffic is located.

(c) At least one department representative participating in a meeting under Subsection (a) must be proficient in Spanish.

(d) The department, in conjunction with the border commerce coordinator, shall develop short-range and long-range plans, including recommendations to increase bilateral relations with Mexico and expedite trade by mitigating delays in border crossing inspections for northbound truck traffic. In developing the plans, the department and coordinator shall consider information obtained from any meetings under Subsection (a). The department shall update the plan biennially and submit the updated plan to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature on or before December 1 of each even-numbered year.

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 was read.

Senator Shapleigh, on behalf of Senator Zaffirini, moved to concur in the House amendment to **SB 293**.

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

SENATE BILL 569 WITH HOUSE AMENDMENT

Senator Shapleigh, on behalf of Senator Zaffirini, called **SB 569** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 569** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to meetings between representatives of the Texas Department of Transportation and Mexican states on transportation and truck inspection issues.

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

SECTION 1. Section 201.207, Transportation Code, is amended to read as follows:

Sec. 201.207. CROSS-BORDER TRANSPORTATION AND INFRASTRUCTURE MEETINGS. (a) The department shall initiate efforts to meet at least quarterly ~~[semiannually]~~ with the department's counterparts in those states of the United Mexican States that border this state to discuss issues relating to truck inspections and transportation and infrastructure involved in truck inspections and transportation ~~[issues. To the extent practicable, the department shall meet at least semiannually with its counterparts in those bordering states to discuss transportation and infrastructure issues].~~

(b) To assist the department in carrying out this section, the department shall contact the border commerce coordinator designated under Section 772.010, Government Code, and the mayors of each municipality in this state in which a port of entry for land traffic is located.

(c) At least one department representative participating in a meeting under Subsection (a) must be proficient in Spanish.

(d) The department, in conjunction with the border commerce coordinator, shall develop short-range and long-range plans, including recommendations to increase bilateral relations with Mexico and expedite trade by mitigating delays in border crossing inspections for northbound truck traffic. In developing the plans, the department and coordinator shall consider information obtained from any meetings under Subsection (a). The department shall update the plan biennially and submit the updated plan to the lieutenant governor, the speaker of the house of representatives, and each other member of the legislature on or before December 1 of each even-numbered year.

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 was read.

Senator Shapleigh, on behalf of Senator Zaffirini, moved to concur in the House amendment to **SB 569**.

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

SENATE BILL 1189 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1189** 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 1189** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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.

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

SECTION 1. (a) Section 24.194, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 92nd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(b) Section 24.195, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 93rd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(c) Section 24.241, Government Code, is amended by adding Subsection (d) to read as follows:

(d) All civil cases in the 139th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(d) Section 24.385, Government Code, is amended to read as follows:

Sec. 24.385. 206TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 206th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 206th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(e) Section 24.452, Government Code, is amended to read as follows:

Sec. 24.452. 275TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 275th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 275th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(f) Section 24.478, Government Code, is amended to read as follows:

Sec. 24.478. 332ND JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 332nd Judicial District is composed of Hidalgo County.

(b) All civil cases in the 332nd District Court shall be assigned and docketed at random by the district clerk using an automated system.

(g) Section 24.515, Government Code, is amended to read as follows:

Sec. 24.515. 370TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 370th Judicial District is composed of Hidalgo County.

(b) All civil cases in the 370th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(h) Section 24.534, Government Code, is amended by adding Subsection (c) to read as follows:

(c) All civil cases in the 389th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(i) Section 24.543, Government Code, is amended by adding Subsection (c) to read as follows:

(c) All civil cases in the 398th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(j) The changes in law made by this section apply to a civil case filed with the district clerk of Hidalgo County on or after the effective date of this section. A civil case filed with the district clerk of Hidalgo County before the effective date of this section is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that purpose.

SECTION 2. (a) Subsection (d), Section 24.386, Government Code, is amended to read as follows:

(d) The terms of the 207th District Court begin:

(1) in Hays County on the first Mondays in February and~~[, May,]~~ August~~[, and November]~~;

(2) in Caldwell County on the first Mondays in March and~~[, June,]~~ September~~[, and December]~~; and

(3) in Comal County on the first Mondays in January and~~[, April,]~~ July~~[, and October]~~.

(b) Section 53.002, Government Code, is amended by adding Subsection (i) to read as follows:

(i) The judge of the 207th District Court may appoint a bailiff to serve the court in Comal County, subject to the approval of the local administrative judge.

SECTION 3. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.574 to read as follows:

Sec. 24.574. 430TH JUDICIAL DISTRICT (HIDALGO COUNTY). (a) The 430th Judicial District is composed of Hidalgo County.

(b) The 430th District Court shall give preference to family violence and criminal matters.

(c) All civil cases in the 430th District Court shall be assigned and docketed at random by the district clerk using an automated system.

(b) Subsection (b), Section 24.534, and Subsection (b), Section 24.543, Government Code, are repealed.

(c) The 430th Judicial District is created January 1, 2007.

(d) Subsection (b) of this section takes effect January 1, 2007.

SECTION 4. (a) Section 24.205, Government Code, is amended to read as follows:

Sec. 24.205. 103RD JUDICIAL DISTRICT (CAMERON COUNTY [AND WILLACY COUNTIES]). (a) The 103rd Judicial District is composed of Cameron County [and Willacy counties]. The court shall give preference to civil cases.

(b) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County.

(c) The terms of the 103rd District Court begin[~~:~~

~~[(1) in Cameron County]~~ on the first Mondays in February and July~~[; and~~

~~[(2) in Willacy County on the first Mondays in January and June].~~

(d) The judge ~~[judges]~~ of the 103rd District Court ~~[and 107th district courts]~~ need not impanel grand juries except in cases of emergency.

(b) Section 24.209, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The judge of ~~[Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and]~~ the 107th District Court need not impanel grand juries except in cases of emergency.

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County. The 107th and 138th district courts have concurrent jurisdiction in Willacy County.

(c) Subsection (d), Section 24.240, Government Code, is amended to read as follows:

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County. The 107th and 138th district courts have concurrent jurisdiction in Willacy County ~~[Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and the 138th District Court].~~

(d) Section 24.503, Government Code, is amended to read as follows:

Sec. 24.503. 357TH JUDICIAL DISTRICT (CAMERON COUNTY ~~[AND WILLACY COUNTIES]~~). The 357th Judicial District is composed of Cameron County ~~[and Willacy counties]~~.

(e) Section 24.549, Government Code, is amended to read as follows:

Sec. 24.549. 404TH JUDICIAL DISTRICT (CAMERON COUNTY ~~[AND WILLACY COUNTIES]~~). The 404th Judicial District is composed of Cameron County ~~[and Willacy counties]~~.

(f) The local administrative district judge shall transfer all cases from Willacy County that are pending in the 103rd, 357th, and 404th district courts on September 1, 2005, to the 107th, 138th, and 197th district courts.

(g) When a case is transferred as provided by Subsection (f) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the 103rd, 357th, and 404th district courts are returnable to the 107th, 138th, or 197th district court as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the 103rd, 357th, and 404th district courts and all witnesses summoned to appear in those courts are required to appear before the 107th, 138th, or 197th district court as if originally required to appear before that court.

SECTION 5. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.556 to read as follows:

Sec. 24.556. 412TH JUDICIAL DISTRICT (BRAZORIA COUNTY). The 412th Judicial District is composed of Brazoria County.

(b) The 412th Judicial District is created September 1, 2005.

SECTION 6. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.567 to read as follows:

Sec. 24.567. 423RD JUDICIAL DISTRICT (KENEDY AND KLEBERG COUNTIES). (a) The 423rd Judicial District is composed of Kenedy and Kleberg Counties.

(b) The 423rd District Court shall give preference to criminal cases.

(c) In addition to other jurisdiction provided by law, the 423rd District Court has concurrent jurisdiction with the county courts in Kenedy and Kleberg Counties and the statutory county court in Kleberg County over all matters of civil and criminal

jurisdiction, original and appellate, in cases over which a county court has jurisdiction under the constitution and laws of this state. Matters and proceedings in the concurrent jurisdiction of the 423rd District Court and the county court or county court at law may be filed in either court and all cases of concurrent jurisdiction may be transferred between the 423rd District Court, the county court, and the county court at law. However, a case may not be transferred from one court to another without the consent of the judge of the court to which it is transferred, and a case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) Section 24.207, Government Code, is amended to read as follows:

Sec. 24.207. 105TH JUDICIAL DISTRICT (~~[KENEDY, KLEBERG, AND] NUECES COUNTY [COUNTIES]~~). (a) The 105th Judicial District is composed of [~~Kenedy, Kleberg, and~~] Nueces County [~~counties~~]. The court shall give preference to criminal cases.

(b) The terms of the 105th District Court begin[+:

~~[(1) in Kenedy County on the first Mondays in June and December;~~

~~[(2) in Kleberg County on the first Mondays in April and October; and~~

~~[(3) in Nueces County]~~ on the first Mondays in February and August.

(c) The judge, with the approval of the commissioners court, may appoint an official interpreter of the court [~~in Nueces County~~] who serves at the will of the judge. The official interpreter shall take both the constitutional oath of office and an oath that he will faithfully interpret all testimony in the district court as official interpreter. The oath is sufficient for his service as official interpreter in all cases in the court [~~in Nueces County~~] during the interpreter's term of office. The judge may also assign the official interpreter to assist the court's probation officer in the discharge of the probation officer's duties.

(c) The heading to Section 43.148, Government Code, is amended to read as follows:

Sec. 43.148. KENEDY, KLEBERG, AND NUECES COUNTIES [~~105TH JUDICIAL DISTRICT~~].

(d) Subsections (a) and (c), Section 43.148, Government Code, are amended to read as follows:

(a) The voters of Kenedy, Kleberg, and Nueces counties [~~the 105th Judicial District~~] elect a district attorney. The district attorney has the same powers and duties as other district attorneys and serves all the district, county, and justice courts of Nueces County and the district courts of Kleberg and Kenedy counties.

(c) The commissioners courts of Kenedy, Kleberg, and Nueces [~~the~~] counties [~~comprising the district~~] may supplement the state salary of the district attorney. The amount of the supplement may not exceed \$12,000 a year. The supplemental salary must be paid proportionately by the commissioners court of each county according to the population of the county. The supplemental salary may be paid from the officers' salary fund of a county. If that fund is inadequate, the commissioners court may transfer the necessary funds from the general fund of the county.

(e) The local administrative district judge shall transfer all cases from Kenedy and Kleberg Counties that are pending in the 105th District Court on September 1, 2005, to the 423rd District Court.

(f) When a case is transferred as provided by Subsection (e) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the 105th District Court are returnable to the 423rd District Court as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the 105th District Court and all witnesses summoned to appear in the 105th District Court are required to appear before the 423rd District Court as if originally required to appear before that court.

(g) The 423rd Judicial District is created September 1, 2005.

SECTION 7. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.569 to read as follows:

Sec. 24.569. 425TH JUDICIAL DISTRICT (WILLIAMSON COUNTY). The 425th Judicial District is composed of Williamson County.

(b) The 425th Judicial District is created January 1, 2007.

SECTION 8. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.570 to read as follows:

Sec. 24.570. 426TH JUDICIAL DISTRICT (BELL COUNTY). (a) The 426th Judicial District is composed of Bell County.

(b) The terms of the 426th District Court begin on the first Mondays in January, April, July, and October.

(c) Section 24.129, relating to the 27th District Court, contains provisions applicable to both that court and the 426th District Court.

(b) Effective September 1, 2005, Subsection (b), Section 24.129, Government Code, is amended to read as follows:

(b) The 27th, 146th, ~~[and]~~ 169th, and 264th judicial districts have concurrent jurisdiction in Bell County.

(c) Effective January 1, 2007, Subsection (b), Section 24.129, Government Code, is amended to read as follows:

(b) The 27th, 146th, ~~[and]~~ 169th, 264th, and 426th judicial districts have concurrent jurisdiction in Bell County.

(d) The 426th Judicial District is created January 1, 2007.

SECTION 9. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.571 to read as follows:

Sec. 24.571. 427TH JUDICIAL DISTRICT (TRAVIS COUNTY). (a) The 427th Judicial District is composed of Travis County.

(b) The 427th Judicial District shall give preference to criminal matters.

(b) The 427th Judicial District is created January 1, 2007.

SECTION 10. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.572 to read as follows:

Sec. 24.572. 428TH JUDICIAL DISTRICT (HAYS COUNTY). The 428th Judicial District is composed of Hays County.

(b) The 428th Judicial District is created September 1, 2005.

SECTION 11. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.577 to read as follows:

Sec. 24.577. 433RD JUDICIAL DISTRICT (COMAL COUNTY). The 433rd Judicial District is composed of Comal County.

(b) The 433rd Judicial District is created January 1, 2007.

SECTION 12. (a) Effective January 1, 2007, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.578 to read as follows:

Sec. 24.578. 434TH JUDICIAL DISTRICT (FORT BEND COUNTY). The 434th Judicial District is composed of Fort Bend County.

(b) The 434th Judicial District is created January 1, 2007.

SECTION 13. (a) Section 24.115(c), Government Code, is amended to read as follows:

(c) Except for Subsection (b), which applies only to the 14th District Court, this section applies to the 14th, 44th, 68th, 95th, 101st, 116th, 134th, 160th, and 162nd district courts, the Criminal Judicial District of Dallas County, and the Criminal Judicial Districts Nos. 2, 3, 4, ~~and~~ 5, 6, and 7 of Dallas County.

(b) Effective September 1, 2005, Subchapter E, Chapter 24, Government Code, is amended by adding Sections 24.906 and 24.907 to read as follows:

Sec. 24.906. DALLAS COUNTY CRIMINAL JUDICIAL DISTRICT NO. 6.

(a) The Dallas County Criminal Judicial District No. 6 is composed of Dallas County.

(b) The terms of the criminal district court no. 6 begin on the first Mondays in January, April, July, and October.

(c) Section 24.901, relating to the Criminal District Court of Dallas County, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 6.

(d) Section 24.115, relating to the 14th District Court, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 6.

Sec. 24.907. DALLAS COUNTY CRIMINAL JUDICIAL DISTRICT NO. 7.

(a) The Dallas County Criminal Judicial District No. 7 is composed of Dallas County.

(b) The terms of the criminal district court no. 7 begin on the first Mondays in January, April, July, and October.

(c) Section 24.901, relating to the Criminal District Court of Dallas County, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 7.

(d) Section 24.115, relating to the 14th District Court, contains provisions applicable to both that court and the Dallas County Criminal District Court No. 7.

(c) The Dallas County Criminal Judicial Districts Nos. 6 and 7 are created September 1, 2005.

SECTION 14. Section 24.135, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The judge of the 33rd District Court may select jury commissioners and impanel grand juries in each county. The judge of the 33rd District Court may alternate the drawing of grand juries with the judge of any other district court in each county within the 33rd Judicial District and may order grand and petit juries to be drawn for any term of the court as the judge determines is necessary, by an order entered in the minutes of the court. Indictments within each county may be returned to either court within that county.

(d) The 33rd District Court may hear and determine, in any county in the district convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded, in any case pending in any county in the district regardless of whether the case was filed in the county in which the hearing is held. Unless an

objection is filed by a party to the suit, the 33rd District Court may hear, in any county in the district convenient for the court, any nonjury case pending in any county in the district, including divorces, adoptions, default judgments, and matters in which citation was by publication, regardless of whether the case was filed in the county in which the hearing is held.

SECTION 15. (a) Effective September 1, 2005, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.568 to read as follows:

Sec. 24.568. 424TH JUDICIAL DISTRICT (BLANCO, BURNET, LLANO, AND SAN SABA COUNTIES). (a) The 424th Judicial District is composed of Blanco, Burnet, Llano, and San Saba Counties.

(b) The jurisdiction of the 424th District Court is concurrent with the jurisdiction of the 33rd District Court.

(c) The 424th District Court has the same terms of court as the 33rd District Court.

(d) The judge of the 424th District Court may select jury commissioners and impanel grand juries in each county. The judge of the 424th District Court may alternate the drawing of grand juries with the judge of any other district court in each county within the 424th Judicial District and may order grand and petit juries to be drawn for any term of the court as the judge determines is necessary, by an order entered in the minutes of the court. Indictments within each county may be returned to either court within that county.

(e) The 424th District Court may hear and determine, in any county in the district convenient for the court, all preliminary or interlocutory matters in which a jury may not be demanded, in any case pending in any county in the district regardless of whether the case was filed in the county in which the hearing is held. Unless an objection is filed by a party to the suit, the 424th District Court may hear, in any county in the district convenient for the court, any nonjury case pending in any county in the district, including divorces, adoptions, default judgments, and matters in which citation was by publication, regardless of whether the case was filed in the county in which the hearing is held.

(b) The 424th Judicial District is created September 1, 2005.

SECTION 16. Subchapter D, Chapter 74, Government Code, is amended by adding Section 74.097 to read as follows:

Sec. 74.097. LOCAL ADMINISTRATIVE DISTRICT JUDGE FOR BLANCO, BURNET, LLANO, AND SAN SABA COUNTIES. Notwithstanding Section 74.091(b), the local administrative district judge for Blanco, Burnet, Llano, and San Saba Counties is selected on the basis of seniority from the district judges of the 33rd Judicial District and the 424th Judicial District.

SECTION 17. Subsection (b), Section 152.0221, Human Resources Code, is amended to read as follows:

(b) The ~~juvenile court~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 18. Subsection (b), Section 152.0331, Human Resources Code, is amended to read as follows:

(b) The ~~juvenile court~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 19. Subsection (a), Section 152.0521, Human Resources Code, is amended to read as follows:

(a) The Comal County Juvenile Board is composed of:

(1) the county judge;

(2) the ~~[local administrative statutory county]~~ judge of each county court at law in the county;

(3) the judge of the 207th District Court;

(4) an additional judge of the district courts having jurisdiction in Comal County, to be appointed biennially by the local administrative district judge; and

(5) the criminal district attorney of Comal County.

SECTION 20. Subsection (b), Section 152.1561, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 21. Subsection (b), Section 152.2121, Human Resources Code, is amended to read as follows:

(b) The ~~[juvenile court]~~ judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

SECTION 22. Subsection (h), Section 152.2261, Human Resources Code, is amended to read as follows:

(h) Sections 152.0002, ~~[152.0003,]~~ 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Tarrant County.

SECTION 23. Subsection (a), Section 152.2461, Human Resources Code, is amended to read as follows:

(a) The Webb County Juvenile Board is composed of the county judge, the district judges in the county, and the judge of each county court at law. The county judge may designate any member of the commissioners court to represent the judge on the board. A reference in this section to a juvenile court judge of a juvenile board member includes a person designated by the county judge under this subsection.

SECTION 24. Subsection (a), Section 152.1511, Human Resources Code, is amended to read as follows:

(a) The juvenile board of Leon County is composed of the county judge and the judges of the 12th, 87th, and 278th Judicial Districts.

SECTION 25. Except as otherwise provided by this Act, this Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 1189** by striking SECTION 4 of the bill (House committee printing, page 4, line 18, through page 6, line 20) and substitute the following:

SECTION 4. (a) Subsections (b) and (d), Section 24.205, Government Code, are amended to read as follows:

(b) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County. The 103rd and 138th district courts have concurrent jurisdiction in Willacy County.

(d) The judge [judges] of the 103rd District Court ~~[and 107th district courts]~~ need not impanel grand juries except in cases of emergency.

(b) The heading to Section 24.209, Government Code, is amended to read as follows:

Sec. 24.209. 107TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]).

(c) Section 24.209, Government Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The 107th Judicial District is composed of Cameron County [~~and Willacy counties~~]. The court shall give preference to criminal cases.

(c) The judge of [Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and] the 107th District Court need not impanel grand juries except in cases of emergency.

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County. The 103rd and 138th district courts have concurrent jurisdiction in Willacy County.

(d) Section 24.240(d), Government Code, is amended to read as follows:

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County. The 103rd and 138th district courts have concurrent jurisdiction in Willacy County [Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and the 138th District Court].

(e) Section 24.503, Government Code, is amended to read as follows:

Sec. 24.503. 357TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 357th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(f) Section 24.549, Government Code, is amended to read as follows:

Sec. 24.549. 404TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 404th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(g) The local administrative district judge shall transfer all cases from Willacy County that are pending in the 107th, 357th, and 404th district courts on September 1, 2005, to the 103rd, 138th, and 197th district courts.

(h) When a case is transferred as provided by Subsection (g) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the 107th, 357th, and 404th district courts are returnable to the 103rd, 138th, or 197th district court as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the 107th, 357th, and 404th district courts and all witnesses summoned to appear in those courts are required to appear before the 103rd, 138th, or 197th district court as if originally required to appear before that court.

Floor Amendment No. 2

Amend **CSSB 1189** (House committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Section 75.014, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A district judge in El Paso County or a judge of a statutory county court in El Paso County may serve as the local administrative judge for the council of judges. The council of judges shall elect a judge as local administrative judge for a term of not more than two years. The local administrative judge may not be elected on the basis of rotation or seniority.

Floor Amendment No. 3

Amend **CSSB 1189** (House committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Subchapter D, Chapter 152, Human Resources Code, is amended by adding Section 152.2264 to read as follows:

Sec. 152.2264. TARRANT COUNTY CRIMINAL COURT ADMINISTRATOR AND COURT SERVICES DEPARTMENT. (a) The judges of the district and county courts in Tarrant County that give preference to criminal matters shall, on a majority vote, appoint the criminal courts administrator. The administrator serves at the will of those judges.

(b) The commissioners court shall pay the salary and expenses of the criminal court administrator and of the court services department employees as determined by the department budget:

(1) submitted by the judges of the district and county courts that give preference to criminal cases; and

(2) approved by the commissioners court.

(c) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence; or

(B) conscious indifference or reckless disregard for the safety of others.

Floor Amendment No. 4

Amend **CSSB 1189** (House committee printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Section 24.151(d), Government Code, is amended to read as follows:

(d) A criminal complaint may be presented to the grand jury of any district court [Indictments returned to the 49th District Court] in Webb County, and a resulting indictment may [also] be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

SECTION __. Section 24.487, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The judge of the 341st District Court may select jury commissioners and impanel grand juries in Webb County. The judge of the 341st District Court may alternate the drawing of grand juries with the judge of any other district court in the county. By order entered on the minutes, for any term that the judge considers it

necessary, the judge may order grand and petit juries to be drawn. ~~[Indictments returned in Webb County may also be returned to the 49th District Court or the 111th District Court.]~~ The 341st District Court has concurrent jurisdiction with the 49th District Court in all tax suits and cases.

(d) A criminal complaint may be presented to the grand jury of any district court in Webb County, and a resulting indictment may be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

SECTION __. Section 24.551, Government Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) The 406th District Court has concurrent jurisdiction with the other district courts in Webb County.

(d) In addition to other jurisdiction provided by law, the 406th District Court has the:

(1) criminal jurisdiction of a county court; and

(2) civil jurisdiction of a county court in all cases under the Family Code or the Health and Safety Code.

(e) The terms of the 406th District Court begin on the first Mondays in January, April, July, and October. Each term continues until the court disposes of its business.

(f) A criminal complaint may be presented to the grand jury of any district court in Webb County, and a resulting indictment may be returned to any other district court in Webb County with the appropriate criminal jurisdiction.

SECTION __. Section 53.001, Government Code, is amended by adding Subsection (i) to read as follows:

(i) The judge of the 406th District Court shall appoint a bailiff.

SECTION __. Section 53.004, Government Code, is amended by adding Subsection (f) to read as follows:

(f) To be eligible to be appointed bailiff in the 406th District Court, a person must be:

(1) at least 21 years of age; and

(2) a citizen of the United States.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1189** on third reading by striking the SECTION of the bill that amends Sections 24.205, 24.209, 24.240, 24.503, and 24.549, Government Code, and substituting the following appropriately numbered SECTION:

SECTION __. Section 24.205, Government Code, is amended to read as follows:

Sec. 24.205. 103RD JUDICIAL DISTRICT (CAMERON COUNTY ~~[AND WILLACY COUNTIES]~~). (a) The 103rd Judicial District is composed of Cameron County ~~[and Willacy counties]~~. The court shall give preference to civil cases.

(b) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County.

(c) The terms of the 103rd District Court begin[=

(1) in Cameron County] on the first Mondays in February and July[=and

(2) in Willacy County on the first Mondays in January and June].

(d) The judge [judges] of the 103rd District Court ~~[and 107th district courts]~~ need not impanel grand juries except in cases of emergency.

(b) The heading to Section 24.209, Government Code, is amended to read as follows:

Sec. 24.209. 107TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]).

(c) Section 24.209, Government Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The 107th Judicial District is composed of Cameron County [~~and Willacy counties~~]. The court shall give preference to criminal cases.

(c) ~~The judge of [Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and]~~ the 107th District Court need not impanel grand juries except in cases of emergency.

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County.

(d) Section 24.240(d), Government Code, is amended to read as follows:

(d) The 103rd, 107th, and 138th district courts have concurrent jurisdiction in Cameron County [~~Section 24.205, relating to the 103rd District Court, contains provisions applicable to both that court and the 138th District Court~~].

(e) Section 24.503, Government Code, is amended to read as follows:

Sec. 24.503. 357TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 357th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(f) Section 24.549, Government Code, is amended to read as follows:

Sec. 24.549. 404TH JUDICIAL DISTRICT (CAMERON COUNTY [~~AND WILLACY COUNTIES~~]). The 404th Judicial District is composed of Cameron County [~~and Willacy counties~~].

(g) The local administrative district judge shall transfer all cases from Willacy County that are pending in the 103rd, 107th, 357th, and 404th district courts on September 1, 2005, to the 138th and 197th district courts.

(h) When a case is transferred as provided by Subsection (g) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the 103rd, 107th, 357th, and 404th district courts are returnable to the 138th or 197th district court as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the 103rd, 107th, 357th, and 404th district courts and all witnesses summoned to appear in those courts are required to appear before the 138th or 197th district court as if originally required to appear before that court.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1189** on third reading by striking Section 152.2264, Human Resources Code, as added by the bill, and substituting the following:

Sec. 152.2264. TARRANT COUNTY CRIMINAL COURT ADMINISTRATOR AND COURT SERVICES DEPARTMENT. (a) Subject to the approval of the commissioners court, the judges of the district and county courts in Tarrant County that give preference to criminal matters may use the services of a criminal courts administrator.

(b) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence; or

(B) conscious indifference or reckless disregard for the safety of others.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1189** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Duncan, Averitt, Harris, and West.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 261 ADOPTED

Senator Wentworth called from the President's table the Conference Committee Report on **HB 261**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2005.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1077 ADOPTED

Senator Wentworth called from the President's table the Conference Committee Report on **HB 1077**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2005.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 1048

Senator Seliger called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1048** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Eltife in Chair, asked if there were any motions to instruct the conference committee on **HB 1048** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Whitmire, Hinojosa, Van de Putte, and Duncan.

SENATE BILL 1458 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1458** 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 1458** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to the adoption of a uniform commercial building code for use in municipalities in the state.

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

SECTION 1. Section 214.211, Local Government Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "International Building Code" means the International Building Code promulgated by the International Code Council.

(5) "Commercial" means a building for the use or occupation of people for:

(A) a public purpose or economic gain; or

(B) a residence if the building is a multifamily residence that is not defined as residential by this section.

SECTION 2. Section 214.213, Local Government Code, is amended to read as follows:

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

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

SECTION 3. Section 214.214, Local Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

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

(c) The National Electrical Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

SECTION 4. Subchapter G, Chapter 214, Local Government Code, is amended by adding Section 214.216 to read as follows:

Sec. 214.216. INTERNATIONAL BUILDING CODE. (a) To protect the public health, safety, and welfare, the International Building Code, as it existed on May 1, 2003, is adopted as a municipal commercial building code in this state.

(b) The International Building Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

(c) A municipality may establish procedures:

(1) to adopt local amendments to the International Building Code; and

(2) for the administration and enforcement of the International Building Code.

(d) A municipality may review and consider amendments made by the International Code Council to the International Building Code after May 1, 2003.

SECTION 5. Before January 1, 2006, rules shall be established and other actions taken as necessary by municipalities to implement Section 214.216, Local Government Code, as added by this Act.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2006.

(b) This section and Section 5 of this Act take effect September 1, 2005.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1458**, on third reading, in SECTION 4 of the bill, in added Section 214.216, Local Government Code (House committee report, page 3, between lines 2 and 3) by adding Subsection (e) to read as follows:

(e) A municipality that has adopted a more stringent commercial building code before January 1, 2006, is not required to repeal that code and may adopt future editions of that code.

The amendments were read.

Senator Wentworth moved to concur in the House amendments to **SB 1458**.

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

Nays: Zaffirini.

(Senator Seliger in Chair)

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1103 ADOPTED

Senator Eltife called from the President's table the Conference Committee Report on **SB 1103**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2005.

On motion of Senator Eltife, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

RECESS

On motion of Senator Nelson, the Senate at 3:11 p.m. recessed until 5:00 p.m. today.

AFTER RECESS

The Senate met at 5:36 p.m. and was called to order by Senator Armbrister.

SENATE BILL 150 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 150** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 150** (Senate engrossed version) as follows:

- (1) On page 1, line 14, between "," and "the", strike "or".
- (2) On page 1, line 16, between "IAutomobile" and the period, insert ", the Champ Car organization, or the American Le Mans Series organization".
- (3) On page 2, line 27, strike "UNITED STATES GRAND PRIX" and substitute "MOTOR SPORTS RACING".
- (4) On page 3, line 16, between "Prix" and the period, insert ", or a specific automobile racing event that is part of the Champ Car World Series or the American Le Mans Series".
- (5) On page 5, lines 20-21, strike "United States Grand Prix trust fund" and substitute "Motor Sports Racing trust fund for the particular racing event".
- (6) On page 6, line 13, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (7) On page 6, lines 18-19, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (8) On page 7, lines 10-11, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (9) On page 7, line 15, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (10) On page 8, lines 15-16, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (11) On page 8, lines 25-26, strike "United States Grand Prix" and substitute "Motor Sports Racing".
- (12) On page 9, lines 7-8, strike "United States Grand Prix" and substitute "Motor Sports Racing".

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 150**.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 26, 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 216, Honoring U.S. Marine Corps Captain Van Taylor of Dallas for his service to his country.

HCR 223, Honoring the sesquicentennial of Sulphur Springs.

HCR 224, Congratulating Eddie Almond on his retirement as director of the Regional Controlled Substance Apprehension Program Drug Task Force.

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

HB 126 (140 Yeas, 0 Nays, 2 Present, not voting)

HB 129 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 160 (141 Yeas, 0 Nays, 2 Present, not voting)

HB 308 (140 Yeas, 0 Nays, 2 Present, not voting)

HB 495 (non-record vote)

HB 629 (non-record vote)

HB 646 (non-record vote)

HB 754 (non-record vote)

HB 914 (131 Yeas, 0 Nays, 1 Present, not voting)

HB 984 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 988 (non-record vote)

HB 989 (138 Yeas, 6 Nays, 2 Present, not voting)

HB 1208 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 1209 (140 Yeas, 1 Nays, 2 Present, not voting)

HB 1252 (non-record vote)

HB 1516 (non-record vote)

HB 1567 (141 Yeas, 0 Nays, 2 Present, not voting)

HB 1588 (138 Yeas, 0 Nays, 2 Present, not voting)

HB 1622 (non-record vote)

HB 1644 (140 Yeas, 4 Nays, 2 Present, not voting)

HB 1813 (non-record vote)

HB 2243 (non-record vote)

HB 2337 (non-record vote)

HB 2382 (137 Yeas, 0 Nays, 2 Present, not voting)

HB 2466 (non-record vote)

HB 2518 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 2569 (non-record vote)

HB 2653 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2680 (140 Yeas, 0 Nays, 3 Present, not voting)

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

HB 265 (non-record vote)

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

HB 664 (non-record vote)

House Conferees: Isett - Chair/Frost/Hamilton/Hopson/Swinford

HB 789 (non-record vote)

House Conferees: King, Phil - Chair/Baxter/Cook, Robby/Crabb/Hartnett

HB 843 (non-record vote)

House Conferees: Truitt - Chair/Cook, Robby/Gattis/King, Phil/Riddle

HB 873 (non-record vote)

House Conferees: Dukes - Chair/Elkins/Giddings/Solomons/Zedler

HB 1690 (non-record vote)

House Conferees: Keel - Chair/Hill/Hodge/Nixon/Rose

HB 1830 (non-record vote)

House Conferees: Wong - Chair/Nixon/Talton/Van Arsdale/Vo

HB 1855 (non-record vote)

House Conferees: Giddings - Chair/Bohac/Elkins/Martinez/Zedler

HB 2048 (non-record vote)

House Conferees: Uresti - Chair/Davis, John/Gattis/Hupp/Noriega, Melissa

HB 2423 (non-record vote)

House Conferees: Puente - Chair/Geren/Hardcastle/Hope/King, Tracy

HB 2510 (non-record vote)

House Conferees: Bonnen - Chair/Crownover/Howard/King, Tracy/Ritter

HB 2604 (non-record vote)

House Conferees: Guillen - Chair/Berman/Corte/Hughes/Pena

HB 3526 (non-record vote)

House Conferees: Hochberg - Chair/Allen, Alma/Madden/Talton/Wong

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 1050 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **SB 1050**. The Conference Committee Report was filed with the Senate on Tuesday, May 24, 2005.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

HOUSE CONCURRENT RESOLUTION 166

On motion of Senator Staples and by unanimous consent, Senate Rule 8.02 and all necessary rules were suspended to take up for consideration **HCR 166** at this time.

The Presiding Officer, Senator Armbrister in Chair, laid before the Senate the following resolution:

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.

The resolution 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.

CONFERENCE COMMITTEE ON HOUSE BILL 2702

Senator Staples called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2702** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2702** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Staples, Chair; Ellis, Eltife, Fraser, and Shapleigh.

HOUSE CONCURRENT RESOLUTION 193

On motion of Senator Staples and by unanimous consent, Senate Rule 8.02 and all necessary rules were suspended to take up for consideration **HCR 193** at this time.

The Presiding Officer laid before the Senate the following resolution:

HCR 193, Supporting Texas' application for a Mental Health Transformation State Incentive Grant from the U.S. Department of Health and Human Services.

The resolution 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.

SENATE BILL 563 WITH HOUSE AMENDMENTS

Senator Janek called **SB 563** 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 563** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the prevention of Medicaid fraud; providing penalties.

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

SECTION 1. Subdivision (9), Section 36.001, Human Resources Code, is amended to read as follows:

(9) "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider; ~~and~~

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which the Medicaid program provides reimbursement.

SECTION 2. Subchapter A, Chapter 36, Human Resources Code, is amended by adding Section 36.0011 to read as follows:

Sec. 36.0011. CULPABLE MENTAL STATE. (a) For purposes of this chapter, a person acts "knowingly" with respect to information if the person:

(1) has knowledge of the information;

(2) acts with conscious indifference to the truth or falsity of the information;

or

(3) acts in reckless disregard of the truth or falsity of the information.

(b) Proof of the person's specific intent to defraud is not required in a civil or administrative proceeding to show that a person acted "knowingly" with respect to information under this chapter.

SECTION 3. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly ~~[or intentionally]~~ makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

~~[(A) on an application for a contract, benefit, or payment under the Medicaid program; or~~

~~[(B) that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program];~~

(2) knowingly ~~[or intentionally]~~ conceals or fails to disclose information that permits [an event]

~~[(A) that the person knows affects the initial or continued right to a benefit or payment under the Medicaid program of:~~

~~[(i) the person; or~~

~~[(ii) another person on whose behalf the person has applied for a benefit or payment or is receiving a benefit or payment; and~~

~~[(B) to permit]~~ a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment ~~[or benefit]~~ that is authorized;

(3) knowingly ~~[or intentionally]~~ applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly ~~[or intentionally]~~ makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, ~~[or intentionally]~~ charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product ~~[to a Medicaid recipient]~~ if the cost of the service or product ~~[provided to the Medicaid recipient]~~ is paid for, in whole or in part, under the Medicaid program;

(6) knowingly ~~[or intentionally]~~ presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly ~~[or intentionally]~~ makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly [~~or intentionally~~] fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly [~~or intentionally~~] enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent; [~~or~~]

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly [~~or intentionally~~]:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program; [~~or~~]

(11) knowingly (~~DD~~) obstructs an investigation by the attorney general of an alleged unlawful act under this section; or

(12) knowingly makes, uses, or causes the making or use of, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.

SECTION 4. Subsection (b), Section 36.003, Human Resources Code, is amended to read as follows:

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:

(1) an [~~authorized~~] employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; [~~or~~]

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

SECTION 5. Section 36.004, Human Resources Code, is amended to read as follows:

Sec. 36.004. IMMUNITY. Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

(1) an [~~authorized~~] employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general; ~~[or]~~

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

SECTION 6. Section 36.005, Human Resources Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:

(a) A health and human services agency, as defined by Section 531.001, Government Code ~~[The commissioner of human services, the commissioner of public health, the commissioner of mental health and mental retardation, the executive director of the Department of Protective and Regulatory Services, or the executive director of another state health care regulatory agency]:~~

(1) shall suspend or revoke:

(A) a provider agreement between the ~~[department or]~~ agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the ~~[department or]~~ agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the ~~[department or]~~ agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the ~~[department or]~~ agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052.

(b) A provider [person] found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program [for a period of 10 years]. The executive commissioner of the Health and Human Services Commission [board of a state agency that operates part of the Medicaid program] may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the Medicaid program or a beneficiary of the program.

(b-1) The period of ineligibility begins on the date on which the determination that the provider [person] is liable becomes final.

(b-2) Subsections (b) and (b-1) do [This subsection does] not apply to a provider [person] who operates a nursing facility or an ICF-MR facility.

SECTION 7. Subsections (a) and (c), Section 36.052, Human Resources Code, are amended to read as follows:

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) ~~[restitution of]~~ the amount ~~[value]~~ of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;

(2) interest on the amount ~~[value]~~ of the payment or the value of the benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that ~~[restitution is paid to]~~ the state recovers the amount of the payment or value of the benefit;

(3) a civil penalty of:

(A) not less than \$5,000 or more than \$15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1) ~~[48.002(1)]~~, a disabled person, as defined by Section 48.002(a)(8)(A) ~~[48.002(8)(A)]~~, or a person younger than 18 years of age; or

(B) not less than \$1,000 or more than \$10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the amount ~~[value]~~ of the payment or the value of the benefit described by Subdivision (1).

(c) The trier of fact may assess a total of not more than two times the amount ~~[value]~~ of a payment or the value of a benefit described by Subsection (a)(1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

SECTION 8. Section 36.053, Human Resources Code, is amended by adding Subsections (c) through (f) to read as follows:

(c) The office of the attorney general may not release or disclose information that is obtained under Subsection (b)(1) or (2) or any documentary material or other record derived from the information except:

(1) by court order for good cause shown;

(2) with the consent of the person who provided the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information.

(d) The attorney general may use documentary material derived from information obtained under Subsection (b)(1) or (2), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(e) If a person fails to file a statement as required by Subsection (b)(1) or fails to submit to an examination as required by Subsection (b)(2), the attorney general may file in a district court of Travis County a petition for an order to compel the person to

file the statement or submit to the examination within a period stated by court order. Failure to comply with an order entered under this subsection is punishable as contempt.

(f) An order issued by a district court under this section is subject to appeal to the supreme court.

SECTION 9. Section 36.054, Human Resources Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e) ~~The [Except as ordered by a court for good cause shown, the] office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section except:~~

(1) by court order for good cause shown;

(2) with the consent of the person who produced the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information [to a person other than an authorized employee of the attorney general without the consent of the person who produced the documentary material].

(e-1) The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

SECTION 10. Section 36.102, Human Resources Code, is amended by amending Subsections (b) through (e) and adding Subsection (c-1) to read as follows:

(b) The petition shall be filed in camera and, except as provided by Subsection (c-1) or (d), shall remain under seal until at least the 180th [60th] day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 180th [60th] day after the date the attorney general receives the petition and the material evidence and information.

(c-1) At the time the state intervenes, the attorney general may file a motion with the court requesting that the petition remain under seal for an extended period.

(d) The state may, for good cause shown, move the court to extend the 180-day deadline [time during which the petition remains under seal] under Subsection (b) or (c). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period during which the petition remains under seal ~~[prescribed by Subsection (b), as extended as provided by Subsection (d), if applicable,]~~ only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

SECTION 11. Section 36.103, Human Resources Code, is amended to read as follows:

Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under this subchapter until ~~[the 20th day after the date]~~ the petition is unsealed and served on the defendant ~~[in compliance with the Texas Rules of Civil Procedure].~~

SECTION 12. Subsection (a), Section 36.104, Human Resources Code, is amended to read as follows:

(a) Not later than the last day of the period prescribed by Section 36.102(c) or an extension of that period as provided by Section 36.102(d), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

SECTION 13. Subsection (c), Section 36.110, Human Resources Code, is amended to read as follows:

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action ~~[plus reasonable attorney's fees and costs. Expenses, fees, and costs shall be awarded against the defendant].~~

SECTION 14. The heading of Subchapter D, Chapter 36, Human Resources Code, is amended to read as follows:

SUBCHAPTER D. ~~[CRIMINAL PENALTIES AND]~~ REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

SECTION 15. Subsection (b), Section 36.132, Human Resources Code, is amended to read as follows:

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 35A.02, Penal Code ~~[36.131].~~ In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

SECTION 16. Title 7, Penal Code, is amended by adding Chapter 35A to read as follows:

CHAPTER 35A. MEDICAID FRAUD

Sec. 35A.01. DEFINITIONS. In this chapter:

(1) "Claim" has the meaning assigned by Section 36.001, Human Resources Code.

(2) "Fiscal agent" has the meaning assigned by Section 36.001, Human Resources Code.

(3) "Health care practitioner" has the meaning assigned by Section 36.001, Human Resources Code.

(4) "Managed care organization" has the meaning assigned by Section 36.001, Human Resources Code.

(5) "Medicaid program" has the meaning assigned by Section 36.001, Human Resources Code.

(6) "Medicaid recipient" has the meaning assigned by Section 36.001, Human Resources Code.

(7) "Physician" has the meaning assigned by Section 36.001, Human Resources Code.

(8) "Provider" has the meaning assigned by Section 36.001, Human Resources Code.

(9) "Service" has the meaning assigned by Section 36.001, Human Resources Code.

Sec. 35A.02. MEDICAID FRAUD. (a) A person commits an offense if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under Section 36.002, Human Resources Code; or

(12) knowingly makes, uses, or causes the making or use of, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is less than \$50;

(2) a Class B misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$500 or more but less than \$1,500;

(4) a state jail felony if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the conduct is \$200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

SECTION 17. Subsection (d), Section 41.002, Civil Practice and Remedies Code, is amended to read as follows:

(d) Notwithstanding any provision to the contrary, this chapter does not apply to:

(1) Section 15.21, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983);

(2) [;] an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act;

(3) an action brought under Chapter 36, Human Resources Code;[;] or

(4) an action brought under Chapter 21, Insurance Code.

SECTION 18. Section 36.131, Human Resources Code, is repealed.

SECTION 19. (a) This Act 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 at the time the conduct occurred, and that law is continued in effect for that purpose.

(b) For purposes of this section, conduct constituting an offense under the penal law of this state occurred before the effective date of this Act if any element of the offense occurred before that date.

SECTION 20. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 563** in SECTION 2 of the bill, in added Section 36.0011(b), Human Resources Code (House committee printing, page 2, line 3), by striking "the person's specific intent to defraud" and substituting "the person's specific intent to commit an unlawful act under Section 36.002".

Floor Amendment No. 2

Amend **CSSB 563** (House committee printing) by adding the following appropriately numbered section to read as follows and renumbering subsequent sections accordingly:

SECTION _____. (a) Section 531.1063, Government Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) The commission shall implement ~~[may extend]~~ the program statewide as provided by Subsection (h) [to additional counties] if the commission determines that statewide implementation ~~[expansion]~~ would be cost-effective.

(h) The commission shall adopt a plan to implement the program statewide in phases and shall terminate the statewide implementation at any stage of the process if the commission determines that statewide implementation would not be cost-effective. The plan must include for each phase:

(1) a description of the policies and procedures to be tested concerning the handling of lost, forgotten, or stolen cards carrying a fingerprint image or situations in which a fingerprint match cannot be confirmed;

(2) a determination of whether the commission will require children or persons who are elderly or disabled to participate in the phase and the reason or reasons for including children or persons who are elderly or disabled in the phase; and

(3) a description of the manner and location in which the fingerprint images will be initially collected.

(i) In developing the plan required by Subsection (h), the commission shall seek comments from recipients, providers, and other stakeholders in the state Medicaid program.

(b) The Health and Human Services Commission, before implementing a phase of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, that requires mandatory participation by Medicaid recipients or health care providers, shall submit a report regarding the phase to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. The report must include a description of each component of the plan for that phase, as required by Subsection (h), Section 531.1063, Government Code, as added by this section.

(c) In addition to the report required by Subsection (c), Section 2.23, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, the Health and Human Services Commission shall report, not later than December 1, 2006, on the status and progress of the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code, as amended by this section, to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the senate and house of representatives having jurisdiction over the state Medicaid program. The report must include:

(1) a continued evaluation of the benefits of the program;

(2) an evaluation of the strengths and weaknesses of the policies and procedures tested in each phase required by Subsection (h), Section 531.1063, Government Code, as added by this section;

(3) information concerning the cost-effectiveness of the program;

(4) if the program has been implemented statewide, any significant problems encountered; and

(5) if the Health and Human Services Commission requires participation by children or persons who are elderly or disabled, the reason or reasons for including children or persons who are elderly or disabled in the program.

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

The amendments were read.

Senator Janek moved to concur in the House amendments to **SB 563**.

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

SENATE BILL 907 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 907** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 907** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

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.

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

SECTION 1. Article 14.03(g), Code of Criminal Procedure, is amended to read as follows:

(g)(1) A peace officer listed in Subdivision (1), (2), ~~[(3), (4),]~~ or (5), Article 2.12, who is licensed under Chapter 1701 ~~[415]~~, Occupations ~~[Government]~~ Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, ~~other than [except that an officer who is outside the officer's jurisdiction may arrest a person for]~~ a violation of Subtitle C, Title 7, Transportation Code~~[, only if the officer is listed in Subdivision (4), Article 2.12].~~

(2) A peace officer listed in Subdivision (3), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.

(3) A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of:

(A) the person committing the offense and take the person before a magistrate in compliance with Article 14.06; and

(B) any property seized during or after the arrest as if the property had been seized by a peace officer of that law enforcement agency.

SECTION 2. This Act takes effect September 1, 2005.

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **SB 907**.

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

SENATE BILL 1205 WITH HOUSE AMENDMENT

Senator Madla called **SB 1205** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1205** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to allowing the creation of multi-jurisdictional library districts; authorizing taxes and bonds.

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

SECTION 1. FINDINGS. The legislature finds that:

(1) the quality of life and general literacy of children and other residents of this state are enhanced by convenient access to a public library and the valuable resources a public library provides; and

(2) the creation of library districts in this state would allow for the efficient operation and most equitable use of available public money and therefore make valuable educational, information, and literacy resources more readily available to the entire region of the district.

SECTION 2. MULTI-JURISDICTIONAL LIBRARY DISTRICTS. Subtitle C, Title 10, Local Government Code, is amended by adding Chapter 336 to read as follows:

CHAPTER 336. MULTI-JURISDICTIONAL LIBRARY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 336.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of trustees.

(2) "District" means a multi-jurisdictional library district created under this chapter.

(3) "Executive director" means an executive director employed under Section 336.103.

(4) "Lead governmental entity" means the county or municipality that proposes to create a district under this chapter.

Sec. 336.002. NATURE OF DISTRICT. A district created under this chapter is a special district and a political subdivision of this state.

Sec. 336.003. MULTI-JURISDICTIONAL PUBLIC LIBRARY. (a) A district created under this chapter shall establish, equip, support, operate, and maintain one or more public libraries for the dissemination of educational programs and general information relating to the arts, sciences, literature, and other subject areas of interest to the public.

(b) Each public library created under this chapter must be accredited by and meet the standards for basic public library services established by the Texas State Library and Archives Commission.

(c) A library created under this chapter must be open to all members of the public under identical conditions.

[Sections 336.004-336.020 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 336.021. ROLE OF LEAD GOVERNMENTAL ENTITY. (a) A district may be created by a county or municipality that, by resolution, assumes the role of a lead governmental entity under this chapter and proposes the creation of a district for specific contiguous counties and municipalities that by resolution agree to have their territory in the district.

(b) The governing body of a county or municipality may adopt a resolution under Subsection (a) on its own motion or after a hearing held on a petition requesting the creation of a district.

(c) The lead governmental entity shall provide over 50 percent of the initial assets to the district.

Sec. 336.022. TERRITORY INCLUDED IN DISTRICT. (a) The lead governmental entity shall describe the initial district territory, which must include all territory of each municipality or county that agrees to have its territory in the district under Section 336.021.

(b) The district may include incorporated or unincorporated territory and may include any contiguous territory in one or more counties that agree to have the counties' territory in the district under Section 336.021.

(c) If the boundaries of the proposed district include any territory that, on the date on which an election is ordered on the question of creating the district, is part of a municipality that operates a municipal public library, the governing body of that municipality must consent by resolution to allow the inclusion of that municipal territory in the proposed district.

Sec. 336.023. CONFIRMATION ELECTION. A district created under this chapter may call an election for the purpose of approving a sales tax or an ad valorem tax, or both, on property in the district.

Sec. 336.024. PAYMENT OF CONFIRMATION ELECTION COSTS. The lead governmental entity may not order the confirmation election until the entity deposits with the county clerk an amount of money equal to the cost of conducting the confirmation election, as computed by the county clerk.

Sec. 336.025. ORDERING CONFIRMATION ELECTION. (a) At a regular or special meeting of the governing body of the lead governmental entity held to discuss the creation of a district, the governing body shall determine whether the district will be supported by a sales tax or by an ad valorem tax, or both, on property located in the proposed district.

(b) The governing body may order a confirmation election to confirm the imposition of a sales tax or of an ad valorem tax on property located in the proposed district.

(c) The election ordered shall be held on an authorized uniform election date under Chapter 41, Election Code, that occurs on or after the 45th day after the date the election is ordered.

(d) In addition to the elements required to be included by the Election Code, the election order must state:

(1) the ballot proposition stating the measure to be voted on;

(2) the hours that the polls will be open; and

(3) the location of each polling place.

Sec. 336.026. NOTICE OF CONFIRMATION ELECTION. (a) The lead governmental entity shall give notice of the election by publishing a substantial copy of the election order once a week for two consecutive weeks in a newspaper with general circulation in the county in which the proposed district is located.

(b) The notice must be published not earlier than the 30th day and not later than the 10th day before election day.

Sec. 336.027. BALLOT PROPOSITION. (a) If the governing body of the lead governmental entity determines under Section 336.025 that the district should be supported by a sales tax, the ballot for the election shall be printed to permit voting for or against the proposition: "The creation of a multi-jurisdictional library district to be known as the _____ (name of district) and adoption of a sales tax in the _____ (name of district) at the rate of _____ (rate of tax) percent."

(b) If the governing body of the lead governmental entity determines under Section 336.025 that the district should be supported by an ad valorem tax, the ballot for the election shall be printed to permit voting for or against the proposition: "The creation of a multi-jurisdictional library district to be known as the _____ (name of district) and adoption of an ad valorem tax in the _____ (name of district) at a rate up to _____ (rate of tax) cents per \$100 valuation of property to provide revenue for the district."

Sec. 336.028. RESULTS OF CONFIRMATION ELECTION. (a) If a majority of the voters voting in the election favor the creation of the district and the adoption of a sales tax or of an ad valorem tax, the lead governmental entity shall by resolution or order declare that the district is created and shall declare the rate of the sales tax or the amount of the ad valorem tax adopted and enter the result in its minutes.

(b) If a majority of the voters voting in the election are against the creation of the district, the lead governmental entity shall declare the measure defeated and enter the result in its minutes.

(c) An order under Subsection (a) must:

(1) contain a description of the district's boundaries and a map of the district;

(2) state the election date; and

(3) state the total number of votes cast for and against the ballot proposition.

(d) The lead governmental entity must file in the deed records of the county in which the district is located a resolution or order issued under Subsection (a).

Sec. 336.029. INITIAL BOARD AND PRESIDING OFFICER. (a) Appointments to the initial board are made as provided by Subchapter C, except that the initial trustees shall agree to stagger their terms, with four members' terms expiring in two years and three members' terms expiring in one year. If the trustees cannot agree on the initial staggering, the trustees shall draw lots to determine the staggering.

(b) The lead governmental entity shall appoint the board's initial presiding officer to serve a two-year term in that capacity. The requirement of Section 336.056 that the board of trustees elect the presiding officer does not apply to the presiding officer appointed under this subsection.

Sec. 336.030. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The district may:

(1) pay all costs and expenses necessarily incurred in the creation and organization of the district; and

(2) reimburse any person for money advanced for the costs and expenses described by Subdivision (1).

(b) Payments under this section may be made from money obtained from taxes or other district revenue.

[Sections 336.031-336.050 reserved for expansion]

SUBCHAPTER C. BOARD OF TRUSTEES

Sec. 336.051. GOVERNING BODY. A district is governed by a seven-member board of trustees. The board has control over and shall manage the affairs of the district.

Sec. 336.052. APPOINTMENT. (a) The lead governmental entity shall appoint four trustees to the board.

(b) The most populous county in which the district is located shall appoint three trustees to the board, unless the county is the lead governmental entity. If the county is the lead governmental entity, the most populous municipality in the county shall appoint three trustees.

Sec. 336.053. ELIGIBILITY FOR APPOINTMENT. A person is eligible for appointment to the board if the person:

(1) resides in the district;

(2) is registered to vote in a county in which the district is located; and

(3) has recognized expertise in:

(A) library services;

(B) education;

(C) information technology;

(D) local or Texas history; or

(E) business management.

Sec. 336.054. TERMS. (a) Trustees serve staggered two-year terms.

(b) A trustee may not serve more than two consecutive terms or more than four terms.

(c) A trustee who has served two consecutive terms but fewer than four terms is eligible for appointment to a new term on the date one year after the date on which the trustee's former term ended.

Sec. 336.055. VACANCY. A vacancy on the board shall be filled by appointment for the remainder of the unexpired term by the governmental entity that appointed the vacating member.

Sec. 336.056. OFFICERS. (a) The board shall elect a trustee to serve as the board's presiding officer. The presiding officer presides at all board meetings and is the chief executive officer of the district.

(b) The board shall elect from among its members a vice presiding officer, a secretary, and any other officers the board considers necessary.

(c) The vice presiding officer acts as the presiding officer if the presiding officer is incapacitated or absent from a meeting.

(d) The secretary acts as the presiding officer if both the presiding officer and vice presiding officer are incapacitated or absent from a meeting.

Sec. 336.057. MEETINGS AND NOTICE. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires.

(b) The board shall hold its meetings at a designated meeting place.

Sec. 336.058. CONFLICT OF INTEREST IN CONTRACT. (a) For purposes of this section, a trustee who is an employee of, or a trustee related within the second degree by affinity or consanguinity as determined under Subchapter B, Chapter 573, Government Code, to, a person who is financially interested in a contract is considered to be financially interested in the contract.

(b) A trustee who is financially interested in a contract may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) A trustee who is financially interested in a contract with the district shall disclose that fact to the other trustees. The disclosure shall be entered into the minutes of the meeting.

(d) The failure of a trustee to disclose the trustee's financial interest in a contract and to have the disclosure entered in the minutes invalidates the contract.

[Sections 336.059-336.100 reserved for expansion]

SUBCHAPTER D. OTHER ADMINISTRATIVE PROVISIONS

Sec. 336.101. BYLAWS. The board may adopt bylaws to govern:

(1) the time, place, and manner of conducting board meetings;
(2) the powers, duties, and responsibilities of the board's officers and employees;

(3) the disbursement of money by a check, draft, or warrant;

(4) the appointment and authority of board committees;

(5) the keeping of accounts and other records; and

(6) any other matter the board considers appropriate.

Sec. 336.102. EMPLOYEES. (a) The board may employ any person the board considers necessary for conducting the district's affairs.

(b) The board may remove any employee.

Sec. 336.103. EXECUTIVE DIRECTOR. (a) The board may employ an executive director to administer the affairs of the district under policies and requirements established by the board.

(b) The board shall set the compensation of the executive director.

(c) The board may delegate to the executive director the board's authority to hire, establish the compensation of, review the performance of, discipline, or remove a district employee.

Sec. 336.104. QUALIFICATIONS OF EXECUTIVE DIRECTOR OR LIBRARY DIRECTOR. The board shall ensure that the executive director or a subordinate library director has all necessary qualifications to oversee library services in the district. The board shall require the executive director or a subordinate library director to meet the qualification requirements for a county librarian under Section 441.007, Government Code, and under any rules adopted by the Texas State Library and Archives Commission under that section.

Sec. 336.105. BOND. The board may require an officer or employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

Sec. 336.106. EMPLOYEE PLANS. (a) The board may provide for and administer a workers' compensation, health benefit, retirement, disability, or death compensation plan for district employees.

(b) The board may adopt a plan to accomplish the purpose of this section.

(c) The board, after notice and a hearing, may change any plan or rule adopted under this section.

Sec. 336.107. RECORDS; SECRETARY. (a) The secretary is responsible for ensuring that all district books and other records are properly maintained.

(b) The board may appoint the executive director or an employee as assistant or deputy secretary to assist the secretary in performing the secretary's duties under this section. The assistant or deputy secretary may certify the authenticity of any district record.

[Sections 336.108-336.150 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES

Sec. 336.151. GENERAL POWERS OF DISTRICT. A district has all authority necessary to accomplish district purposes.

Sec. 336.152. RULES; VIOLATION OF RULES. (a) The board may adopt reasonable rules to accomplish district purposes.

(b) The board may set monetary charges in reasonable amounts for the violation of a district rule.

(c) The board may exclude from the use of a public library a person who intentionally violates a rule adopted by the board under this section.

Sec. 336.153. LOCATION OF PUBLIC LIBRARY FACILITIES. A district may locate a public library facility at any place in the district, including the territory of a political subdivision within the district.

Sec. 336.154. CONTRACTS. A district may contract with any person for any district purpose.

Sec. 336.155. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS.

(a) A district may contract with a municipality, county, or other political subdivision for the district to provide public library services outside the district.

(b) A district may enter into one or more agreements with any municipality included in the area of the district for the acquisition or operation of the municipality's library facilities.

Sec. 336.156. PROPERTY AND EQUIPMENT. (a) A district may construct, acquire, own, lease, operate, maintain, repair, or improve any land, works, materials, supplies, improvements, facilities, equipment, vehicles, machinery, appliances, or other property as necessary.

(b) If a district acquires property of any kind related to the operation of a public library, the district may assume the contracts and obligations of the previous owner.

(c) A district may hold, use, sell, lease, dispose of, and acquire, by any means, property and licenses, patents, rights, and other interests necessary, convenient, or useful to the exercise of any district power.

Sec. 336.157. SURPLUS PROPERTY. A district may sell, lease, or dispose of in any other manner and at any time:

(1) any right, interest, or property of the district that is not needed for, or, if a lease, is inconsistent with, the efficient operation and maintenance of a public library; or

(2) surplus materials or other property that is not needed for a district purpose.

Sec. 336.158. SUITS. (a) A district may sue and be sued in any court of this state in the name of the district.

(b) A court of this state shall take judicial notice of the establishment of a district.

(c) A district is not required to give security for costs in a suit or to give a supersedeas or cost bond in an appeal of a judgment.

Sec. 336.159. EXPANSION OF DISTRICT. (a) The district may expand to include additional territory if the commissioners court of the county in which the district is located holds an election for that purpose in the territory to be added to the district.

(b) If a majority of the voters voting at the expansion election approve the expansion of the district, the territory of the district is expanded.

[Sections 336.160-336.200 reserved for expansion]

SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 336.201. BORROWING. A district may borrow money.

Sec. 336.202. FEES; GENERAL. (a) A district may impose any necessary charges or fee for providing a district service.

(b) A district may discontinue a service to enforce payment of an unpaid charge or fee that is owed to the district.

Sec. 336.203. LIBRARY FEES. A library created under this chapter may charge reasonable fees to remove certain materials from the library or for other services provided by the library.

Sec. 336.204. DEPOSITORY. (a) The board shall designate one or more banks inside or outside of the district to serve as the depository for district money.

(b) The district shall deposit district tax revenue in a depository bank.

Sec. 336.205. EXPENDITURES. A district may disburse district money only by check, draft, money order, or another instrument that must be signed by one or more officers or employees of the district as designated by the board.

Sec. 336.206. ACCOUNTS AND RECORDS; AUDITS. (a) A district shall keep a complete system of accounts.

(b) The district shall have an annual audit of the district affairs performed by an independent certified public accountant.

(c) A signed copy of the audit report shall be delivered to each trustee not later than the 120th day after the closing date of each fiscal year.

(d) A copy of the audit report shall be kept on file at the district office and shall be made available for inspection by any interested person during regular business hours.

Sec. 336.207. FISCAL YEAR. The fiscal year of the district is from October 1 to September 30, unless the board adopts another fiscal year.

Sec. 336.208. GRANTS AND DONATIONS. A district may accept and administer a grant or donation from any source for any district purpose.

[Sections 336.209-336.250 reserved for expansion]

SUBCHAPTER G. TAXES

Sec. 336.251. AD VALOREM TAX ASSESSMENT AND COLLECTION. (a) A district may impose an ad valorem tax.

(b) If the district imposes an ad valorem tax, the board shall have the taxable property in its district assessed for ad valorem taxation and the ad valorem taxes in the district collected, in accordance with any one of the methods set forth in this section, and any method adopted remains in effect until changed by the board.

(c) The board may have the taxable property in its district assessed or its taxes collected, wholly or partly, by the tax assessors or tax collectors of any county, municipality, taxing district, or other governmental entity in which all or any part of the district is located. The tax assessors or tax collectors of a governmental entity, on the request of the board, shall assess and collect the taxes of the district in the manner prescribed in the Property Tax Code. Tax assessors and tax collectors shall receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed.

Sec. 336.252. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF SALES TAX. (a) A district may impose a sales and use tax.

(b) Chapter 323, Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the sales and use tax under this subchapter, except that Sections 323.101, 323.105, 323.404, and 323.406-323.408, Tax Code, do not apply.

(c) Chapter 323, Tax Code, does not apply to the use and allocation of revenue under this chapter.

(d) In applying the procedures under Chapter 323, Tax Code, to the district, the district's name shall be substituted for "the county," and "board of trustees" is substituted for "commissioners court."

Sec. 336.253. SALES AND USE TAX RATES. The permissible rates for a sales and use tax imposed under this chapter are one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

Sec. 336.254. ABOLITION OF OR CHANGE IN AD VALOREM TAX RATE. (a) The board by order may decrease or abolish the ad valorem tax rate or may call an election to increase, decrease, or abolish the ad valorem tax rate.

(b) At the election, the ballot shall be printed to permit voting for or against the proposition: "The increase (decrease) in the ad valorem tax rate of _____ (name of district) to a rate up to _____ (rate of tax) cents per \$100 valuation of taxable property to be used for district purposes" or "The abolition of the district ad valorem tax." The increase or decrease in the tax rate, or the abolition of the tax, is effective if it is approved by a majority of the votes cast.

(c) In calling and holding the election, the board shall use the procedure for the confirmation and tax election in Subchapter B.

Sec. 336.255. USE OF TAX. A tax collected under this subchapter may be used only for a district purpose and may be pledged as collateral for borrowing money to further those purposes.

[Sections 336.256-336.300 reserved for expansion]

SUBCHAPTER H. BONDS

Sec. 336.301. DEFINITION. In this subchapter, "bond" includes a note.

Sec. 336.302. GENERAL POWER TO ISSUE BONDS. (a) A district may issue bonds at any time and for any amount it considers necessary or appropriate to acquire, construct, equip, or improve district facilities.

(b) The board by resolution may authorize the issuance of bonds payable solely from revenue.

Sec. 336.303. LEAD GOVERNMENTAL ENTITY'S CONSENT REQUIRED. The district may not issue bonds under this subchapter unless the lead governmental entity's governing body by resolution consents to the issuance.

Sec. 336.304. SHORT-TERM BONDS. (a) The board by resolution may issue bonds that are secured by revenue or taxes of the district if the bonds:

(1) have a term of not more than 12 months; and

(2) are payable only from revenue or taxes received on or after the date of their issuance and before the end of the fiscal year following the fiscal year in which the bonds are issued.

(b) Approval by the attorney general or registration with the comptroller is not required for a bond issued under this section.

(c) An election is not required to issue bonds under this section.

Sec. 336.305. ELECTION REQUIRED FOR CERTAIN BONDS SECURED BY TAXES. Except for short-term bonds issued under Section 336.304, bonds payable wholly or partly from taxes may not be issued unless authorized by a majority of the votes received in an election held for that purpose.

Sec. 336.306. SECURITY PLEDGED. (a) To secure the payment of a district's bonds, the district may:

(1) pledge all or part of revenue realized from any tax that the district may impose;

(2) pledge all or part of revenue from library facilities; or

(3) mortgage all or part of the district's facilities, including any part of the facilities subsequently acquired.

(b) A district may, subject to the terms of the bond indenture or the resolution authorizing the issuance of the bonds, secure payment of district bonds by encumbering a separate item of the district facilities and may acquire, use, hold, or contract for the property by lease, chattel mortgage, or other conditional sale.

(c) This subchapter does not prohibit a district from encumbering one or more library facilities to purchase, construct, or improve one or more other district facilities.

Sec. 336.307. LIEN ON REVENUE. The expense of operation and maintenance of library facilities, including salaries, labor, materials, and repairs necessary to provide efficient service, and every other proper item of expense are a first lien and charge against the revenue of a district encumbered under this chapter.

Sec. 336.308. EXCHANGE OF BONDS FOR EXISTING LIBRARY FACILITIES. A district's revenue bonds may be exchanged, in lieu of cash, for the property of all or part of existing library facilities to be acquired by the district.

Sec. 336.309. GOVERNMENTAL ENTITIES NOT RESPONSIBLE FOR DISTRICT OBLIGATIONS. A governmental entity, other than the district, is not required to pay a bond or other district obligation.

[Sections 336.310-336.350 reserved for expansion]

SUBCHAPTER I. DISSOLUTION

Sec. 336.351. NO DISSOLUTION. A district created under this chapter may not be dissolved.

SECTION 3. 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 was read.

Senator Madla moved to concur in the House amendment to **SB 1205**.

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

SENATE BILL 1339 WITH HOUSE AMENDMENT

Senator Madla called **SB 1339** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1339** in SECTION 1 of the bill, as follows:

(1) In amended Subsection (a), Section 451.705, Transportation Code, strike "voters of a municipality" (page 1, line 9, House committee printing) and substitute "voters of another municipality".

(2) In amended Subsection (a), Section 451.705, Transportation Code, strike "the governing body of the municipality" (page 1, lines 11-12, House committee printing) and substitute "the governing body of the other municipality".

The amendment was read.

Senator Madla moved to concur in the House amendment to **SB 1339**.

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

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

May 26, 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 217, Congratulating Carol Rhodes on earning the 2005 Texas Crime Victim Clearinghouse Award.

HCR 219, Honoring Detective Deanna Tofte of the Wichita Falls Police Department on her receipt of the 2005 America's Most Wanted All Star Hero award.

HCR 221, Congratulating Jacksonville native and Longview resident Neal McCoy on winning the 2005 Humanitarian Award at the 40th Annual Academy of Country Music Awards and designating October 1, 2005, as Neal McCoy Day in Texas.

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

HB 1601 (non-record vote)

HB 1823 (non-record vote)

HB 2218 (non-record vote)

HB 2579 (non-record vote)

HB 2753 (non-record vote)

HB 2806 (non-record vote)

HB 2958 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 3434 (141 Yeas, 0 Nays, 2 Present, not voting)

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

HB 2129 (non-record vote)

House Conferees: Bonnen - Chair/Hamric/Geren/Ritter/West, George "Buddy"

HB 2421 (non-record vote)

House Conferees: Chavez - Chair/Cook, Byron/Morrison/Ritter/Seaman

HB 3540 (non-record vote)

House Conferees: Pitts - Chair/Berman/Isett/McClendon/Pena

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 2614 (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The Presiding Officer announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given Tuesday, May 24, 2005, by Senator Lindsay.

Senator Lindsay moved confirmation of the nominees reported Tuesday by the Committee on Nominations.

The Presiding Officer asked if there were requests to sever nominees.

Senator West requested the following nominees be severed:

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

The request was granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported Tuesday by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

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

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

NOMINEES CONFIRMED

The following severed nominees were confirmed by the following votes:

Member, Texas Residential Construction Commission: Lewis Brown, Montgomery County: Yeas 24, Nays 5.

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

Nays: Barrientos, Gallegos, Van de Putte, Wentworth, West.

Absent: Hinojosa, Ogden.

Member, Texas Residential Construction Commission: John R. Krugh, Harris County: Yeas 25, Nays 6.

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

Nays: Barrientos, Duncan, Shapleigh, Van de Putte, Wentworth, West.

Member, Texas Residential Construction Commission: Scott M. Porter, Kerr County: Yeas 30, Nays 1.

Nays: West.

CONFERENCE COMMITTEE ON SENATE BILL 419 DISCHARGED

On motion of Senator Nelson and by unanimous consent, the Senate conferees on **SB 419** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 419**?

On motion of Senator Nelson and by unanimous consent, the Senate concurred in the House amendments to **SB 419** by the following vote: Yeas 23, Nays 7.

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

Nays: Barrientos, Ellis, Gallegos, Shapleigh, Wentworth, Whitmire, Zaffirini.

Absent: Seliger.

Reason for Vote

Senator Zaffirini submitted the following reason for vote for **SB 419**:

I cast a "No" vote on the motion to discharge the conferees and to concur with House amendments to **SB 419**, the Sunset bill 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. I did so because this motion was in conflict with long-established rules for Sunset legislation that preclude adopting amendments that were not considered by the Sunset Commission.

ZAFFIRINI

CONFERENCE COMMITTEE REPORT ON SENATE BILL 122 ADOPTED

Senator Hinojosa called from the President's table the Conference Committee Report on **SB 122**. The Conference Committee Report was filed with the Senate on Friday, May 20, 2005.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 268

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 268** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 268** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Duncan, Ellis, Seliger, and Harris.

SENATE BILL 330 WITH HOUSE AMENDMENTS

Senator Deuell called **SB 330** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 330** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a stroke committee and the development of a statewide stroke emergency transport plan.

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

SECTION 1. Section 773.001, Health and Safety Code, is amended to read as follows:

Sec. 773.001. SHORT TITLE. This chapter may be cited as the Emergency Health Care ~~Medical Services~~ Act.

SECTION 2. Section 773.003, Health and Safety Code, is amended by amending Subdivision (7) to read as follows:

(7) "Department" means the ~~Texas~~ Department of State Health Services.

SECTION 3. Chapter 773, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. EMERGENCY STROKE SERVICES

Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Sec. 773.202. DEFINITIONS. In this subchapter:

(1) "Advisory council" means the advisory council established under Section 773.012.

(2) "Stroke committee" means the committee appointed under Section 773.203.

(3) "Stroke facility" means a health care facility that:

(A) is capable of primary or comprehensive treatment of stroke victims;

(B) is part of an emergency medical services and trauma system;

(C) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and

(D) records patient treatment and outcomes.

Sec. 773.203. STROKE COMMITTEE. (a) The advisory council shall appoint a stroke committee to assist the advisory council in the development of a statewide stroke emergency transport plan.

(b) The stroke committee must include the following members:

(1) a licensed physician appointed from a list of physicians eligible for accreditation from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;

(2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide organization of radiologists;

(3) a neurosurgeon with stroke expertise;

(4) a member of the Texas Council on Cardiovascular Disease and Stroke who has expertise in stroke care;

(5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;

(6) a neuroscience registered nurse with stroke expertise; and

(7) a volunteer member of a nonprofit organization specializing in stroke treatment, prevention, and education.

(c) Chapter 2110, Government Code, does not apply to the stroke committee.

Sec. 773.204. DUTIES OF STROKE COMMITTEE; DEVELOPMENT OF STROKE EMERGENCY TRANSPORT PLAN. (a) The advisory council, with the assistance of the stroke committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke, shall develop a statewide stroke emergency transport plan.

(b) The stroke emergency transport plan must include:

(1) training requirements on stroke recognition and treatment, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;

(3) protocols for rapid transport to a designated facility when rapid transport is appropriate; and

(4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport.

(c) In developing the stroke emergency transport plan, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as the Joint Commission on Accreditation of Healthcare Organizations.

SECTION 4. (a) Not later than January 1, 2006, the advisory council established under Section 773.012, Health and Safety Code, shall establish a stroke committee as required by Section 773.203, Health and Safety Code, as added by this Act.

(b) Not later than January 1, 2007, the advisory council established under Section 773.012, Health and Safety Code, shall develop a statewide stroke emergency transport plan as required by Section 773.204, Health and Safety Code, as added by this Act.

(c) Not later than January 1, 2007, the advisory council shall submit a report of the statewide stroke emergency transport plan to the governor, lieutenant governor, speaker of the house of representatives, and executive commissioner of the Health and Human Services Commission.

SECTION 5. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 330** (House committee printing) as follows:

(1) In SECTION 3 of the bill, in added Section 773.201, Health and Safety Code (page 1, lines 20-21) strike "to construct an emergency treatment system in" and substitute "that a statewide stroke emergency transport plan be developed for".

(2) In SECTION 3 of the bill, in added Section 773.202(3)(B), Health and Safety Code, (page 2, line 10) strike "trauma system" and substitute "trauma care system, as defined by Section 773.003".

(3) In SECTION 3 of the bill, in added Section 773.203(b)(1), Health and Safety Code (page 2, line 21) between "for accreditation" and "from" insert "in Vascular Neurology".

(4) In SECTION 3 of the bill, in added Section 773.204(b)(3), Health and Safety Code (page 3, lines 22-23) strike "designated facility when rapid transport is appropriate" and substitute "stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility".

(5) In SECTION 4 of the bill (page 4, lines 8-11) strike Subsection (b) of that SECTION and reletter the subsequent subsection.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 330** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Van de Putte, Lindsay, West, and Averitt.

CONFERENCE COMMITTEE ON HOUSE BILL 585

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 585** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 585** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Madla, Brimer, Deuell, and Whitmire.

CONFERENCE COMMITTEE ON HOUSE BILL 1225

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1225** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1225** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Armbrister, Seliger, Staples, and Madla.

SENATE BILL 1604 WITH HOUSE AMENDMENT

Senator Staples called **SB 1604** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1604** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the Neches and Trinity Valleys Groundwater Conservation District.

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

SECTION 1. Section 5, Chapter 1387, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (g) to read as follows:

(g) The district may not assess a fee of any type on a well if the well's production is used only for domestic, agricultural, or wildlife purposes within the district.

SECTION 2. Section 6, Chapter 1387, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsections (j) and (k) to read as follows:

(j) A director may be removed from office in the same manner as provided for the removal of a county officer by Subchapter B, Chapter 87, Local Government Code.

(k) The validity of an action of the board of directors is not affected by the fact that the action is taken when a ground for removal of a director exists.

SECTION 3. This Act takes effect September 1, 2005.

The amendment was read.

Senator Staples 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 1604** 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; Madla, Eltife, Seliger, and Brimer.

SENATE BILL 771 WITH HOUSE AMENDMENTS

Senator West called **SB 771** 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 771** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to tax increment financing.

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

SECTION 1. Subsection (a), Section 311.005, Tax Code, is amended to read as follows:

(a) To be designated as a reinvestment zone, an area must:

(1) substantially arrest or impair the sound growth of the municipality creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

(A) a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(B) the predominance of defective or inadequate sidewalk or street layout;

(C) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(D) unsanitary or unsafe conditions;

(E) the deterioration of site or other improvements;

(F) tax or special assessment delinquency exceeding the fair value of the land;

(G) defective or unusual conditions of title; ~~or~~

(H) conditions that endanger life or property by fire or other cause; or

(I) structures, other than single-family residential structures, that have been substantially vacant for at least five years;

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the municipality; ~~or~~

(3) be in a federally assisted new community located in the municipality or in an area immediately adjacent to a federally assisted new community; or

(5) be an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality by the owners of property constituting at least 50 percent of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

SECTION 2. Section 311.008, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) The implementation of a project plan to alleviate a condition described by Section 311.005(a)(1), (2), or (3) and to promote development or redevelopment of a reinvestment zone in accordance with this chapter serves a public purpose.

SECTION 3. Section 311.010, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) Chapter 252, Local Government Code, does not apply to a dedication, pledge, or other use of revenue in the tax increment fund for a reinvestment zone by the board of directors of the zone in carrying out its powers under Subsection (b).

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.

Floor Amendment No. 1

Amend **CSSB 771** (House committee printing) by inserting the following appropriately numbered section and renumbering the subsequent sections of the bill accordingly:

SECTION _____. Chapter 311, Tax Code, is amended by adding Section 311.0087 to read as follows:

Sec. 311.0087. RESTRICTION ON POWERS OF CERTAIN MUNICIPALITIES. (a) this section applies only to a proposed reinvestment zone:

(1) the designation of which is requested in a petition submitted under Section 311.005(a)(5) before July 31, 2004, to the governing body of a home rule municipality that:

(A) has a population of more than 1.1 million; and

(B) is located primarily in a county with a population of 1.5 million or less; and

(C) as created at least 20 reinvestment zones under this chapter; and

(2) that is the subject of a resolution of intent that was adopted before October 31, 2004 by the governing body of the municipality.

(b) If the municipality imposes a fee of more than \$25,000 for processing the petition, the municipality may not require a property owner who submitted the petition, as a condition of designating the reinvestment zone or approving a development agreement, interlocal agreement, or project plan for the proposed reinvestment zone:

(1) to waive any rights of the owner under Chapter 245, Local Government Code, or under any agreed order or settlement agreement to which the municipality is a party;

(2) to dedicate more than 20 percent of the owner's land in the area described in the petition as open-space land; or

(3) to use a nonconventional use pattern for a development to be located within the proposed reinvestment zone.

Floor Amendment No. 2

Amend **CSSB 771** (House committee printing) as follows:

(1) In the recital to SECTION 3 of the bill (page 2, line 26), strike "Subsection (g)" and substitute "Subsections (g), (h), and (i)".

(2) In SECTION 3 of the bill, immediately following proposed Section 311.010(g), Tax Code (page 3, between lines 3 and 4), insert the following:

(h) Subject to the approval of the governing body of the municipality that created the zone, the board of directors of a reinvestment zone, as necessary or convenient to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code.

(i) The board of directors of a reinvestment zone or a local government corporation administering a reinvestment zone may contract with the municipality that created the zone to allocate from the tax increment fund for the zone an amount equal to the tax increment produced by the municipality and paid into the tax increment fund for the zone to pay the incremental costs of providing municipal services incurred as a result of the creation of the zone or the development or redevelopment of the land in the zone, regardless of whether the costs of those services are identified in the project plan or reinvestment zone financing plan for the zone.

(3) Insert the following appropriately numbered section of the bill and renumber the subsequent sections of the bill accordingly:

SECTION __. Section 311.013, Tax Code, is amended by amending Subsection (b) and adding Subsections (l) and (m) to read as follows:

(b) Each taxing unit shall pay into the tax increment fund for the zone an amount equal to the tax increment produced by the unit, less the sum of:

(1) property taxes produced from the tax increments that are, by contract executed before the designation of the area as a reinvestment zone, required to be paid by the unit to another political subdivision; and

(2) for a taxing unit other than the municipality that created the zone, a portion, not to exceed 15 percent, of the tax increment produced by the unit as provided by the reinvestment zone financing plan or a larger portion as provided by Subsection (f).

(l) The governing body of a municipality that designates an area as a reinvestment zone may determine in the designating ordinance adopted under Section 311.003 or in the ordinance adopted under Section 311.011 approving the reinvestment zone financing plan for the zone the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. If a municipality does not determine the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, the municipality is required to pay into the fund for the zone the entire tax increment produced by the municipality, except as provided by Subsection (b)(1).

(m) The governing body of a municipality that is located in a county with a population of more than 1.4 million but less than 2.1 million or in a county with a population of 3.3 million or more by ordinance may reduce the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone. The municipality may not reduce under this subsection the portion of the tax increment produced by the municipality that the municipality is required to pay into the tax increment fund for the zone unless the municipality provides each county that has entered into an agreement with the municipality to pay all or a portion of the county's tax increment into the fund an opportunity to enter into an agreement with the municipality to reduce the portion of the tax increment produced by the county that the county is required to pay into the tax increment fund for the zone by the same proportion that the portion of the municipality's tax increment that the municipality is required to pay into the fund is reduced. The portion of the tax increment produced by a municipality that the municipality is required to pay into the tax increment fund for a reinvestment zone, as reduced by the ordinance adopted under this subsection, together with all other revenues required to be paid into the fund, must be sufficient to complete and pay for the estimated costs of projects listed in the reinvestment zone financing plan and pay any tax increment bonds or notes issued for the zone, and any other obligations of the zone.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 771** on third reading in SECTION 1 of the bill by striking proposed Section 311.005(a)(1)(I), Tax Code, and substituting the following:

(I) structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more;

Floor Amendment No. 2 on Third Reading

Amend Floor Amendment No. 1 by Menendez to **CSSB 771** on third reading as follows:

Sec. 311.0087(1)(C) by replacing the word as with the word has before the word created on line 16 page 1.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 771** on third reading in SECTION 1 of the bill, in Section 311.005(a)(2), Tax Code, by striking "be predominantly open and," and substituting "[~~be predominantly open and,~~]".

The amendments were read.

Senator West 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 771** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Brimer, Ellis, Gallegos, and Deuell.

SENATE BILL 982 WITH HOUSE AMENDMENTS

Senator Van de Putte called **SB 982** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 982** (House committee printing) as follows:

(1) Strike the recital to Section 1 of the bill (page 1, lines 5 and 6) and substitute the following:

Section 447.004, Government Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(2) In Section 1 of the bill, in amended Subsection (e), Section 447.004, Government Code (page 1, line 7), strike "or an institution of higher education" and substitute "[~~or an institution of higher education~~]".

(3) In Section 1 of the bill, immediately following amended Subsection (e), Section 447.004, Government Code (page 2, between lines 2 and 3), insert the following:

(f) An institution of higher education may not begin construction of a new state building or a major renovation project before the design architect or engineer for the construction or renovation has:

(1) certified to the institution of higher education that the construction or renovation complies with the standards established under this section; and

(2) provided to the state energy conservation office a copy of that certification.

Floor Amendment No. 2

Amend **SB 982** (House committee printing) as follows:

(1) In the recital to Section 4 of the bill (page 3, lines 11 and 12), strike "Subsections (b-1) and (b-2)" and substitute "Subsections (b-1), (b-2), (c-1), and (c-2)".

(2) In Section 4 of the bill, in amended Subsection (b), Section 2166.403, Government Code (page 3, line 13), strike "During" and substitute "Except as provided by Subsection (c-1), during [~~During~~]".

(3) In Section 4 of the bill, in amended Subsection (b), Section 2166.403, Government Code (page 3, lines 14 and 15), strike "or institution" and substitute "[~~or institution~~]".

(4) In Section 4 of the bill, immediately following amended Subsection (c), Section 2166.403, Government Code (page 4, between lines 21 and 22), insert the following:

(c-1) For a project constructed by and for a state institution of higher education, the governing body of the institution shall, during the planning phase of the proposed construction for the project, verify in an open meeting the economic feasibility of incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling functions, water heating functions, electrical load functions, and interior lighting functions. The governing body of the institution shall determine the economic feasibility of each function listed in this subsection by comparing the estimated cost of providing energy for the function, based on the use of conventional design practices and energy systems, with the estimated cost of providing energy for the function, based on the use of alternative energy devices, during the economic life of the building.

(c-2) If the use of alternative energy devices for a specific function is determined to be economically feasible under Subsection (c-1), the governing body shall include the use of alternative energy devices for that function in the construction plans for the project.

Floor Amendment No. 3

Amend **SB 982** (House committee printing) by adding the following appropriately numbered Sections to the bill and renumbering subsequent Sections as appropriate:

SECTION __. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.058 to read as follows:

Sec. 2165.058. VENDING MACHINES; ENERGY-SAVING DEVICE REQUIRED. (a) The commission shall require the use of an energy-saving device for each vending machine located in a building owned or leased by the state except a vending machine that contains a perishable food product, as defined by Section 96.001, Civil Practice and Remedies Code.

(b) Notwithstanding Subsection (a), the commission may not require the acquisition or installation of an energy-saving device for a vending machine that is owned or operated by an entity that owns or operates a total of 20 or fewer vending

machines. However, the commission shall require the entity to activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.

(c) An entity that owns or operates a vending machine subject to this section is responsible for any expenses associated with the acquisition, installation, or maintenance of an energy-saving device required by this section.

(d) The commission may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 a year for each machine found to be in violation of this section or related rules adopted by the commission.

(e) The commission shall adopt rules relating to the specifications for and regulation of energy-saving devices required by this section.

SECTION _____. (a) An entity that owns or operates a vending machine subject to Section 2165.058, Government Code, as added by this Act, is not required to comply with that section or a related rule of the Texas Building and Procurement Commission until September 1, 2006.

(b) Notwithstanding Section 2165.058(d), Government Code, as added by this Act, the Texas Building and Procurement Commission may impose a fine only in relation to a vending machine that is found to be operating in violation of Section 2165.058, Government Code, as added by this Act, or a related rule of the commission, on or after September 1, 2006.

The amendments were read.

Senator Van de Putte 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 982** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Ellis, Armbrister, Eltife, and Harris.

SENATE BILL 34 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 34** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 34** by adding the following SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 51.351(1), Education Code, is amended to read as follows:

(1) "General academic teaching institution," "governing board," "institution of higher education," "medical and dental unit," "public junior college," and "university system" have the meanings assigned by Section 61.003 ~~[of this code]~~.

SECTION _____. Subchapter G, Chapter 51, Education Code, is amended by adding Sections 51.355 and 51.356 to read as follows:

Sec. 51.355. NONVOTING STUDENT REGENT; UNIVERSITY SYSTEM BOARD OF REGENTS. (a) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution or medical and dental unit.

(b) The chancellor of each university system shall develop a uniform application form to be used by each general academic teaching institution and medical and dental unit in the university system to solicit applicants for the position of student regent.

(c) Except as provided by Subsection (f), not later than September 1 of each year, the student government of each general academic teaching institution and medical and dental unit in a university system shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant and the name of the institution or unit in which the applicant is enrolled removed, to the chancellor of the university system. From among those applicants, the chancellor shall select two or more applicants as the university system's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the position of student regent received by the student governments and may request to review information required to be removed from an application by a student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the system for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the chancellor.

(d) A student regent must be enrolled as an undergraduate or graduate student in a general academic teaching institution or medical and dental unit in the university system at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution or unit for a summer term if the person was enrolled in the institution or unit for the preceding semester and:

(1) is registered or preregistered at the institution or unit for the following fall semester;

(2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution or unit in the following fall semester;
or

(3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution or unit for the following fall semester.

(e) A student regent is not a member of the board of regents of the system for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the system, including the right to attend and participate in meetings of the board of regents, except that the student regent:

(1) may not vote on any matter before the board or make or second any motion before the board; and

(2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(f) The student government of the general academic teaching institution or medical and dental unit at which a current student regent was enrolled at the time of the student regent's appointment may not solicit applicants for the position of student regent for the next regular term of the position.

(g) A vacancy in the position of student regent for a university system shall be filled for the unexpired term by appointment by the governor in consultation with the chancellor of the system.

Sec. 51.356. NONVOTING STUDENT REGENT; INSTITUTION BOARD OF REGENTS. (a) This section applies only to a general academic teaching institution that is not a part of a university system.

(b) In this section, "student government" means the representative student organization directly elected by the student body of a general academic teaching institution.

(c) The president of a general academic teaching institution shall develop a uniform application form to be used to solicit applicants for the position of student regent.

(d) Not later than September 1 of each year, the student government of the general academic teaching institution shall solicit applicants for the position of student regent. Not later than November 1, from among the applications received by the student government, the student government shall select five applicants as the student government's recommendations for the position of student regent and send the applications of those applicants, with the name of each applicant removed, to the president of the institution. From among those applicants, the president shall select two or more applicants as the institution's recommendations for the position of student regent and shall send the applications of those applicants to the governor not later than December 1. The governor may request to review all applications for the position of student regent received by the student government and may request to review information required to be removed from an application by the student government under this subsection. On February 1, or as soon thereafter as practicable, the governor shall appoint one of the applicants to serve as the student regent for the institution for a one-year term expiring on the next February 1. The governor is not required to appoint an applicant recommended by the president.

(e) A student regent must be enrolled as an undergraduate or graduate student in the general academic teaching institution at the time of appointment and throughout the student regent's term. For purposes of this subsection, a person is considered to be enrolled in an institution for a summer term if the person was enrolled in the institution for the preceding semester and:

(1) is registered or preregistered at the institution for the following fall semester;

(2) if the person has not completed the person's degree program, is eligible to continue the degree program at the institution in the following fall semester; or

(3) if the person completed a degree program in the preceding semester, is admitted to another degree program at the institution for the following fall semester.

(f) A student regent is not a member of the board of regents of the institution for which the student regent is appointed. A student regent has the same powers and duties as the members of the board of regents of the institution, including the right to attend and participate in meetings of the board of regents, except that the student regent:

(1) may not vote on any matter before the board or make or second any motion before the board; and

(2) is not counted in determining whether a quorum exists for a meeting of the board or in determining the outcome of any vote of the board.

(g) A vacancy in the position of student regent for an institution shall be filled for the unexpired term by appointment by the governor in consultation with the president of the institution.

SECTION _____. The initial term of a student regent appointed for a state university system under Section 51.355, Education Code, as added by this Act, or for a state university under Section 51.356, Education Code, as added by this Act, expires February 1, 2007. The appropriate student governments, the chancellor of each state university system, the president of each state university that is not a part of a university system, and the governor shall take the actions required by Sections 51.355 and 51.356, Education Code, as added by this Act, as soon as practicable after this Act takes effect to select a student regent for each state university or state university system for that initial term.

Floor Amendment No. 2

Amend **SB 34** by adding the following new SECTIONS, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter M, Chapter 56, Education Code, is amended by adding Section 56.3012 to read as follows:

Sec. 56.3012. PILOT PROJECT TO PROVIDE INCENTIVES FOR ATTENDANCE AT UNDERUTILIZED PUBLIC INSTITUTIONS. (a) In addition to incentives described by Section 54.0065, the coordinating board shall establish a tuition grant incentive pilot project as provided by this section to encourage students to attend eligible public institutions of higher education that offer extensive baccalaureate degree program options and that have sufficient facilities, administrative infrastructure, and faculty to serve additional students in order to reduce the need for this state to construct additional facilities or hire additional faculty at other institutions of higher education.

(b) From money available under Section 56.310 for purposes of this subchapter and money available under Section 56.464 for purposes of Subchapter Q, the coordinating board shall set aside sufficient money to provide tuition grant incentives,

including TEXAS grants for the 2005-2006 and 2006-2007 academic years to students who are initially eligible for a grant under Section 56.304 or 56.3041 in either of those years as follows:

(1) for not more than 400 additional students in excess of the total of fall 2004 awards at Angelo State University; and

(2) for not more than 200 additional students in excess of the total of fall 2004 awards at Sul Ross State University.

(c) To the extent money set aside under Subsection (b) is available for the purpose, a person awarded a grant as provided by Subsection (b) who continues to be eligible for a grant under Section 56.305 may receive a grant from the money set aside. If money set aside under Subsection (b) is not available to pay for a grant for a person awarded a grant as provided by Subsection (b) who continues to be eligible for a grant under Section 56.305, the person may receive a grant from the money available under Section 56.310 on the same basis as other Texas grant applicants.

(d) The coordinating board shall reallocate for grants under this subchapter or for loans under Subchapter Q, as applicable, any money set aside for purposes of the TEXAS grant pilot project that is not used in the academic year for which the money is set aside. Money reallocated under this subsection may be used at any eligible institution under this subchapter or Subchapter Q.

(e) Except as otherwise specifically provided by this section, this subchapter applies to a TEXAS grant awarded under this section.

(f) The coordinating board shall develop criteria for evaluating the pilot project and, based on that evaluation, not later than January 1, 2007, shall report to the 80th Legislature the coordinating board's recommendations concerning whether to continue, expand to other underutilized eligible public institutions of higher education, or discontinue the pilot project.

SECTION __. The Texas Higher Education Coordinating Board shall adopt rules to administer Section 56.3012, Education Code, as added by this Act, as soon as practicable after the date this Act takes effect. For that purpose, the board may adopt the initial rules in the manner provided by law for adoption of emergency rules.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 34** 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; Shapiro, West, Seliger, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 283

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 283** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 283** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Van de Putte, Shapiro, Averitt, and Hinojosa.

SENATE BILL 743 WITH HOUSE AMENDMENTS

Senator Fraser called **SB 743** 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 743** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to independent organizations in ERCOT and their regulation and certification by the Public Utility Commission of Texas; providing an administrative penalty.

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

SECTION 1. Section 39.151, Utilities Code, is amended by amending Subsections (b), (c), (d), (e), (g), and (j) and adding Subsections (g-1), (g-2), and (n) to read as follows:

(b) "Independent organization" means an independent system operator or other person that is sufficiently independent of any producer or seller of electricity that its decisions will not be unduly influenced by any producer or seller. ~~[An entity will be deemed to be independent if it is governed by a board that has three representatives from each segment of the electric market, with the consumer segment being represented by one residential customer, one commercial customer, and one industrial retail customer.]~~

(c) The commission shall certify an independent organization or organizations to perform the functions prescribed by this section. The commission has complete authority to oversee, require the commission's approval of, and order modifications of any part of the finances, budget, or administration of an independent organization certified under this section.

(d) An independent organization certified by the commission for a power region shall establish and enforce procedures, consistent with this title and the commission's rules, relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants. The procedures shall be subject to commission oversight and review. An

independent organization certified by the commission is directly responsible and accountable to the commission. The organization shall fully cooperate with the commission in the commission's oversight and investigatory functions. The commission may decertify an organization that does not adequately perform the organization's functions or duties or does not comply with this section.

(e) The commission by rule shall require an independent organization certified under this section to provide the commission with sufficiently detailed information to allow the commission to review and approve or disapprove the independent organization's budget for cost efficiencies and for the reasonableness and necessity of budget items. The rules must include a timetable for an independent organization to file its budget for review under the rules. The commission's budget review must include a review of salaries, employee benefits, and the independent organization's use of debt financing. After determining the overall reasonableness and necessity of an independent organization's budget, the [The] commission, in the same proceeding, may authorize the [an] independent organization [that is certified under this section] to charge [a reasonable and competitively neutral rate] to wholesale buyers and sellers a reasonable and competitively neutral rate determined by the commission to allow [cover] the independent organization a reasonable opportunity to take in a reasonable and necessary amount of revenue, as determined by the commission in the budget review process. The independent organization may change the rate established by the commission in the budget review process only with the commission's approval. On the commission's own initiative or on receiving a complaint, the commission may inquire into the reasonableness of an independent organization's budget or rate [costs].

(g) To maintain certification as an independent organization under this section, an organization's [If it amends its governance rules to provide that its governing body is composed as prescribed by this subsection, the existing independent system operator in ERCOT will meet the criteria provided by Subsection (a) with respect to ensuring access to the transmission systems for all buyers and sellers of electricity in the ERCOT region and ensuring the reliability of the regional electrical network. To comply with this subsection, the] governing body must be composed of persons specified by this section and selected in accordance with formal bylaws or protocols of the organization. The process must allow for commission input in identifying candidates. The governing body must be composed of:

- (1) the chairman of the commission as an ex officio nonvoting member;
- (2) the counsellor as an ex officio voting member representing residential and small commercial consumer interests;
- (3) the chief executive officer [director] of the independent system operator as an ex officio voting member;
- (4) six market participants elected by their respective market segments to serve one-year terms, with:

- (A) one representing independent generators;
- (B) one representing investor-owned utilities;
- (C) one representing power marketers;
- (D) one representing retail electric providers;
- (E) one representing municipally owned utilities; and

(F) one representing electric cooperatives [four representatives of the power generation sector as voting members];

(5) one member representing industrial consumer interests and elected by the industrial consumer market segment to serve a one-year term [four representatives of the transmission and distribution sector as voting members];

(6) one member representing large commercial consumer interests selected by the outgoing large commercial consumer representative to serve a one-year term [four representatives of the power sales sector as voting members]; and

(7) five members unaffiliated with any market segment and selected by the other members of the governing body to serve three-year terms [the following people as voting members, appointed by the commission:

[(A) one representative of residential customers;

[(B) one representative of commercial customers; and

[(C) one representative of industrial customers].

[The four representatives specified in each of Subdivisions (4), (5), and (6) shall be selected in a manner that ensures equitable representation for the various sectors of industry participants.]

(g-1) The presiding officer of the governing body must be one of the members described by Subsection (g)(7).

(g-2) The governing body and its members are subject to Chapter 551, Government Code, in the same manner as that chapter applies to a governmental body and the members of a governmental body, except that the requirements pertaining to executive sessions of the governing body, to advance notice of meetings and planned agendas of the meetings, and the opportunity to comment on matters under discussion at the meetings contained in the independent organization's bylaws apply in lieu of conflicting requirements of that chapter.

(j) A retail electric provider, municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company, or any other person who participates in a market operated by the independent system operator in ERCOT, shall observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT. A violation by any person of [Failure to comply with] this subsection may result in the revocation, suspension, or amendment of that person's [a] certificate or registration as provided by Section 39.356 or in the imposition against that person of an administrative penalty [as provided by Section 39.357]. The commission may require the refunding or disgorgement of unjust profits that accrue as a result of a violation of this subsection.

(n) Subsections (a), (b), (f), (k), (l), and (m) apply to an independent organization established to serve areas located outside of the ERCOT power region. Subsections (c), (d), (e), (g), (h), (i), and (j) do not apply to an independent organization established to serve areas located outside of the ERCOT power region. The commission, however, may certify an independent organization or organizations outside of ERCOT to perform the functions described by Subsection (a).

SECTION 2. Subchapter D, Chapter 39, Utilities Code, is amended by adding Sections 39.1511, 39.1512, and 39.1515 to read as follows:

Sec. 39.1511. PUBLIC MEETINGS OF GOVERNING BODY OF INDEPENDENT ORGANIZATION. (a) The bylaws of the independent organization and the rules of the commission shall provide for the governing body or subcommittee to enter into executive session closed to the public to address sensitive matters such as confidential personnel information, contracts, lawsuits, competitively sensitive information, customer proprietary information, or other information that by law is privileged or confidential or that is related to security of the regional electrical network.

(b) The bylaws of the independent organization and rules of the commission must ensure that a person interested in the activities of the independent organization has an opportunity to obtain at least seven days' advance notice of meetings of the governing body and the planned agendas of the meetings and an opportunity to comment on matters under discussion at the meetings.

(c) In an emergency or if there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with Subsection (b) is sufficient if the notice is posted for at least two hours before the meeting is convened and if the notice or supplemental notice clearly identifies the emergency or urgent public necessity. An emergency or an urgent public necessity is considered to exist only if immediate action is required of the governing body because of an imminent threat to public health and safety or a reasonably unforeseeable situation.

(d) This section does not apply to an independent organization established to serve areas located outside of ERCOT.

Sec. 39.1512. DISCLOSURE OF INTEREST IN MATTER BEFORE INDEPENDENT ORGANIZATION'S GOVERNING BODY; PARTICIPATION IN DECISION. (a) If a matter comes before the governing body of an independent organization certified under Section 39.151 and a member or a person that member represents has a direct interest in that matter, the member shall publicly disclose the fact of that interest to the governing body at a public meeting of the body. The member shall recuse himself or herself from the governing body's deliberations and actions on the matter and may not vote on the matter or otherwise participate in a governing body decision on the matter.

(b) A disclosure made under Subsection (a) shall be entered in the minutes of the meeting at which the disclosure is made.

(c) The fact that a member is recused from a vote or decision by application of this section does not affect the existence of a quorum.

(d) This section does not apply to an independent organization established to serve areas located outside ERCOT.

Sec. 39.1515. WHOLESALE ELECTRIC MARKET MONITOR. (a) An independent organization certified under Section 39.151 shall contract with a private person selected by the commission to act as the wholesale electric market monitor and to detect and prevent market power abuses, potential market power abuses, and other violations of this subchapter.

(b) The independent organization shall provide to the personnel of the market monitor:

- (1) full access to the organization's main operations center; and

(2) other support and cooperation necessary for the market monitor to perform the market monitor's functions.

(c) The independent organization shall use money from the rate authorized by Section 39.151(e) to pay for the market monitor's activities.

(d) The commission is responsible for ensuring that the market monitor has the resources, expertise, and access to information necessary to monitor effectively the wholesale electric market administered by the independent organization and shall adopt rules and perform oversight of the market monitor as necessary. The market monitor shall operate under the supervision and oversight of the commission. The commission shall retain all enforcement authority conferred under this title and this section may not be construed to confer enforcement authority on the market monitor or to authorize the commission to delegate the commission's enforcement authority to the market monitor. The commission by rule shall define:

(1) the market monitor's monitoring responsibilities;

(2) the standards for funding the market monitor, including staffing requirements;

(3) qualifications for personnel of the market monitor;

(4) ethical standards for the market monitor and the personnel of the market monitor;

(5) procedures and standards for communications between the market monitor and both the commission and the independent organization;

(6) the nature and timing of reports the commission determines the market monitor shall provide to the commission, market participants, and the independent organization; and

(7) procedures for the market monitor to observe in complying with Subsection (i).

(e) In adopting rules governing the standards for funding the market monitor, the commission shall consult with a subcommittee of the independent organization's governing body to receive information on how money is or should be spent for monitoring functions. Rules governing ethical standards must include provisions designed to ensure that the personnel of the market monitor are professionally and financially independent from market participants and consumer market segments described by Section 39.151(g). The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the operational responsibilities of the market monitor.

(f) The market monitor immediately shall confidentially report directly to the commission and to a market participant that is the subject of the report any potential market power abuses and any discovered or potential violations of commission rules or rules of the independent organization that involve markets administered by the independent organization.

(g) The personnel of the market monitor may communicate with any person, including the commission, in accordance with commission rules and with independent organization procedures.

(h) The market monitor annually shall submit to the commission and the independent organization a report that identifies market design flaws and recommends methods to correct the flaws. The commission and the independent organization shall

review the report and evaluate whether changes to rules of the commission or the independent organization should be made. The report shall be made available to the public.

(i) The market monitor shall comply with this title, commission rules and orders, and bylaws of the independent organization. The market monitor shall perform the monitor's functions in a manner that ensures the confidentiality of information that is customer proprietary information, competitively sensitive, or otherwise confidential or privileged under this title, commission rules or orders, procedures or bylaws of the independent organization, or other law.

(j) This section does not apply to an independent organization established to serve areas located outside of ERCOT.

SECTION 3. An independent organization certified by the Public Utility Commission of Texas before September 1, 2005, shall modify the organization's governing body to comply with Section 39.151(g), Utilities Code, as amended by this Act, not later than January 1, 2006. On or after January 1, 2006, the Public Utility Commission of Texas may decertify an independent organization whose governing body does not comply with Section 39.151(g), Utilities Code, as amended by this Act.

SECTION 4. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 743** (House committee printing) by adding the following sections, numbered appropriately, and renumbering the sections of the bill accordingly:

SECTION __. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION __. Subsection (e), Section 39.203, Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1) - (3) and (4)(E). Notwithstanding any other law,

including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION __. Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (g) - (n) to read as follows:

(a) It is the intent of the legislature that by January 1, 2015 [2009], an additional 5,000 [2,000] megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 5,880 [1,280] megawatts by January 1, 2015. The cumulative installed renewable capacity in this state shall total 2,280 megawatts by January 1, 2007, 3,272 megawatts by January 1, 2009, 4,264 megawatts by January 1, 2011, 5,256 megawatts by January 1, 2013, and 5,880 megawatts by January 1, 2015 [2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009].

(a-1) The commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The commission shall also establish a target of 500 megawatts of generating capacity from non-wind renewable technologies or emerging ultra-clean distributed generation technologies including generation from industrial waste heat and fuel cells, installed in this state after September 1, 2005. Non-renewable ultra-clean distributed generation projects as defined in this section, shall not exceed 200 megawatts of the 500 megawatt target and individual projects shall not exceed 10 megawatts capacity.

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones; and

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold in this state are counted toward the goal in Subsection (a).

(n) Notwithstanding any other provision of law, the commission may cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if that suspension is necessary to protect the reliability and operation of the grid.

SECTION __. (a) The Public Utility Commission of Texas, in cooperation with the appropriate independent organizations certified under Section 39.151, Utilities Code, electric reliability councils, and regional transmission organizations, shall study cost-effective options for meeting this state's long-term transmission system needs to accommodate renewable energy requirements and targets under section 39.904, Utilities Code, as amended by this Act, and any additional electric generation capacity or other infrastructure necessary to meet the state's projected growth in demand for electric energy for the period ending January 1, 2005. This study is not intended to delay commission action in meeting near-term renewable energy needs of the state.

(b) The commission shall present to the legislature not later than December 31, 2006, a report of the results of the study and detailed recommendations regarding the most cost-effective measures to meet reliably this state's electricity requirements. The report may be included in the report required by Section 39.904(j) or (k), Utilities Code, as added by this Act.

Floor Amendment No. 2

Amend **CSSB 743** by adding the following appropriately numbered SECTIONS to read as follows:

SECTION __. Section 36.053, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) If the commission issues a certificate of convenience and necessity or, acting under Section 39.203(e), orders an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities to facilitate meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a), the commission shall find that the facilities are used and useful to the utility in providing service for purposes of this section and are prudent and includable in the rate base, regardless of the extent of the utility's actual use of the facilities.

SECTION ____ . Section 39.203(e), Utilities Code, is amended to read as follows:

(e) The commission may require an electric utility or a transmission and distribution utility to construct or enlarge facilities to ensure safe and reliable service for the state's electric markets and to reduce transmission constraints within ERCOT in a cost-effective manner where the constraints are such that they are not being resolved through Chapter 37 or the ERCOT transmission planning process. The commission shall require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under Section 39.904(a). In any proceeding brought under Chapter 37, an electric utility or transmission and distribution utility ordered to construct or enlarge facilities under this subchapter need not prove that the construction ordered is necessary for the service, accommodation, convenience, or safety of the public and need not address the factors listed in Sections 37.056(c)(1) - (3) and (4)(E). Notwithstanding any other law, including Section 37.057, in any proceeding brought under Chapter 37 by an electric utility or a transmission and distribution utility related to an application for a certificate of public convenience and necessity to construct or enlarge transmission or transmission-related facilities under this subsection, the commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.

SECTION ____ . Section 39.904, Utilities Code, is amended by amending Subsection (a) and adding Subsections (g) - (m) to read as follows:

(a) It is the intent of the legislature that by January 1, 2017 ~~[2009]~~, an additional 7,000 ~~[2,000]~~ megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 7,880 ~~[4,280]~~ megawatts by January 1, 2017, and the commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The cumulative installed renewable capacity in this state shall total 3,113 megawatts by January 1, 2007, 3,946 megawatts by January 1, 2009, 4,779 megawatts by January 1, 2011, 5,612 megawatts by January 1, 2013, 6,445 megawatts by January 1, 2015, and 7,880 megawatts by January 1, 2017. Of the renewable energy technology generating capacity installed to meet the goal of this subsection after September 1, 2005, the commission shall establish a target of having at least 500 megawatts of that capacity from a renewable energy technology other than a source using wind energy ~~[2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009]~~.

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones;

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of public convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with the comptroller, the Texas Commission on Environmental Quality, the State Energy Conservation Office, the Office of Rural Community Affairs, and each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects;

(4) an assessment of the net impact of renewable energy generation on statewide fuel use, fuel cost savings, and wholesale energy costs;

(5) an evaluation of the impact that historical and additional renewable generation has on air quality, water resources, environmental impact mitigation costs, and how renewable energy use by electric customers may qualify for any credits stemming from emission reductions; and

(6) an assessment of the economic development and tax revenue impacts of historical and additional renewable energy generation.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission may cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if that suspension is necessary to protect the reliability and operation of the grid.

Floor Amendment No. 3

Amend **CSSB 743** (House committee printing) by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. (a) The Public Utility Commission of Texas, as part of the commission's continuing analysis of reserve margins and capacity needs for the ERCOT system, shall consider creating and may establish a new alternative market mechanism to allow a potential interruptible industrial load that is greater than one megawatt and that is not participating in the ERCOT market as a load acting as a resource to provide the benefits of interruptible load to the system and to be compensated for that service.

(b) The legislature finds that businesses in this state that are able to participate in an alternative interruptible service compete in interstate and global markets and that the opportunity for the businesses to be compensated for their interruptible loads is essential to the businesses' ability to remain competitive and to provide significant benefits to the economy of this state. The Public Utility Commission of Texas shall consider these economic benefits in analyzing the potential of interruptible service.

(c) Not later than January 1, 2006, the Public Utility Commission of Texas shall report any actions taken regarding interruptible service and the results of its analysis of interruptible service to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative committee with jurisdiction over electric services.

Floor Amendment No. 4

Amend **CSSB 743** by inserting the following appropriately numbered new SECTION in the bill and renumbering the subsequent SECTIONS accordingly:

"SECTION _____. Before implementing a new wholesale transmission and distribution market design, the Public Utility Commission of Texas shall provide to the Senate Committee on business and Commerce and the House Committee on Regulated Industries a report that contains:

(1) an executive summary and detailed description of the changes in the wholesale transmission and distribution market that the commission has ordered, including the effect the new market design is anticipated to have on local congestions costs;

(2) a list of entities, associations and groups that have submitted comments to the commission on the new market design, classified by whether the comments indicated support for or opposition to the new market design;

(3) a comparison of the new market design to any similar market design adopted in any other state;

(4) a time line for the implementation of the new market design, including estimated costs of implementation;

(5) the estimated increases in wholesale and retail electricity prices that will be caused in each county in this state by the new market design, projected over the first five years after the date the new design will be implemented; and

(6) the names, business addresses, and the telephone number of the Texas Nodal Team and any other quasi-official working group that recommends to the commission the adoption of the new market design."

Amendment No. 5

Amend Floor Amendment No. 4 by Flores to **CSSB 743** by adding the following section, appropriately numbered:

SECTION _____. (a) It is the policy of this state to ensure that all electric customers in ERCOT, including low-income customers and customers in rural and other high-cost areas, have access to electric energy service at reasonable rates.

(b) The Public Utility Commission of Texas shall conduct a study to determine methods or mechanisms to ensure that residential customers who are currently being served by an affiliated retail electric provider at the "price-to-beat" rate will continue to have default electric service available at reasonable rates. On September 1, 2005, the commission shall begin the review required by this subsection. The review must include the methods other competitive regions, including Ohio, Maine, Maryland, Massachusetts, and New Jersey, use to provide default services to residential customer classes at reasonable rates.

(c) The study required by Subsection (b) of this section must

(1) evaluate:

(A) extending or modifying the "price-to-beat;"

(B) local governmental aggregation, including municipal "opt-out" mechanisms; and

(C) competitive procurement load auctions; and

(2) compare, regarding various mechanisms or methods considered:

(A) resulting prices for service at wholesale;

(B) resulting prices for service at retail;

(C) key features of each mechanism or method and key differences between the mechanisms or methods;

(D) the level of wholesale supplier competition under each mechanism or method, measured by factors such as:

(i) numbers of participants;

(ii) volumes bid; or

(iii) other relevant factors; and

(E) any other factors or variables the commission considers necessary to arrive at a conclusion and to make recommendations under this section.

(d) The Public Utility Commission of Texas shall conclude the study under this section not later than February 1, 2006, and shall determine at that time a mechanism by which residential customers served by an affiliated retail electric provider will be able to receive the lowest cost default electric service on and after January 1, 2007.

(e) The Public Utility Commission of Texas shall present a report of the study and the recommendations made as a result of the study to the joint electric utility restructuring legislative oversight committee on or before March 1, 2006.

(f) The joint electric utility restructuring legislative oversight committee shall hold hearings on the study and recommendations in each region of the state served by an affiliated retail electric provider and following the hearings shall make recommendations to the 80th Legislature on the best means to provide residential customers default electric service at the lowest cost.

Floor Amendment No. 6

Amend **CSSB 743** by adding the following appropriately numbered section:

SECTION _____. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.1519 to read as follows:

Sec. 39.1519. ERCOT ACCOUNTABILITY TASK FORCE. (a) The ERCOT accountability task force consists of:

(1) a former commissioner of the commission who resides in this state, or a current or former chairman of the Federal Energy Regulatory Commission who resides in this state, appointed by the governor, who serves as the presiding officer of the task force;

(2) the comptroller;

(3) a representative of the attorney general, if the attorney general chooses to designate a representative; and

(4) representatives of:

(A) the comptroller's office;

(B) the Department of Public Safety of the State of Texas;

(C) the commission;

(D) the office; and

(E) the office of the state auditor.

(b) The task force shall oversee the implementation of best management practices for the independent organization certified under Section 39.151 for ERCOT. The task force may contract with independent fraud investigators or other experts as the task force determines is appropriate. ERCOT shall pay the costs of task force contractors under this subsection.

(c) The task force shall present a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with jurisdiction over electric services not later than January 1, 2007.

(d) This section expires September 1, 2007.

Floor Amendment No. 7

Amend **CSSB 743** as follows:

(1) In the introductory language to Section 1 of the bill (House committee printing, page 1, line 8), strike "and (n)" and substitute "(n), (o), and (p)".

(2) In Section 1 of the bill, following proposed Subsection (n), Section 39.151, Utilities Code (House committee printing, page 6, between lines 11 and 12), insert:

(o) An independent organization certified under this section is subject to Chapter 552, Government Code, as if it were a governmental body under that chapter.

(p) Information is excepted from the requirements of Section 552.021, Government Code, if the information is collected, assembled, or maintained by or for the independent organization:

(1) as part of the duty of the organization to support wholesale and retail electric markets and the information is competitively sensitive information of a third party that provides electric service within the transmission system managed by the independent organization that if disclosed, would give advantage to competitors or prospective competitors of the third party;

(2) for the purpose of maintaining the reliability of an electric transmission system that if disclosed, could provide information about security measures of the independent organization or information about the transmission system or a related control or communication system that could aid acts of terrorism or other criminal activity against the independent organization or the electric transmission system; or

(3) in relation to the development or construction of a system used by the independent organization to maintain the security and reliability of the transmission grid or in support of market systems or processes of the independent organization.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 743** on third reading by striking the section of the bill amending Section 39.904, Utilities Code, as added on second reading by Floor Amendment No. 1 by Hunter and by Floor Amendment No. 2 by Swinford and substituting:

SECTION _____. Section 39.904, Utilities Code, is amended by amending Subsections (a) and (d) and adding Subsections (a-1) and (g) - (o) to read as follows:

(a) It is the intent of the legislature that by January 1, 2017 ~~[2009]~~, an additional 7,000 ~~[2,000]~~ megawatts of generating capacity from renewable energy technologies will have been installed in this state. The cumulative installed renewable capacity in this state shall total 7,880 ~~[4,280]~~ megawatts by January 1, 2017. The cumulative installed renewable capacity in this state shall total 3,113 megawatts by January 1, 2007, 3,946 megawatts by January 1, 2009, 4,779 megawatts by January 1, 2011, 5,612 megawatts by January 1, 2013, 6,445 megawatts by January 1, 2015, and 7,880 megawatts by January 1, 2017 ~~[2003, 1,730 megawatts by January 1, 2005, 2,280 megawatts by January 1, 2007, and 2,880 megawatts by January 1, 2009]~~.

(a-1) The commission shall establish a target of 10,000 megawatts of installed renewable capacity by January 1, 2025. The commission shall also establish a target of 500 megawatts of generating capacity from non-wind renewable technologies or emerging ultra-clean distributed generation technologies including generation from industrial waste heat and fuel cells, installed in this state after September 1, 2005. Non-renewable ultra-clean distributed generation projects as defined in this section, shall not exceed 200 megawatts of the 500 megawatt target and individual projects shall not exceed 10 megawatts capacity.

(d) In this section, "renewable energy technology" means any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, ~~[or]~~ on biomass or biomass-based

waste products, including landfill gas, or on gasification of municipal solid waste. In this subsection, "municipal solid waste" means nondurable goods, containers, packaging, food wastes, yard trimmings, and miscellaneous organic wastes from residential, commercial, and industrial nonprocess sources. A renewable energy technology, other the gasification of municipal solid waste, does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(g) The commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones; and

(3) shall consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether to designate an area as a competitive renewable energy zone and whether to grant a certificate of convenience and necessity.

(h) In considering an application for a certificate of convenience and necessity for a transmission project intended to serve a competitive renewable energy zone, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).

(i) Transmission service to a competitive renewable energy zone must be provided in a manner consistent with Subchapter A, Chapter 35.

(j) The commission, after consultation with the comptroller, the Texas Commission on Environmental Quality, the State Energy Conservation Office, the Office of Rural Community Affairs, and each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31 of each even-numbered year. The report must include:

(1) an evaluation of the commission's implementation of competitive renewable energy zones;

(2) the estimated cost of transmission service improvements needed for each competitive renewable energy zone;

(3) an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects;

(4) an assessment of the net impact of renewable energy generation on statewide fuel use, fuel cost savings, and wholesale energy costs; and

(5) an assessment of the economic development and tax revenue impacts of historical and additional renewable energy generation.

(k) The commission and the independent organization certified for ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for

legislation. The report must be filed with the legislature not later than December 31 of each even-numbered year and may be filed as a part of the report required by Subsection (j).

(l) The commission may adopt rules requiring renewable power facilities to have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

(m) Notwithstanding any other provision of law, the commission shall ensure that all renewable capacity installed in this state and all renewable energy credits awarded, produced, procured, or sold in this state are counted toward the goal in Subsection (a).

(n) Notwithstanding any other provision of law, the commission may cap the price of renewable energy credits and may suspend the goal contained in Subsection (a) if that suspension is necessary to protect the reliability and operation of the grid.

(o) The commission, after consultation with the comptroller, the Texas Commission on Environmental Quality, the State Energy Conservation Office, the Office of Rural Community Affairs, and with each appropriate independent organization, electric reliability council, or regional transmission organization, shall file a report with the legislature not later than December 31, 2006, detailing the costs and benefits of additional renewable energy use in this state. The report must include the projected net effects throughout this state on fuel costs, transmission costs, wholesale energy costs, environmental impacts, tax revenues, and economic development of achieving renewable energy use of up to 10 percent of electric energy consumption in this state on or before January 1, 2020.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 743** on third reading by inserting the following appropriately numbered new SECTION in the bill and renumbering the subsequent SECTIONS accordingly:

"SECTION . Before implementing a new wholesale transmission and distribution market design, the Public Utility Commission of Texas shall provide to the Senate Committee on business and Commerce and the House Committee on Regulated Industries a report that contains:

(1) an executive summary and detailed description of the changes in the wholesale transmission and distribution market that the commission has ordered, including the effect the new market design is anticipated to have on local congestions costs:

(2) a list of entities, associations and groups that have submitted comments to the commission on the new market design, classified by whether the comments indicated support for or opposition to the new market design:

(3) a comparison of the new market design to any similar market design adopted in any other state:

(4) a time line for the implementation of the new market design, including estimated costs of implementation:

(5) the estimated increases in wholesale and retail electricity prices that will be caused in each county in this state by the new market design, projected over the first five years after the date the new design will be implemented; and

(6) the names, business addresses, and the telephone number of the Texas Nodal Team and any other quasi-official working group that recommends to the commission the adoption of the new market design."

Floor Amendment No. 5 on Third Reading

Amend **CSSB 743** on third reading by adding the following new appropriately numbered SECTION and renumbering the remaining SECTIONS:

SECTION _____. Subsection (c), Section 39.051, Utilities Code, is amended as follows:

(c) An electric utility may accomplish the separation required by Subsection (b) either through the creation of separate nonaffiliated companies or separate affiliated companies owned by a common holding company or through the sale of assets to a third party. An electric utility may create separate transmission and distribution utilities. Notwithstanding any other provision of this Chapter, an electric utility that does not have stranded costs described by Section 39.254 and that on September 1, 2005 has not finalized unbundling pursuant to a commission order approving an unbundling plan may also meet the requirements of Subsection (b) for generation facilities existing on September 1, 2005 in the Electric Reliability Council of Texas if it meets and maintains compliance with the following requirements:

(1) the electric utility has no more than 400 megawatts of Texas jurisdictional capacity from generating units within the Electric Reliability Council of Texas that have not been mothballed or retired;

(2) the electric utility has a contract or contracts with separate nonaffiliated companies or separate affiliated companies for the sale of all of the output from its generating units that have not been mothballed or retired with a contract term that is no shorter than twenty years or the life of the generating units, whichever is shorter; and

(3) the electric utility has a separate division within the electric utility for its generation business activities.

(c-1) A separate division described by Subsection (c)(3) is subject to subsection (d) and, for the purposes of this Chapter, is considered a separate affiliated power generation company and a competitive affiliate.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 743** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Estes, Averitt, Janek, and West.

SENATE BILL 1863 WITH HOUSE AMENDMENTS

Senator Ogden called **SB 1863** 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 1863** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to certain fiscal matters affecting governmental entities.

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

ARTICLE 1. REGISTRATION FEE FOR CERTAIN LOBBYISTS

SECTION 1.01. Subsection (c), Section 305.005, Government Code, is amended to read as follows:

(c) The registration fee and registration renewal fee are:

(1) \$100 for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986; or

(2) ~~\$1,000~~ ~~[\$300]~~ for any other registrant.

SECTION 1.02. This article takes effect December 1, 2005.

**ARTICLE 2. FEES FOR CERTAIN INSPECTIONS CONDUCTED
BY THE COMMISSION ON JAIL STANDARDS**

SECTION 2.01. Section 511.0091, Government Code, is amended by adding Subsection (c-1) and amending Subsection (d) to read as follows:

(c-1) In addition to the other fees authorized by this section, the commission may set and collect a reasonable fee to cover the cost of performing any reinspection of a municipal or county jail that is conducted by the commission:

(1) following a determination by the commission that the jail is not in compliance with minimum standards;

(2) in response to a request by the operator of the jail; and

(3) before the operator of the jail has taken actions as necessary to ensure that the jail is in compliance with minimum standards.

(d) All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404. Fees collected under Subsection (c-1) shall be deposited to the credit of a special account in the general revenue fund to be appropriated only to pay costs incurred by the commission in performing services under this section.

SECTION 2.02. This article takes effect September 1, 2005.

ARTICLE 3. CERTAIN AUDITS OF STATE AGENCY EXPENDITURES

SECTION 3.01. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2115 to read as follows:

**CHAPTER 2115. RECOVERY OF CERTAIN
STATE AGENCY OVERPAYMENTS**

Sec. 2115.001. DEFINITIONS. In this chapter:

(1) "Overpayment" includes a duplicate payment made to a vendor for a single invoice and a payment made to a vendor:

(A) when an available discount from the vendor was not applied;

(B) for a late payment penalty that was improperly applied by the vendor;

(C) for shipping costs that were computed incorrectly or incorrectly included in an invoice;

(D) for state sales tax; or

(E) for a good or service the vendor did not provide.

(2) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education other than a public junior college, that:

(A) is in the executive branch of state government;

(B) is created by statute; and

(C) does not have statutory geographical boundaries limited to a part of the state.

Sec. 2115.002. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN OVERPAYMENTS. (a) The comptroller shall contract with one or more consultants to conduct recovery audits of payments made by state agencies to vendors. The audits must be designed to detect and recover overpayments to the vendors and to recommend improved state agency accounting operations.

(b) A contract under this section:

(1) may provide for reasonable compensation for services provided under the contract, including compensation determined by the application of a specified percentage of the total amount recovered because of the consultant's audit activities or recommendations as a fee for services;

(2) may permit or require the consultant to pursue a judicial action in a court inside or outside this state to recover an overpaid amount; and

(3) to allow time for the performance of existing state payment auditing procedures, may not allow a recovery audit of a payment during the 180-day period after the date the payment was made.

(c) The comptroller or a state agency whose payments are being audited may provide a person acting under a contract authorized by this section with any confidential information in the custody of the comptroller or state agency that is necessary for the performance of the audit or the recovery of an overpayment, to the extent the comptroller and state agency are not prohibited from sharing the information under an agreement with another state or the federal government. A person acting under a contract authorized by this section, and each employee or agent of the person, is subject to all prohibitions against the disclosure of confidential information obtained from the state in connection with the contract that apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency. A person acting under a contract authorized by this section or an employee or agent of the person who discloses confidential information in violation of a prohibition made applicable to the person under this subsection is subject to the same sanctions and penalties that would apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency for that disclosure.

Sec. 2115.003. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS. (a) The comptroller shall require that recovery audits be performed on the payments to vendors made by each state agency that has total expenditures during a state fiscal biennium in an amount that exceeds \$100 million. Each state agency described by this subsection shall provide the recovery audit consultant with all information necessary for the audit.

(b) The comptroller may exempt from the mandatory recovery audit process a state agency that has a low proportion of its expenditures made to vendors, according to criteria the comptroller adopts by rule after consideration of the likely costs and benefits of performing recovery audits for agencies that make relatively few or small payments to vendors.

Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) A state agency shall pay, from recovered money appropriated for the purpose, the recovery audit consultant responsible for obtaining for the agency a reimbursement from a vendor.

(b) A state agency shall expend or return to the federal government any federal money that is recovered through a recovery audit conducted under this chapter. The state agency shall expend or return the federal money in accordance with the rules of the federal program through which the agency received the federal money.

Sec. 2115.005. FORWARDING REPORTS. (a) The comptroller shall provide copies, including electronic form copies, of any reports received from a consultant contracting under Section 2115.002 to:

- (1) the governor;
- (2) the state auditor's office; and
- (3) the Legislative Budget Board.

(b) The comptroller shall provide the copies required by Subsection (a) not later than the seventh day after the date the comptroller receives the consultant's report.

(c) Not later than January 1 of each odd-numbered year, the comptroller shall issue a report to the legislature summarizing the contents of all reports received under this chapter during the state fiscal biennium ending August 31 of the previous year.

SECTION 3.02. The comptroller of public accounts shall adopt rules under Chapter 2115, Government Code, as added by this article, in a timely manner so that the comptroller may begin contracting with a consultant under that chapter not later than January 1, 2006.

ARTICLE 4. COLLECTION OF MOTOR FUELS TAXES

SECTION 4.01. Subdivisions (20) and (43), Section 162.001, Tax Code, are amended to read as follows:

(20) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and who makes sales at wholesale and whose activities may also include sales at retail. The term includes a person engaged in the tax-free sale of dyed diesel fuel to marine vessels.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, or gasoline blended fuel for hire outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

SECTION 4.02. Subsection (b), Section 162.004, Tax Code, is amended to read as follows:

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the comptroller:

- (1) the terminal control number of the terminal or physical address of the bulk plant from which the motor fuel was received;
- (2) the name ~~and license number~~ of the purchaser;
- (3) the date the motor fuel was loaded;
- (4) the net gallons loaded, or the gross gallons loaded if the fuel was purchased from a bulk plant;
- (5) the destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent; and
- (6) a description of the product being transported.

SECTION 4.03. Subsection (a), Section 162.016, Tax Code, is amended to read as follows:

(a) A person may not import motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. The shipping document must include:

- (1) the name and physical address of the terminal or bulk plant from which the motor fuel was received for import or export;
- (2) the name ~~[and federal employer identification number, or the social security number if the employer identification number is not available,]~~ of the carrier transporting the motor fuel;
- (3) the date the motor fuel was loaded;
- (4) the type of motor fuel;
- (5) the number of gallons:

(A) in temperature-adjusted gallons if purchased from a terminal for export or import; or

(B) in temperature-adjusted gallons or in gross gallons if purchased from a bulk plant;

(6) the destination of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered, if delivery is to only one state;

(7) the name ~~[- federal employer identification number, license number, and physical address]~~ of the purchaser of the motor fuel;

(8) the name of the person responsible for paying the tax imposed by this chapter, as given to the terminal by the purchaser if different from the licensed supplier or distributor; and

(9) any other information that, in the opinion of the comptroller, is necessary for the proper administration of this chapter.

SECTION 4.04. Subsection (d), Section 162.113, Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier ~~shall [has the right]~~, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, ~~[to]~~ terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The supplier or permissive supplier

shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

SECTION 4.05. Section 162.115, Tax Code, is amended by adding Subsection (m-1) to read as follows:

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION 4.06. Subsections (a) and (d), Section 162.116, Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) ~~[the number of net gallons of gasoline received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

~~(2)]~~ the number of net gallons of gasoline removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code, and carrier;

~~(2)~~ ~~(3)]~~ the number of net gallons of gasoline removed during the month for export, sorted by product code, person receiving the gasoline, terminal code, destination state, and carrier;

~~(3)~~ ~~(4)]~~ the number of net gallons of gasoline removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, person receiving the gasoline, terminal code, and carrier;

~~(4)~~ ~~(5)]~~ the number of net gallons of gasoline the supplier or permissive supplier sold during the month in transactions exempt under Section 162.104, sorted by ~~[product code, carrier,]~~ purchaser~~[-, and terminal code;~~

~~(6)~~ ~~the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license];~~ and

~~(5)~~ ~~(7)]~~ any other information required by the comptroller.

(d) For purposes of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION 4.07. Section 162.118, Tax Code, is amended to read as follows:

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the distributor during the month, sorted by product code and[~~7~~] seller[, ~~point of origin, destination state, carrier, and receipt date~~];

(2) the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code[, ~~and carrier~~];

(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of gasoline removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of gasoline the distributor sold during the month in transactions exempt under Section 162.104, sorted by product code and purchaser; and

(6) any other information required by the comptroller.

SECTION 4.08. Section 162.123, Tax Code, is amended to read as follows:

Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) [~~the number of net gallons of gasoline received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date~~;

[~~2~~] the number of net gallons of product blended with gasoline during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

[~~3~~] ~~the number of net gallons of blended gasoline sold during the month and the license number or name and address of the entity receiving the blended gasoline;~~ and

(2) [~~4~~] any other information required by the comptroller.

SECTION 4.09. Section 162.127, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date the comptroller receives a valid refund claim from the distributor. If the comptroller does not issue the refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.060 beginning on the 61st day after the date the comptroller receives the valid refund claim and ending on the date the comptroller issues the refund warrant.

SECTION 4.10. Section 162.206, Tax Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (h-1) to read as follows:

(c) A person may not make a tax-free purchase and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement[~~:-~~

[~~(1) for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery; or~~

~~[(2)]~~ in a calendar month in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser more than:

(1) ~~[(A)]~~ 10,000 gallons of dyed diesel fuel;

(2) ~~[(B)]~~ 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in the original production of, or to increase the production of, oil or gas and furnishes the supplier with a letter of exception issued by the comptroller; or

(3) ~~[(C)]~~ 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.

(c-1) The monthly limitations prescribed by Subsection (c) apply regardless of whether the dyed diesel fuel is purchased in a single transaction during that month or in multiple transactions during that month.

(h-1) For purposes of this section, the purchaser is considered to have furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end user number issued by the comptroller. The licensed supplier or distributor shall use the comptroller's Internet website or other materials provided or produced by the comptroller to verify this information.

SECTION 4.11. Subsection (d), Section 162.214, Tax Code, is amended to read as follows:

(d) The supplier or permissive supplier shall ~~[has the right]~~, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, ~~[(t)]~~ terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

SECTION 4.12. Section 162.216, Tax Code, is amended by adding Subsection (m-1) to read as follows:

(m-1) In addition to the records specifically required by this section, a license holder shall keep any other record required by the comptroller.

SECTION 4.13. Subsections (a) and (d), Section 162.217, Tax Code, are amended to read as follows:

(a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) ~~[the number of net gallons of diesel fuel received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;~~

~~[(2)]~~ the number of net gallons of diesel fuel removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(2) ~~(3)~~ the number of net gallons of diesel fuel removed during the month for export, sorted by product code, person receiving the diesel fuel, terminal code, destination state, and carrier;

(3) ~~(4)~~ the number of net gallons of diesel fuel removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(4) ~~(5)~~ the number of net gallons of diesel fuel the supplier or permissive supplier sold during the month in transactions exempt under Section 162.204, sorted by ~~[product code, carrier,] purchaser[, and terminal code;~~

~~[(6) the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license]; and~~

(5) ~~(7)~~ any other information required by the comptroller.

(d) For the purpose of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION 4.14. Section 162.219, Tax Code, is amended to read as follows:

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN.

The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code and ~~;~~ seller~~[- point of origin, destination state, carrier, and receipt date];~~

(2) the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code~~[- and carrier];~~

(3) the number of net gallons of diesel fuel removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, sorted by product code and by the entity receiving the diesel fuel;

~~(6) the number of net gallons of~~ ~~;~~ dyed diesel fuel sold to a purchaser under a signed statement~~[-]~~ or dyed diesel fuel sold to a dyed diesel fuel bonded user, sorted by product code and by the entity receiving the diesel fuel; and

(7) ~~(6)~~ any other information required by the comptroller.

SECTION 4.15. Section 162.224, Tax Code, is amended to read as follows:

Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) ~~[the number of net gallons of diesel fuel received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;~~

~~[(2)]~~ the number of net gallons of product blended with diesel fuel during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

~~[(3) the number of net gallons of blended diesel fuel sold during the month and the license number or name and address of the entity receiving the blended diesel fuel;]~~ and

~~(2)~~ ~~[(4)]~~ any other information required by the comptroller.

SECTION 4.16. Section 162.227, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock or other component in the further manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in the original production of oil or gas or to increase the production of oil or gas.

SECTION 4.17. Section 162.229, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) The comptroller shall issue a refund warrant to a distributor not later than the 60th day after the date the comptroller receives a valid refund claim from the distributor. If the comptroller does not issue the refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.060 beginning on the 61st day after the date the comptroller receives the valid refund claim and ending on the date the comptroller issues the refund warrant.

SECTION 4.18. Subsection (d), Section 162.230, Tax Code, is amended to read as follows:

(d) A supplier, ~~[or]~~ permissive supplier, or distributor that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

SECTION 4.19. Subsections (c) and (d), Section 162.404, Tax Code, are amended to read as follows:

(c) The prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(a)(1) ~~[162.204(1)]~~, (2), or (3).

(d) The prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(a)(1) ~~[162.104(1)]~~, (2), or (3).

SECTION 4.20. Subsection (h), Section 162.016, Tax Code, is repealed.

SECTION 4.21. This article applies only to taxes imposed on or after the effective date of this article. Taxes imposed before the effective date of this article are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose.

SECTION 4.22. This article takes effect September 1, 2005.

ARTICLE 5. COLLECTION OF CERTAIN STATE TAXES

PART A. MOTOR VEHICLE SALES AND USE TAX

SECTION 5A.01. Section 152.002, Tax Code, is amended by adding Subsection (f) to read as follows:

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

SECTION 5A.02. Subsection (a), Section 152.041, Tax Code, is amended to read as follows:

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

SECTION 5A.03. Subchapter C, Chapter 152, Tax Code, is amended by adding Section 152.0412 to read as follows:

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

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

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

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

(1) the retail value is shown on an appraisal certified by an adjuster licensed under Chapter 4101, Insurance Code, or by a motor vehicle dealer operating under Subchapter B, Chapter 503, Transportation Code;

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

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

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

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

(g) This section does not apply to a transaction described by Section 152.024 or 152.025.

SECTION 5A.04. Not later than October 1, 2005, the Texas Department of Transportation shall:

(1) establish standard presumptive values for motor vehicles as provided by Section 152.0412, Tax Code, as added by this part;

(2) modify the department's registration and title system as needed to include that information and administer that section; and

(3) make that information available through the system to all county tax assessor-collectors.

SECTION 5A.05. (a) Except as provided by this part and Subsection (b) of this section, this part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect September 1, 2005.

(b) Section 152.0412, Tax Code, as added by this part, takes effect October 1, 2005.

PART B. MOTOR FUELS TAX

SECTION 5B.01. Section 162.503, Tax Code, is amended to read as follows:

Sec. 162.503. ALLOCATION OF GASOLINE TAX. (a) Except as provided by Subsection (b), on ~~On~~ or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

(b) During the months of June, July, and August of each odd-numbered year, the comptroller may not make the allocations to the state highway fund and county and road district highway fund otherwise required by Subsections (a)(2) and (3). After

September 5 and before September 11 of that year, the comptroller shall allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated and deposited to that fund during those months.

SECTION 5B.02. Section 162.504, Tax Code, is amended to read as follows:

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) Except as provided by Subsection (b), on ~~On~~ or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, shall allocate the remainder of the taxes collected under Subchapter C as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

(b) During the months of June, July, and August of each odd-numbered year, the comptroller may not make the allocation to the state highway fund otherwise required by Subsection (a)(2). After September 5 and before September 11 of that year, the comptroller shall allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated to that fund during those months.

SECTION 5B.03. Section 162.505, Tax Code, is amended to read as follows:

Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. (a) Except as provided by Subsection (b), on ~~On~~ or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter D as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

(b) During the months of June, July, and August of each odd-numbered year, the comptroller may not make the allocation to the state highway fund otherwise required by Subsection (a)(2). After September 5 and before September 11 of that year, the comptroller shall allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated to that fund during those months.

SECTION 5B.04. This part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect September 1, 2005.

PART C. HOTEL OCCUPANCY TAXES

SECTION 5C.01. Section 156.001, Tax Code, is amended to read as follows:

Sec. 156.001. DEFINITION. In this chapter, "hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast. The term does not include:

(1) a hospital, sanitarium, or nursing home; ~~or~~

(2) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or

(3) that part of an apartment or condominium building that consists of unfurnished dwelling units that are leased to tenants, as defined by Section 92.001, Property Code.

SECTION 5C.02. Subsection (c), Section 351.002, Tax Code, is amended to read as follows:

(c) The tax does not apply to a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for that period ~~[is a permanent resident under Section 156.101 of this code].~~

SECTION 5C.03. Subdivision (1), Section 352.001, Tax Code, is amended to read as follows:

(1) "Hotel" has the meaning assigned by Section 156.001 ~~[156.001(1)]~~.

SECTION 5C.04. Subsection (c), Section 352.002, Tax Code, is amended to read as follows:

(c) The tax does not apply to a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for that period ~~[is a permanent resident under Section 156.101 of this code].~~

SECTION 5C.05. Section 156.101, Tax Code, is repealed.

SECTION 5C.06. This part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect October 1, 2005.

ARTICLE 6. ELIGIBILITY FOR MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE PROGRAMS

SECTION 6.01. Section 62.102, Health and Safety Code, is amended to read as follows:

Sec. 62.102. CONTINUOUS COVERAGE. ~~[(a)]~~ The commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

(1) the end of the six-month ~~[a]~~ period~~[- not to exceed 12 months,]~~ following the date of the eligibility determination; or

(2) the individual's 19th birthday.

~~[(b) The period of continuous eligibility may be established at an interval of 6 months beginning immediately upon passage of this Act and ending September 1, 2005, at which time an interval of 12 months of continuous eligibility will be re-established.]~~

SECTION 6.02. Section 32.0261, Human Resources Code, is amended to read as follows:

Sec. 32.0261. CONTINUOUS ELIGIBILITY. The department shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of continuous eligibility for a child under 19 years of age who is determined to be eligible for medical assistance under this chapter. The rules shall provide that the

child remains eligible for medical assistance, without additional review by the department and regardless of changes in the child's resources or income, until the earlier of:

(1) the end of the six-month period following ~~[first anniversary of]~~ the date on which the child's eligibility was determined; or

(2) the child's 19th birthday.

SECTION 6.03. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE 7. MEDICAL ASSISTANCE PROGRAM

SECTION 7.01. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0081 to read as follows:

Sec. 531.0081. OFFICE OF MEDICAL TECHNOLOGY. (a) In this section, "office" means the office of medical technology.

(b) The commission shall establish the office of medical technology within the commission. The office shall explore and evaluate new developments in medical technology and propose implementing the technology in the medical assistance program under Chapter 32, Human Resources Code, if appropriate and cost-effective.

(c) Office staff must have skills and experience in research regarding health care technology.

SECTION 7.02. Section 531.021, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) In adopting rates for medical assistance payments under Subsection (b)(2), the executive commissioner may adopt reimbursement rates for appropriate nursing services provided to recipients with certain health conditions if those services are determined to provide a cost-effective alternative to hospitalization. A physician must certify that the nursing services are medically appropriate for the recipient for those services to qualify for reimbursement under this subsection.

(g) In adopting rates for medical assistance payments under Subsection (b)(2), the executive commissioner may adopt cost-effective reimbursement rates for group appointments with medical assistance providers for certain diseases and medical conditions specified by rules of the executive commissioner.

SECTION 7.03. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02175 to read as follows:

Sec. 531.02175. REIMBURSEMENT FOR ONLINE MEDICAL CONSULTATIONS. (a) In this section, "physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(b) Subject to the requirements of this subsection, the executive commissioner by rule may require the commission and each health and human services agency that administers a part of the Medicaid program to provide Medicaid reimbursement for a medical consultation that is provided by a physician or other health care professional using the Internet as a cost-effective alternative to an in-person consultation. The executive commissioner may require the commission or a health and human services

agency to provide the reimbursement described by this subsection only if the Centers for Medicare and Medicaid Services develop an appropriate Current Procedural Terminology code for medical services provided using the Internet.

(c) The executive commissioner may develop and implement a pilot program in one or more sites chosen by the executive commissioner under which Medicaid reimbursements are paid for medical consultations provided by physicians or other health care professionals using the Internet. The pilot program must be designed to test whether an Internet medical consultation is a cost-effective alternative to an in-person consultation under the Medicaid program. The executive commissioner may modify the pilot program as necessary throughout its implementation to maximize the potential cost-effectiveness of Internet medical consultations. If the executive commissioner determines from the pilot program that Internet medical consultations are cost-effective, the executive commissioner may expand the pilot program to additional sites or may implement Medicaid reimbursements for Internet medical consultations statewide.

(d) The executive commissioner is not required to implement the pilot program authorized under Subsection (c) as a prerequisite to providing Medicaid reimbursement authorized by Subsection (b) on a statewide basis.

SECTION 7.04. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.083 to read as follows:

Sec. 531.083. HOSPITAL EMERGENCY ROOM USE REDUCTION INITIATIVES. The commission shall develop and implement a comprehensive plan to reduce the use of hospital emergency room services by recipients under the medical assistance program. The plan may include:

(1) a pilot program designed to facilitate program participants in accessing an appropriate level of health care, which may include as components:

(A) providing program participants access to bilingual health services providers; and

(B) giving program participants information on how to access primary care physicians, advanced practice nurses, and local health clinics;

(2) a pilot program under which health care providers, other than hospitals, are given financial incentives for treating recipients outside of normal business hours to divert those recipients from hospital emergency rooms;

(3) payment of a nominal referral fee to hospital emergency rooms that perform an initial medical evaluation of a recipient and subsequently refer the recipient, if medically stable, to an appropriate level of health care, such as care provided by a primary care physician, advanced practice nurse, or local clinic;

(4) a program under which the commission or a managed care organization that enters into a contract with the commission under Chapter 533 contacts, by telephone or mail, a recipient who accesses a hospital emergency room three times during a six-month period and provides the recipient with information on ways the recipient may secure a medical home to avoid unnecessary treatment at hospital emergency rooms;

(5) a health care literacy program under which the commission develops partnerships with other state agencies and private entities to:

(A) assist the commission in developing materials that:

(i) contain basic health care information for parents of young children who are recipients under the medical assistance program and who are participating in public or private child-care or prekindergarten programs, including federal Head Start programs; and

(ii) are written in a language understandable to those parents and specifically tailored to be applicable to the needs of those parents;

(B) distribute the materials developed under Paragraph (A) to those parents; and

(C) otherwise teach those parents about the health care needs of their children and ways to address those needs; and

(6) other initiatives developed and implemented in other states that have shown success in reducing the incidence of unnecessary treatment in hospital emergency rooms.

(b) The Health and Human Services Commission may develop the health care literacy component of the comprehensive plan to reduce the use of hospital emergency room services required by Section 531.083(5), Government Code, as added by this section, so that the health care literacy component operates in a manner similar to the manner in which the Johnson & Johnson/UCLA Health Care Institute operates its health care training program that is designed to teach parents to better address the health care needs of their children.

SECTION 7.05. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.084 to read as follows:

Sec. 531.084. PERFORMANCE BONUS PILOT PROGRAM. (a) The commission shall develop a proposal for providing higher reimbursement rates to primary care case management providers under the Medicaid program who treat program recipients with chronic health conditions in accordance with evidence-based, nationally accepted best practices and standards of care.

(b) The commission shall define the parameters of the proposed program, including:

(1) the types of chronic health conditions the program would target;

(2) the best practices and standards of care that must be followed for a provider to obtain a higher reimbursement rate under the proposed program; and

(3) the types of providers to whom the higher reimbursement rate would be offered under the proposed program.

(c) Not later than December 1, 2006, the Health and Human Services Commission shall report to the standing committees of the senate and the house of representatives having primary jurisdiction over welfare programs regarding the proposed program under this section. The report must include:

(1) the anticipated effect of the higher reimbursement rates to be offered under the program on the quality of care provided and the health outcomes for program recipients;

(2) a determination of whether the program would be cost-effective; and

(3) a recommendation regarding implementation of the program.

(d) This section expires September 1, 2007.

SECTION 7.06. Section 562.1085, Occupations Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) A pharmacist who practices in or serves as a consultant for a health care facility in this state may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by board rule. The unused drugs must:

(1) be approved by the federal Food and Drug Administration and be:

(A) sealed in ~~[the manufacturer's original]~~ unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;

(B) oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(C) topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(D) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(2) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(f) The tamper-evident packaging required under Subsection (a)(1) for the return of unused drugs is not required to be the manufacturer's original packaging unless that packaging is required by federal law.

SECTION 7.07. MEDICAID COVERAGE FOR HEALTH INSURANCE PREMIUMS AND LONG-TERM CARE NEEDS. (a) The Health and Human Services Commission shall explore the commission's authority under federal law to offer, and the cost and feasibility of offering:

(1) a stipend paid by the Medicaid program to a person to cover the cost of a private health insurance plan as an alternative to providing traditional Medicaid services for the person;

(2) premium payment assistance through the Medicaid program for long-term care insurance for a person with a health condition that increases the likelihood that the person will need long-term care in the future; and

(3) a long-term care partnership between the Medicaid program and a person under which the person pays the premiums for long-term care insurance and the Medicaid program provides continued coverage after benefits under that insurance are exhausted.

(b) In exploring the feasibility of the options described by Subsection (a) of this section, the Health and Human Services Commission shall consider whether other state incentives that could encourage persons to purchase health insurance plans or long-term care insurance are feasible. The incentives may include offering tax credits to businesses to increase the availability of affordable insurance.

(c) If the Health and Human Services Commission determines that any of the options described by Subsection (a) of this section are feasible and cost-effective, the commission shall make efforts to implement those options to the extent they are authorized by federal law. The commission shall request any necessary waivers from the Centers for Medicare and Medicaid Services as soon as possible after determining that an option is feasible and cost-effective. If the commission determines that legislative changes are necessary to implement an option, the commission shall report to the 80th Legislature and specify the changes that are needed.

SECTION 7.08. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE 8. QUALITY ASSURANCE FEES

SECTION 8.01. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. QUALITY ASSURANCE FEE

Sec. 242.801. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Health and Human Services Commission.
- (2) "Department" means the Department of Aging and Disability Services.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "Gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to an institution.

Sec. 242.802. APPLICABILITY. This subchapter does not apply to:

- (1) a state-owned veterans' nursing facility; or
- (2) an entity that provides on a single campus a continuum of services, including independent living services, licensed assisted living services, and licensed nursing facility care services, and that:
 - (A) operates under a continuing care retirement community certificate of authority issued by the Texas Department of Insurance; or
 - (B) over a 12-month period, provides a greater number of combined patient days of service to independent living and assisted living residents, not including services provided to persons in licensed nursing facility beds, than the patient days of service provided to nursing facility residents.

Sec. 242.803. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each institution subject to this subchapter for which a license fee must be paid under Section 242.034. The quality assurance fee payment:

- (1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 242.804;
- (2) is payable monthly; and
- (3) is in addition to other fees imposed under this chapter.
- (b) The commission shall establish a quality assurance fee for each patient day so that the fee does not produce annual revenues greater than six percent of the total annual gross receipts in this state. The fee is subject to adjustment as necessary. The amount of the quality assurance fee may vary according to the number of patient days provided by an institution as necessary to obtain a waiver under federal regulations at 42 C.F.R. Section 433.68(e).

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts:

- (1) reported to the commission or to the department at the direction of the commission; and
- (2) covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the state Medicaid program.

(e) A nursing facility may not list the quality assurance fee as a separate charge on a patient's or resident's billing statement or otherwise directly or indirectly attempt to charge the quality assurance fee to a patient or resident.

Sec. 242.804. PATIENT DAYS. For each calendar day, an institution shall determine the number of patient days by adding the following:

(1) the number of patients occupying an institution bed immediately before midnight of that day plus the number of patients admitted that day less the number of patients discharged that day, except that a patient is included in the count under this subdivision if:

(A) the patient is admitted and discharged on the same day; or

(B) the patient is discharged that day because of the patient's death; and

(2) the number of beds that are on hold that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is:

(A) in the hospital; or

(B) on therapeutic home leave.

Sec. 242.805. REPORTING AND COLLECTION. (a) The commission or the department as directed by the executive commissioner shall collect the quality assurance fee.

(b) Each institution shall, not later than the 25th day after the last day of a month:

(1) file with the commission a report stating the total patient days for the month; and

(2) pay the quality assurance fee.

Sec. 242.806. RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The executive commissioner may adopt rules granting exceptions from the quality assurance fee, including an exception for units of service reimbursed through Medicare Part A, if the commission obtains all waivers necessary under federal law, including 42 C.F.R. Section 433.68(e).

(c) An administrative penalty assessed under this subchapter in accordance with Section 242.066 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Sec. 242.807. NURSING HOME QUALITY ASSURANCE FEE ACCOUNT.

(a) The nursing home quality assurance fee account is a dedicated account in the general revenue fund. Interest earned on money in the account shall be credited to the account.

(b) The comptroller shall deposit money collected under this subchapter to the credit of the account.

(c) Subject to legislative appropriation and this subchapter, money in the account together with federal matching money shall be used to support or maintain an increase in Medicaid reimbursement for institutions.

Sec. 242.808. REIMBURSEMENT OF INSTITUTIONS. (a) Subject to legislative appropriation, the commission may use money in the nursing home quality assurance fee account, together with any federal money available to match that money, to:

(1) offset allowable expenses under the state Medicaid program; or
(2) increase reimbursement rates paid under the Medicaid program to institutions.

(b) The commission shall devise the formula by which amounts received under this subchapter increase the reimbursement rates paid to institutions under the state Medicaid program.

Sec. 242.809. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter 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 fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and, not later than the 30th day after the date collection is stopped, shall return to the institutions that paid the fees, in proportion to the total amount paid by those institutions, any money deposited to the credit of the nursing home quality assurance fee account but not spent.

Sec. 242.810. REVISION IN CASE OF DISAPPROVAL. If the Centers for Medicare and Medicaid Services disapproves the quality assurance fee plan established under this subchapter, the commission shall revise the associated state plan amendments and waiver requests as necessary to comply with federal regulations provided by 42 C.F.R. Section 433.68(e). The revisions must be completed as soon as practicable after the date the commission receives notice of the disapproval.

Sec. 242.811. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. The executive commissioner by rule may adopt a definition, a method of computation, or a rate that differs from those expressly provided by or expressly authorized by this subchapter to the extent the difference is necessary to accomplish the purposes of this subchapter.

SECTION 8.02. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.078 through 531.081 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 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 normally not covered by the waivers.

(b) The executive commissioner by rule shall establish a quality assurance fee program as provided by this section and impose 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 commission 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 commission 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.

SECTION 8.03. Subsection (b), Section 252.202, Health and Safety Code, is amended to read as follows:

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in an [the] amount that will produce [necessary to produce] annual revenues of [equal to an amount that is] not more than six percent of the [facility's] total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

SECTION 8.04. Section 252.209, Health and Safety Code, is repealed.

SECTION 8.05. (a) Notwithstanding Section 242.803, Health and Safety Code, as added by this article, the executive commissioner of the Health and Human Services Commission shall establish the initial quality assurance fee imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this article, based on available revenue and patient day information. The initial quality assurance fee established under this section remains in effect until the Health and Human Services Commission obtains the information necessary to set the fee under Section 242.803, Health and Safety Code, as added by this article.

(b) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules as necessary to implement Subchapter P, Chapter 242, Health and Safety Code, and Section 531.078, Government Code, as added by this article.

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

ARTICLE 9. WAIVER OF AND SUPPLEMENTAL HEALTH COVERAGE FOR STATE EMPLOYEES

SECTION 9.01. Subsection (a), Section 1551.104, Insurance Code, is amended to read as follows:

(a) Subject to Sections 1551.101 and 1551.102, each full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless:

- (1) participation is specifically waived as provided by Section 1551.1045;
- (2) the employee or annuitant is expelled from the program under Section 1551.351; or
- (3) eligibility is otherwise limited by this chapter.

SECTION 9.02. Subchapter C, Chapter 1551, Insurance Code, is amended by adding Section 1551.1045 to read as follows:

Sec. 1551.1045. WAIVER. (a) Subject to Subsections (b) and (c), an employee or annuitant may waive in writing any coverage provided under this chapter.

(b) To waive coverage under the basic coverage plan for employees, a full-time employee must demonstrate, in the manner required by the board of trustees, that the employee is:

- (1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to employees by the basic coverage plan; or

- (2) eligible for benefits under the TRICARE Military Health System.

(c) To waive coverage under the basic coverage plan for annuitants for the purpose of eligibility for an incentive payment under Section 1551.222, an annuitant must demonstrate, in the manner required by the board of trustees, that the annuitant is:

- (1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to annuitants by the basic coverage plan; or

(2) eligible for benefits under the TRICARE Military Health System.

SECTION 9.03. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Sections 1551.221 and 1551.222 to read as follows:

Sec. 1551.221. OPTIONAL SUPPLEMENTAL HEALTH COVERAGE FOR INDIVIDUALS ELIGIBLE UNDER TRICARE MILITARY HEALTH SYSTEM. (a) The board of trustees shall offer, as an optional coverage under the group benefits program, a supplemental health coverage program.

(b) Under the supplemental health coverage program, an employee or annuitant who is eligible to participate in the group benefits program and who is also eligible for benefits under the TRICARE Military Health System may elect to receive primary coverage under the TRICARE Military Health System. An employee or annuitant participating in the supplemental health coverage program must waive basic coverage through the group benefits program, but receives supplemental health coverage under this section.

(c) The cost of supplemental health coverage provided under this section may be paid in the same manner as the cost of other optional coverage is paid under Subchapter G.

(d) The board of trustees shall contract to purchase the supplemental health coverage in accordance with Sections 1551.213-1551.216.

(e) The board of trustees may adopt rules to implement this section.

Sec. 1551.222. INCENTIVE PAYMENTS. (a) The board of trustees may allow an incentive payment under this section to an employee or annuitant who elects to waive coverage under the basic coverage plan for employees or annuitants as provided by Section 1551.1045(b) or (c).

(b) The incentive payment authorized by this section is in the amount authorized by the General Appropriations Act and may be used by the employee or annuitant, in the manner prescribed by the board of trustees, only to pay for other group coverage plans provided under the group benefits program, including the supplemental health coverage offered under Section 1551.221.

(c) The board of trustees, at the time of initial enrollment in the group benefits program and during subsequent open-enrollment periods, shall inform employees and annuitants that they may make an election described by Subsection (a), if eligible, and receive any authorized incentive payment.

SECTION 9.04. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.324 to read as follows:

Sec. 1551.324. REDUCTION IN CONTRIBUTION FOR CERTAIN ACTIVE EMPLOYEES AND ANNUITANTS; INCENTIVE PAYMENTS. (a) Notwithstanding any other provision of this subchapter, the state contribution for an employee's coverage or an annuitant's coverage under this chapter may be reduced, as provided in the General Appropriations Act, to reflect the reduced cost of coverage for an employee or annuitant who elects to waive basic coverage as provided by Section 1551.1045(b) or (c).

(b) Instead of the full state contribution for an employee or annuitant who makes an election described by Subsection (a), the state may contribute, as specified by the General Appropriations Act, an amount for the incentive payment authorized by Section 1551.222.

ARTICLE 10. MISCELLANEOUS FEES AND FUNDS

PART A. TEXAS MOBILITY FUND

SECTION 10A.01. Subchapter M, Chapter 201, Transportation Code, is amended by adding Section 201.9471 to read as follows:

Sec. 201.9471. TEMPORARY DISPOSITION OF MONEY ALLOCATED TO FUND. (a) Notwithstanding Sections 521.058, 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2006 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(b) Notwithstanding Sections 521.313, 521.3466, 521.427, 522.029, 524.051, and 724.046, to the extent that those sections allocate money to the Texas mobility fund, in state fiscal year 2007 the comptroller shall deposit that money to the credit of the general revenue fund instead of to the credit of the Texas mobility fund.

(c) This section expires January 1, 2008.

SECTION 10A.02. This part takes effect September 1, 2005.

PART B. TELECOMMUNICATIONS INFRASTRUCTURE FUND

SECTION 10B.01. Section 57.048, Utilities Code, is amended by adding Subsections (f) through (i) to read as follows:

(f) Notwithstanding any other provision of this title, a certificated telecommunications utility may recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller. A certificated telecommunications utility may recover only the amount of the assessment imposed after the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion, as determined by the comptroller. The utility may recover the assessment through a monthly billing process.

(g) The comptroller shall publish in the Texas Register the date on which the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion.

(h) Not later than February 15 of each year, a certificated telecommunications utility that wants to recover the assessment under Subsection (f) shall file with the commission an affidavit or affirmation stating the amount that the utility paid to the comptroller under this section during the previous calendar year and the amount the utility recovered from its customers in cumulative payments during that year.

(i) The commission shall maintain the confidentiality of information the commission receives under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

SECTION 10B.02. Section 57.0485, Utilities Code, is amended to read as follows:

Sec. 57.0485. ALLOCATION OF REVENUE [ACCOUNTS]. ~~[(a)]~~ The comptroller shall deposit ~~[50 percent of]~~ the money collected by the comptroller under Section 57.048 to the credit of the general revenue fund ~~[public schools account in the~~

~~fund. The comptroller shall deposit the remainder of the money collected by the comptroller under Section 57.048 to the credit of the qualifying entities account in the fund.~~

~~[(b) Interest earned on money in an account shall be deposited to the credit of that account].~~

SECTION 10B.03. Section 57.051, Utilities Code, is amended to read as follows:

Sec. 57.051. SUNSET PROVISION. The Telecommunications Infrastructure Fund ~~[Board]~~ is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, ~~[the board is abolished and]~~ this subchapter expires September 1, 2011 ~~[2005]~~.

SECTION 10B.04. Section 57.043 and Subsections (c) and (d), Section 57.048, Utilities Code, are repealed.

SECTION 10B.05. If, on the day before the effective date of this part, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, the comptroller shall, on the effective date of this part, reset the rate of the assessment to 1.25 percent.

SECTION 10B.06. This part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect September 1, 2005.

ARTICLE 11. POWERS AND DUTIES OF COMPTROLLER AND PROVISIONS RELATED TO TAXES COLLECTED BY COMPTROLLER OR LOCAL ENTITIES

SECTION 11.01. Section 442.015, Government Code, is amended by adding Subsection (h) to read as follows:

(h) The comptroller may manage the assets of the Texas preservation trust fund account in the same manner as the comptroller may manage the assets of certain permanent funds under Section 403.1068.

SECTION 11.02. Section 552.025(c), Government Code, is amended to read as follows:

(c) Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority, provided that, to preserve taxpayer confidentiality, a governmental body with taxing authority shall remove any information that identifies a taxpayer from the letter, memorandum, or ruling.

SECTION 11.03. Section 285.063, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 11.04. Section 775.0753, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 11.05. Section 776.0753, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held as provided by this subchapter.

SECTION 11.06. Article 1.16(b), Insurance Code, is amended to read as follows:

(b) Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses and expenses provided by Section 803.007 ~~[Article 1.28]~~ of this Code shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force shall be assessed annually for each such corporation or association. In computing the assessments, the board may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The amount of all examination and evaluation fees paid in each taxable year to the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due ~~[under this article]~~. The limitations provided by Sections 803.007(1) and (2)(B) of this code for domestic insurance companies apply to foreign insurance companies.

SECTION 11.07. Section 222.002(b), Insurance Code, is amended to read as follows:

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, the insurer or health maintenance organization shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups ~~[a person]~~

located in this state and arising from the business of a health maintenance organization or the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection.

SECTION 11.08. Section 223.003(a), Insurance Code, is amended to read as follows:

(a) An annual tax is imposed on all ~~[each title insurance company that receives]~~ premiums from the business of title insurance. The rate of the tax is 1.35 percent of ~~[the]~~ title insurance ~~[company's]~~ taxable premiums for a calendar year, including any premiums retained by a title insurance agent as provided by Section 223.005. For purposes of this chapter, a person engages in the business of title insurance if the person engages in an activity described by Section 2501.005.

SECTION 11.09. Section 252.003, Insurance Code, is amended to read as follows:

Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums ~~[collected]~~ from writing insurance in this state against loss or damage by:

- (1) bombardment;
- (2) civil war or commotion;
- (3) cyclone;
- (4) earthquake;
- (5) excess or deficiency of moisture;
- (6) explosion as defined by Article 5.52;
- (7) fire;
- (8) flood;
- (9) frost and freeze;
- (10) hail;
- (11) insurrection;
- (12) invasion;
- (13) lightning;
- (14) military or usurped power;
- (15) an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe;
- (16) rain;
- (17) riot;
- (18) the rising of the waters of the ocean or its tributaries;
- (19) smoke or smudge;
- (20) strike or lockout;
- (21) tornado;
- (22) vandalism or malicious mischief;
- (23) volcanic eruption;
- (24) water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers;

- (25) weather or climatic conditions; ~~[or]~~
- (26) windstorm;
- (27) an event covered under a home warranty insurance policy; or
- (28) an event covered under an inland marine insurance policy.

SECTION 11.10. Section 271.002(a), Insurance Code, is amended to read as follows:

(a) A maintenance fee is imposed on all ~~[each insurer with gross]~~ premiums subject to assessment under Section 271.006.

SECTION 11.11. Section 1502.053, Insurance Code, is amended to read as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The issuer of a ~~[A]~~ children's health benefit plan approved under Section 1502.051 ~~[issuer]~~ is not subject to the premium tax or the tax on revenues imposed under Chapter 222 with respect to money received for coverage provided under that plan.

(b) The issuer of a children's health benefit plan is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan.

SECTION 11.12. Section 383.101, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 11.13. Section 387.012, Local Government Code, is amended to read as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. (a) The adoption of the tax, the change of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

(b) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this chapter.

SECTION 11.14. Section 111.009, Tax Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) A person having a direct interest in a determination may petition the comptroller for a redetermination and may assert legal and factual grounds to challenge the assessment.

(e) The person filing the petition may assert credits or claim a refund for the same tax type and same period. The assertion for the credits or the claim for the refund must be included in the petition or must be filed within the applicable limitations period, except as otherwise provided by this section. The comptroller shall adopt procedural rules that ensure that redetermination proceedings are expeditiously finalized and that provide that all parties receive equal time to prepare and submit their positions before the hearing.

(f) A credit or refund for the same tax type and same period may be asserted or claimed in the redetermination proceeding for all issues if the credit is asserted or the refund is claimed not later than the second anniversary of the date the petition for redetermination is filed. This subsection does not authorize a filing for a separate credit or refund that is not authorized under Section 111.107(b).

SECTION 11.15. Section 111.016, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The comptroller may assess the responsible individual liable under Subsection (b) at any time before the first anniversary of the later of:

(1) the date the tax liability of the corporation, association, limited liability company, limited partnership, or other legal entity becomes final; or

(2) the date the bankruptcy proceeding is closed or dismissed.

(f) An individual that the comptroller asserts is liable for the payment of tax or other money under this section as a responsible individual is entitled to:

(1) reasonable notice from the comptroller that specifies the basis for that assertion and the amount of tax or money for which the comptroller asserts the individual is liable; and

(2) contest that assertion in a manner consistent with the remedies available to taxpayers under this title.

SECTION 11.16. Subchapter B, Chapter 111, Tax Code, is amended by adding Section 111.0515 to read as follows:

Sec. 111.0515. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES, PENALTIES, AND INTEREST PROHIBITED. Unless the restriction or condition is authorized by this title, a restriction or condition placed on a check in payment of taxes by the maker of the check that purports to limit the amount of taxes owed to an amount less than that stated in the comptroller's records, or a restriction or condition placed on a check in payment of penalties and interest on delinquent taxes by the maker that purports to limit the amount of the penalties and interest to an amount less than the amount of penalties and interest accrued on the delinquent taxes, is void.

SECTION 11.17. Subchapter B, Chapter 111, Tax Code, is amended by adding Section 111.065 to read as follows:

Sec. 111.065. EXPEDITIOUS ASSISTANCE FOR TAXPAYERS. (a) As expeditiously as possible, the comptroller shall:

(1) refund or credit any amount of tax overpaid by a person; and

(2) correct any erroneous assessment.

(b) The comptroller shall amend any audit or the records of any audit period as expeditiously as possible if necessary to comply with Subsection (a).

SECTION 11.18. Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a) Except as otherwise expressly provided, a person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 and the refund is made or the credit is issued under a court order;

(2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final; or

(3) under Chapter 162 [~~153~~], except Section 162.126(f), 162.128(d), 162.228(f), or 162.230(d) [~~153.1195(e)~~, ~~153.121(d)~~, ~~153.2225(e)~~, or ~~153.224(d)~~].

(b) A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller in a refund hearing.

SECTION 11.19. Section 151.006, Tax Code, is amended to read as follows:

Sec. 151.006. "SALE FOR RESALE". "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America or in the United Mexican States as an integral part of a taxable service; or

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

SECTION 11.20. Section 151.011(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (c) [~~of this section~~], "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printing [~~printed~~] material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state, and, except as provided by Section 151.056(b) [~~of this code~~], includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

SECTION 11.21. Section 151.3111(b), Tax Code, is amended to read as follows:

(b) Subsection (a) does not apply to the performance of a service on:

(1) tangible personal property that would be exempted solely because of the exempt status of the seller of the property;

(2) tangible personal property that is exempted solely because of the application of Section 151.303, 151.304, or 151.306;

(3) motor vehicles, trailers, or semitrailers as defined, taxed, or exempted by Chapter 152; [~~or~~]

(4) a taxable boat or motor as defined by Section 160.001;

(5) tangible [~~—(6) Tangible~~] personal property exempt under Section 151.326; or

(6) through December 31, 2007, tangible personal property that is exempted solely because of the application of Section 151.3162.

SECTION 11.22. Sections 151.3162(d) and (e), Tax Code, are amended to read as follows:

(d) The exemption provided by Subsection (b) takes effect January 1, 2008. Until that date, a person is entitled to an exemption [~~a credit or refund~~] of a portion of the taxes paid under this chapter on an item that after January 1, 2008, will be exempted from the taxes imposed by this chapter under Subsection (b). The amount of the exemption [~~credit or refund~~] is determined as follows:

(1) for an item for which the taxable event occurs on or after October 1, 2001, and before January 1, 2004, the taxpayer is entitled to an exemption [~~a refund or credit~~] in an amount equal to 33 percent of the tax paid on the item;

(2) for an item for which the taxable event occurs on or after January 1, 2004, and before January 1, 2006, the taxpayer is entitled to an exemption [~~a refund or credit~~] in an amount equal to 50 percent of the tax paid on the item; and

(3) for an item for which the taxable event occurs on or after January 1, 2006, and before January 1, 2008, the taxpayer is entitled to an exemption [~~a refund or credit~~] in an amount equal to 75 percent of the tax paid on the item.

(e) A taxpayer entitled to a credit or refund under Subsection (d), as that subsection existed on September 30, 2005, may elect to receive either a credit or a refund. A taxpayer who elects to receive a credit must claim the credit on the return for a period that ends not later than the first anniversary of the date on which the taxable event occurred. A taxpayer who elects to receive a refund must apply to the comptroller for the refund before or during the calendar year following the year in which the tax on the item was paid.

SECTION 11.23. Section 151.419(b), Tax Code, is amended to read as follows:

(b) The application must be accompanied with:

(1) an agreement that is signed by the applicant or a responsible officer of an applicant corporation, that is in a form prescribed by the comptroller, and that provides that the applicant agrees to:

(A) accrue and pay all taxes imposed by Subchapter D [~~of this chapter~~] on the storage and use of all taxable items sold to or leased or rented by the permit holder unless the items are exempted from the taxes imposed by this chapter; and

(B) pay the imposed taxes monthly on or before the 20th day of the month following the end of each calendar month; [~~and~~

~~[(C) waive the discount permitted by Section 151.423 of this code on the payment of all taxes under the direct payment permit only;]~~

(2) a description, in the amount of detail that the comptroller requires, of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions; and

(3) records establishing that the applicant is a responsible person who annually purchases taxable items that have a value when purchased of \$800,000 or more excluding the value of taxable items for which resale certificates were or could have been given.

SECTION 11.24. Sections 151.424(a) and (c), Tax Code, are amended to read as follows:

(a) A taxpayer who prepays the taxpayer's tax liability on the basis of a reasonable estimate of the tax liability for a quarter in which a prepayment is made or for a month in which a prepayment is made may deduct and withhold 1.25 percent of the amount of the prepayment [~~in addition to the amount permitted to be deducted and withheld under Section 151.423 of this code~~]. A reasonable estimate of the tax liability must be at least 90 percent of the tax ultimately due or the amount of tax paid in the same quarter, or month, if a monthly prepayer, in the last preceding year. Failure to prepay a reasonable estimate of the tax will result in the loss of the entire prepayment discount.

(c) A taxpayer who prepays the tax liability as permitted by this section must file a report when due as provided by this chapter. The amount of a prepayment made by a taxpayer under this section shall be credited against the amount of actual tax liability of the taxpayer as shown on the tax report of the taxpayer. If there is a tax liability owed by the taxpayer in excess of the prepayment credit, the taxpayer shall send to the comptroller the remaining tax liability at the time of filing the quarterly or monthly report. [~~The taxpayer is entitled to the deduction permitted under Section 151.423 of this code on the amount of the remaining tax liability.~~]

SECTION 11.25. Section 151.425, Tax Code, is amended to read as follows:

Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. If a taxpayer fails to file a report required by this chapter when due or to pay the tax when due, the taxpayer forfeits any claim to a [~~deduction or~~] discount allowed under [~~Section 151.423 or~~] Section 151.424 [~~of this code~~].

SECTION 11.26. Section 151.428(c), Tax Code, is amended to read as follows:

(c) The reporting, collection, refund, and penalty provisions of this chapter and Subtitle B [~~of this title~~] apply to the payments required by this section, except that Section [~~Sections 151.423 and~~] 151.424 does [~~of this code do~~] not apply to this section.

SECTION 11.27. Section 152.047(a), Tax Code, is amended to read as follows:

(a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed sales in the same manner as the sales tax is reported and paid by a retailer under Sections 151.401, 151.402, 151.405, 151.406, 151.409, [~~151.423,~~] 151.424, and 151.425.

SECTION 11.28. Section 152.123(b), Tax Code, is amended to read as follows:

(b) The county shall retain the following percentage of the amounts calculated under Subsection (a) during each of the following fiscal years:

- (1) [~~in fiscal year 2006, 10 percent;~~
- [~~(2) in fiscal year 2007, 20 percent;~~
- [~~(3)~~] in fiscal year 2008, 30 percent;
- (2) [~~(4)~~] in fiscal year 2009, 40 percent;
- (3) [~~(5)~~] in fiscal year 2010, 50 percent;
- (4) [~~(6)~~] in fiscal year 2011, 60 percent;
- (5) [~~(7)~~] in fiscal year 2012, 70 percent;
- (6) [~~(8)~~] in fiscal year 2013, 80 percent;

(7) ~~(9)~~ in fiscal year 2014, 90 percent; and

(8) ~~(10)~~ in fiscal year 2015 and succeeding years, 100 percent.

SECTION 11.29. Section 171.109(g), Tax Code, as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, is reenacted and amended to read as follows:

(g) All oil and gas exploration and production activities by a corporation which is required to or elects to use generally accepted accounting principles to compute surplus must be reported according to the successful efforts or the full cost method of accounting. Notwithstanding the method of accounting, the corporation may elect to depreciate the corporation's oil and gas properties using any alternative method of depreciation recognized under generally accepted accounting principles. The useful lives of intangible assets shall be similar to the useful lives of tangible assets.

SECTION 11.30. Section 171.110, Tax Code, is amended by adding Subsection (m) to read as follows:

(m) Except as otherwise provided by this section, in computing taxable earned surplus, a corporation is considered to have made an election to use the same methods used in filing its federal income tax return.

SECTION 11.31. Section 171.1121(b), Tax Code, is amended to read as follows:

(b) Except as otherwise provided by this section, a corporation shall use the same accounting methods to apportion taxable earned surplus as the corporation used to compute taxable earned surplus ~~[in computing reportable federal taxable income]~~.

SECTION 11.32. Section 171.801(2), Tax Code, is amended to read as follows:

(2) "Qualified capital investment" means tangible personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in a strategic investment area, or first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, and that is described as Section 1245 property by ~~[in]~~ Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include land ~~[real property]~~ or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property expensed under Section 179, Internal Revenue Code, is not considered a "qualified capital investment."

SECTION 11.33. Section 183.053(b), Tax Code, is amended to read as follows:

(b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this chapter shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than \$1,000 or more than the greater of \$100,000 or four times the amount of the permittee's average monthly tax liability ~~[\$50,000]~~.

SECTION 11.34. Section 201.058(b), Tax Code, is amended to read as follows:

(b) Operators increasing production by marketing gas from a well ~~[an oil well or lease]~~ that has been released into the air for six [12] months or more pursuant to the rules of the Railroad Commission of Texas ~~[commission]~~ shall be entitled to an exemption from the tax imposed by this chapter on the production resulting from the marketing of such gas for the life of the well ~~[or lease]~~.

SECTION 11.35. 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 11.36. Subchapter B, Chapter 202, Tax Code, is amended by adding Section 202.060 to read as follows:

Sec. 202.060. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT.

(a) In this section, "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.

(b) The taxpayer responsible for the payment of severance taxes on the production from a well in this state on which enhanced efficiency equipment is installed and used is entitled to a credit in an amount equal to 20 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 \$2,000 for any well;

(2) the enhanced efficiency equipment installed in a qualifying 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 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 two percent of the producing 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 11.37. Sections 313.021(1) and (2), Tax Code, are amended to read as follows:

(1) "Qualified investment" means:

(A) tangible personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, and is described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;

(B) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:

(i) integrated systems, fixtures, and piping;

(ii) all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and

(iii) production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting; or

(C) a building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by Paragraph (A) or (B).

(2) "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to construct a new building or erect or affix a new improvement that does not exist before the date the owner applies for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner of the land, or the owner of a leasehold interest in the land, proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:

(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

SECTION 11.38. Section 321.203, Tax Code, is amended by amending Subsections (b)-(e) and adding Subsection (n) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items ~~[tangible personal property]~~ are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item ~~[tangible personal property]~~ by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item ~~[property]~~, if the retailer ships or delivers the item ~~[property]~~ to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item ~~[property]~~, if the purchaser or lessee takes possession of and removes the item ~~[property]~~ from a place of business of the retailer.

(d) If neither the possession of a taxable item ~~[tangible personal property]~~ is taken at nor shipment or delivery of the item ~~[property]~~ is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received;
or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of a taxable item ~~[tangible personal property]~~ is consummated at the location in this state to which the item ~~[property]~~ is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item ~~[property]~~ occurs at, or shipment or delivery of the item ~~[property]~~ originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item ~~[property]~~ is shipped or delivered directly to the purchaser by the supplier.

(n) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. However, if the job site includes areas in multiple municipalities, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received;
or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent who took the order operates.

SECTION 11.39. Section 321.302, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) For purposes of Subsection (c)(3), "full amount of the tax due" means the amount of municipal tax to be allocated that can be determined without a comptroller's audit of the person's records.

SECTION 11.40. Section 321.503, Tax Code, is amended to read as follows:

Sec. 321.503. STATE'S SHARE. Before sending any money to a municipality under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the municipality during the period for which a distribution is made as the state's charge for its services under this chapter and shall~~[-subject to premiums payments under Section 321.501(e);]~~ credit the money deducted to the general revenue fund.

SECTION 11.41. Section 323.102(c), Tax Code, is amended to read as follows:

(c) A tax imposed under Section 323.105 of this code or Chapter 326 or 383, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b).

SECTION 11.42. Section 323.203, Tax Code, is amended by amending Subsections (b)-(e) and adding Subsection (m) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items ~~[tangible personal property]~~ are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item ~~[tangible personal property]~~ by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item ~~[property]~~, if the retailer ships or delivers the item ~~[property]~~ to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item ~~[property]~~, if the purchaser or lessee takes possession of and removes the item ~~[property]~~ from a place of business of the retailer.

(d) If neither the possession of a taxable item ~~[tangible personal property]~~ is taken at nor shipment or delivery of the item ~~[property]~~ is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of a taxable item ~~[tangible personal property]~~ is consummated at the location in this state to which the item ~~[property]~~ is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item ~~[property]~~ occurs at, or shipment or delivery of the item ~~[property]~~ originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item ~~[property]~~ is shipped or delivered directly to the purchaser by the supplier.

(m) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. However, if the job site includes areas in multiple municipalities, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received;
or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent who took the order operates.

SECTION 11.43. Section 323.503, Tax Code, is amended to read as follows:

Sec. 323.503. STATE'S SHARE. Before sending any money to a county under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the county during the period for which a distribution is made as the state's charge for its services under this chapter and shall~~[, subject to premiums payments under Section 323.501(e),]~~ credit the money deducted to the general revenue fund.

SECTION 11.44. Section 502.1025(b), Transportation Code, is amended to read as follows:

(b) A county tax assessor-collector shall retain under Section 502.102(b) fees based on the following percentage of the amounts calculated under Subsection ~~[subsection]~~ (a) during each of the following fiscal years:

- (1) in fiscal year 2006, 100 ~~[90]~~ percent;
- (2) in fiscal year 2007, 100 ~~[80]~~ percent;
- (3) in fiscal year 2008, 70 percent;
- (4) in fiscal year 2009, 60 percent;
- (5) in fiscal year 2010, 50 percent;
- (6) in fiscal year 2011, 40 percent;
- (7) in fiscal year 2012, 30 percent;
- (8) in fiscal year 2013, 20 percent;
- (9) in fiscal year 2014, 10 percent; and
- (10) in fiscal year 2015 and succeeding years, 0 percent.

SECTION 11.45. The heading to Subchapter A, Chapter 16, Utilities Code, is amended to read as follows:

SUBCHAPTER A. ASSESSMENT ON UTILITY GROSS RECEIPTS
[PUBLIC UTILITIES]

SECTION 11.46. The heading to Section 16.001, Utilities Code, is amended to read as follows:

Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS ~~[PUBLIC UTILITIES]~~.

SECTION 11.47. Sections 16.001(a) and (b), Utilities Code, are amended to read as follows:

(a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each telecommunications utility, electric ~~[public]~~ utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.

(b) An assessment under this section is equal to one-sixth of one percent of the telecommunications utility's, electric [public] utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.

SECTION 11.48. Section 16.002(b), Utilities Code, is amended to read as follows:

(b) A telecommunications utility, electric [public] utility, retail electric provider, or electric cooperative may instead make quarterly payments due August 15, November 15, February 15, and May 15.

SECTION 11.49. The following sections of the Tax Code are repealed:

- (1) Section 151.103(d);
- (2) Section 151.202(c);
- (3) Section 151.423;
- (4) Section 321.203(l), as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003; and
- (5) Section 323.203(l).

SECTION 11.50. The changes in law made by this article to Section 201.102, Tax Code, apply to a refund claim or determination under Chapter 111, Tax Code, made in relation to a tax that is due on or after the effective date of this article. A refund claim or determination that is made in relation to a tax that is due before the effective date of this article is governed by the law in effect on the date the tax is due, and that law is continued in effect for that purpose.

SECTION 11.51. The changes in law made by this article to Section 111.009, Tax Code, apply to a petition for redetermination for which the comptroller has not issued a final order or decision on or before the effective date of this article, regardless of the date on which the petition is filed.

SECTION 11.52. The changes in law made by this article to Section 151.006, Tax Code, do not affect any matter that is the subject of litigation pending on the effective date of this article.

SECTION 11.53. The change in law made to Section 171.109(g), Tax Code, by this article is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this article.

SECTION 11.54. If a change in law made to Section 16.001 or 16.002, Utilities Code, by this article conflicts with another bill enacted by the 79th Legislature, Regular Session, 2005, that amends Section 16.001 or 16.002, Utilities Code, including H.B. No. 1779, that other bill controls.

SECTION 11.55. This article takes effect October 1, 2005.

ARTICLE 12. SALE OF CIGARETTES AND TOBACCO PRODUCTS

SECTION 12.01. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0821 to read as follows:

Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) A person who is younger than 18 years of age commits an offense if the person purchases or attempts to purchase cigarettes or tobacco products.

(b) It is an exception to the application of this section that the person younger than 18 years of age is participating in an investigation or compliance inspection in accordance with Section 161.088 on behalf of the comptroller or a local law enforcement agency.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision.

(d) For purposes of this section, a person attempts to purchase cigarettes or tobacco products if the person commits an act amounting to more than mere preparation that tends, but fails, to effect the purchase.

(e) An offense under this section is a Class C misdemeanor.

SECTION 12.02. (a) Chapter 161, Health and Safety Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. INTERNET OR MAIL-ORDER SALES OF
CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.651. DEFINITIONS. (a) In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Tobacco product" has the meaning assigned by Sections 155.001(15)(C)-(E), Tax Code.

(b) In this subchapter, "common carrier," "consumer," "distributor," "importer," "manufacturer," "permit holder," "retailer," and "wholesaler" have the meanings assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Sec. 161.652. APPLICABILITY OF SUBCHAPTER TO INDIAN TRIBES. This subchapter does not apply to cigarette or tobacco product sales by an Indian tribe, as defined by 25 U.S.C. Section 450b(e), or by members of the Indian tribe, to a consumer in this state if the consumer is a verified adult member of that Indian tribe and the buyer and seller are each located on land over which the tribe exercises governmental power and that is owned or occupied by that tribe.

Sec. 161.653. CERTAIN DELIVERIES OF CIGARETTES AND TOBACCO PRODUCTS PROHIBITED. (a) A distributor, importer, manufacturer, retailer, wholesaler, or other person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products, including selling cigarettes or tobacco products over the Internet or through mail-order sales, may not sell, offer for sale, deliver, or cause to be delivered any cigarettes or tobacco products to a person in this state except in a face-to-face transaction at the time of purchase unless the cigarettes or tobacco products are in a container or wrapping plainly and visibly marked on the exterior in a manner that indicates that there are cigarettes or tobacco products inside and the sale or delivery is made to one of the following persons for purposes other than personal consumption by the recipient:

(1) a permit holder, including the holder's employees or agents;

(2) a manufacturer or importer of tobacco products or an export warehouse proprietor with a federal permit under 26 U.S.C. Section 5712 or an operator of a federally designated customs bonded warehouse under 19 U.S.C. Section 1311 or 1555; or

(3) a person who is an officer, employee, or agent of the United States government, this state, or a department, agency, instrumentality, or political subdivision of the United States or this state acting within the scope of the person's official duties.

(b) A person within the jurisdiction of this state's laws, including a common carrier or commercial delivery service, may not knowingly transport cigarettes or tobacco products on behalf of another person for commercial or business purposes for delivery to a person in this state other than a person described by Subsection (a)(1), (2), or (3).

(c) Except as specifically provided by Subsection (b), this section does not apply to a common carrier or other delivery service operating within the scope of its business as a common carrier or delivery service.

Sec. 161.654. PERMIT HOLDER LIST. The comptroller shall compile and make available on the comptroller's Internet website and by other means a list of all persons who hold a permit under Subchapter D, Chapter 154, or Subchapter C, Chapter 155, Tax Code. The comptroller shall periodically update the list of persons holding a permit under those subchapters.

Sec. 161.655. VIOLATOR'S LIST. (a) The comptroller shall maintain a list of persons the comptroller determines have violated Section 161.653(a) or are violating or offering to violate that subsection.

(b) The comptroller shall provide to the United States Postal Service, each common carrier and commercial delivery service operating in this state, and any other person who delivers cigarettes or tobacco products into or within this state a copy of this subchapter and the list maintained under Subsection (a). The comptroller shall provide updated copies of the list as the comptroller determines is appropriate.

(c) Before adding a person to the list maintained under Subsection (a), the comptroller shall provide 10 days' written notice and an opportunity to be heard to that person. The notice must include the text of this subchapter. The notice may be made by an electronic communication.

(d) The list maintained under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code. The comptroller and each person who receives a copy of the list from the comptroller under this section must maintain the list as confidential and may use the list only to comply with this subchapter.

Sec. 161.656. CARRIER AND DELIVERY SERVICE RESPONSIBILITIES. (a) A person who is a common carrier or commercial delivery service within the jurisdiction of this state's laws who receives a copy of a list maintained under Section 161.655 may not make any deliveries in this state on behalf of a person identified in the list unless:

(1) the person making the delivery knows or affirmatively believes in good faith that the package does not contain cigarettes or tobacco products; or

(2) the delivery is made to a person described by Section 161.653(a)(1), (2), or (3).

(b) A person who delivers cigarettes or tobacco products and receives a copy of a list maintained under Section 161.155:

(1) is not required to:

(A) inspect a package being delivered to determine whether the package contains cigarettes or tobacco products;

(B) determine whether the list is complete, accurate, and up to date; or

(C) determine whether any person ordering or requesting a delivery is in compliance with this subchapter;

(2) is not subject to any penalty for:

(A) failing to make a specific delivery on behalf of a person on the list;

or

(B) establishing and following a policy of not making deliveries:

(i) in this state on behalf of a person on the list;

(ii) of cigarettes or tobacco products in this state; or

(iii) of cigarettes or tobacco products in this state for any person that is not a distributor, manufacturer, retailer, or wholesaler;

(3) is not subject to criminal penalties for a violation of this subchapter unless the person knowingly violates this subchapter for the specific purpose of:

(A) assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products to violate this subchapter; or

(B) profiting from the violation of this subchapter by another person;

and

(4) may collect an additional fee from the person's customers who order deliveries of cigarettes or tobacco products to recover any costs incurred by the person related to complying with this subchapter.

(c) An employee of a common carrier or commercial delivery service or of any other person making deliveries for a carrier or delivery service is not subject to criminal or civil penalties for violating this subchapter unless the employee knowingly violates this subchapter for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products in violation of this subchapter.

Sec. 161.657. CIVIL PENALTIES. (a) Except as provided in Section 161.656(c), a person who violates this subchapter is subject to a civil penalty for each violation in an amount:

(1) of at least \$500 and not more than the greater of \$5,000 or five times the value of the cigarettes or tobacco products at issue; and

(2) equal to any profits, gain, gross receipts, or other benefits received from the violation.

(b) A person who violates Section 161.653(a) must reimburse this state and the applicable political subdivisions of this state for all unpaid taxes that would otherwise have been imposed by this state and those political subdivisions on the cigarettes and tobacco products in question, plus interest, and for any other damages incurred by the state or the political subdivision as a result of the violation.

Sec. 161.658. CRIMINAL PENALTIES. Except as provided by Sections 161.656(b)(3) and (c), a person who knowingly violates Section 161.653 or 161.656(a) commits an offense. An offense under this subsection is a Class A misdemeanor, except that if it is shown on the trial of the offense that the person has a previous conviction under this subsection, the offense is a state jail felony.

Sec. 161.659. COSTS. (a) The comptroller shall deposit an amount equal to 50 percent of the civil penalties recovered by this state under this subchapter to be appropriated only to the comptroller, department, attorney general, and other state agencies to enforce this subchapter or make related investigations or to enforce other state laws relating to contraband cigarettes and tobacco products, the collection of taxes on cigarettes and tobacco products, and the prohibition of cigarette and tobacco product sales to minors.

(b) In a civil action brought to enforce this subchapter, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees, plus interest.

Sec. 161.660. ENFORCEMENT. (a) The attorney general may bring an action in the appropriate court in this state to enforce this subchapter, seek civil penalties and related damages, and equitable relief, or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(b) On providing at least 15 days' notice to the attorney general, enforcement officials of a political subdivision of this state may bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to seek damages and equitable relief or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(c) On providing at least 15 days' notice to the attorney general, a person who holds a valid permit under 26 U.S.C. Section 5712 may bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(d) On receiving notice from another person of the person's intent to bring an action under this subchapter in the appropriate court in this state, the attorney general may choose to join in the other person's action or bring an action by this state in its stead and shall inform the person providing notice of how the attorney general will proceed not later than the 15th day after receiving the notice.

(e) The attorney general shall make public, by posting on the Internet and other means, a list of all actions taken to enforce this subchapter and a list of all persons found to have violated this subchapter, including the persons' names, addresses, and any other information the attorney general believes may be useful to other jurisdictions enforcing laws prohibiting or restricting cigarette or tobacco product sales for personal consumption in which the seller and buyer do not initiate and complete the entire transaction in each other's physical presence.

(b) Effective September 1, 2006, Subchapter R, Chapter 161, Health and Safety Code, as added by Chapter 730, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(c) Not later than January 1, 2006, the comptroller shall post the list of persons who hold permits under Subchapter D, Chapter 154, Tax Code, or Subchapter C, Chapter 155, Tax Code, as required by Section 161.654, Health and Safety Code, as added by this section.

(d) Not later than June 1, 2006, the comptroller shall create and distribute the list as required by Section 161.655, Health and Safety Code, as added by this section.

(e) Notwithstanding Subchapter V, Chapter 161, Health and Safety Code, as added by this section, a person is not subject to a penalty for a violation of that subchapter before September 1, 2006.

(f) The change in law made by this section applies only to an offense committed on or after September 1, 2006. An offense committed before September 1, 2006, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2006, if any element of the offense was committed before that date.

(g) This section takes effect September 1, 2005, except that Sections 161.657-161.660, Health and Safety Code, as added by this section, take effect September 1, 2006.

SECTION 12.03. (a) Article 59.01(2), Code of Criminal Procedure, as amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and Section 3, Chapter 649, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code; ~~or~~

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code;

(viii) a Class A misdemeanor or state jail felony under Subchapter U, Chapter 161, Health and Safety Code; or

(ix) ~~(vii)~~ a Class B misdemeanor under Section 35.58, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(ix) ~~(B)(vii)~~ of this subdivision, or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(ix) [(B)(vii)] of this subdivision, or a crime of violence.

(b) The change in law made by this section applies only to an offense committed on or after September 1, 2006. An offense committed before September 1, 2006, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2006, if any element of the offense was committed before that date.

(c) This section takes effect September 1, 2006.

ARTICLE 13. COMMERCIAL DRIVER'S LICENSES

SECTION 13.01. Section 522.021(a), Transportation Code, is amended to read as follows:

(a) An application for a commercial driver's license or commercial driver learner's permit must include:

(1) the full name and current residence and mailing address of the applicant;
(2) a physical description of the applicant, including sex, height, and eye color;

(3) the applicant's date of birth;

(4) the applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;

(5) certifications, including those required by 49 C.F.R. Section 383.71(a); [and]

(6) if the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction, a copy of:

(A) a social security card; or

(B) a passport issued to the applicant by the country of which the applicant is a resident and a visa, each containing an identification number and an expiration date; and

(7) any other information required by the department.

SECTION 13.02. Section 522.029, Transportation Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) The fee for a commercial driver's license or commercial driver learner's permit issued by the department is \$60, except as provided by Subsections (f), [and] (h), and (j).

(j) The fee for a nonresident commercial driver's license is \$100.

SECTION 13.03. Section 522.051, Transportation Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Except as provided by Subsection (f) and Section 522.033, an original commercial driver's license or commercial driver learner's permit expires six years after the applicant's next birthday.

(f) A nonresident commercial driver's license issued to an applicant described by Section 522.021(a)(6)(B) who submitted a copy of a visa expires on the date the person's visa expires.

ARTICLE 14. EFFECTIVE DATE

SECTION 14.01. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, except as otherwise provided by this Act, this Act takes effect on the 91st day after the last day of the legislative session.

Floor Amendment No. 1

Amend **CSSB 1863** (House committee printing) as follows:

- (1) Strike ARTICLE 5 (page 19, line 18 through page 26, line 23).
- (2) Strike SECTION 8.04 (page 44, lines 13-14).
- (3) Strike ARTICLE 10 (page 48, line 20 through page 51, line 16).
- (4) Strike SECTIONS 11.23, 11.24, 11.25, 11.26, and 11.27 (page 64, line 11, through page 67, line 2).
- (5) Strike SECTION 11.29 (page 67, line 19 through page 68, line 4).
- (6) Strike SECTION 11.34 (page 69, lines 19-26).
- (7) Strike SECTION 11.36 (page 70, line 9 through page 71, line 18).
- (8) Strike SECTION 11.49 (page 80, lines 14-21) and substitute:
SECTION 11.49. The following sections of the Tax Code are repealed:
 - (1) Section 151.103(d);
 - (2) Section 151.202(c);
 - (3) Section 321.203(l), as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003; and
 - (4) Section 323.203(l).

Floor Amendment No. 3

Amend **CSSB 1863** as follows:

On page 1, line 12, strike "\$1,000" and substitute "\$370"

Floor Amendment No. 4

Amend the Tracy King Floor Amendment No. 3 to **CSSB 1863** as follows:

Amend **CSSB 1863** as follows:

On page 1, line 12, strike "\$1,000" and substitute "\$500"

Floor Amendment No. 5

Amend **CSSB 1863** (House committee printing) as follows:

- (1) In the recital to SECTION 4.16 of the bill (page 17, line 26, strike "Subsection (c-1)" and substitute "Subsections (c-1) and (d-1)").
- (2) In SECTION 4.16 of the bill (page 18, between lines 9 and 10), after added Section 162.227(c-1), Tax Code, insert the following:

(d-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state by auxiliary power units or power take-off equipment on any motor vehicle. If the quantity of that diesel fuel can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor

vehicle, the comptroller may approve and adopt the use of the device as a basis for determining the quantity of diesel fuel consumed in those operations for a tax credit or tax refund. If there is no separate metering device or other approved measuring method, the license holder may take the credit and the person who does not hold a license may claim the refund on a percentage of the diesel fuel consumed by each motor vehicle equipped with an auxiliary power unit or power take-off equipment. The comptroller shall determine the percentage of the credit or refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund may not be allowed for the tax paid on any portion of the diesel fuel that is used for that purpose. A credit or refund may not be allowed for the diesel fuel tax paid on that portion of the diesel fuel that is used for idling.

Floor Amendment No. 6

Amend **CSSB 1863** as follows:

(1) In the recital to SECTION 4.16 (page 17, line 26), strike "Subsection (c-1)" and substitute "Subsections (c-1) and (c-2)".

(2) At the end of SECTION 4.16 (page 18, between lines 9 and 10), insert the following:

(c-2) A person who does not hold a license under this subchapter may file a refund claim with the comptroller if the person paid tax on kerosene and used or consumed the kerosene in this state in manufacturing or as a component part of a product that is not a motor fuel.

Floor Amendment No. 7

Amend **CSSB 1863**, in SECTION 5A.03 of the bill, proposed Section 152.0412, Tax Code (committee printing, on page 21, between lines 4 and 5), by inserting the following:

(d-1) A county tax assessor-collector shall examine each certified appraisal submitted to the assessor-collector under Subsection (d) for the purpose of determining the truth and accuracy of the information in the appraisal. If the tax assessor-collector or the comptroller believes that any information in a certified appraisal is incorrect or untrue, or if the certified appraisal does not conform to any applicable rule adopted by the comptroller under this chapter, the tax assessor or the comptroller shall require the purchaser of the vehicle described on the certified appraisal, the licensed adjuster, or the motor vehicle dealer, as applicable, to:

(1) provide additional information or evidence to substantiate the information in the appraisal; or

(2) conform the appraisal to the applicable rule of the comptroller.

Floor Amendment No. 10

Amend **CSSB 1863** (House committee report) as follows:

(1) In SECTION 8.02 of ARTICLE 8 of the bill, in proposed Subsection (c), Section 531.079, Government Code (page 43, line 7), strike "commission" and substitute "Department of Aging and Disability Services".

(2) In SECTION 8.02 of ARTICLE 8 of the bill, in proposed Section 531.080, Government Code (page 43, line 12), strike "commission" and substitute "Department of Aging and Disability Services".

Floor Amendment No. 13

Amend **CSSB 1863** (House committee printing) as follows:

(1) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (b), Section 161.653, Health and Safety Code (page 84, lines 7 and 8), strike ", including a common carrier or commercial delivery service,".

(2) In SECTION 12.02 of ARTICLE 12 of the bill, at the end of proposed Subsection (b), Section 161.653, Health and Safety Code (page 84, line 12), insert the following "This subsection does not apply to a common carrier or commercial delivery service that in the ordinary course of business does not use bills of lading or other shipping documents to identify the contents of packages transported by the carrier or commercial delivery service."

(3) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (a), Section 161.656, Health and Safety Code (page 85, line 22), between "may not" and "make any", insert ", with the specific purpose of intentionally assisting in the violation of this subchapter,".

(4) In SECTION 12.02 of ARTICLE 12 of the bill, in proposed Subsection (a), Section 161.656, Health and Safety Code (page 85, line 23), strike "unless" and substitute ". A person who is a common carrier or commercial delivery service and who receives a list maintained under Section 161.655 may make deliveries in this state on behalf of a person who is identified in the list if".

(5) In SECTION 12.02 of ARTICLE 12 of the bill, strike proposed Subdivision (3), Subsection (b), Section 161.656, Health and Safety Code (page 86, line 24 through page 87, line 4), and substitute the following:

(3) is not subject to criminal penalties for a violation of this subchapter unless the person intentionally violates this subchapter for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products to violate this subchapter; and

Floor Amendment No. 14

Amend **CSSB 1863** by adding the following Article _____. and renumbering the following Articles accordingly.

ARTICLE _____. WATER CONSERVATION SYSTEMS FOR CORRECTIONAL FACILITIES

SECTION _____. Chapter 493, Government Code, is amended by adding Section 493.0101 to read as follows:

Sec. 493.0101. WATER CONSERVATION SYSTEMS FOR CORRECTIONAL FACILITIES. (a) The department shall contract with a performance contractor to hire a private vendor, at no initial cost to the state, to install electronic water conservation systems on prison toilets, sinks, and showers.

(b) A performance contractor contracting with the department under this section shall:

(1) demonstrate that the electronic water conservation systems used will yield the greatest amount of annual water consumption and maintenance cost savings available.

(c) A contract between the department and a performance contractor under this section must include a provision that will ensure a budget-neutral or positive fiscal impact to the state.

(d) The department shall contract for the installation of the conservation systems in every correctional facility. In designating the order of installation in a correctional facility under this subsection, the department shall consider:

(1) the facility where the greatest amount of savings can be achieved;

(2) the age of the facility; and

(3) the potential operational and security concerns of the facility.

(e) A performance contractor that contracts with the department under this section may not receive any remuneration under the contract until cost savings to the state have been verified.

(f) Not later than December 31, 2006, the department shall submit a progress report to the lieutenant governor, speaker of the house of representatives, and the Legislative Budget Board. The report must include an evaluation of the initial installation of the water conservation systems, effectiveness of the technology used, and the amount of cost savings to the state. The department may request assistance from the State Auditor and the Legislative Budget Board with the preparation of the report and the calculation of savings.

SECTION _____. (a) Not later than October 1, 2005, the Texas Department of Criminal Justice shall submit a request for proposals from performance contractors to provide water conservation systems under Section 493.0101, Government Code, as added by this Act.

(b) The installation of the water conservation systems described by Subsection (a) of this section shall begin not later than February 1, 2006, and shall be completed by January 1, 2011.

Floor Amendment No. 16

Amend Floor Amendment No. 14 by Madden to **CSSB 1863** (House committee printing) as follows:

(2) In the unnumbered SECTION of the amendment that adds Subsection (b), Section 493.0101, Government Code (page 1, lines 11-16), strike added Subsection (b) and substitute the following:

(b) A performance contractor contracting with the department under this section shall:

(1) ensure that the installation work described by Subsection (a) is performed by a person licensed as a plumber under Chapter 1301, Occupations Code, who complies with all plumbing codes described by that chapter; and

(2) demonstrate that the electronic water conservation systems used will yield annual water consumption and maintenance cost savings.

(4) In the unnumbered SECTION of the amendment that adds Subsection (d), Section 493.0101, Government Code (page 1, lines 22 and 23), strike "in every correctional facility" and substitute "in a number of facilities as considered appropriate by the department".

(5) In the unnumbered SECTION of the amendment that adds Subsection (e), Section 493.0101, Government Code (page 2, line 4), between "verified" and the period, insert "by the Texas Water Development Board".

Floor Amendment No. 18

Amend **CSSB 1863** (House committee printing) by adding the following appropriately numbered Article to the bill and renumbering subsequent Articles and Sections of the bill as appropriate:

ARTICLE ____ . PROCEEDS FROM THE SALE OF CERTAIN STATE PERSONAL AND REAL PROPERTY

SECTION ____ .01. Section 2175.134, Government Code, is amended by adding Subsection (b) and amending Subsection (c) to read as follows:

(b) Proceeds from the sale of surplus or salvage property originally purchased with money from the state highway fund shall be deposited to the credit of the state highway fund. The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited to the credit of the general revenue fund if the costs were not paid from the state highway fund. The fee collected under Section 2175.131 shall be deposited to the credit of the general revenue fund.

SECTION ____ .02. Section 2175.191, Government Code, is amended by adding Subsection (b) and amending Subsection (c) to read as follows:

(b) Proceeds from the sale of surplus or salvage property originally purchased with money from the state highway fund shall be deposited to the credit of the state highway fund. The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited to the credit of the general revenue fund if the costs were not paid from the state highway fund. The fee collected under Section 2175.188 shall be deposited to the credit of the general revenue fund.

SECTION ____ .03. Subsection (c), Section 31.1573, Natural Resources Code, is amended to read as follows:

(c) Unless otherwise dedicated by the Texas Constitution, the proceeds of the transaction shall be deposited:

(1) to the credit of the Texas capital trust fund, except as provided by Subdivision (2) or (3) [if the agency is eligible under Chapter 2201, Government Code, to participate in that fund];

(2) in the state treasury to the credit of the state highway fund, if the real property was originally purchased in whole or in part with money from the state highway fund [affected agency if the agency is not eligible under Chapter 2201, Government Code, to participate in the Texas capital trust fund]; or

(3) notwithstanding Subdivisions (1) and (2), as otherwise directed under the procedures of Chapter 317, Government Code.

SECTION ____ .04. This article takes effect September 1, 2007.

Floor Amendment No. 19

Amend **CSSB 1863** by adding Sections ____ and ____ to read as follows:

SECTION ____ . Subsection (a), Section 61.001, Government Code, is amended to read as follows:

"(a) Each grand juror or petit juror in a civil or criminal case in a district court, criminal district court, county court, county court at law, or justice court is entitled to receive as reimbursement for travel and other expenses an amount: (1) not less than \$6 for the first day or fraction of the first day served as a juror; and (2) not less than \$40 [not more than \$50] for each day or fraction of each day served as a juror after the first day."

SECTION __. Chapter 61, Government Code, is amended by adding Section 61.0015 to read as follows:

"Sec. 61.0015. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county \$34 a day for the reimbursement paid to a grand juror or petit juror under Section 61.001 for each day or fraction of each day served as a juror after the first day.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

(c) The comptroller shall pay claims for reimbursement under this section quarterly to the county treasury of each county that filed a claim from money collected under Article 102.0045, Code of Criminal Procedure, and deposited in the judicial fund.

(d) If sufficient money described by Subsection (c) is not available to satisfy the claims for reimbursement filed by the counties under this section, the comptroller shall apportion the available money among the counties by reducing the amount payable to each county on an equal percentage basis.

(e) If a payment on a county's claim for reimbursement is reduced under Subsection (d), or if a county fails to file the claim for reimbursement in a timely manner, the comptroller shall:

(1) pay the balance owed to the county when sufficient money described by Subsection (c) is available; or

(2) carry forward the balance owed to the county and pay the balance to the county when the next payment is required."

SECTION __. Section 62.0141, Government Code, is amended to read as follows:

"Sec. 62.0141. FAILURE TO ANSWER JURY SUMMONS. In addition to any criminal penalty prescribed by law, a person summoned for jury service who does not comply with the summons as required by law or who knowingly provides false information in a request for an exemption or to be excused from jury service is subject to a contempt action punishable by a fine of not less than \$100 nor more than \$1,000."

SECTION __. Subchapter A, Chapter 62, Government Code, is amended by adding Section 62.0142 to read as follows:

"Sec. 62.0142. POSTPONEMENT OF JURY SERVICE. (a) A person summoned for jury service may request a postponement of the person's initial appearance for jury service. The person may request the postponement by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear.

(b) On receipt of a request under Subsection (a), the clerk of the court shall grant the person a postponement if:

(1) the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and

(2) the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

(c) A person who receives a postponement under Subsection (b) may request a subsequent postponement in the manner described by Subsection (a). The clerk of the court may approve the subsequent postponement only because of an extreme emergency that could not have been anticipated, such as a death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved. Before the clerk may grant the subsequent postponement, the person and the clerk must determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was to appear after the postponement under Subsection (b)."

SECTION __. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0045 to read as follows:

"Art. 102.0045. FEE FOR JURY REIMBURSEMENT TO COUNTIES. (a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to all other costs, a fee of \$4 to be used to reimburse counties for the cost of juror services as provided by Section 61.0015, Government Code.

(b) The clerk of the court shall remit the fees collected under this article to the comptroller in the manner provided by Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit the fees in the judicial fund."

SECTION __. Section 102.021, Government Code, is amended to read as follows:

"Sec. 102.021. COURT COSTS ON CONVICTION. A person convicted of an offense shall pay, in addition to all other costs:

(1) court costs on conviction of a felony (Sec. 133.102, Local Government Code) . . . \$133;

(2) court costs on conviction of a Class A or Class B misdemeanor (Sec. 133.102, Local Government Code) . . . \$83;

(3) court costs on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Sec. 133.102, Local Government Code) . . . \$40;

(4) court costs on certain convictions in statutory county courts (Sec. 51.702, Government Code) . . . \$15;

(5) court costs on certain convictions in certain county courts (Sec. 51.703, Government Code) . . . \$15;

(6) a time payment fee if convicted of a felony or misdemeanor for paying any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, courts costs, or restitution (Sec. 133.103, Local Government Code) . . . \$25;

(7) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;

(8) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(B) executing or processing an issued arrest warrant or capias (Art. 102.011, Code of Criminal Procedure) . . . \$50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . \$8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed \$5;

(9) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;

(10) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

(11) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(12) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(13) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure) . . . \$20;

(14) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . \$15;

(15) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(16) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

(17) cost for DNA testing for certain felonies (Art. 102.020, Code of Criminal Procedure) . . . \$250;

(18) court cost on an offense of public lewdness or indecent exposure (Art. 102.020, Code of Criminal Procedure) . . . \$50;

(19) court cost on conviction of a misdemeanor under Subtitle C, Title 7, Transportation Code (Sec. 542.403, Transportation Code) . . . \$3;

(20) cost for impoundment of vehicle (Sec. 601.263, Transportation Code) . . . \$15 per day; ~~and~~

(21) a civil and criminal enforcement cost on conviction of an offense of, or related to, the nonpayment of a toll in certain counties (Sec. 284.2031, Transportation Code) . . . \$1; and

(22) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4."

SECTION _____. Section 133.003, Local Government Code, is amended to read as follows:

"Sec. 133.003. CRIMINAL FEES. This chapter applies to the following criminal fees:

(1) the consolidated fee imposed under Section 133.102;

(2) the time payment fee imposed under Section 133.103;

(3) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal Procedure, and forwarded to the comptroller as provided by Section 133.104;

(4) costs on conviction imposed in certain statutory county courts under Section 51.702, Government Code, and deposited in the judicial fund;

(5) costs on conviction imposed in certain county courts under Section 51.703, Government Code, and deposited in the judicial fund;

(6) the administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code; ~~and~~

(7) fines on conviction imposed under Section 621.506(g), Transportation Code; and

(8) the fee imposed under Article 102.0045, Code of Criminal Procedure."

Floor Amendment No. 20

Amend Floor Amendment No. 19 by Thompson to **CSSB 1863** as follows:

(1) In proposed Article 102.0045(a), Code of Criminal Procedure (page 4, line 8), strike "\$4" and substitute "\$2".

(2) In proposed Section 102.021(22), Government Code (page 8, line 3), strike "\$4" and substitute "\$2".

Floor Amendment No. 21

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE _____. COST PARTICIPATION IN TOLL FACILITIES BY
THE TEXAS DEPARTMENT OF TRANSPORTATION

SECTION _____.01. Subsection (h), Section 222.103, Transportation Code, is amended to read as follows:

(h) Money granted by the department each fiscal year under this section may not exceed \$1.5 billion [~~\$800 million~~]. This limitation does not apply to money required to be repaid.

Floor Amendment No. 22

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE ____ . AUTHORIZATION OF CERTAIN NONPROFIT ORGANIZATIONS TO CONDUCT BINGO

SECTION 19.01. Section 2001.002(11), Occupations Code, is amended to read as follows:

(11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; ~~or~~

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States; or

(C) a nonprofit organization that:

(i) is organized under tribal law by a federally recognized Indian tribe that is not subject to the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.) and that exercises tribal authority over a reservation, as defined by 25 U.S.C. Section 1300g, that is located in a county on the international border with Mexico; and

(ii) is organized to perform and is engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions.

SECTION 19.02. Subchapter C, Chapter 2001, Occupations Code, is amended by adding Section 2001.1015 to read as follows:

Sec. 2001.1015. CERTAIN TRIBAL ORGANIZATIONS EXEMPT FROM REGULATORY JURISDICTION AND LICENSE REQUIREMENTS. (a) A nonprofit organization in existence for at least 180 days that qualifies as a fraternal organization under Section 2001.002(11)(C) may conduct bingo on the reservation of the Indian tribe under whose tribal law the organization is organized on adoption by the tribe of rules governing the conduct of bingo by the organization that conform to the substantive provisions of this chapter and of Sections 47(b) and (c), Article III, Texas Constitution.

(b) In accordance with Section 107(b), Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (25 U.S.C. Section 1300g-6), an organization described by Subsection (a) may conduct bingo activities in accordance with the tribe's rules adopted under Subsection (a) without submitting to the regulatory jurisdiction, including licensing requirements, of this state.

(c) A nonprofit organization described by Subsection (b) may not conduct bingo under this section unless the organization transfers to the state on a monthly basis an amount equal to five percent of the gross receipts from bingo in a manner determined by the comptroller.

Floor Amendment No. 25

Amend **CSSB 1863** by adding a new appropriately numbered section __ and renumbering subsequent sections accordingly.

SECTION 531.070(h), Government Code, is amended to read as follows:

(h) Subject to Subsection (i), the commission shall negotiate with manufacturers and labelers, and may negotiate with ~~[including]~~ generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs provided under:

- (1) the Medicaid vendor drug program in excess of the Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its subsequent amendments;
- (2) the child health plan program; and
- (3) any other state program administered by the commission or a health and human services agency, including community mental health centers and state mental health hospitals.

Floor Amendment No. 27

Amend **CSSB 1863** by adding the following appropriately numbered article to the bill and renumbering the remaining articles appropriately:

ARTICLE __. MARKETING AND SALE OF CERTAIN LICENSE PLATES

SECTION __.01. Section 504.851, Transportation Code, is amended by amending Subsections (a), (b), (c), (e), (f), (g), and (h) and adding Subsections (g-1) and (k) to read as follows:

(a) The ~~[commission may authorize the]~~ department shall ~~[to]~~ enter into a contract with the private vendor whose proposal is most advantageous to the state, as determined from competitive sealed proposals that satisfy the requirements of this section, for the marketing and sale of:

- (1) personalized ~~[prestige]~~ license plates authorized by Section 504.101; or
- (2) with the agreement of the private vendor, other specialty ~~[specialized]~~ license plates authorized by this subchapter.

(b) Instead of the fees established by Section 504.101(c), ~~[if the commission authorizes the department to contract with a private vendor under Subsection (a)(1) for the marketing and sale of personalized prestige license plates,]~~ the commission by rule shall establish fees for the issuance or renewal of personalized ~~[prestige]~~ license plates that are marketed and sold by the private vendor. Fees must be reasonable and not less than the greater of:

- (1) the amounts necessary to allow the department to recover all reasonable costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs; or
- (2) the amount established by Section 504.101(c).

(c) ~~The [If the commission authorizes the department to contract with a private vendor under Subsection (a)(2) for the marketing and sale of other specialized license plates authorized by this subchapter, including specialized license plates that may be~~

~~personalized, the~~ commission by rule shall establish the fees for the issuance or renewal of souvenir license plates, specialty ~~[specialized]~~ license plates, or souvenir or specialty license plates that are personalized that are marketed and sold by the private vendor. Fees must be reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs. A fee established under this subsection is in addition to:

(1) the registration fee and any optional registration fee prescribed by this chapter for the vehicle for which specialty ~~[the specialized]~~ license plates are issued;

(2) any additional fee prescribed by this subchapter for the issuance of specialty ~~[the specialized]~~ license plates for that vehicle; and

(3) any additional fee prescribed by this subchapter for the issuance of personalized license plates for that vehicle.

(e) The portion of a ~~[A]~~ contract with a private vendor regarding the marketing and sale of personalized license plates ~~[under Subsection (a)(1)]~~ is payable only from amounts derived from the collection of the fee established under Subsection (b). The portion of a ~~[A]~~ contract with a private vendor regarding the marketing and sale of souvenir license plates, specialty license plates, or souvenir or specialty license plates that are personalized under Section 504.102 ~~[under Subsection (a)(2)]~~ is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) The department may approve ~~[create]~~ new design and color combinations for personalized ~~[prestige]~~ license plates that are marketed and ~~[or]~~ sold by a private vendor under a contract entered into with the private vendor ~~[under Subsection (a)(1)]~~. Each approved license plate design and color combination remains the property of the department.

(g) The department may approve ~~[create]~~ new design and color combinations for specialty ~~[specialized]~~ license plates authorized by this chapter, including specialty ~~[specialized]~~ license plates that may be personalized, that are marketed and ~~[or]~~ sold by a private vendor under a contract entered into with the private vendor ~~[under Subsection (a)(2)]~~. Each approved license plate design and color combination remains the property of the department. Except as otherwise provided by this chapter, this ~~[This]~~ subsection does not authorize:

(1) the department to approve a design or color combination for a specialty ~~[specialized]~~ license plate that is inconsistent with the design or color combination specified for the license plate by this section of this chapter ~~[subchapter]~~ that authorizes the issuance of the specialty ~~[specialized]~~ license plate; or

(2) the private vendor to market and and ~~[or]~~ sell a specialty ~~[specialized]~~ license plate with a design or color combination that is inconsistent with the design or color combination specified by that section.

(g-1) The department may not:

(1) publish a proposed design or color combination for a specialty license plate for public comment in the Texas Register or otherwise, except on the department's website for a period not to exceed 10 days; or

(2) restrict the background color, color combinations, or color alphanumeric license plate numbers of a specialty license plate, except as determined by the Department of Public Safety as necessary for law enforcement purposes.

(h) Subject to the limitations provided by Subsections (g) and (g-1) [~~In connection with a license plate that is marketed or sold by a private vendor under contract~~], the department may cancel a license plate or require the discontinuation of a license plate design or color combination that is marketed and sold by a private vendor under contract at any time if the department determines that the cancellation or discontinuation is in the best interest of this state or the motoring public.

(k) The department shall certify to the comptroller the estimate, with a detailed explanation of the basis on which the estimate is calculated, of all reasonable costs to the department associated with the evaluation of competitive sealed proposals received by the department under this section and associated with the implementation and enforcement of a contract entered into under this section, including direct, indirect, and administrative costs for the issuance or renewal of personalized license plates or specialty license plates.

SECTION __.02. Subchapter J, Chapter 504, Transportation Code, is amended by adding Section 504.852 to read as follows:

Sec. 504.852. CONTRACT LIMITATIONS. (a) In a contract under Section 504.851, the department may not:

(1) require a private vendor to meet a minimum sales volume or pay a security or other deposit in an amount greater than \$100,000 to secure the performance of the vendor;

(2) unreasonably disapprove or limit any aspect of a private vendor's marketing and sales plan;

(3) unreasonably interfere with the selection, assignment, or management by the private vendor of the private vendor's employees, agents, or subcontractors; or

(4) require a private vendor to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102.

(b) If a private vendor contracts to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102, the initial term of the contract shall be for at least five years from the effective date of the contract. The contract shall contain, at the option of either the department or the private vendor, a second term at least equal in length to the initial term of the contract.

(c) Notwithstanding Subsection (b), a private vendor may not market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102 that compete directly for sales with another specialty license plate issued under this chapter unless the department and the sponsoring agency or organization of the other license plate approve.

SECTION __.03. A contract awarded by the Texas Department of Transportation to a private vendor under the provisions of Section 504.851, Transportation Code, is not valid to the extent that the contract does not comply with the changes in law made by this Article.

SECTION __.04. This Article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Article takes effect September 1, 2005.

Floor Amendment No. 29

Amend **CSSB 1863** (House committee printing) by adding a new section numbered appropriately to read as follows:

SECTION __. Sections 151.3162(d) and (e), Tax Code, are amended to read as follows:

(d) the exemption provided by Subsection (b) takes effect January 1, 2008. Until that date, a person is entitled to an exemption ~~[a credit or refund]~~ of a portion of the taxes paid under this chapter on an item that after January 1, 2008, will be exempted from the taxes imposed by this chapter under Subsection (b). The amount of the exemption ~~[credit or refund]~~ is determined as follows:

(1) for an item for which the taxable event occurs on or after October 1, 2001, and before January 1, 2004, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 33 percent of the tax paid on the item;

(2) for an item for which the taxable event occurs on or after January 1, 2004, and before January 1, 2006, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 50 percent of the tax paid on the item; and

(3) for an item for which the taxable event occurs on or after January 1, 2006, and before January 1, 2008, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 75 percent of the tax paid on the item.

(e) A taxpayer entitled to a credit or refund under Subsection (d), as that subsection existed on September 30, 2005, may elect to receive either a credit or a refund. A taxpayer who elects to receive a credit must claim the credit on the return for a period that ends not later than the first anniversary of the date on which the taxable event occurred. A taxpayer who elects to receive a refund must apply to the comptroller for the refund before or during the calendar year following the year in which the tax on the item was paid.

Floor Amendment No. 31

Amend **CSSB 1863** by adding to the bill an appropriately numbered article to read as follows and by renumbering the other articles of the bill accordingly:

ARTICLE __. RENEWING OUR COMMUNITIES; MENTORING INITIATIVE

SECTION __.01. Subtitle I, Title 4, Government Code, is amended by adding Chapter 535 to read as follows:

CHAPTER 535. RENEWING OUR COMMUNITIES ACCOUNT

Sec. 535.001. DEFINITIONS. In this chapter:

(1) "Account" means the renewing our communities account.

(2) "Community-based organization" means a nonprofit corporation or association that is located in close proximity to the population the organization serves.

(3) "Faith-based organization" means a nonprofit corporation or association
that:

(A) is operated through a religious or denominational organization, including an organization that is operated for religious, educational, or charitable purposes and that is operated, supervised, or controlled, wholly or partly, by or in connection with a religious organization; or

(B) clearly demonstrates through the organization's mission statement, policies, or practices that the organization is guided or motivated by religion.

Sec. 535.002. CONSTRUCTION. This chapter may not be construed to:

(1) exempt a faith- or community-based organization from any applicable state or federal law; or

(2) be an endorsement or sponsorship by this state of the religious character, expression, beliefs, doctrines, or practices of a faith-based organization.

Sec. 535.003. APPLICABILITY OF CERTAIN FEDERAL LAW. A power authorized or duty imposed under this chapter must be performed in a manner that is consistent with 42 U.S.C. Section 604a.

Sec. 535.004. RENEWING OUR COMMUNITIES ACCOUNT. (a) The renewing our communities account is an account in the general revenue fund that may be appropriated only to the commission for the purposes and activities authorized by this chapter and for reasonable administrative expenses under this chapter.

(b) The account consists of:

(1) all money appropriated for the purposes of this chapter;

(2) any gifts, grants, or donations received for the purposes of this chapter;

and

(3) interest earned on money in the account.

(c) The account is exempt from the application of Section 403.095.

(d) The purposes of the account are to:

(1) increase the capacity of and strengthen faith- and community-based organizations to provide charitable services to persons in this state who are in need of those services;

(2) assist local governmental entities in establishing local offices for faith- and community-based initiatives;

(3) foster better partnerships between state government and faith- and community-based organizations to provide charitable services to persons in this state; and

(4) leverage state and local resources to acquire federal or private grant funds to provide charitable services in this state.

Sec. 535.005. POWERS AND DUTIES REGARDING ACCOUNT. (a) The commission shall:

(1) develop and implement a competitive process for awarding grants from the account that is consistent with state law and includes objective selection criteria;

(2) oversee the delivery of training and other assistance activities under this chapter;

(3) develop criteria limiting awards of grants under Subsection (b)(1) to small and medium-sized faith- and community-based organizations that provide charitable services to persons in this state;

(4) establish general state priorities for the account; and

(5) establish and monitor performance and outcome measures for persons to whom grants are awarded under this chapter.

(b) The commission may:

(1) award grants from the account to faith- and community-based organizations that provide charitable services to persons in this state for capacity-building purposes;

(2) directly, or through agreements with one or more entities that serve faith- and community-based organizations that provide charitable services to persons in this state:

(A) assist faith- and community-based organizations with:

(i) writing or managing grants through workshops or other forms of guidance;

(ii) obtaining legal assistance related to forming a corporation or obtaining an exemption from taxation under the Internal Revenue Code; and

(iii) obtaining information about or referrals to entities that provide expertise in accounting, legal, or tax issues, program development matters, or other organizational topics;

(B) provide information or assistance to faith- and community-based organizations related to building the organizations' capacity for providing services;

(C) facilitate the formation of networks, the coordination of services, and the sharing of resources among faith- and community-based organizations;

(D) in cooperation with existing efforts, if possible, conduct needs assessments to identify gaps in services in a community that present a need for developing or expanding services;

(E) work with faith- and community-based organizations to identify the organizations' needs for improvements in their internal capacity for providing services; and

(F) provide faith- and community-based organizations with information on and assistance in identifying or using best practices for delivering charitable services to persons, families, and communities and in replicating charitable services programs that have demonstrated effectiveness;

(3) award grants from the account to local governmental entities to provide seed money for local offices for faith- and community-based initiatives;

(4) assist a local governmental entity in creating a better partnership between government and faith- and community-based organizations to provide charitable services to persons in this state;

(5) use the account to provide matching money for federal or private grant programs that further the purposes of the account as described by Section 535.004(d); and

(6) contract with the governor's office of faith-based and community initiatives to administer programs or perform duties or activities under this chapter.

Sec. 535.006. FAITH- AND COMMUNITY-BASED INITIATIVES ADVISORY COMMITTEE. (a) The executive commissioner shall appoint faith and community leaders in this state to serve on the faith- and community-based initiatives advisory committee. The advisory committee members must be representative of the religious and cultural diversity of this state.

(b) The advisory committee shall make recommendations to the executive commissioner regarding the executive commissioner's powers and duties with respect to the account as described by Section 535.005.

(c) Except as otherwise provided by this subsection, the advisory committee shall meet at least twice each calendar year. The advisory committee is not required to meet if the remaining amount appropriated from the account to the commission for the state fiscal biennium is insufficient for the performance of any duties or activities under this chapter.

(d) Chapter 2110 does not apply to the advisory committee.

(e) The advisory committee is subject to Chapter 551.

SECTION __.02. Chapter 401, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. TEXAS MENTORING INITIATIVE

Sec. 401.151. ESTABLISHMENT AND PURPOSE OF TEXAS MENTORING INITIATIVE. (a) The office of the governor shall establish the Texas mentoring initiative to fund activities that:

(1) create or expand mentoring opportunities in this state;
(2) promote responsible fatherhood and healthy marriages; and
(3) increase the capacity of faith- and community-based organizations, as defined by Section 535.001, to provide mentoring and other charitable services to persons in this state.

(b) The office of the governor shall administer the Texas mentoring initiative subject to the availability of funds appropriated for that purpose.

Sec. 401.152. GRANTS. The office of the governor shall provide grants through the Texas mentoring initiative to support:

(1) activities described in Section 401.151; and
(2) the renewing our communities account under Chapter 535.

Floor Amendment No. 32

Amend **CSSB 1863** (House committee printing) by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE __. NONSETTLING MANUFACTURER FEES

SECTION __.01. Chapter 161, Health and Safety Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) prevent nonsettling manufacturers from undermining this state's policy of discouraging underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(2) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of nonsettling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments

to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of nonsettling manufacturer cigarettes and cigarette tobacco products;

(3) provide funding to enforce and administer this subchapter and any legislation relating to nonsettling manufacturers; and

(4) provide funding for any other purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings," and "100s." The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(A) a roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(B) tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(C) a roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes and cigarette tobacco products manufactured outside the United States.

(5) "Master settlement agreement" means the settlement agreement and related documents entered into in 1998 by 46 states and leading United States tobacco manufacturers.

(6) "Nonsettling manufacturer" means a manufacturer of cigarettes that did not sign the tobacco settlement agreement.

(7) "Nonsettling manufacturer cigarette tobacco products" means cigarette tobacco products manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(8) "Nonsettling manufacturer cigarettes" means cigarettes manufactured, fabricated, assembled, or imported by a nonsettling manufacturer.

(9) "Settling states" and "subsequent participating manufacturer" have the meanings assigned those terms in the master settlement agreement.

(10) "Tobacco settlement agreement" means the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled *The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91. The term includes the subsequent Clarification of Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in that litigation.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) nonsettling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Chapter 154, Tax Code;

(2) nonsettling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code; and

(3) nonsettling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(c) The fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(d) Except as otherwise provided by this subchapter, the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same manner, taking into account that the fee is imposed on nonsettling manufacturers, as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate.

(e) The fee imposed by this section does not apply to a subsequent participating manufacturer until the date on which the National Association of Attorneys General provides notice to the attorney general of this state that the settling states have offered subsequent participating manufacturers a qualifying credit against their payments under the master settlement agreement. An offered credit shall be considered a qualifying credit if, in each year, it makes available to each subsequent participating manufacturer, other than any subsequent participating manufacturer that has an agreement described by Subsection (f) as of September 1, 2005, a credit against its payment obligations under the master settlement agreement that is equal to or greater than the product of the total number of individual cigarettes sold by that subsequent participating manufacturer in this state during the applicable year multiplied by at least 73.2 percent of the per-cigarette fee provided for in this section, and does not condition that credit on the subsequent participating manufacturer forfeiting wholly or partly other benefits or credits provided for in the master settlement agreement, except for a reduction in that subsequent participating manufacturer's "grandfather share" under the master settlement agreement as follows:

(1) the market share that is not subject to the subsequent participating manufacturer's payment obligations under Article IX(i) of the master settlement agreement shall be calculated by subtracting from either 125 percent of the subsequent participating manufacturer's 1997 volume or 100 percent of its 1998 volume, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations, the lesser of:

(A) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 2004; or

(B) that volume multiplied by the percentage of the subsequent participating manufacturer's sales in the 50 states of the United States, the District of Columbia, and Puerto Rico that were made at retail in this state in 1998 or 125 percent of the percentage of that subsequent participating manufacturer's nationwide sales made at retail in this state in 1997, depending on which volume the subsequent participating manufacturer uses for purposes of master settlement agreement calculations; and

(2) the effect of the proposed grandfather share reduction on the subsequent participating manufacturer's master settlement agreement payments shall be phased in according to the following schedule:

(A) one percent of the reduction shall be reflected in the payment due under the master settlement agreement on April 15, 2006; and

(B) in each subsequent April 15 payment, the following additional percentages of the reduction shall be reflected:

(i) two percent;

(ii) three percent;

(iii) five percent;

(iv) seven percent;

(v) eight percent;

(vi) nine percent;

(vii) 10 percent;

(viii) 12 percent;

(ix) 13 percent;

(x) 14 percent; and

(xi) 16 percent.

(f) Subsection (e) does not apply to any subsequent participating manufacturer that as of September 1, 2005, had an agreement with the settling states, pursuant to which agreement the subsequent participating manufacturer has agreed to a different credit against its payment obligations under the master settlement agreement based on its cigarette sales in this state.

Sec. 161.604. RATE OF FEE. (a) Except as provided by Subsection (b), the fee is imposed at the rate of two cents for:

(1) each nonsettling manufacturer cigarette; and

(2) each 0.09 ounce of nonsettling manufacturer cigarette tobacco product.

(b) On January 1 of each year, the comptroller shall increase the rate of the tax prescribed by Subsection (a) by the greater of:

(1) three percent; or

(2) the percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

Sec. 161.605. DISTRIBUTOR'S REPORT. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of nonsettling manufacturer cigarettes during the preceding month;

(2) the number of individual packages of nonsettling manufacturer cigarettes sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(3) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) The information required by Subsections (a)(1) and (2) must be itemized for each place of business and by manufacturer and brand family.

(c) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month, not later than the 10th day after the date the comptroller receives the information required by Section 161.605, the comptroller shall:

(1) compute the amount of the fee imposed by this subchapter that each nonsettling manufacturer owes for that reporting period based on that information and any other information available to the comptroller; and

(2) mail to each nonsettling manufacturer a notice of the amount of fee the manufacturer owes.

(b) Not later than the 15th day of the month after the month in which the comptroller mails a nonsettling manufacturer a notice under Subsection (a), the nonsettling manufacturer shall send to the comptroller the amount of the fee due according to the notice.

Sec. 161.607. CERTIFICATION TO ATTORNEY GENERAL. (a) Not later than the first day of each month, a nonsettling manufacturer who is required to pay the fee imposed by this subchapter shall certify to the attorney general that the manufacturer is in compliance with this subchapter and has paid in full the fee imposed by this subchapter.

(b) The attorney general shall develop, maintain, and publish on the attorney general's Internet website a directory listing of all nonsettling manufacturers that have provided current, accurate, and complete certifications.

(c) The attorney general shall provide the list described by Subsection (b) to any person on request.

Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a nonsettling manufacturer are not offered for sale or distribution in this state on September 1, 2005, the nonsettling manufacturer may not offer those cigarettes or cigarette tobacco products for sale or distribution in this state after that date unless the manufacturer first prepays the fee imposed by this subchapter for sales of cigarettes and cigarette tobacco products that will occur in the first calendar month in which they are sold or distributed in this state.

(b) The amount a nonsettling manufacturer is required to prepay under this section is equal to the greater of:

(1) the rate prescribed by Section 161.604 in effect on that date multiplied by:

(A) the number of cigarettes the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; and

(B) each 0.09 ounce of nonsettling manufacturer cigarette tobacco products the comptroller reasonably projects that the nonsettling manufacturer will sell or distribute in this state during that calendar month; or

(2) \$50,000.

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(d) The comptroller may require a nonsettling manufacturer to provide any information reasonably necessary to determine the prepayment amount.

(e) The comptroller shall establish procedures to:

(1) reimburse a nonsettling manufacturer if the actual sales or distributions in the first calendar month are less than the projected sales or distributions; and

(2) require additional payments if the actual sales or distributions in the first calendar month are greater than the projected sales or distributions.

(f) A nonsettling manufacturer shall pay the fee imposed by this subchapter in the manner provided by Section 161.606 beginning in the second calendar month in which the manufacturer offers the cigarettes or cigarette tobacco products for sale or distribution in this state.

Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) In addition to prepaying the fee required by Section 161.608, a nonsettling manufacturer described by Section 161.608(a) shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer will offer for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Cigarettes and cigarette tobacco products of a nonsettling manufacturer that has not complied with this subchapter, including full payment of the fee imposed by this subchapter, shall be

treated as cigarettes for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

(b) The comptroller shall provide to a nonsettling manufacturer a notice of noncompliance with this subchapter if the manufacturer:

(1) does not pay in full the fee imposed by this subchapter; or

(2) is not included on the list described by Section 161.607(b).

(c) On receipt of the notice of noncompliance, the nonsettling manufacturer may not:

(1) pay the tax imposed by Chapter 154 or 155, Tax Code, as appropriate;

(2) affix to a package of cigarettes the stamp required by Section 154.041, Tax Code; or

(3) otherwise purchase, sell, or distribute cigarettes in this state.

Sec. 161.611. APPLICATION OF SUBCHAPTER. This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION __.02. (a) Not later than September 30, 2005, a nonsettling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this article, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on September 1, 2005, shall provide to the attorney general on a form prescribed by the attorney general:

(1) the nonsettling manufacturer's complete name, address, and telephone number;

(2) the date that the nonsettling manufacturer began offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the nonsettling manufacturer offers for sale or distribution in this state;

(4) a statement that the nonsettling manufacturer intends to comply with Subchapter U, Chapter 161, Health and Safety Code, as added by this article; and

(5) the name, address, telephone number, and signature of an officer of the nonsettling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under Subsection (a) of this section available to the comptroller.

SECTION __.03. This article takes effect September 1, 2005.

Floor Amendment No. 34

Amend **CSSB 1863** (House committee printing) by adding the following appropriately numbered SECTIONS to ARTICLE 11 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION ____. Subchapter H, Chapter 74, Property Code, is amended by adding Section 74.7085 to read as follows:

Sec. 74.7085. HEARING. (a) If, after an examination of records under Section 74.702, the comptroller determines that a person holds unclaimed property that should have been delivered to the comptroller as provided by this chapter, the person may petition the comptroller for a hearing on that determination and on the imposition of any interest or penalty resulting from that determination.

(b) A person must file a petition for a hearing with the comptroller under this section not later than the 30th day after the date the determination is made. If a petition for a hearing is not filed before the expiration of the period provided by this subsection, the determination is final on the expiration of that period.

(c) At the time a person files a petition for a hearing under Subsection (b), the person must pay to the comptroller a hearing fee in the amount of \$50, which shall be used by the comptroller for the purpose of administering hearings under this section.

SECTION _____. Subchapter A, Chapter 74, Property Code, is amended by adding Section 74.002 to read as follows:

Sec. 74.002. SINGLE BUSINESS ENTERPRISE DOCTRINE INAPPLICABLE. The single business enterprise doctrine does not apply to this chapter.

SECTION _____. The change in law made by Section 74.7085, Property Code, as added by this article, applies only to a determination by the comptroller made on or after the effective date of this Act. A determination by the comptroller made before the effective date of this Act is governed by the law in effect on the date the determination was made, and the former law is continued in effect for that purpose.

SECTION _____. Section 74.002, Property Code, as added by this article, is intended only to clarify existing law with respect to Chapter 74, Property Code.

Floor Amendment No. 35

Amend **CSSB 1863** by adding a new, appropriately numbered ARTICLE to read as follows:

ARTICLE _____. TRANSFER OF DRIVER EDUCATION PROGRAMS FROM THE TEXAS EDUCATION AGENCY TO THE TEXAS DEPARTMENT OF LICENSING AND REGULATION

SECTION _____.01. Section 1001.001, Education Code, is amended by amending Subdivisions (2), (3), (4), and (5) and adding Subdivision (13-a) to read as follows:

(2) "Approved driving safety course" means a driving safety course approved by the department ~~[commissioner]~~.

(3) "Commission" ~~["Commissioner"]~~ means the Texas Commission of Licensing and Regulation ~~[commissioner of education]~~.

(4) "Course provider" means an enterprise that:
(A) maintains a place of business or solicits business in this state;
(B) is operated by an individual, association, partnership, or corporation; and

(C) has received an approval for a driving safety course from the department ~~[commissioner]~~ or has been designated by a person who has received that approval to conduct business and represent the person in this state.

(5) "Department" means the Texas Department of Licensing and Regulation ~~[Public Safety]~~.

(13-a) "Executive director" means the executive director of the department.

SECTION _____.02. Section 1001.002(c), Education Code, is amended to read as follows:

(c) A driver education course is exempt from this chapter, other than Section 1001.055, if the course is:

(1) conducted by a vocational driver training school operated to train or prepare a person for a field of endeavor in a business, trade, technical, or industrial occupation;

(2) conducted by a school or training program that offers only instruction of purely avocational or recreational subjects as determined by the department ~~[commissioner]~~;

(3) sponsored by an employer to train its own employees without charging tuition;

(4) sponsored by a recognized trade, business, or professional organization with a closed membership to instruct the members of the organization; or

(5) conducted by a school regulated and approved under another law of this state.

SECTION __.03. Sections 1001.003 and 1001.004, Education Code, are amended to read as follows:

Sec. 1001.003. LEGISLATIVE INTENT REGARDING SMALL BUSINESSES. It is the intent of the legislature that commission ~~[agency]~~ rules that affect driver training schools that qualify as small businesses be adopted and administered so as to have the least possible adverse economic effect on the schools.

Sec. 1001.004. COST OF ADMINISTERING CHAPTER. The cost of administering this chapter shall be included in the state budget allowance for the department ~~[agency]~~.

SECTION __.04. Sections 1001.051 and 1001.052, Education Code, are amended to read as follows:

Sec. 1001.051. JURISDICTION OVER SCHOOLS. The department ~~[agency]~~ has jurisdiction over and control of driver training schools regulated under this chapter.

Sec. 1001.052. RULES. The commission ~~[agency]~~ shall adopt ~~[and administer]~~ comprehensive rules governing driving safety courses, including rules to ensure the integrity of approved driving safety courses and enhance program quality.

SECTION __.05. The heading to Section 1001.053, Education Code, is amended to read as follows:

Sec. 1001.053. POWERS AND DUTIES OF DEPARTMENT ~~[COMMISSIONER]~~.

SECTION __.06. Section 1001.053(a), Education Code, is amended to read as follows:

(a) The department ~~[commissioner]~~ shall:

(1) administer ~~[the policies of]~~ this chapter;

(2) enforce minimum standards for driver training schools under this chapter; and

(3) ~~[adopt and]~~ enforce rules adopted by the commission necessary to administer this chapter~~;~~ and

~~[(4) visit a driver training school or course provider and reexamine the school or course provider for compliance with this chapter].~~

SECTION __.07. The heading to Section 1001.054, Education Code, is amended to read as follows:

Sec. 1001.054. RULES RESTRICTING ADVERTISING [~~OR COMPETITIVE BIDDING~~].

SECTION __.08. Section 1001.054(c), Education Code, is amended to read as follows:

(c) The commission [~~commissioner~~] by rule may restrict advertising by a branch location of a driver training school so that the location adequately identifies the primary location of the school in a solicitation.

SECTION __.09. Section 1001.055, Education Code, is amended to read as follows:

Sec. 1001.055. DRIVER EDUCATION CERTIFICATES. (a) The department [~~agency~~] shall print and supply to each licensed or exempt driver education school driver education certificates to be used for certifying completion of an approved driver education course to satisfy the requirements of Section 521.204(a)(2), Transportation Code. The certificates must be numbered serially.

(b) The commission [~~agency~~] by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized reproduction or misuse of the certificates.

(c) The department [~~agency~~] may charge a fee of not more than \$4 for each certificate.

SECTION __.10. Sections 1001.056(b), (c), (d), (e), (f) and (g), Education Code, are amended and Subsections (b-1), (c-1) and (h) are added to read as follows:

(b) The department [~~agency~~] shall provide [~~print and supply to~~] each licensed course provider with course completion certificate numbers to enable the provider to print and issue department-approved uniform certificates of course completion.

(b-1) Certificate numbering under Subsection (b) [The certificates] must be serial [~~numbered serially~~].

(c) The commission [~~agency~~] by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates.

(c-1) A course provider shall provide for the printing and issuance of original and duplicate certificates in a manner that, to the greatest extent possible, prevents the unauthorized production or the misuse of the certificates.

(d) A certificate under this section must:

(1) be in a form required by the department [~~agency~~]; and

(2) include an identifying number by which the department [~~agency~~], a court, or the Department of Public Safety [~~department~~] may verify its authenticity with the course provider.

(e) The department [~~agency~~] may charge a fee of not more than \$4 for each course completion certificate number. A course provider that supplies a certificate for an operator shall collect from the [~~charge an~~] operator a fee equal to the amount of the fee paid to the department [~~agency~~] for the [~~a~~] certificate number.

(f) A course provider license entitles a course provider to purchase certificate numbers [~~certificates~~] for only one approved driving safety course.

(g) A course provider [The agency] shall issue a duplicate certificate by United States mail or through a commercial delivery service [certificates]. The commission [commissioner] by rule shall determine the amount of the fee collected by the course provider for issuance of a duplicate certificate under this subsection.

(h) If a duplicate certificate issued by a course provider contains information that is different from the original certificate, the course provider shall include on the duplicate certificate, in addition to the new information, the applicable information from the original certificate with the notation "changed to" indicating how the original information was changed.

SECTION __.11. Section 1001.057, Education Code, is amended to read as follows:

Sec. 1001.057. ELECTRONIC TRANSMISSION OF DRIVING SAFETY COURSE INFORMATION. The department [agency] shall investigate options to develop and implement procedures to electronically transmit information relating to driving safety courses to municipal and justice courts.

SECTION __.12. Subchapter B, Chapter 1001, Education Code, is amended by adding Section 1001.058 to read as follows:

Sec. 1001.058. DESIGNATION OF PERSON TO ADMINISTER CHAPTER. The executive director may designate a person knowledgeable in the administration of regulating driver training schools to administer this chapter for the department.

SECTION __.13. Sections 1001.101 and 1001.102, Education Code, are amended to read as follows:

Sec. 1001.101. DRIVER EDUCATION COURSE CURRICULUM AND TEXTBOOKS. The commission [commissioner] by rule shall establish the curriculum and designate the textbooks to be used in a driver education course.

Sec. 1001.102. ALCOHOL AWARENESS INFORMATION. (a) The commission [agency] by rule shall require that information relating to alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle be included in the curriculum of any driver education course or driving safety course.

(b) In developing rules under this section, the commission [agency] shall consult with the Department of Public Safety [department].

SECTION __.14. Sections 1001.103(b), (d), and (e), Education Code, are amended to read as follows:

(b) The department [agency] shall develop standards for a separate school certification and approve curricula for drug and alcohol driving awareness programs that include one or more courses. Except as provided by commission [agency] rule, a program must be offered in the same manner as a driving safety course.

(d) In accordance with Section 461.013(b), Health and Safety Code, the department [agency] and the Texas Commission on Alcohol and Drug Abuse shall enter into a memorandum of understanding for the interagency approval of the required curricula.

(e) The commission [Notwithstanding Section 1001.056, Subchapter D, and Sections 1001.213 and 1001.303, the commissioner] may establish fees in connection with the programs under this section. The fees must be in amounts reasonable and necessary to administer the department's [agency's] duties under this section.

SECTION __.15. Sections 1001.104 and 1001.105, Education Code, are amended to read as follows:

Sec. 1001.104. HOSPITAL AND REHABILITATION FACILITIES. (a) The department [~~agency~~] shall enter into a memorandum of understanding with the Texas Department of Aging and Disability Services [~~Rehabilitation Commission~~] and the Department of Public Safety [~~department~~] for the interagency development of curricula and licensing criteria for hospital and rehabilitation facilities that teach driver education.

(b) The department [~~agency~~] shall administer comprehensive rules governing driver education courses adopted by mutual agreement among the commission [~~agency~~], the Texas Department of Aging and Disability Services [~~Rehabilitation Commission~~], and the Department of Public Safety [~~department~~].

Sec. 1001.105. TEXAS DEPARTMENT OF INSURANCE. The commission [~~agency~~] shall enter into a memorandum of understanding with the Texas Department of Insurance for the interagency development of a curriculum for driving safety courses.

SECTION __.16. Sections 1001.106(b), (c), and (d), Education Code, are amended to read as follows:

(b) The commission [~~commissioner~~] by rule shall provide minimum standards of curriculum relating to operation of vehicles at railroad and highway grade crossings.

(c) Subchapter F, Chapter 51, Occupations Code, Section 51.353, Occupations Code, and Section [~~Sections 1001.454,~~] 1001.456 of this code [~~, and 1001.553~~] do not apply to a violation of this section or a rule adopted under this section.

(d) Section 51.352, Occupations Code, and Sections [~~1001.455(a)(6),~~] 1001.501 [~~, 1001.551, 1001.552,~~] and 1001.554 of this code do not apply to a violation of this section.

SECTION __.17. Section 1001.107, Education Code, is amended to read as follows:

Sec. 1001.107. INFORMATION RELATING TO LITTER PREVENTION. (a) The commission [~~commissioner~~] by rule shall require that information relating to litter prevention be included in the curriculum of each driver education and driving safety course.

(b) In developing rules under this section, the commission [~~commissioner~~] shall consult the Department of Public Safety [~~department~~].

SECTION __.18. Sections 1001.108(a) and (c), Education Code, are amended to read as follows:

(a) The commission [~~commissioner~~] by rule shall require that information relating to anatomical gifts be included in the curriculum of each driver education course and driving safety course.

(c) In developing rules under this section, the commission [~~commissioner~~] shall consult with the Department of Public Safety [~~department~~] and the [~~Texas~~] Department of State Health Services.

SECTION __.19. Section 1001.151, Education Code, is amended to read as follows:

Sec. 1001.151. APPLICATION, LICENSE, AND REGISTRATION FEES. (a) The commission ~~[commissioner]~~ shall establish ~~[collect]~~ application, license, and registration fees. The fees must be in amounts sufficient to cover administrative costs and are nonrefundable. The department shall collect the application, license, and registration fees.

(b) The commission shall establish a fee for:

(1) an initial driver education school license and ~~[is \$1,000 plus \$850]~~ for each branch location; ~~[-]~~

(2) ~~[(e) The fee for]~~ an initial driving safety school license; ~~[is an appropriate amount established by the commissioner not to exceed \$200.]~~

(3) ~~[(d) The fee for]~~ an initial course provider license ~~[is an appropriate amount established by the commissioner not to exceed \$2,000]~~, except that the commission ~~[agency]~~ may waive the fee if revenue received from the course provider is sufficient to cover the cost of licensing the course provider; ~~[-]~~

(4) ~~the~~ ~~[(e) The]~~ annual renewal ~~[fee]~~ for a course provider, driving safety school, driver education school, or branch location ~~[is an appropriate amount established by the commissioner not to exceed \$200]~~, except that the commission ~~[agency]~~ may waive the fee if revenue generated by the issuance of ~~[uniform certificates]~~ of course completion certificate numbers and driver education certificates is sufficient to cover the cost of administering this chapter and Article 45.0511, Code of Criminal Procedure; ~~[-]~~

(5) ~~[(f) The fee for]~~ a change of address of~~[-]~~

~~[(1) a driver education school; [is \$180; and~~

~~[(2) a driving safety school; or course provider; [is \$50.]~~

(6) ~~[(g) The fee for]~~ a change of name of:

(A) ~~[(1) a driver education school or course provider or an owner of a driver education school or course provider [is \$100]; or [and]~~

(B) ~~[(2) a driving safety school or owner of a driving safety school; [is \$50.]~~

(7) ~~[(h) The application fee for]~~ each additional driver education or driving safety course at a driver training school; ~~[is \$25.]~~

(8) an ~~[(i) The]~~ application of a ~~[fee for:~~

~~[(1) each] director; [is \$30; and~~

~~[(2) each] assistant director; or administrative staff member; and [is \$15.]~~

(9) an ~~[(j) Each]~~ application for approval of a driving safety course that has not been evaluated by the department ~~[commissioner must be accompanied by a nonrefundable fee of \$9,000];~~

(10) an application for approval to teach an approved driving safety course by an alternative method.

(c) ~~[(k)]~~ An application for an original driver education or driving safety instructor license must be accompanied by a processing fee ~~[of \$50]~~ and an annual license fee ~~[of \$25]~~, except that the department ~~[commissioner]~~ may not collect the processing fee from an applicant for a driver education instructor license who is currently teaching a driver education course in a public school in this state.

(d) ~~[(4)]~~ The commission ~~[commissioner]~~ shall establish the amount of the fee for a duplicate license.

SECTION __.20. Section 1001.153, Education Code, is amended to read as follows:

Sec. 1001.153. COMPLAINT INVESTIGATION FEE. (a) The commission [~~commissioner~~] shall establish the amount of the fee to investigate a driver training school or course provider to resolve a complaint against the school or course provider.

(b) The fee may be charged only if:

(1) the complaint could not have been resolved solely by telephone or in writing;

(2) a representative of the department [~~agency~~] visited the school or course provider as a part of the complaint resolution process; and

(3) the school or course provider was found to be at fault.

SECTION __.21. Section 1001.202(b), Education Code, is amended to read as follows:

(b) A driving safety school may use multiple classroom locations to teach a driving safety course if each location:

(1) is approved by the parent school and the department [~~agency~~];

(2) has the same name as the parent school; and

(3) has the same ownership as the parent school.

SECTION __.22. Sections 1001.203, 1001.204, 1001.205, and 1001.206, Education Code, are amended to read as follows:

Sec. 1001.203. APPLICATION. To operate or do business in this state, a driver training school must apply to the department [~~commissioner~~] for the appropriate license. The application must:

(1) be in writing;

(2) be in the form prescribed by the department [~~commissioner~~];

(3) include all required information; and

(4) be verified.

Sec. 1001.204. REQUIREMENTS FOR DRIVER EDUCATION SCHOOL LICENSE. The department [~~commissioner~~] shall approve an application for a driver education school license if, on investigation of the premises of the school, it is determined that the school:

(1) has courses, curricula, and instruction of a quality, content, and length that reasonably and adequately achieve the stated objective for which the courses, curricula, and instruction are offered;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality in the classroom and behind the wheel;

(3) has directors, instructors, and administrators who have adequate educational qualifications and experience;

(4) provides to each student before enrollment:

(A) a copy of:

(i) the refund policy;

(ii) the schedule of tuition, fees, and other charges; and

(iii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) the department's name, mailing address, ~~[and]~~ telephone number, and Internet website address ~~[of the agency]~~ for the purpose of directing complaints to the department ~~[agency]~~;

(5) maintains adequate records as prescribed by the department ~~[commissioner]~~ to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(6) on completion of training, issues each student a certificate indicating the course name and satisfactory completion;

(7) complies with all county, municipal, state, and federal regulations, including fire, building, and sanitation codes and assumed name registration;

(8) is financially sound and capable of fulfilling its commitments for training;

(9) has administrators, directors, owners, and instructors who are of good reputation and character;

(10) maintains and publishes as part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department ~~[commissioner]~~;

(12) does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing by the executive director ~~[commissioner]~~;

(13) submits to the department ~~[agency]~~ for approval the applicable course hour lengths and curriculum content for each course offered by the school;

(14) does not owe an administrative penalty for a violation of ~~[under]~~ this chapter; and

(15) meets any additional criteria required by the department ~~[agency]~~.

Sec. 1001.205. REQUIREMENTS FOR DRIVING SAFETY SCHOOL LICENSE. The department ~~[commissioner]~~ shall approve an application for a driving safety school license if on investigation the department ~~[agency]~~ determines that the school:

(1) has driving safety courses, curricula, and instruction of a quality, content, and length that reasonably and adequately achieve the stated objective for which the course, curricula, and instruction are developed by the course provider;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality;

(3) has instructors and administrators who have adequate educational qualifications and experience;

(4) maintains adequate records as prescribed by the department ~~[commissioner]~~ to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(5) complies with all county, municipal, state, and federal laws, including fire, building, and sanitation codes and assumed name registration;

(6) has administrators, owners, and instructors who are of good reputation and character;

(7) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department ~~[commissioner]~~;

(8) does not use a name similar to the name of another existing school or tax-supported educational establishment in this state, unless specifically approved in writing by the executive director ~~[commissioner]~~;

(9) maintains and uses the approved contract and policies developed by the course provider;

(10) does not owe an administrative penalty for a violation of ~~[under]~~ this chapter;

(11) will not provide a driving safety course to a person for less than \$32 ~~[\$25]~~; and

(12) meets additional criteria required by the department ~~[commissioner]~~.

Sec. 1001.206. REQUIREMENTS FOR COURSE PROVIDER LICENSE. The department ~~[commissioner]~~ shall approve an application for a course provider license if on investigation the department ~~[agency]~~ determines that:

(1) the course provider has an approved course that at least one licensed driving safety school is willing to offer;

(2) the course provider has adequate educational qualifications and experience;

(3) the course provider will:

(A) develop and provide to each driving safety school that offers the approved course a copy of:

(i) the refund policy; and

(ii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) provide to the driving safety school the department's name, mailing address, ~~[and]~~ telephone number, and Internet website address ~~[of the agency]~~ for the purpose of directing complaints to the department ~~[agency]~~;

(4) a copy of the information provided to each driving safety school under Subdivision (3) will be provided to each student by the school before enrollment;

(5) not later than the 15th working day after the date the person successfully completes the course, the course provider will mail a uniform certificate of course completion to the person indicating the course name and successful completion;

(6) the course provider maintains adequate records as prescribed by the department ~~[commissioner]~~ to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(7) the course provider complies with all county, municipal, state, and federal laws, including assumed name registration and other applicable requirements;

(8) the course provider is financially sound and capable of fulfilling its commitments for training;

(9) the course provider is of good reputation and character;

(10) the course provider maintains and publishes as a part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) the course provider does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the department ~~[commissioner]~~;

(12) the course provider does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing by the executive director ~~[commissioner]~~;

(13) the course provider does not owe an administrative penalty for a violation of ~~[under]~~ this chapter; and

(14) the course provider meets additional criteria required by the department ~~[commissioner]~~.

SECTION __.23. Sections 1001.207(a) and (b), Education Code, are amended to read as follows:

(a) Before a driver education school may be issued a license, the school must file a corporate surety bond with the department ~~[commissioner]~~ in the amount of:

- (1) \$10,000 for the primary location of the school; and
- (2) \$5,000 for each branch location.

(b) A bond issued under Subsection (a) must be:

- (1) issued in a form approved by the department ~~[commissioner]~~;
- (2) issued by a company authorized to do business in this state;
- (3) payable to the state to be used only for payment of a refund due to a student or potential student;
- (4) conditioned on the compliance of the school and its officers, agents, and employees with this chapter and rules adopted under this chapter; and
- (5) issued for a period corresponding to the term of the license.

SECTION __.24. Section 1001.209(b), Education Code, is amended to read as follows:

Section 1001.209(b), Education Code, is amended to read as follows:

(b) A bond issued under Subsection (a) must be:

- (1) issued by a company authorized to do business in this state;
- (2) payable to the state to be used:

(A) for payment of a refund due a student of the course provider's approved course;

(B) to cover the payment of unpaid fees or penalties assessed by the department ~~[agency]~~; or

(C) to recover any [the] cost associated with providing [of uniform certificates of] course completion certificate numbers, including the cancellation of certificate numbers [the agency demands be returned or any cost associated with the certificates];

(3) conditioned on the compliance of the course provider and its officers, agents, and employees with this chapter and rules adopted under this chapter; and

- (4) issued for a period corresponding to the term of the license.

SECTION __.25. Section 1001.210, Education Code, is amended to read as follows:

Sec. 1001.210. ALTERNATE FORM OF SECURITY. Instead of the bond required by Section 1001.207 or 1001.209, a driver education school or course provider may provide another form of security that is:

(1) ~~(A)~~ approved by the department ~~[commissioner]~~; and

(2) ~~(B)~~ in the amount required for a comparable bond under Section 1001.207 or 1001.209.

SECTION __.26. Sections 1001.211(a) and (b), Education Code, are amended to read as follows:

(a) The department ~~[commissioner]~~ shall issue a license to an applicant for a license under this subchapter if:

(1) the application is submitted in accordance with this subchapter; and

(2) the applicant meets the requirements of this chapter.

(b) A license must be in a form determined by the department ~~[commissioner]~~ and must show in a clear and conspicuous manner:

(1) the date of issuance, effective date, and term of the license;

(2) the name and address of the driver training school or course provider;

(3) the authority for and conditions of approval;

(4) the executive director's ~~[commissioner's]~~ signature; and

(5) any other fair and reasonable representation that is consistent with this chapter and that the department ~~[commissioner]~~ considers necessary.

SECTION __.27. Section 1001.212, Education Code, is amended to read as follows:

Sec. 1001.212. NOTICE OF DENIAL OF LICENSE. The department ~~[commissioner]~~ shall provide a person whose application for a license under this subchapter is denied a written statement of the reasons for the denial.

SECTION __.28. Sections 1001.213(c) and (d), Education Code, are amended to read as follows:

(c) The commission may establish ~~[Instead of the]~~ fees ~~[required by Section 1001.151, the fee]~~ for a new driver education school or course provider license under Subsection (b) and and [is \$500, plus \$200] for each branch location that are different from the amounts established under Section 1001.151[;] if:

(1) the new owner is substantially similar to the previous owner; and

(2) there is no significant change in the management or control of the driver education school or course provider.

(d) The department ~~[commissioner]~~ is not required to reinspect a school or a branch location after a change of ownership.

SECTION __.29. Section 1001.214, Education Code, is amended to read as follows:

Sec. 1001.214. DUPLICATE LICENSE. A duplicate license may be issued to a driver training school or course provider if:

(1) the original license is lost or destroyed; and

(2) an affidavit of that fact is filed with the department ~~[agency]~~.

SECTION __.30. Sections 1001.251, 1001.252, and 1001.253, Education Code, are amended to read as follows:

Sec. 1001.251. LICENSE REQUIRED FOR INSTRUCTOR. (a) A person may not teach or provide driver education, either as an individual or in a driver education school, or conduct any phase of driver education, unless the person holds a driver education instructor license issued by the department ~~[agency]~~.

(b) A person may not teach or provide driving safety training, either as an individual or in a driving safety school, or conduct any phase of driving safety education, unless the person holds a driving safety instructor license issued by the department [~~agency~~]. This subsection does not apply to an instructor of a driving safety course that does not provide a uniform certificate of course completion to its graduates.

Sec. 1001.252. SIGNATURE AND SEAL ON LICENSE REQUIRED. A license under this subchapter must be signed by the executive director [~~commissioner~~].

Sec. 1001.253. DRIVER EDUCATION INSTRUCTOR TRAINING. (a) The department [~~commissioner~~] shall establish standards for certification of professional and paraprofessional personnel who conduct driver education programs in driver education schools.

(b) A driver education instructor license authorizing a person to teach or provide behind-the-wheel training may not be issued unless the person has successfully completed six semester hours of driver and traffic safety education or a program of study in driver education approved by the department [~~commissioner~~] from an approved driver education school.

(c) A person who holds a driver education instructor license authorizing behind-the-wheel training may not be approved to [~~assist a classroom instructor~~] provide instruction in the classroom phase of driver education, under the certification of a classroom instructor, unless the person has successfully completed the three additional semester hours of training required for a classroom instructor or a program of study in driver education approved by the department [~~commissioner~~].

(d) Except as provided by Section 1001.254, a driver education instructor license authorizing a person to teach or provide classroom training may not be issued unless the person:

(1) has completed nine semester hours of driver and traffic safety education or a program of study in driver education approved by the department [~~commissioner~~] from an approved driver education school; and

(2) holds a teaching certificate and any additional certification required to teach driver education.

(e) A driver education instructor who has completed the educational requirements prescribed by Subsection (d)(1) may not teach instructor training classes unless the instructor has successfully completed a supervising instructor development program consisting of at least six additional semester hours or a program of study in driver education approved by the department [~~commissioner~~] that includes administering driver education programs and supervising and administering traffic safety education, except that the supervising teacher may allow river education teachers and teaching assistants to provide training in areas appropriate for their level of certification or licensure.

(f) A driver education school may submit for department [~~agency~~] approval a curriculum for an instructor development program for driver education instructors. The program must:

(1) be taught by a person who has completed a supervising instructor development program under Subsection (e); and

(2) satisfy the requirements of this section for the particular program or type of training to be provided.

SECTION __.31. Section 1001.254(a), Education Code, is amended to read as follows:

(a) A temporary driver education instructor license may be issued authorizing a person to teach or provide classroom driver education training if the person:

(1) has completed the educational requirements prescribed by Section 1001.253(d)(1);

(2) holds a Texas teaching certificate with an effective date before February 1, 1986;

(3) meets all license requirements, other than successful completion of the examination required under rules adopted by the State Board for Educator Certification to revalidate the teaching certificate; and

(4) demonstrates, in a manner prescribed by the department ~~[commissioner]~~, the intention to comply with the examination requirement at the first available opportunity.

SECTION __.32. Sections 1001.255(a), (b), and (c), Education Code, are amended to read as follows:

(a) The department ~~[agency]~~ shall regulate as a driver education school a driver education instructor who:

(1) teaches driver education courses in a county having a population of 50,000 or less; and

(2) does not teach more than 200 students annually.

(b) An instructor described by Subsection (a) must submit to the department ~~[agency]~~ an application for an initial or renewal driver education school license, together with all required documentation and information.

(c) The department ~~[commissioner]~~ may waive initial or renewal driver education school license fees or the fee for a director or administrative staff member.

SECTION __.33. Section 1001.256, Education Code, is amended to read as follows:

Sec. 1001.256. DUPLICATE LICENSE. A duplicate license may be issued to a driver education instructor or driving safety instructor if:

(1) the original license is lost or destroyed; and

(2) an affidavit of that fact is filed with the department ~~[agency]~~.

SECTION __.34. The heading to Subchapter G, Chapter 1001, Education Code, is amended to read as follows:

SUBCHAPTER G. LICENSE EXPIRATION ~~[AND RENEWAL]~~

SECTION __.35. Sections 1001.351(a) and (b), Education Code, are amended to read as follows:

(a) Not later than the 15th working day after the course completion date, a course provider or a person at the course provider's facilities shall issue and send ~~[mail]~~ a uniform certificate of course completion by United States mail or through a commercial delivery service to a person who successfully completes an approved driving safety course.

(b) A course provider shall electronically submit to the department ~~[agency]~~ in the manner established by the department ~~[agency]~~ data identified by the department ~~[agency]~~ relating to uniform certificates of course completion issued by the course provider.

SECTION __.36. Section 1001.352, Education Code, is amended to read as follows:

Sec. 1001.352. FEES FOR DRIVING SAFETY COURSE. (a)(1) A course provider shall charge each student:

(A) at least \$26 ~~[\$25]~~ for a driving safety course; ~~[and]~~

(B) a fee of at least \$4, ~~[\$3]~~ which shall be retained by the course provider to be used solely for course materials and for supervising and administering the course as required by this chapter and the rules of the commission; and

(C) a fee of \$2 to be remitted to the department for deposit in the general revenue fund.

(2) The department shall periodically audit course providers to verify compliance with this subsection. A course provider shall make its books and records available to the department as needed to verify compliance with this section and failure to do so may be enforced pursuant to Subchapter J.

SECTION __.37. Sections 1001.354(a) and (b), Education Code, are amended to read as follows:

(a) A driving safety course may be taught at a driving safety school if the school is approved by the department ~~[agency]~~.

(b) A driving safety school may teach an approved driving safety course by an alternative method that does not require students to be present in a classroom if the department ~~[commissioner]~~ approves the alternative method. The department ~~[commissioner]~~ may approve the alternative method if:

(1) the department ~~[commissioner]~~ determines that the approved driving safety course can be taught by the alternative method; and

(2) the alternative method includes testing and security measures that are at least as secure as the measures available in the usual classroom setting.

SECTION __.38. Sections 1001.404(b) and (c), Education Code, are amended to read as follows:

(b) The department ~~[commissioner]~~ shall establish annually the rate of interest for a refund at a rate sufficient to provide a deterrent to the retention of student money.

(c) The department ~~[agency]~~ may except a driver education school or course provider from the payment of interest if the school or course provider makes a good-faith effort to refund tuition, fees, and other charges but is unable to locate the student to whom the refund is owed. On request of the department ~~[agency]~~, the school or course provider shall document the effort to locate a student.

SECTION __.39. Sections 1001.451 and 1001.452, Education Code, are amended to read as follows:

Sec. 1001.451. PROHIBITED PRACTICES. A person may not:

(1) use advertising designed to mislead or deceive a prospective student;

(2) fail to notify the department ~~[commissioner]~~ of the discontinuance of the operation of a driver training school before the fourth working day after the date of cessation of classes and make available accurate records as required by this chapter;

(3) issue, sell, trade, or transfer:

(A) a uniform certificate of course completion or driver education certificate to a person or driver training school not authorized to possess the certificate;

(B) a uniform certificate of course completion to a person who has not successfully completed an approved, six-hour driving safety course; or

(C) a driver education certificate to a person who has not successfully completed a ~~department-approved~~ ~~[commissioner-approved]~~ driver education course;

(4) negotiate a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except that before that time the instrument may be assigned to a purchaser who becomes subject to any defense available against the school named as payee; or

(5) conduct any part of an approved driver education course or driving safety course without having an instructor physically present in appropriate proximity to the student for the type of instruction being given.

Sec. 1001.452. COURSE OF INSTRUCTION. A driver education ~~[training]~~ school shall ~~[may]~~ not enroll a student ~~[maintain, advertise, solicit for,]~~ or conduct a course of instruction in this state before ~~[the later of]~~:

(1) the 30th day after the date the school applies for a driver training school license; ~~[or]~~

(2) the date the school receives a driver education ~~[training]~~ school license from the ~~department~~ ~~[commissioner]~~; and

(3) the facilities and equipment are inspected and approved by the department.

SECTION __.40. Sections 1001.453(d) and (e), Education Code, are amended to read as follows:

(d) Subchapter F, Chapter 51, Occupations Code, Section 51.353, Occupations Code, and Section ~~[Sections 1001.454,]~~ 1001.456(a) of this code~~[, and 1001.553]~~ do not apply to a violation of this section or a rule adopted under this section.

(e) Section 51.352, Occupations Code, and Sections ~~[1001.455(a)(6),]~~ 1001.501~~[, 1001.551, 1001.552,]~~ and 1001.554 of this code do not apply to a violation of this section.

SECTION __.41. Section 1001.456, Education Code, is amended to read as follows:

Sec. 1001.456. OTHER DISCIPLINARY ACTIONS. (a) If the ~~department~~ ~~[agency]~~ believes that a driver education school or instructor has violated this chapter or a rule or order of the commission or executive director ~~[adopted under this chapter]~~, the ~~department~~ ~~[agency]~~ may, without notice:

(1) order a peer review;

(2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or

(3) suspend the right to purchase driver education certificates.

(b) If the ~~department~~ ~~[agency]~~ believes that a course provider, driving safety school, or driving safety instructor has violated this chapter or a rule or order of the commission or executive director ~~[adopted under this chapter]~~, the ~~department~~ ~~[agency]~~ may, without notice:

(1) order a peer review of the course provider, driving safety school, or driving safety instructor;

(2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or

(3) suspend the right to purchase ~~[uniform certificates of]~~ course completion certificate numbers.

(c) A peer review ordered under this section must be conducted by a team of knowledgeable persons selected by the department ~~[agency]~~. The team shall provide the department ~~[agency]~~ with an objective assessment of the content of the school's or course provider's curriculum and its application. The school or course provider shall pay the costs of the peer review.

(d) A suspension of enrollment under Subsection (a)(2) or (b)(2) means a ruling by the executive director ~~[commissioner]~~ that restricts a school from:

(1) accepting enrollments or reenrollments;

(2) advertising;

(3) soliciting; or

(4) directly or indirectly advising prospective students of its program or course offerings.

SECTION __.42. The heading to Subchapter L, Chapter 1001, Education Code, is amended to read as follows:

SUBCHAPTER L. PENALTIES ~~[AND ENFORCEMENT PROVISIONS]~~

SECTION __.43. Section 1001.555, Education Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly sells, trades, issues, or otherwise transfers, or possesses with intent to sell, trade, issue, or otherwise transfer, a uniform certificate of course completion, including a duplicate certificate, a course completion certificate number, including a duplicate number, or a driver education certificate to an individual, firm, or corporation not authorized to possess the certificate or number.

(b) The department ~~[agency]~~ shall contract with the Department of Public Safety ~~[department]~~ to provide undercover and investigative assistance in the enforcement of Subsection (a).

(c) A person commits an offense if the person knowingly possesses a uniform certificate of course completion, including a duplicate certificate, a course completion certificate number, including a duplicate number, or a driver education certificate and is not authorized to possess the certificate or number.

SECTION __.44. Article 45.0511(b), Code of Criminal Procedure, is amended to read as follows:

(b) The judge shall require the defendant to successfully complete a driving safety course approved by the Texas Department of Licensing and Regulation ~~[Education Agency]~~ or a course under the motorcycle operator training and safety program approved by the designated state agency under Chapter 662, Transportation Code, if:

(1) the defendant elects driving safety course or motorcycle operator training course dismissal under this article;

(2) the defendant has not completed an approved driving safety course or motorcycle operator training course, as appropriate, within the 12 months preceding the date of the offense;

(3) the defendant enters a plea under Article 45.021 in person or in writing of no contest or guilty on or before the answer date on the notice to appear and:

(A) presents in person or by counsel to the court a request to take a course; or

(B) sends to the court by certified mail, return receipt requested, postmarked on or before the answer date on the notice to appear, a written request to take a course;

(4) the defendant has a valid Texas driver's license or permit;

(5) the defendant is charged with an offense to which this article applies, other than speeding 25 miles per hour or more over the posted speed limit; and

(6) the defendant provides evidence of financial responsibility as required by Chapter 601, Transportation Code.

SECTION __.45. Section 51.308, Education Code, is amended to read as follows:

Sec. 51.308. DRIVER EDUCATION. A driver education course for the purpose of preparing students to obtain a driver's license may be offered by an institution of higher education, as defined by Section 61.003, with the approval of the Texas Department of Licensing and Regulation [~~Central Education Agency~~].

SECTION __.46. Section 521.1655(a), Transportation Code, is amended to read as follows:

(a) A driver education school licensed under Chapter 1001, Education Code, [~~the Texas Driver and Traffic Safety Education Act (Article 4413(29e), Vernon's Texas Civil Statutes)~~] may administer to a student of that school the vision, highway sign, and traffic law parts of the examination required by Section 521.161.

SECTION __.47. Section 521.203, Transportation Code, is amended to read as follows:

Sec. 521.203. RESTRICTIONS ON CLASS A AND B LICENSES. The department may not issue a Class A or Class B driver's license to a person who:

(1) is under 17 years of age;

(2) is under 18 years of age unless the person has completed a driver training course approved by the Texas Department of Licensing and Regulation [~~Central Education Agency~~]; or

(3) has not provided the department with an affidavit, on a form prescribed by the department, that states that no vehicle that the person will drive that requires a Class A or Class B license is a commercial motor vehicle as defined by Section 522.003.

SECTION __.48. Subsection 521.204(a), Transportation Code, is amended to read as follows:

Sec. 521.204. RESTRICTIONS ON MINOR. (a) The department may issue a Class C driver's license to an applicant under 18 years of age only if the applicant:

(1) is 16 years of age or older;

(2) has submitted to the department a driver education certificate issued under Section 1001.055, Education Code [~~Section 9A, Texas Driver and Traffic Safety Education Act (Article 4413(29e), Vernon's Texas Civil Statutes)~~], that states that the person has completed and passed a driver education course approved by the department under Section 521.205 or by the Texas Department of Licensing and Regulation [~~Education Agency~~];

(3) has obtained a high school diploma or its equivalent or is a student:

(A) enrolled in a public school, home school, or private school who attended school for at least 80 days in the fall or spring semester preceding the date of the driver's license application; or

(B) who has been enrolled for at least 45 days, and is enrolled as of the date of the application, in a program to prepare persons to pass the high school equivalency exam; and

(4) has passed the examination required by Section 521.161.

SECTION __.49. Sections 521.205(b) and (d), Transportation Code, are amended to read as follows:

(b) The department may not approve a course unless it determines that the course materials are at least equal to those required in a course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~], except that the department may not require that:

(1) the classroom instruction be provided in a room with particular characteristics or equipment; or

(2) the vehicle used for the behind-the-wheel instruction have equipment other than the equipment otherwise required by law for operation of the vehicle on a highway while the vehicle is not being used for driver training.

(d) Completion of a driver education course approved under this section has the same effect under this chapter as completion of a driver education course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~].

SECTION __.50. Subsections 521.222(a) and (c), Transportation Code, are amended to read as follows:

Sec. 521.222. INSTRUCTION PERMIT. (a) The department or a driver education school licensed under Chapter 1001, Education Code, [~~the Texas Driver and Traffic Safety Education Act (Article 4413(29e), Vernon's Texas Civil Statutes)~~] may issue an instruction permit, including a Class A or Class B driver's license instruction permit, to a person who:

(1) is 15 years of age or older but under 18 years of age;

(2) has satisfactorily completed and passed the classroom phase of an approved driver education course, which may be a course approved under Section 521.205;

(3) meets the requirements imposed under Section 521.204(3); and

(4) has passed each examination required under Section 521.161 other than the driving test.

(c) A driver education school may issue an instruction permit to a person 18 years of age or older who has successfully passed:

(1) a six-hour adult classroom driver education course approved by the Texas Department of Licensing and Regulation [~~Education Agency~~]; and

(2) each part of the driver's examination required by Section 521.161 other than the driving test.

SECTION __.51. Sections 1001.001(1), 1001.053(b) and (c), 1001.054(a) and (b), 1001.152, 1001.303, 1001.304, 1001.454, 1001.455, 1001.457, 1001.458, 1001.459, 1001.460, 1001.461, 1001.551, 1001.552, and 1001.553, Education Code, and Subchapter B, Chapter 543, Transportation Code, are repealed.

SECTION __.52. (a) As soon as practicable after the effective date of this Act, the Texas Education Agency and the Texas Department of Licensing and Regulation shall develop a transition plan for transferring the functions performed by the Texas Education Agency under Chapter 1001, Education Code, to the Texas Department of Licensing and Regulation. The transition plan must include a timetable with specific steps and deadlines needed to complete the transfer.

(b) In accordance with the transition plan developed by the Texas Education Agency and the Texas Department of Licensing and Regulation under Subsection (a) of this section, on November 1, 2005:

(1) all functions and activities relating to Chapter 1001, Education Code, performed by the Texas Education Agency immediately before that date are transferred to the Texas Department of Licensing and Regulation;

(2) a rule or form adopted by the commissioner of education that relates to Chapter 1001, Education Code, is a rule or form of the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation, as applicable, and remains in effect until amended or replaced by that commission or department;

(3) a reference in law to or an administrative rule of the Texas Education Agency that relates to Chapter 1001, Education Code, means the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation, as applicable;

(4) a complaint, investigation, or other proceeding before the Texas Education Agency that is related to Chapter 1001, Education Code, is transferred without change in status to the Texas Department of Licensing and Regulation, and the Texas Department of Licensing and Regulation assumes, as appropriate and without a change in status, the position of the Texas Education Agency in an action or proceeding to which the Texas Education Agency is a party;

(5) any employee of the Texas Education Agency who is primarily involved in administering Chapter 1001, Education Code, becomes an employee of the Texas Department of Licensing and Regulation;

(6) all money, contracts, leases, property, and obligations of the Texas Education Agency related to Chapter 1001, Education Code, are transferred to the Texas Department of Licensing and Regulation;

(7) all property in the custody of the Texas Education Agency related to Chapter 1001, Education Code, is transferred to the Texas Department of Licensing and Regulation; and

(8) the unexpended and unobligated balance of any money appropriated by the legislature for the Texas Education Agency related to Chapter 1001, Education Code, is transferred to the Texas Department of Licensing and Regulation.

(c) Before November 1, 2005, the Texas Education Agency may agree with the Texas Department of Licensing and Regulation to transfer any property of the Texas Education Agency to the Texas Department of Licensing and Regulation to implement the transfer required by this Act.

(d) In the period beginning September 1, 2005, and ending on November 1, 2005, the Texas Education Agency shall continue to perform functions and activities under Chapter 1001, Education Code, as if that chapter had not been amended by this Act, and the former law is continued in effect for that purpose.

SECTION __.53. Before December 31, 2007, the department shall perform a complete review and approval of each six-hour driving safety course and alternative delivery method approved before May 1, 2005, to verify compliance with Chapter 1001, Education Code, and the rules of the department applicable to the course or method. The department shall charge each course provider and alternative method owner the fee applicable to an application for initial approval of a driving safety course, which is appropriated to the department to administer the requirements of this subsection. The department may revoke the approval of any course or alternative delivery method that is not in compliance.

SECTION __.54. The changes in law made by this article apply only to a fee charged on or after September 1, 2005. A fee charged before September 1, 2005, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION __.55. The changes in law made by this article apply only to a license issued or renewed on or after September 1, 2005. An issuance or renewal that occurs before September 1, 2005, is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

Amendment No. 36

Amend Floor Amendment No. 35 by Grusendorf to **CSSB 1863** as follows:
On page 25, line 19 strike the word "river" and insert "driver"

Floor Amendment No. 37

Amend the Grusendorf Floor Amendment No. 35 to **CSSB 1863** by adding to the new ARTICLE added to that bill the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the added ARTICLE accordingly:

SECTION _____. Section 521.161, Transportation Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department shall, from money currently available, design and administer in each county of this state an alternate oral examination for applicants who because of extreme circumstances are unable to take the traffic law and highway sign part of the examination in a manner authorized by Subsection (c). The alternate oral examination must be identical to the examination administered to other applicants under Subsection (c). If the applicant takes that part of the examination orally in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The department shall inform each person taking the examination of the person's rights under this subsection. The fee for an alternate oral examination is \$15 in addition to any other fees applicable to an examination.

Floor Amendment No. 39

Amend **CSSB 1863** (House committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE __. POWER MANAGEMENT SOFTWARE

SECTION __.01. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.133 to read as follows:

Sec. 2054.133. POWER MANAGEMENT SOFTWARE. (a) After researching the software available, the department shall select power management software to be used, if technically feasible, by state agencies, including institutions of higher education as defined by Section 61.003, Education Code, to reduce the amount of energy required to operate state computer networks and networked personal computers.

(b) As determined by the department, each state agency, including an institution of higher education, that would benefit from using power management software that would provide cost savings to this state in the state fiscal biennium ending August 31, 2007, shall purchase, lease, or otherwise acquire the software for the agency's computer networks to manage the energy usage of the agency's networked personal computers.

Floor Amendment No. 40

Amend **CSSB 1863** by adding a new article to the bill, appropriately numbered, to read:

ARTICLE _____. LOCAL GASOLINE TAX

SECTION _____.01. Chapter 370, Transportation Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. FINANCIAL PARTICIPATION OF CERTAIN COUNTIES
IMPOSING LOCAL GASOLINE TAX

Sec. 370.351. DEFINITIONS. In this subchapter:

(1) "Dealer" has the meaning assigned by Section 162.001, Tax Code.

(2) "Gasoline" has the meaning assigned by Section 162.001, Tax Code.

(3) "Jobber" means a person who:

(A) purchases tax-paid gasoline from a person who holds a license under Chapter 162, Tax Code; and

(B) makes a sale with the tax included to a person who maintains storage facilities for gasoline and uses all or part of the stored gasoline to operate a motor vehicle.

(4) "Motor vehicle" has the meaning assigned by Section 162.001, Tax Code.

(5) "Net gallon" has the meaning assigned by Section 162.001, Tax Code.

(6) "Public highway" has the meaning assigned by Section 162.001, Tax Code.

(7) "Sale" has the meaning assigned by Section 162.001, Tax Code.

Sec. 370.352. TAX ON SALE OF GASOLINE AUTHORIZED. (a) A county, by order of the commissioners court, may impose a tax on the sale of gasoline sold in the county to propel a motor vehicle on the public highways of this state if:

(1) the county is included in an authority or is adjacent to such a county, if the county which is not in an authority is in the same metropolitan planning organization as the county in the authority;

(2) the county is located in the boundaries of a metropolitan planning area that is served by a metropolitan planning organization; and

(3) imposition of the tax is approved at an election called for that purpose and held in each county located in that metropolitan planning area.

(a-1) This subchapter, including Subsection (a), does not apply to a county with a population of more than two million.

(b) The counties located in a metropolitan planning area described by Subsection (a)(2) may hold the election to authorize the imposition of the tax on the same uniform election dates or on different uniform election dates. If the counties hold the elections on different uniform election dates, a county included in that metropolitan planning area may not impose the tax until the imposition of the tax has been approved in each county.

Sec. 370.353. RATE OF TAX. (a) The tax authorized by this subchapter may be imposed in increments of one cent for each net gallon of gasoline sold in the county to propel a motor vehicle on the public highways of this state, with a minimum rate of three cents for each net gallon and a maximum rate of 10 cents for each net gallon.

(b) If the voters of the counties located in a metropolitan planning area described by Section 370.352(a)(3) authorize the imposition of the tax at different rates, each county shall impose the tax at the lowest authorized rate.

Sec. 370.354. ADOPTION ELECTION PROCEDURE. (a) An election to adopt the tax authorized by this subchapter is called by an order of the commissioners court.

(b) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local tax on the sale of gasoline in (insert name of county) at the maximum rate of (insert proposed rate) cents per gallon."

Sec. 370.355. COMPUTATION OF TAX. (a) A person, including a dealer or jobber, who makes a sale of gasoline in a county authorized to impose the tax to a person who uses the gasoline to propel a motor vehicle on the public highways of this state shall collect the tax authorized by this subchapter for the benefit of the county.

(b) The seller shall add the amount of the tax authorized by this subchapter to the selling price of gasoline, and the tax is a part of the gasoline price, is a debt owed to the seller, and is recoverable at law in the same manner as the gasoline fuel charge.

(c) The tax authorized by this subchapter is in addition to the tax imposed by Chapter 162, Tax Code.

Sec. 370.356. EXEMPTIONS APPLICABLE. The exemptions provided by Section 162.104, Tax Code, apply to the tax authorized by this subchapter.

Sec. 370.357. EFFECTIVE DATE OF TAX. After the imposition of the tax has been approved in each county located in a metropolitan planning area described by Section 370.352(a)(2), the commissioners court of each county shall issue a concurrent order prescribing the date on which the adoption of the tax will take effect in those counties.

Sec. 370.358. COLLECTION AND ENFORCEMENT OF TAX. (a) A person, including a dealer or jobber, required to collect the tax authorized by this subchapter shall report and send the taxes to the county as provided by the county.

(b) The county may prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the tax when due.

(c) The county may permit a person who is required to collect the tax authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the county.

(d) The county attorney may bring suit against a person who violates this subchapter.

Sec. 370.359. REFUND. (a) A person who has paid the tax authorized by this subchapter on gasoline used by the person for a purpose other than to propel a motor vehicle on the public highways of this state or for a use exempted under Section 370.356 may file a claim for a refund.

(b) The county shall prescribe the procedures a person must use to obtain a refund under this section.

Sec. 370.360. REQUIRED PERMIT. The county may require a dealer, jobber, or other person required to collect, report, and pay the tax authorized by this subchapter to obtain a permit from the county.

Sec. 370.361. TRANSFER TO AUTHORITY. (a) Not later than the last day of the first month following each calendar quarter, the county treasurer shall send to the authority the taxes collected during that calendar quarter after payment of all refunds allowed by law and expenses of collection.

(b) Net tax revenue received by an authority under this subchapter shall be accounted for separately and may not be commingled with other authority revenue.

Sec. 370.362. USE OF TAX PROCEEDS. An authority may use net tax revenue received under this subchapter only to:

(1) reduce the number of lane miles included in a proposed transportation project or a part or section of a proposed transportation project for which the authority intends to impose a toll for use according to the authority's most recently adopted toll plan;

(2) reduce the amount of the toll charged for use of a transportation project or a part or section of a transportation project in use at the time the tax is imposed under this subchapter; and

(3) waive the toll charged for use of a transportation project or for a part or section of a transportation project by one or more classes of vehicles prescribed by the authority, such as public school buses and mass transit vehicles.

Floor Amendment No. 41

Amend **CSSB 1863** (House committee printing) by adding the following appropriately numbered article to the bill and renumbering subsequent articles accordingly:

ARTICLE _____. USE OF ENERGY-SAVING DEVICES FOR VENDING
MACHINES IN STATE BUILDINGS

SECTION __.01. Subchapter B, Chapter 2165, Government Code, is amended by adding Section 2165.058 to read as follows:

Sec. 2165.058. VENDING MACHINES; ENERGY-SAVING DEVICE REQUIRED. (a) The commission shall require the use of an energy-saving device for each vending machine located in a building owned or leased by the state except a vending machine that contains a perishable food product, as defined by Section 96.001, Civil Practice and Remedies Code.

(b) Notwithstanding Subsection (a), the commission may not require the acquisition or installation of an energy-saving device for a vending machine that is owned or operated by an entity that owns or operates a total of 20 or fewer vending machines. However, the commission shall require the entity to activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.

(c) An entity that owns or operates a vending machine subject to this section is responsible for any expenses associated with the acquisition, installation, or maintenance of an energy-saving device required by this section.

(d) The commission may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 a year for each machine found to be in violation of this section or related rules adopted by the commission.

(e) The commission shall adopt rules relating to the specifications for and regulation of energy-saving devices required by this section.

SECTION __.02. (a) An entity that owns or operates a vending machine subject to Section 2165.058, Government Code, as added by this article, is not required to comply with that section or a related rule of the Texas Building and Procurement Commission until September 1, 2006.

(b) Notwithstanding Section 2165.058(d), Government Code, as added by this article, the Texas Building and Procurement Commission may impose a fine only in relation to a vending machine that is found to be operating in violation of Section 2165.058, Government Code, as added by this article, or a related rule of the commission, on or after September 1, 2006.

Floor Amendment No. 42

Amend **CSSB 1863** by adding the following appropriately numbered article to the bill and renumbering subsequent articles accordingly:

ARTICLE _____. USE OF CERTAIN TRAFFIC PENALTIES

SECTION __.01. Subchapter D, Chapter 542, Transportation Code, is amended by adding Section 542.405 to read as follows:

Sec. 542.405. USE OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) In this section, "photographic traffic signal enforcement system" means a system that:

(1) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal;

(2) is capable of producing one or more recorded photographic or digital images that depict the license plate attached to the front or rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal; and

(3) is designed to enforce compliance with the instructions of the traffic-control signal by imposition of a civil or administrative penalty against the owner of the motor vehicle.

(b) This section applies only to a civil or administrative penalty imposed on the owner of a motor vehicle by a local authority that operates or contracts for the operation of a photographic traffic signal enforcement system with respect to a highway under its jurisdiction or that operates or contracts for the operation of any other type of electronic traffic law enforcement system consisting of a camera system that automatically produces one or more recorded photographs or digital images of the license plate on a motor vehicle or the operator of a motor vehicle.

(c) Of the gross amount received by a local authority from the imposition of a civil or administrative penalty against the owner of a motor vehicle, the local authority may retain \$1 and shall remit the remainder to the comptroller for deposit to the credit of the general revenue fund. Money deposited under this subsection may be used only to finance studies relating to improvement of the state transportation system.

SECTION __.02. Section 542.405, Transportation Code, as added by this article, applies to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this article, regardless of whether the penalty was imposed before, on, or after the effective date of this article.

Floor Amendment No. 43

Amend **CSSB 1863** (House committee printing) in Section 7.02 of the bill as follows:

(1) In the recital to the section (page 28, line 19), strike "Subsections (f) and (g)" and substitute "Subsections (f) - (i)".

(2) At the end of the section (page 29, between lines 5 and 6), insert:

(h) The commission shall establish a pilot project to streamline and expedite the cost reporting and auditing processes for intermediate care facilities for the mentally retarded that are not operated by the state and for the home and community-based services waiver program. The commission shall commence the pilot project in time to capture financial information for the 2005 fiscal year. The commission shall ensure that the 2005 fiscal year information is available for use in the 2006 legislative appropriations process for the 80th state legislative session. The commission may consider providing in the pilot program incentives for providers to submit independently audited financial information instead of reviewed financials. The pilot project must include the following features:

(1) a significantly simplified cost reporting process that is similar to standard financial reporting expectations in banking and that includes both allowable and non-allowable costs;

(2) reimbursement regulations that eliminate all minimum spending requirements, to ensure simplicity;

(3) rules that require providers to include with all reports submitted a financial review performed by an independent accounting firm licensed under Chapter 901, Occupations Code, in accordance with generally-accepted accounting principles and with commission guidelines; and

(4) provisions for filing financial information electronically that are:

(A) for the first year of the pilot program, optional; and

(B) after the first anniversary of the pilot program, mandatory.

(i) In developing the pilot project described by Subsection (h), he commission shall:

(1) revise reimbursement rules as necessary to implement the pilot program;

and

(2) develop the simplified reporting process and system by a collaborative process involving:

(A) providers of services in intermediate care facilities for the mentally retarded and home and community-based services waiver program services; and

(B) accounting firms familiar with intermediate care facilities for the mentally retarded and the home and community-based services waiver program.

Floor Amendment No. 45

Amend **CSSB 1863** by adding the following appropriately numbered ARTICLE to read as follows and renumbering subsequent ARTICLES accordingly:

ARTICLE __. SYSTEM BENEFIT FUND

SECTION __.01. (a) Section 39.903(a), as amended by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The system benefit fund is a trust fund with the comptroller and shall be administered by the commission as a trustee on behalf of the entities eligible to receive funding under this section ~~[an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section or other law. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund].~~

SECTION __.02. This article takes effect September 1, 2007.

The amendments were read.

Senator Ogden 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 1863** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Staples, Duncan, West, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 3540

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3540** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3540** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Averitt, Whitmire, Staples, and Shapiro.

CONFERENCE COMMITTEE ON HOUSE BILL 2465

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2465** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2465** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Duncan, Williams, Lucio, and Shapleigh.

(Senator Averitt in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 1835

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1835** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1835** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Wentworth, Lucio, Madla, and Fraser.

CONFERENCE COMMITTEE ON HOUSE BILL 2438

Senator Armbrister called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2438** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2438** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Brimer, Lucio, Harris, and Fraser.

SENATE BILL 757 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 757** 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 757** as follows:

On page 4, line 12, add the following language after "under":

"Chapter 18 and"

Floor Amendment No. 1

Amend **SB 757** as follows:

1.) On page 4, line 11-12, strike the term "chief law enforcement officer" and replace with the term "peace officer."

2.) On page 4, line 12, strike the term "contraband" and replace with the term "property."

The amendments were read.

Senator Armbrister 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 757** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Brimer, Fraser, Lucio, and Estes.

SENATE BILL 1176 WITH HOUSE AMENDMENTS

Senator Armbrister called **SB 1176** 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 1176** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to systems and programs administered by the Employees Retirement System of Texas.

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

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1402 to read as follows:

Sec. 411.1402. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for employment with, or who is or has been employed by, the retirement system.

(b) Criminal history record information obtained by the Employees Retirement System of Texas under Subsection (a) may be used only to evaluate an applicant for employment with, or a current or former employee of, the retirement system.

(c) The Employees Retirement System of Texas may not release or disclose information obtained under Subsection (a) except on court order.

(d) After the expiration of any probationary term of the person's employment or not later than the 180th day after the date of receipt of the information, whichever is later, the Employees Retirement System of Texas shall destroy all criminal history record information obtained under Subsection (a).

SECTION 2. Subdivision (2-a), Section 609.001, Government Code, is amended to read as follows:

(2-a) "Institution of higher education" means an institution of higher education as defined by Section 61.003, Education Code~~[-other than a public junior college].~~

SECTION 3. Section 811.001, Government Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

SECTION 4. Section 812.003, Government Code, is amended to read as follows:

Sec. 812.003. MEMBERSHIP IN EMPLOYEE CLASS. (a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state; and

(2) persons disqualified from membership under Section 812.201.

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership ~~[For persons whose employment or office holding begins on or after September 1, 2005, membership in the employee class begins on the first day the person is employed or holds office.~~

~~[(e) For persons whose employment or office holding begins before September 1, 2005, membership]~~ in the employee class begins on the 91st day after the first day a person is employed or holds office.

~~(e) [(+)]~~ A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the 91st day after the first day the person is reemployed or again holds office.

~~(f) A [(g) Notwithstanding any other provision of law, a]~~ member may establish service credit only as provided by Section 813.514 for service performed during the 90-day waiting period provided by Subsection ~~(d) or (e) [(+)].~~

~~[(h) Subsections (e), (f), and (g) and this subsection expire September 1, 2005.]~~

SECTION 5. Subsection (a), Section 812.005, Government Code, is amended to read as follows:

(a) A person's membership in the retirement system is terminated by:

(1) death of the person;

(2) retirement based on service credited in all classes of membership in which the person has service credit; or

(3) withdrawal of all of the person's accumulated contributions~~[-or~~

~~[(4) transfer of the person's accumulated contributions under Section 815.502(e)].~~

SECTION 6. Subsection (b), Section 813.102, Government Code, is amended to read as follows:

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus interest computed on the basis of the state fiscal year at an annual rate of 10 ~~[five]~~ percent from the date of withdrawal to the date of redeposit.

SECTION 7. Section 813.504, Government Code, is amended to read as follows:

Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. ~~[(+)]~~ A person may reestablish service credit previously canceled in the retirement system if~~[-~~

~~[(+)]~~ the person is a member of the employee class and at least six months have elapsed since the end of the month in which the cancellation became effective~~[-~~
~~or~~

~~[(2) the person is:~~

~~[(A) a former member of the employee class; and~~

~~[(B) a participant in the optional retirement program under Chapter 830].~~

SECTION 8. Subsection (a), Section 813.513, Government Code, is amended to read as follows:

(a) An eligible member may establish not more than 36 ~~[60]~~ months of equivalent membership service credit, including law enforcement or custodial officer service, in either the elected class or the employee class.

SECTION 9. Subsection (c), Section 813.514, Government Code, is amended to read as follows:

(c) After a member makes the deposits required by this section, the retirement system shall grant the member one month of equivalent membership service credit for each month of credit approved. ~~[A member may establish not more than three months of equivalent membership service credit under this section.]~~

SECTION 10. Subchapter A, Chapter 814, Government Code, is amended by adding Section 814.011 to read as follows:

Sec. 814.011. LUMP-SUM PAYMENTS IN LIEU OF ANNUITIES. The retirement system may elect to make a lump-sum payment to a retiree or beneficiary in lieu of annuity payments if the actuarial present value of the annuity at the time of retirement or death does not exceed \$20,000. Payment of a lump sum under this section does not affect eligibility for any other program administered by the retirement system.

SECTION 11. Section 814.202, Government Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (f) to read as follows:

(a) A member who was contributing to the retirement system at the time the member became permanently disabled for the further performance of duty is eligible to retire for a nonoccupational disability if the member has at least:

- (1) 8 years of membership service credit in the elected class of membership;
- (2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or
- (3) 10 years of membership service credit in the employee class of membership.

(b) A member who was contributing to the retirement system at the time the member became permanently incapacitated for the further performance of duty, who meets the requirements provided by Section 811.001(12), and who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(e) A member otherwise eligible may not apply for or receive a nonoccupational disability annuity if the member is eligible for a service retirement annuity under Section 814.102 or 814.104(a)(2) or (b) [814.104].

(f) An application for a nonoccupational disability retirement may not be made after the second anniversary of the date the member ceased making contributions to the retirement system.

SECTION 12. Section 814.203, Government Code, is amended to read as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the

further performance of duty, as supported by substantial, objective, medical evidence, and that the incapacity is likely to be permanent, the medical board shall issue a certification of disability and submit it to the executive director. A certification under this section is admissible in a contested case under Section 815.511 without proving the medical board as experts.

SECTION 13. Section 814.206, Government Code, is amended by adding Subsection (f) to read as follows:

(f) A standard nonoccupational disability retirement annuity under this section is reducible, under actuarial tables adopted by the board of trustees, for a member who retires before reaching an applicable age provided by Section 814.102 or 814.104.

SECTION 14. Subsection (a), Section 814.301, Government Code, is amended to read as follows:

(a) A contributing member who has at least 10 years of service credit in the elected or employee class of membership may select a death benefit plan for the payment, if the member dies while the member is eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4), payable as if the member had retired at the time of death.

SECTION 15. Subsection (a), Section 814.302, Government Code, is amended to read as follows:

(a) If a contributing member eligible to select a death benefit plan under Section 814.301 dies without having made a selection, or if a selection cannot be made effective, the member's designated beneficiary may select a plan in the same manner as if the member had made the selection. If there is no designated beneficiary, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees. In lieu of selecting a death benefit plan, the designated beneficiary or, if there is none, the personal representative of the decedent's estate, may elect to receive a refund of contributions and any applicable payment under Section 814.401.

SECTION 16. Subsection (a), Section 815.103, Government Code, is amended to read as follows:

(a) The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets. The board of trustees shall hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 17. Section 815.109, Government Code, is amended to read as follows:

Sec. 815.109. CORRECTION OF ERRORS. If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error in accordance with Section 802.1024 and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

SECTION 18. Section 815.204, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The medical board is not subject to subpoena regarding findings it makes in assisting the executive director under this section, and its members may not be held liable for any opinions, conclusions, or recommendations made under this section.

SECTION 19. Subsections (a), (c), and (d), Section 815.504, Government Code, are amended to read as follows:

(a) The retirement system may photograph, microphotograph, or film any record in its possession or preserve the record through electronic document imaging.

(c) A photograph, microphotograph, ~~or~~ film, or electronic document image of a record reproduced under Subsection (a) is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A ~~[duly]~~ certified or authenticated copy of such a record ~~[photograph, microphotograph, or film]~~ is admissible as evidence equally with the original ~~[photograph, microphotograph, or film]~~.

(d) The executive director or an authorized representative may certify the authenticity ~~[of a photograph, microphotograph, or film]~~ of a record reproduced under this section and shall charge a fee for the certified copy ~~[photograph, microphotograph, or film]~~ as provided by law.

SECTION 20. Subchapter F, Chapter 815, Government Code, is amended by adding Sections 815.5111, 815.513, and 815.514 to read as follows:

Sec. 815.5111. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 815.511(f). If the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by or on behalf of the retirement system unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

Sec. 815.513. EXCLUSIVE REMEDIES. The remedies provided under this chapter are the exclusive remedies available to a member, retiree, beneficiary, or alternate payee.

Sec. 815.514. MAILINGS ON BEHALF OF NONPROFIT ASSOCIATION. The retirement system may make mailings on behalf of a nonprofit association of active or retired state employees described by Section 814.009, for purposes of association membership and research only, to annuitants identified in information contained in records that are in the custody of the system. The nonprofit association requesting a mailing shall pay the expenses of the mailing.

SECTION 21. Subsection (b), Section 838.108, Government Code, is amended to read as follows:

(b) A member is eligible to establish service credit under this section only for the purpose of becoming eligible to retire, or retiring, under Section 839.101(a)(3) ~~[if the member has at least 120 months of actual membership service of the type of service that the member seeks to establish].~~

SECTION 22. Subsection (a), Section 840.001, Government Code, is amended to read as follows:

(a) The board of trustees of the Employees Retirement System of Texas, as provided by Subchapter A of Chapter 815, is responsible for the general administration and operation of the retirement system. The board of trustees shall hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 23. Section 1551.003, Insurance Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

SECTION 24. Subsection (c), Section 1551.063, Insurance Code, is amended to read as follows:

(c) To accomplish the purposes of this chapter, the ~~[The]~~ board of trustees may release the records to:

(1) an administrator, carrier, agent, or attorney acting on behalf of the board;
(2) another governmental entity having a legitimate need for the information to perform a function of the board of trustees;

(3) an authorized ~~[a]~~ medical provider of the participant ~~[to accomplish the purposes of this chapter];~~ or

(4) a party in response to a subpoena issued under applicable law.

SECTION 25. Subsection (e), Section 1551.101, Insurance Code, is amended to read as follows:

(e) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual receives compensation for service performed for an institution of higher education pursuant to a payroll certified by an institution of higher education or by an elected or appointed officer of this state and either:

(1) is eligible to become ~~[be]~~ a member of the Teacher Retirement System of Texas after any waiting period provided by law before membership in that retirement system; or

(2) is employed at least 20 hours a week and is not permitted to be a member of the Teacher Retirement System of Texas because the individual is employed by an institution of higher education only in a position that as a condition of employment requires the individual to be enrolled as a student in the institution in graduate-level courses.

SECTION 26. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.220 to read as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) A benefit payable on the death of a participant or the beneficiary of a participant in the group benefits program may not be paid to a person convicted of causing that death but instead is payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of causing the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 27. Subsection (a), Section 1551.259, Insurance Code, is amended to read as follows:

(a) The amount of group life coverage and group accidental death and dismemberment coverage in force for a participant on the date the participant dies shall be paid, on the establishment of a valid claim, to a person surviving the death in the following order of precedence:

(1) to the beneficiary designated by the participant in a signed and witnessed document mailed before the death of the participant ~~[writing received before death by the employing state agency];~~

(2) if a beneficiary is not designated, to the spouse of the participant;

(3) if Subdivisions (1) and (2) do not apply, to the children of the participant and descendants of the deceased children by representation;

(4) if Subdivisions (1) - (3) do not apply, to the parents of the participant or the survivor of the parents;

(5) if Subdivisions (1) - (4) do not apply, to the executor or administrator of the estate of the participant; or

(6) if Subdivisions (1) - (5) do not apply, to other relatives of the participant entitled under applicable laws of the participant's domicile on the date of the participant's death.

SECTION 28. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3195 to read as follows:

Sec. 1551.3195. AMOUNT OF CONTRIBUTION FOR ANNUITANTS WHO WERE PART-TIME EMPLOYEES. An annuitant who as an employee received the benefits of a state contribution under Section 1551.319(b) for coverage during any portion of the annuitant's last employment by a state agency is not eligible to receive more than the state contribution provided under Section 1551.319(b) unless the annuitant was designated by the annuitant's employer as a full-time employee during the three-consecutive-month period before retirement.

SECTION 29. Subsection (d), Section 1551.351, Insurance Code, is amended to read as follows:

(d) A person may appeal a determination made under Subsection (a) or (b) or Section 1551.352 only to the board of trustees. A proceeding under this subsection is a contested case under Chapter 2001, Government Code. This subchapter applies to

an appeal to the board of trustees under this subsection. The appellant has the burden of proof on all issues, including issues in the nature of an affirmative defense. Any[; and any] sanction imposed is not stayed during an appeal under this subsection. ~~[If a person fails to make a timely appeal, any sanction relates back to the date of the Employees Retirement System of Texas' determination.]~~ An appeal of a decision of the board of trustees under this subsection is under the substantial evidence rule.

SECTION 30. Subchapter H, Chapter 1551, Insurance Code, is amended by adding Section 1551.361 to read as follows:

Sec. 1551.361. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 1551.359. If the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made on or behalf of the Employees Retirement System of Texas, unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

SECTION 31. A retiree of the Employees Retirement System of Texas who at the time of retirement had at least 25 years of service credit in the retirement system and has served as the executive head of a legislative agency is eligible to make an election to retire as a member of the elected class of membership. The election must be made in writing to the Employees Retirement System of Texas before September 1, 2008. After the filing of such an election, the retirement system shall consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 32. (a) An individual who is eligible for participation in the group benefits program under Subdivision (2), Section 1551.108, Insurance Code, on being first eligible to retire under Subdivision (1), Subsection (a), Section 814.104, Government Code, on or after March 31, 2008, is eligible for a contribution under Section 1551.310, Insurance Code.

(b) The expiration of this section does not affect the eligibility of an individual for a contribution under Section 1551.310, Insurance Code, if the individual obtained coverage as described by Subsection (a) of this section before the expiration of this section.

(c) This section takes effect March 1, 2008. This section expires August 31, 2008.

SECTION 33. (a) The change in law made by this Act to Section 814.202, Government Code, applies only to a person who applies for a disability retirement annuity on or after the effective date of this Act. A person who applied for a disability retirement annuity before 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.

(b) The changes in law made by this Act to Sections 814.301 and 814.302, Government Code, apply only to the selection of a death benefit plan that is made on or after the effective date of this Act. A person who selected a death benefit plan

before 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.

(c) The change in law made by this Act to Subsection (d), Section 1551.351, Insurance Code, applies only to an appeal filed on or after the effective date of this Act. An appeal filed under that subsection before 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 34. The following provisions of the Government Code are repealed:

- (1) Section 813.103;
- (2) Section 813.507;
- (3) Section 813.508;
- (4) Section 813.510; and
- (5) Subsection (d), Section 814.202.

SECTION 35. (a) Except as provided by Subsections (b) and (c) of this section and as otherwise specifically provided by this Act, this Act takes effect September 1, 2005.

(b) The changes in law made by this Act to Subsection (a), Section 813.513, Government Code, and Section 1551.3195, Insurance Code, as added by this Act, take effect January 1, 2006.

(c) The change in law made by this Act to Subsection (b), Section 813.102, Government Code, takes effect September 1, 2006.

Floor Amendment No. 1

Amend **CSSB 1176** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1551.002, Insurance Code, is amended to read as follows:

Sec. 1551.002. PURPOSES. The purposes of this chapter are to:

- (1) provide uniformity and individual choice and control in life, accident, and health benefit coverages for all state officers and employees and their dependents;
- (2) enable the state to attract and retain competent and able employees by providing employees and their dependents with life, accident, and health benefit coverages at least equal to those commonly provided in private industry;
- (3) foster, promote, and encourage employment by and service to the state as a career profession for individuals of high standards of competence and ability;
- (4) recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among employees and their dependents;
- (5) foster and develop high standards of employer-employee relationships between the state and its employees;
- (6) recognize the long and faithful service and dedication of state officers and employees and encourage them to remain in state service until eligible for retirement by providing health benefits for them and their dependents; and

(7) recognize the service to the state by employees and retired employees of community supervision and corrections departments by extending to them and their dependents the same life, accident, and health benefit coverages as those provided under this chapter to state employees, retired state employees, and their dependents.

SECTION _____. Section 1551.011, Insurance Code, is amended to read as follows:

Sec. 1551.011. EXEMPTION FROM EXECUTION. All benefit payments, state contributions, contributions of employees and annuitants, and optional benefit payments, any rights, benefits, or payments accruing to a person under this chapter, and all money in a fund created by this chapter:

(1) are exempt from execution, attachment, garnishment, or any other process; and

(2) may not be assigned, except:

(A) for direct payment that a participant may assign to a provider of health care services; and

(B) as specifically provided by this chapter.

SECTION _____. Section 1551.055, Insurance Code, is amended to read as follows:

Sec. 1551.055. GENERAL POWERS OF BOARD OF TRUSTEES REGARDING COVERAGE PLANS. The board of trustees may:

(1) prepare specifications for a coverage provided under this chapter;

(2) prescribe the time and conditions under which an employee, annuitant, or dependent is eligible for a coverage provided under this chapter;

(3) determine the methods and procedures of claims administration;

(4) determine the amount of payroll deductions and reductions applicable to employees and annuitants and establish procedures to implement those deductions and reductions;

(5) establish procedures for the board of trustees to decide contested cases arising from a coverage provided under this chapter;

(6) study, on an ongoing basis, the operation of all coverages provided under this chapter, including gross and net costs, administration costs, benefits, utilization of benefits, and claims administration;

(7) administer the employees life, accident, and health insurance and benefits fund;

(8) provide the beginning and ending dates of coverages of participants under all benefit plans;

(9) develop basic group coverage plans applicable to all individuals eligible to participate in the group benefits program under Sections 1551.101 and 1551.102;

(10) provide for optional group coverage plans in addition to the basic group coverage plans;

(11) provide, as the board of trustees determines is appropriate, either additional statewide optional coverage plans or individual agency coverage plans;

(12) develop health benefit plans that permit access to high-quality, cost-effective health care;

(13) design, implement, and monitor health benefit plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(14) develop and refine, on an ongoing basis, a health benefit strategy consistent with evolving benefit delivery systems;

(15) develop a funding strategy that efficiently uses employer contributions to achieve the purposes of this chapter and that is reasonable and ensures participants a fair choice among health benefit plans as provided by Section 1551.302; ~~and~~

(16) appoint an advisory committee for the group benefits program under the terms provided by Section 815.509, Government Code; and

(17) design, implement, and monitor, as a benefit under the group benefits program, the health savings account program established and operated under Subchapter J.

SECTION _____. Section 1551.201, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) The board of trustees must give individuals participating in the group benefits program the option of choosing a high deductible health plan to be used in conjunction with a health savings account established under Subchapter J. For purposes of this subsection, "high deductible health plan" has the meaning assigned by Section 1551.451.

SECTION _____. Section 1551.301, Insurance Code, is amended to read as follows:

Sec. 1551.301. FUNDING OF BASIC COVERAGE. The board of trustees shall use the amount appropriated for employer contributions in the manner provided by this subchapter to fund, as applicable, the basic coverage or participation in the health savings account program under Subchapter J.

SECTION _____. Section 1551.303, Insurance Code, is amended to read as follows:

Sec. 1551.303. FUNDING OF OPTIONAL COVERAGES. The board of trustees may allocate any employer contributions remaining after the basic coverage or participation in the health savings account program under Subchapter J has been funded to fund optional coverages in any manner the board determines is appropriate.

SECTION _____. Section 1551.305, Insurance Code, is amended to read as follows:

Sec. 1551.305. COST OF BASIC COVERAGE AND CERTAIN OTHER BENEFITS EXCEEDING EMPLOYER CONTRIBUTIONS. If the cost of the basic coverage for an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 or the cost of participation in the health savings account program under Subchapter J exceeds the amount of employer contributions allocated to fund the basic coverage or participation in the health savings account program, the state shall deduct from or reduce the monthly compensation of the participant or deduct from the retirement benefits of the participant, as applicable, an amount sufficient to pay the cost of the basic coverage or participation in the health savings account program.

SECTION _____. Section 1551.306, Insurance Code, is amended to read as follows:

Sec. 1551.306. PAYMENT OF CERTAIN EXCESS COST [~~OVER BASIC COVERAGE CONTRIBUTION~~]. (a) The board of trustees shall apply the amount of any employer contribution for optional coverages to the excess of:

(1) the cost of the basic and optional coverages for which an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 applies over the basic coverage contribution; or

(2) the cost of participation in the health savings account program under Subchapter J and optional coverages that a participant selects over the amount of the state contribution under Section 1551.461.

(b) Except as provided by Section 1551.309, if a participant applies for basic and optional coverages or participation in the health savings account program under Subchapter J and optional coverages for which the cost exceeds the employer contributions for those coverages or participation under this chapter, the participant shall authorize in a form and manner satisfactory to the board of trustees a deduction from the participant's monthly compensation or monthly annuity equal to the difference between:

(1) the cost of basic and optional coverages, or, as applicable, participation in the health savings account program under Subchapter J and optional coverages, for which the participant applies; and

(2) the employer contributions for basic and optional coverages, or, as applicable, participation in the health savings account program under Subchapter J and optional coverages.

SECTION _____. Section 1551.310, Insurance Code, is amended to read as follows:

Sec. 1551.310. STATE CONTRIBUTION REQUIRED. The state shall contribute to the cost of each participant's group coverages or participation in the health savings account program under Subchapter J, including dependents' group coverages and dependents' participation in the health savings account program under Subchapter J, the amounts appropriated for the coverages or participation in the General Appropriations Act.

SECTION _____. Section 1551.311(a), Insurance Code, is amended to read as follows:

(a) Not later than November 1 preceding each regular session of the legislature, the board of trustees shall certify to the Legislative Budget Board and the budget division of the governor's office for information and review the amount necessary to pay the contributions of the state to the board for participation in the health savings account program under Subchapter J or for the coverages provided under this chapter during the following biennium.

SECTION _____. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be made for participation in the health savings account program under Subchapter J or for coverages under this chapter selected by an individual who receives a state contribution, other than as a spouse, dependent, or beneficiary, for coverages under a group benefits program provided by an institution of higher education, as defined by Section 61.003, Education Code.

SECTION _____. Section 1551.315(a), Insurance Code, is amended to read as follows:

(a) The governing board of each state agency participating in the group benefits program shall pay to the board of trustees an amount equal to the amount appropriated by the legislature for each employee's individual group coverages or participation in the health savings account program under Subchapter J or dependents' group coverages or participation in the health savings account program under Subchapter J for the agency's employees who are, and annuitants who were, compensated from funds not appropriated in the General Appropriations Act, as applicable.

SECTION _____. Section 1551.318(a), Insurance Code, is amended to read as follows:

(a) The board of trustees shall certify to the governing board of each state agency participating in the group benefits program that provides contributions for its employees' group coverages or participation in the health savings account program under Subchapter J and dependents' group coverages or participation in the health savings account program under Subchapter J from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts required to pay its contributions.

SECTION _____. Section 1551.319(a), Insurance Code, is amended to read as follows:

(a) A full-time employee receives the benefits of a full state contribution for coverage under this chapter or participation in the health savings account program under Subchapter J.

SECTION _____. Section 1551.401(d), Insurance Code, is amended to read as follows:

(d) The fund is available:

(1) without fiscal year limitation for all payments for any coverages and benefits provided for under this chapter, including the health savings account program under Subchapter J; and

(2) for payment of expenses of administering this chapter within the limitations that may be specified annually by the legislature.

SECTION _____. Chapter 1551, Insurance Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. STATE HEALTH SAVINGS ACCOUNT PROGRAM

Sec. 1551.451. DEFINITIONS. In this subchapter:

(1) "High deductible health plan" means a health benefit plan that complies with Section 223(c), Internal Revenue Code of 1986, and its subsequent amendments, and other federal law.

(2) "Participant" means an individual who is:

(A) eligible to participate in the group benefits program; and

(B) enrolled in the program established under this subchapter.

(3) "Program" means the state health savings account program established under this subchapter and includes a health savings account and a high deductible health plan.

(4) "Qualified medical expense" means an expense paid by a participant for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, and its subsequent amendments, for the participant or the participant's dependents as defined by Section 152, Internal Revenue Code of 1986, and its subsequent amendments.

Sec. 1551.452. ESTABLISHMENT OF STATE HEALTH SAVINGS ACCOUNT PROGRAM. (a) The state health savings account program is established for the benefit of individuals eligible to participate in the group benefits program and those individuals' eligible dependents.

(b) After final rules, plans, and procedures are adopted by the board of trustees and qualified by the Internal Revenue Service under Section 1551.453, the board of trustees shall:

(1) administer, or solicit bids for the administration of, health savings accounts under this subchapter;

(2) fund or purchase at least one high deductible health plan in accordance with Sections 1551.208-1551.216; and

(3) provide information to individuals eligible to participate in the group benefits program regarding the option to participate in and operation of health savings accounts and high deductible health plans established under this subchapter.

(c) The board of trustees shall adopt rules, plans, and procedures as necessary to administer this subchapter.

Sec. 1551.453. QUALIFICATION OF HEALTH SAVINGS ACCOUNTS. The board of trustees shall request in writing a ruling or opinion from the Internal Revenue Service as to whether the program established under this subchapter and the rules adopted under this subchapter qualify the health savings accounts established under this subchapter for federal tax treatment as health savings accounts under Section 223(e), Internal Revenue Code of 1986, and its subsequent amendments, and any other appropriate federal tax exemptions. Based on the response of the Internal Revenue Service, the board of trustees shall:

(1) modify the rules, plans, and procedures adopted under Section 1551.452 as necessary to ensure the qualification of health savings accounts established under this subchapter for appropriate federal tax exemptions; and

(2) certify the information regarding federal tax qualifications to the comptroller.

Sec. 1551.454. ACCOUNT ADMINISTRATOR. (a) The account administrator of a health savings account established under this subchapter must be a person:

(1) qualified to serve as trustee under Section 223(d)(1)(B), Internal Revenue Code of 1986, and its subsequent amendments, and the rules adopted under that section; and

(2) experienced in administering health savings accounts or other similar trust accounts.

(b) The account administrator is the fiduciary of a participant who has a health savings account established under this subchapter.

(c) Section 1551.056(b) does not apply to the account administrator.

Sec. 1551.455. REQUIRED PARTICIPATION. Each state agency, including an institution of higher education, shall make participation in the program as provided by this subchapter available to employees and inform employees of an employee's option to participate in the program.

Sec. 1551.456. PROVISION OF COVERAGE. The program shall provide, through a high deductible health plan, health benefit plan coverage to a participant and, as provided by this chapter, to that participant's dependents.

Sec. 1551.457. HIGH DEDUCTIBLE HEALTH PLANS. The program must include a high deductible health plan.

Sec. 1551.458. PARTICIPATION IN PROGRAM. (a) Each individual eligible to participate in the group benefits program may participate in the program if the participant is an eligible individual under Section 223(c)(1), Internal Revenue Code of 1986, and its subsequent amendments. A participant in the program waives basic plan coverage and must be enrolled in a high deductible health plan.

(b) Participation in the program qualifies a participant to receive a contribution to a health savings account under Section 1551.461. An individual who elects not to participate in the program is not eligible to receive a contribution under Section 1551.461.

(c) An individual who elects to participate in the program is subject to Subchapter H in the same manner as an individual who participates in a group coverage plan offered under the group benefits program.

(d) Under this section, the board of trustees has exclusive authority to determine an individual's eligibility to participate in the program and shall adopt rules, plans, and procedures regarding eligibility to participate in the program.

Sec. 1551.459. COVERAGE FOR DEPENDENTS; REQUIRED CONTRIBUTIONS. (a) Subject to Subsection (d), a participant is entitled to obtain for the participant's dependents coverage in the high deductible health plan selected by the participant in the manner determined by the board of trustees.

(b) The participant shall make any required additional contribution payments for the dependent coverage in the manner prescribed by the board of trustees.

(c) Amounts contributed by a participant under this section may be:

(1) used to pay the cost of coverage in the high deductible health plan not paid by the state under Section 1551.461(b)(1); or

(2) contributed to the health savings account provided to the participant.

(d) A participant's dependent who is covered by a high deductible health plan selected by the participant:

(1) is subject to Subchapter H in the same manner as a dependent who is covered by a group coverage plan offered under the group benefits program; and

(2) must be a dependent for purposes of:

(A) Section 152, Internal Revenue Code of 1986, and its subsequent amendments; and

(B) Section 1551.004.

Sec. 1551.460. IDENTIFICATION CARDS FOR PARTICIPANTS. (a) The board of trustees or the account administrator, as applicable, shall issue to each participant an identification card.

(b) The board of trustees or the account administrator, as applicable, shall issue a duplicate identification card to each participant's dependent for whom qualified medical expenses may be paid out of a health savings account established under the program.

Sec. 1551.461. STATE CONTRIBUTION. (a) For each participant, the state shall annually contribute:

(1) to a high deductible health plan in which the participant is enrolled, the same percentage of the cost of coverage under the high deductible health plan as the state annually contributes for a full-time or part-time employee covered by the basic coverage plan; and

(2) to the participant's health savings account, an amount determined by the board of trustees under Section 1551.462.

(b) For each participant's dependent covered by a high deductible health plan under Section 1551.459, the state shall annually contribute:

(1) to a high deductible health plan in which the dependent is enrolled, the same percentage of the cost of coverage under the high deductible health plan as the state annually contributes for dependent coverage in the basic coverage plan; and

(2) to the participant's health savings account, as allowed under federal law, the amount determined by the board of trustees under Section 1551.462.

(c) For a calendar year, the amount of state contributions under Subsections (a)(2) and (b)(2), in the aggregate, may not exceed the sum of the monthly limitations imposed by federal law for health savings accounts.

Sec. 1551.462. DETERMINATION OF STATE CONTRIBUTION TO HEALTH SAVINGS ACCOUNT. (a) The board of trustees by rule shall determine the amount of the state contribution to:

(1) a participant's health savings account under Section 1551.461(a)(2); and

(2) a participant's health savings account under Section 1551.461(b)(2).

(b) Subject to Section 1551.461(c), the amount of the state contribution under Section 1551.461(a)(2) must be an amount equal to or greater than 50 percent of the difference between the cost of coverage for a full-time or part-time employee covered by the basic coverage plan and a participant covered under the high deductible health plan.

(c) Subject to Section 1551.461(c), the amount of the state contribution under Section 1551.461(b)(2) must be an amount equal to or greater than 50 percent of the difference between the cost of dependent coverage under the basic coverage plan and dependent coverage under the high deductible health plan.

(d) The board of trustees shall establish state contributions under Subsection (a) in amounts that encourage participation in the program while, at the same time, maximize the use of state resources.

Sec. 1551.463. PARTICIPANT CONTRIBUTIONS. (a) Each participant, in accordance with Section 1551.305, shall contribute any amount required to cover the selected participation in the high deductible health plan that exceeds the state contribution amount under Section 1551.461.

(b) A participant may contribute any amount allowed under federal law to the participant's health savings account. A participant may make a contribution under this section in addition to receiving the state contribution under Section 1551.461.

(c) A participant shall make contributions under this section in the manner prescribed by the board of trustees.

Sec. 1551.464. COORDINATION WITH CAFETERIA PLAN. (a) The board of trustees has exclusive authority to determine the eligibility of a participant in the program established under this subchapter to participate in any medical flexible savings account that is part of a cafeteria plan offered under this chapter.

(b) The board of trustees shall adopt rules, plans, and procedures regarding:

(1) the eligibility of a participant in the program established under this subchapter to participate in any medical flexible savings account that is part of a cafeteria plan offered under this chapter; and

(2) the coordination of benefits provided under this subchapter and any medical flexible savings account that is part of a cafeteria plan offered under this chapter.

(c) The rules adopted by the board of trustees under Subsection (b) must prohibit a participant in the program established under this chapter from participating in any medical flexible savings account that would disqualify the participant's health savings account from favorable tax treatment under federal law.

Sec. 1551.465. CONFIDENTIALITY OF RECORDS. To the extent allowed under federal law and subject to Section 1551.063, the board of trustees or the program administrator, as applicable, may disclose to a carrier information in an individual's records that the board of trustees determines is necessary to administer the program.

Sec. 1551.466. ASSISTANCE. In implementing and administering this subchapter, the board of trustees may obtain the assistance of any state agency the board of trustees considers appropriate.

SECTION _____. (a) During the initial implementation of Subchapter J, Chapter 1551, Insurance Code, as added by this Act, and notwithstanding other requirements set forth in Chapter 1551, Insurance Code, an advisory council shall be created for the purpose of overseeing the design of the state health savings account program consisting of seven members, including a nonvoting ex officio member, being the executive director of the Employees Retirement System of Texas.

(b) The governor of Texas shall designate a chair to the advisory council in conjunction with appointing three members: a representative from the public sector, a representative from the private sector, and an actuary, preferably having experience in the area of health savings accounts; the lieutenant governor of Texas shall appoint two members from the Texas Senate; and the speaker of the Texas House of Representatives shall appoint two members from the Texas House of Representatives.

SECTION _____. The Employees Retirement System of Texas shall develop the health savings account program to be implemented under Subchapter J, Chapter 1551, Insurance Code, as added by this Act, beginning September 1, 2005, and shall develop enrollment requirements for the program during 2005-2006, with coverage beginning, subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, September 1, 2006.

SECTION _____. Not later than July 31, 2006, and subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, the Employees Retirement System of Texas shall provide written information to individuals eligible to participate in the state health savings account program under Subchapter J, Chapter 1551, Insurance Code, as added by this Act, that provides a general description of the requirements for such a program as adopted under Subchapter J, Chapter 1551, Insurance Code, as amended by this Act.

SECTION _____. During the initial implementation of Subchapter J, Chapter 1551, Insurance Code, as added by this Act, and notwithstanding any bidding requirements or other requirements set forth in Chapter 1551, Insurance Code, as that chapter existed before amendment by this Act, the Employees Retirement System of Texas may amend any agreement in effect on September 1, 2006, that it has entered into as necessary to comply with Subchapter J, Chapter 1551, Insurance Code, as amended by this Act.

SECTION _____. The Employees Retirement System of Texas shall develop and implement the health savings account program under Subchapter J, Chapter 1551, Insurance Code, as amended by this Act, in a manner that is as revenue neutral as is possible.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1176** on third reading as follows:

1). In SECTION 34 add a new subsection (5) to read as follows: "(5) Section 814.1042" and renumber subsequent subsections appropriately.

2). In SECTION 35, Subsection (b), insert the following between "Insurance Code," and "as added by this Act": "and the repeal of Section 814.1042, Government Code".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 1176** on third reading by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 815.003, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) Three members of the board of trustees are nominated and elected by members of the retirement system and retirees under rules adopted by the board. Two of the trustees must meet the eligibility requirements specified in Subsection (b) and one trustee must meet the eligibility requirements specified in Subsection (b-1).

(b) To be eligible to serve as an elected member of the board, two of the elected trustees ~~[a person]~~ must be members ~~[a member]~~ of the retirement system and must hold a position that:

(1) is included in the employee class of membership; and

(2) is not with an agency or department with which another trustee holds a position.

(b-1) To be eligible to serve as an elected member of the board, one of the trustees must be a retiree.

SECTION _____. At the trustee election held by the Employees Retirement System of Texas to fill a position on the board of trustees that expires August 31, 2007, the members and retirees of the retirement system shall elect a trustee who meets the eligibility requirements of Section 815.003(b-1), Government Code, as added by this Act.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 1176** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. The Employees Retirement System of Texas shall recompute the annuities of all persons who retired or received a death benefit annuity from the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two before January 1, 2002, as if the changes in law made by Chapter 1240, Acts of the 77th Legislature, Regular Session, 2001, to Subsection (b), Section 834.102, and Subsection (b), Section 839.102, Government Code, had been in effect on the date of the person's retirement or death. The first payment of any annuity increased under this section becomes payable with the first payment due on or after the effective date of this Act.

The amendments were read.

Senator Armbrister 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 1176** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Duncan, Barrientos, Brimer, and Jackson.

SENATE BILL 1297 WITH HOUSE AMENDMENT

Senator Armbrister called **SB 1297** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1297** (House committee printing) as follows:

(1) Strike the recital to SECTION 2 of the bill (page 1, lines 19 and 20) and substitute the following:

SECTION 2. Section 7.176, Water Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(2) In SECTION 2 of the bill, immediately following amended Section 7.176(a), Water Code (page 3, between lines 5 and 6), insert the following:

(e) For purposes of this section and Section 11.086, "surface water" means any water resulting from precipitation or from naturally or artificially produced groundwater as the water flows on the surface of the earth in sheet flow or in a natural or manmade conveyance until the water evaporates, flows in to a bay, estuary, sea, or ocean, or returns underground by recharge, absorption, or other natural means.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1297** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Armbrister, Chair; Jackson, Gallegos, Staples, and Fraser.

SENATE BILL 712 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Carona, called **SB 712** 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 712** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the legislature's goal for energy efficiency and related energy efficiency programs.

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

SECTION 1. Section 39.905, Utilities Code, is amended to read as follows:

Sec. 39.905. GOAL FOR ENERGY EFFICIENCY. (a) It is the goal of the legislature that:

(1) electric utilities will administer energy savings incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) all customers, in all customer classes, have a choice of and access to energy efficiency alternatives and other choices from the market that allow each customer to reduce energy consumption, peak demand, or ~~[and reduce]~~ energy costs; and

(3) each electric utility will provide, through market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional cost-effective energy efficiency equivalent to at least 10 percent of the electric utility's annual growth in demand.

(b) The commission shall provide oversight and adopt rules and procedures, as necessary, to ensure that the utilities can achieve the goal of this section [~~is achieved by January 1, 2004~~].

(c) A standard offer program provided under Subsection (a)(3) must be neutral with respect to technologies, equipment, and fuels, including thermal, chemical, mechanical, and electrical energy storage technologies.

(d) The commission shall adopt the following market-transformation program options that the utilities may choose to implement in order to satisfy the goal in Subsection (a)(3):

- (1) energy-smart schools;
- (2) appliance retirement and recycling;
- (3) air conditioning system tune-ups; and
- (4) the use of trees or other landscaping for energy efficiency.

(e) An electric utility may use money approved by the commission for energy efficiency programs to perform necessary research and development to foster continuous improvement and innovation in the application of technology and program design and implementation. Money the utility uses under this subsection may not exceed 10 percent of the amount the commission approved for energy efficiency programs in the utility's most recent full rate proceeding.

SECTION 2. This Act takes effect September 1, 2005.

Committee Amendment No. 1

Amend **CSSB 712** as follows:

(1) On page 2, line 23, add new SECTION 2 and renumber accordingly:

SECTION 2. Amend section 35.004 of the Utilities Code by adding a new Subsection (f) to read as follows:

(f) In order to properly reflect the infrastructure costs and benefits of energy efficiency and other technologies and resources that do not require transmission infrastructure, the commission shall develop and implement rules to ensure that a power generation company that interconnects with the transmission facilities of an electric utility, municipally owned utility, or electric cooperative in ERCOT bears an appropriate share of the costs of transmission additions and upgrades made necessary by the power generation company's interconnection to and use of the transmission system and transmission additions and upgrades associated with a competitive renewable energy zone. The rules shall be competitively neutral and consistent with the purposes of this subtitle.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 712** on third reading in Section 35.004(f), Utilities Code, as added by Committee Amendment No. 1 by Bonnen, Hamric, by:

- (1) Striking "an appropriate share of" on line 12.
- (2) Striking line 13.
- (3) Striking "generation company's" and "and use of" on line 14.
- (4) Adding a period after "system" and striking the remained of the line on line 15.
- (5) Striking "competitive renewable energy zone" on line 16.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 712** on third reading on page 1, line 15, between the semicolon and "and", by inserting a new Subsection (3) as follows and renumbering the subsequent sections accordingly:

(3) each electric utility will provide funding for targeted low-income energy efficiency programs as described in Section 39.903(f)(2), in an amount equal to or greater than funding for those programs in FY 2003.

The amendments were read.

Senator Armbrister, on behalf of Senator Carona, 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 712** before appointment.

There were no motions offered.

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

SENATE BILL 988 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Carona, called **SB 988** 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 988** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to education courses required for a mortgage broker or loan officer license.

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

SECTION 1. Section 156.204, Finance Code, is amended by reenacting and amending Subsection (c), as amended by Chapters 170 and 171, Acts of the 78th Legislature, Regular Session, 2003, and adding Subsection (e) to read as follows:

(c) To be eligible to be licensed as a loan officer a person must:

(1) be an individual who is at least 18 years of age;
(2) be a citizen of the United States or a lawfully admitted alien;
(3) designate in the application the name of the mortgage broker sponsoring the loan officer;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person meets one of the requirements described by Subsection (a)(4);

(B) the person has successfully completed 30 ~~45~~ hours of education courses approved by the commissioner under this section;

(C) the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202; or

(D) for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans;

(5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;

(6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; ~~and~~

(7) [(6)] provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(A) the mortgage industry; and

(B) the role and responsibilities of a loan officer; and

(8) [(7)] not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

(e) The education courses required for a loan officer license under Subsection (c)(4)(B) must cover ethics, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), and the provisions of this chapter.

SECTION 2. Section 156.208(g), Finance Code, is amended to read as follows:

(g) The finance commission shall adopt rules related to the approval of courses for continuing education credit under this section that provide for the acceptance of continuing education courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, deceptive trade practices, real property conveyances, and other topics that are relevant to mortgage brokers and that are acceptable as continuing education courses to other professional licensing agencies or related trade associations. The finance commission may approve any education course approved by the Texas Real Estate Commission, the Mortgage Bankers Association of America, or the National Association of Mortgage Brokers so long as the subject matter of such courses specifically promotes or furthers the purposes of this chapter and relates to residential mortgage lending.

SECTION 3. (a) The changes in law made by this Act to Section 156.204, Finance Code, apply only to an individual who applies for a license as a loan officer on or after September 1, 2005. An individual who applies for a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Section 156.208, Finance Code, apply only to an individual who applies to renew the individual's license on or after September 1, 2005. An individual who applies to renew a license before September 1, 2005, must comply with the requirements in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

Floor Amendment No. 1

Amend **CSSB 988** as follows:

1.) On page 3, line 14, strike language beginning after "or related trade associations." and replace with the following:

The finance commission shall approve any education course approved by the Texas Real Estate Commission, the Mortgage Bankers Association of America, or the Nation Association of Mortgage Brokers.

(1) The finance commission shall adopt a rule that requires a mortgage broker or loan officer to attend, during the term of the current license, not less than eight hours of continuing education courses related to residential mortgage lending before renewing a license under this section.

The amendments were read.

Senator Armbrister, on behalf of Senator Carona, 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 988** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Lucio, Brimer, Estes, and Fraser.

SENATE BILL 1142 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Carona, called **SB 1142** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Averitt in Chair, laid the bill and the House amendments before the Senate.

Amendment

Amend **SB 1142** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of a film industry incentive program.

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

SECTION 1. Sections 485.001 through 485.007, Government Code, are designated as Subchapter A, Chapter 485, Government Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 485, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. FILM INDUSTRY INCENTIVE PROGRAM

Sec. 485.021. DEFINITIONS. In this subchapter:

(1) "Filmed entertainment" means a visual and sound production, including
a:

(A) film;

(B) television program; or

(C) national or multistate commercial.

(2) "Production company" includes a film production company, television production company, or film and television production company.

(3) "Texas resident" means an individual who has resided in Texas since the 60th day before the first day of principal photography on a filmed entertainment.

(4) "Underused area" includes any area of this state other than the metropolitan areas of Austin, Houston, or Dallas-Fort Worth.

Sec. 485.022. FILM INDUSTRY INCENTIVE PROGRAM. (a) The office shall administer a grant program for production companies that produce filmed entertainments in this state, to the extent that gifts, grants, donations, or other money, including appropriations, are made available to the office for that purpose.

(b) The office shall develop a procedure for the submission of grant applications and the awarding of grants under this subchapter. The procedure must include provisions relating to:

(1) methods by which an individual's Texas residency as described by Section 485.021(3) can be proved; and

(2) requirements for the submission, before production of a filmed entertainment begins, of an estimate of total wages that will be paid to Texas residents.

(c) The office may accept gifts, grants, and donations for the purpose of implementing this subchapter.

Sec. 485.023. QUALIFICATION. To qualify for a grant under this subchapter, a production company must pay a minimum of:

(1) \$500,000 in wages to Texas residents for a film or television program; or

(2) \$50,000 in wages to Texas residents for a commercial or series of commercials.

Sec. 485.024. GRANT. (a) Except as provided by Section 485.025, a grant under this subchapter may not exceed the lesser of:

(1) 20 percent of the wages paid to Texas residents for a filmed entertainment; or

(2) \$750,000.

(b) In calculating a grant amount under Subsection (a), the office may not include wages of persons, including an actor or director, employed in the production of a filmed entertainment that are:

(1) a major part of the production costs of the entertainment, as determined by the office; and

(2) spent before production begins.

Sec. 485.025. ADDITIONAL GRANT FOR UNDERUSED AREAS. In addition to the grant calculated under Section 485.024, a production company that spends at least 25 percent of a filmed entertainment's filming days in an underused area is eligible for an additional grant in an amount equal to five percent of the wages paid to Texas residents for the filmed entertainment.

Sec. 485.026. STATE DEBT. If a production company owes money to the state at the time the production company is awarded a grant under this subchapter, the office shall offset the amount owed to the state from the amount awarded.

SECTION 3. This Act takes effect September 1, 2005.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1142** on third reading by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION __. Subchapter E, Chapter 152, Tax Code, is amended by adding Section 152.094 to read as follows:

Sec. 152.094. MOTOR VEHICLES USED IN TELEVISION, MOTION PICTURE, VIDEO, OR AUDIO PRODUCTIONS. (a) In this section, "nonbroadcast, industrial, or educational recorded material" means material produced for instructional, educational, sales, promotional, amusement, or entertainment purposes, regardless of the medium used or the manner displayed or transmitted. The term includes recording of events for sale to interested persons.

(b) The taxes imposed by this chapter do not apply to the purchase, rental, or use of a motor vehicle used exclusively in connection with the production for consideration of a television film, commercial, or program, nonbroadcast, industrial, or educational recorded material, a motion picture, or a video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise commercially exhibited.

(c) The tax that would have been remitted on gross rental receipts without the exemption provided by this section is considered to have been remitted for the purpose of computing the minimum gross rental receipts tax imposed by Section 152.026.

SECTION __. Subchapter C, Chapter 156, Tax Code, is amended by adding Section 156.105 to read as follows:

Sec. 156.105. EXCEPTION—PERSONS INVOLVED IN TELEVISION, MOTION PICTURE, VIDEO, OR AUDIO PRODUCTIONS. (a) In this section, "nonbroadcast, industrial, or educational recorded material" means material produced for instructional, educational, sales, promotional, amusement, or entertainment purposes, regardless of the medium used or the manner displayed or transmitted. The term includes recording of events for sale to interested persons.

(b) Subject to this section, this chapter does not impose a tax on a person involved exclusively in the production for consideration of a television film, commercial, or program, nonbroadcast, industrial, or educational recorded material, a motion picture, or a video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise commercially exhibited, provided that the person has the right to use or possess a room in one hotel or in a series of two or more hotels for at least three consecutive days.

(c) A person otherwise excepted under this section shall pay the tax imposed by this chapter and is entitled to a refund of the amount of tax paid in accordance with Section 156.154.

SECTION __. Section 156.154(a), Tax Code, is amended to read as follows:

(a) A governmental entity [~~that is~~] entitled under Section 156.103 or a person entitled under Section 156.105 to a refund of taxes paid under this chapter must file a refund claim with the comptroller.

SECTION __. The change in law made by this Act does not affect taxes imposed before the effective date of this Act, and the law in effect before the effective date of this Act is continued in effect for the purposes of the liability for and collection of those taxes.

The amendments were read.

Senator Armbrister, on behalf of Senator Carona, 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 1142** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Lucio, Eltife, Averitt, and Ogden.

CONFERENCE COMMITTEE ON HOUSE BILL 2678

Senator Armbrister, on behalf of Senator Seliger, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2678** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2678** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Duncan, Armbrister, West, and Averitt.

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 189, SB 271, SB 291, SB 308, SB 314, SB 423, SB 465, SB 471, SB 483, SB 502, SB 511, SB 593, SB 702, SB 739, SB 815, SB 829, SB 866, SB 867, SB 920, SB 951, SB 955, SCR 12, SCR 16, SCR 17, SCR 18, SCR 19, SCR 21,

SCR 27, SCR 30, SCR 36, HB 137, HB 833, HB 1038, HB 1044, HB 1480, HB 1609, HB 1708, HB 2647, HB 2651, HB 3041, HB 3147, HB 3181, HB 3423, HJR 79.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1048**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas
May 26, 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 1048** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER
WHITMIRE

HINOJOSA
VAN DE PUTTE
DUNCAN

On the part of the Senate

CHISUM
BLAKE

JACKSON
LEIBOWITZ
VO

On the part of the House

The Conference Committee Report on **HB 1048** was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 1038 by Hinojosa, In memory of Zachary A. Kolda of Corpus Christi.

Congratulatory Resolutions

SR 1022 by Ellis, Congratulating Basil Markesinis for being named Knight Bachelor by Her Majesty Queen Elizabeth II.

SR 1023 by Ellis, Recognizing L. A. Kennedy for his service to the New Community Baptist Church in Houston.

SR 1024 by Ellis, Recognizing Lena Atkinson on the occasion of her 100th birthday.

SR 1025 by Barrientos, Recognizing Dennis McCudden on the occasion of his retirement.

SR 1026 by Madla, Recognizing the University Health System in Bexar County on the occasion of its 50th anniversary.

SR 1029 by Averitt and Gallegos, Commending Whitney Jennings for her accomplishments.

SR 1030 by Gallegos, Recognizing T. Chaney Anderson on the occasion of his retirement.

SR 1031 by Gallegos, Commending Cristina Saralegui for her achievements.

SR 1032 by West, Recognizing Alma Florence Yvette Rollerson-Twitty of Paris on the occasion of her 84th birthday.

SR 1034 by Lucio, Recognizing Jean Bovee for being named Teacher of the Year by the *Valley Morning Star*.

SR 1035 by Lucio, Recognizing Julie Berger on the occasion of her Bat Mitzvah.

SR 1036 by Hinojosa, Commending Carlos I. Garza of McAllen for his achievements.

SR 1037 by Hinojosa, Recognizing Leo Montalvo of McAllen on the occasion of his retirement.

SR 1039 by Hinojosa, Recognizing Regina Ann Lamb of McAllen for her service to her community.

Official Designation Resolutions

HCR 154 (Averitt), Designating the Lake Whitney area as the Getaway Capital of Texas.

HCR 172 (Zaffirini), Designating Jim Hogg County as the official Vaquero Capital of Texas.

ADJOURNMENT

On motion of Senator Barrientos, the Senate at 8:09 p.m. adjourned, in memory of Kenneth Dale Zimmerman of Austin, until 12:00 noon tomorrow.