

# EIGHTY-SECOND DAY

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SUNDAY, MAY 29, 2005

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## PROCEEDINGS

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The Senate met at 1:50 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.

### (President in Chair)

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

Brother H. Eldon Sturgeon, International Mission Board, Southern Baptist Convention, offered the invocation as follows:

Our Father, we thank You for life and all its blessings. Bless each Senator and all who serve in this important body. Help each one to accept the position as Senator not only as a privilege but also as a great responsibility to the citizens of Texas. As this session rapidly comes to a close, give clarity of thought on the many complex issues to be decided. Help each one to put aside any personal desires, interests, or prejudice, and with love and wisdom, seek what is best for the people of this great state. Give insight and integrity to each one. Bless not only each Senator but the family of each one. May real love be abundant and growing in each family. You, Father, know their needs and I ask You to bless them accordingly. *Todo esto te lo pedimos en el nombre del Señor y Salvador Jesucristo. Amén.*

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 29, 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 231**, In memory of the Honorable Pat McKinney Baskin of Midland.

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

**SB 14** (non-record vote)

House Conferees: Smithee - Chair/Eiland/Seaman/Taylor/Van Arsdale

**SB 39** (non-record vote)

House Conferees: Goolsby - Chair/Harper-Brown/Hodge/Keel/Rose

**SB 265** (non-record vote)

House Conferees: Keffer, Bill - Chair/Driver/Seaman/Taylor/Van Arsdale

**SB 408** (non-record vote)

House Conferees: King, Phil - Chair/Baxter/Crabb/Hunter/Turner

**SB 568** (non-record vote)

House Conferees: Truitt - Chair/Dawson/McReynolds/Solis/Zedler

**SB 805** (non-record vote)

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

**SB 809** (non-record vote)

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

**SB 1189** (non-record vote)

House Conferees: Hartnett - Chair/Anchia/Dawson/Gattis/Hopson

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 7** (non-record vote)

**HB 167** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 283** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 969** (144 Yeas, 0 Nays, 1 Present, not voting)

**HB 1358** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 1830** (non-record vote)

**HB 1855** (non-record vote)

**HB 2438** (133 Yeas, 11 Nays, 2 Present, not voting)

**HB 2678** (non-record vote)

**SB 6** (124 Yeas, 20 Nays, 3 Present, not voting)

**SB 757** (non-record vote)

**SB 1641** (142 Yeas, 1 Nays, 2 Present, not voting)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 55** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE BILL 1605 WITH HOUSE AMENDMENTS**

Senator Ogden called **SB 1605** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 1605** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation and re-creation of funds and accounts in the state treasury, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

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

SECTION 1. DEFINITION. In any provision of this Act that does not amend current law, "state agency" means an office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state. The term does not include an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created in the state treasury by an Act of the 79th Legislature, Regular Session, 2005, that becomes law and all dedications or rededications of revenue in the state treasury or otherwise collected by a state agency for a particular purpose by an Act of the 79th Legislature, Regular Session, 2005, that becomes law are abolished on the later of August 29, 2005, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

SECTION 3. PREVIOUSLY EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Section 2 of this Act does not apply to:

(1) statutory dedications, funds, and accounts that were enacted before the 79th Legislature convened to comply with requirements of state constitutional or federal law;

(2) dedications, funds, or accounts that remained exempt from former Subsection (h), Section 403.094, Government Code, at the time dedications, accounts, and funds were abolished under that provision;

(3) increases in fees or in other revenue dedicated as described by this section; or

(4) increases in fees or in other revenue required to be deposited in a fund or account described by this section.

SECTION 4. ACCOUNTS IN GENERAL REVENUE FUND. Effective on the later of August 29, 2005, or the date the Act creating or re-creating the account takes effect, the following accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act and are created in the general revenue fund, if created or re-created by an Act of the 79th Legislature, Regular Session, 2005, that becomes law:

(1) all accounts created or re-created by House Bill No. 2 or similar legislation;

(2) all accounts created or re-created by House Bill No. 3 or similar legislation;

(3) all accounts created or re-created by House Bill No. 3540 or similar legislation;

(4) all accounts created or re-created by Senate Bill No. 1863 or similar legislation; and

(5) the Texas emerging technology fund created by House Bill No. 1765, Senate Bill No. 831, or similar legislation.

SECTION 5. FUNDS TO BECOME ACCOUNTS. Effective on the later of August 29, 2005, or the date the Act creating or re-creating the fund takes effect, the following funds in the state treasury or funds otherwise with or in the custody of the comptroller of public accounts are re-created as accounts in the general revenue fund and the accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act, if created or re-created by an Act of the 79th Legislature, Regular Session, 2005, that becomes law:

(1) all funds created or re-created by House Bill No. 2 or similar legislation;

(2) all funds created or re-created by House Bill No. 3 or similar legislation;

and

(3) the employment and training investment holding fund created by Senate Bill No. 1096 or similar legislation.

SECTION 6. REVENUE DEDICATIONS EXEMPT. Effective on the later of August 29, 2005, or the date the Act dedicating or rededicating the revenue takes effect, the following dedications or rededications of revenue collected by a state agency for a particular purpose are exempt from Section 2 of this Act, if dedicated or rededicated by an Act of the 79th Legislature, Regular Session, 2005, that becomes law:

(1) all dedications or rededications of revenue to the Judicial Fund 0573 as provided by Senate Bill No. 368;

(2) all dedications or rededications of revenue made by House Bill No. 2 or similar legislation;

(3) all dedications or rededications of revenue made by House Bill No. 3 or similar legislation;

(4) all dedications or rededications of revenue made by House Bill No. 3540 or similar legislation;

(5) all dedications or rededications of revenue made by Senate Bill No. 1863 or similar legislation;

(6) all dedications or rededications of revenue to the State Highway Fund 0006;

(7) all dedications or rededications of revenue to the Game, Fish, and Water Safety Account 0009;

(8) all dedications or rededications of revenue to the Texas Department of Insurance Operating Account 0036;

(9) all dedications or rededications of revenue to the Clean Air Account 0151 as provided by House Bill No. 1611 or similar legislation;

(10) all dedications or rededications of revenue to the Coastal Protection Account 0027 as provided by House Bill No. 2096 or similar legislation;

(11) all dedications or rededications of revenue to the Water Resource Management Account 0153 as provided by House Bill No. 2428 or similar legislation; and

(12) all dedications or rededications of revenue to the Unemployment Compensation Special Administration Account 0165 as provided by House Bill No. 3250 or similar legislation.

SECTION 7. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 79th Legislature, Regular Session, 2005, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 8. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 79th Legislature, Regular Session, 2005, except that the trust funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 9. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 79th Legislature, Regular Session, 2005, except that the funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 10. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created by the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under a constitutional amendment proposed by the 79th Legislature, Regular Session, 2005, or to dedicated revenue deposited to funds or accounts that would be so created or re-created, if the constitutional amendment is approved by the voters.

SECTION 11. SEPARATE FUNDS IN THE TREASURY. Effective September 1, 2005, the following funds in the state treasury and the revenue deposited to the credit of the funds are exempt from Section 2 of this Act and are created as separate funds in the state treasury, if created by an Act of the 79th Legislature, Regular Session, 2005, that becomes law:

(1) all funds created or re-created by House Bill No. 3540 or similar legislation; and

(2) all funds created or re-created by Senate Bill No. 1863 or similar legislation.

SECTION 12. AMENDMENT OF SECTION 403.095, GOVERNMENT CODE. Effective September 1, 2005, Subsections (b), (d), and (e), Section 403.095, Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 2007 [~~2005~~], are estimated to exceed the amount appropriated by the General Appropriations Act or other laws enacted by the 79th [~~78th~~] Legislature are available for general governmental purposes and are considered available for the purpose of certification under Section 403.121.

(d) Following certification of the General Appropriations Act and other appropriations measures enacted by the 79th [~~78th~~] Legislature, the comptroller shall reduce each dedicated account as directed by the legislature by an amount that may not exceed the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary for cash flow considerations to allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required under this subsection. This subsection does not apply to revenues or balances in:

(1) funds outside the treasury;

(2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;

(3) funds created by the constitution or a court; or

(4) funds for which separate accounting is required by federal law.

(e) This section expires on September 1, 2007 [~~2005~~].

SECTION 13. LICENSE PLATE FEES. Any dedication of revenue that consists of fees collected from the sale of motor vehicle license plates that are authorized by an Act of the 79th Legislature, Regular Session, 2005, that becomes law is exempt from Section 2 of this Act, and any fund or account created or re-created in connection with that revenue by operation of the Act authorizing the license plates is exempt from Section 2 of this Act.

SECTION 14. EFFECT OF ACT. (a) This Act prevails over any other Act of the 79th Legislature, Regular Session, 2005, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account in the state treasury or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code.

(b) Revenues that, under the terms of another Act of the 79th Legislature, Regular Session, 2005, would be deposited to the credit of a special account or fund shall be deposited to the credit of the undedicated portion of the general revenue fund unless the fund, account, or dedication is exempted under this Act.

SECTION 15. 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 on the 91st day after the last day of the legislative session.

**Floor Amendment No. 1**

Amend **CSSB 1605** (House committee printing) as follows:

- (1) In Section 5 of the bill (page 3, lines 13-17), strike:  
all funds created or re-created by House Bill No. 2 or similar legislation;  
(2) all funds created or re-created by House Bill No. 3 or similar legislation;  
and  
(3)  
(2) In Section 11 of the bill (the "Separate Funds in the Treasury" section), add the following appropriately numbered subdivisions and renumber the existing subdivisions of that section accordingly:  
 all funds created or re-created by House Bill No. 2 or similar legislation;  
 all funds created or re-created by House Bill No. 3 or similar legislation;

**Floor Amendment No. 2**

Amend **CSSB 1605** in Subdivision (7), Section 6, of the bill, between "0009" and the semicolon (page 4, line 12, House committee printing), by inserting "except for dedications or rededications of revenue made by House Bill No. 3051 or similar legislation".

**Floor Amendment No. 3**

Amend **CSSB 1605** by adding a new section, numbered appropriately, to read as follows and by renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_ . SCHOLARSHIP FUND FOR ARCHITECTURAL EXAMINATION. Sections 2 and 8 of this Act do not apply to the scholarship fund for architectural examination created or re-created by Senate Bill No. 1279 or similar legislation creating or re-creating the fund and do not apply to dedications or rededications of revenue related to that fund made by that legislation.

**Floor Amendment No. 4**

Amend **CSSB 1605** as follows:

On page 3, Section 6, between lines 3 and 4, insert:

(6) all accounts created or re-created by Senate Bill No. 3 or similar legislation;

**Floor Amendment No. 6**

Amend **CSSB 1605** (House committee printing) in Section 4 of the bill (the "ACCOUNTS IN GENERAL REVENUE FUND" section), by inserting the following appropriately numbered subdivisions:

- the renewing our communities account created by House Bill No. 2479 or similar legislation;  
 the childhood immunization account created by House Bill No. 2100, House Bill No. 2101, or similar legislation;

**Floor Amendment No. 7**

Amend **CSSB 1605**, SECTION 6. by inserting a new (4) as follows and renumber:

"(4) all dedications or rededications of revenue made by H.B. 7 or similar legislation;"

The amendments were read.

Senator Ogden moved to concur in the House amendments to **SB 1605**.

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

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1830 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 1830**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1357 ADOPTED**

Senator Seliger called from the President's table the Conference Committee Report on **HB 1357**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1046**

Senator Lucio offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 3485** (the establishment of criminal law hearing officers in Cameron County) to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit text in added Section 54.1352, Government Code, by striking proposed Subsection (c) of that section and relettering the subsequent subsection of that section accordingly.

Explanation: The change is necessary to allow a criminal law hearing officer appointed in Cameron County under Subchapter BB, Chapter 54, Government Code, to engage in the private practice of law and to serve as a mediator or arbitrator or otherwise participate as a neutral party in an alternative dispute resolution proceeding.

**SR 1046** was read and was adopted by the following vote: Yeas 31, Nays 0.



**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3485 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **HB 3485**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON  
SENATE BILL 39 DISCHARGED**

On motion of Senator Zaffirini and by unanimous consent, the Senate conferees on **SB 39** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 39**?

On motion of Senator Zaffirini, the Senate concurred in the House amendments to **SB 39** by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 969 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **HB 969**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Harris.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 265 ADOPTED**

Senator Eltife called from the President's table the Conference Committee Report on **HB 265**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Eltife, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**(Senator Seliger in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 873 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **HB 873**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### SENATE RESOLUTION 1075

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the 79th Texas Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08, to enable the conference committee appointed to resolve the differences on **HB 3526** (creation of the Greater Sharpstown Management District and the Greater Sharpstown Management District No. 2; providing authority to impose a tax and issue a bond or similar obligation) to consider and take action on the following matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to change SECTION 2 to read as follows:

SECTION 2. As of the effective date of this Act, the Greater Sharpstown Management District includes all territory contained in the following described area:

(1) Beginning at the intersection of the East Right of Way of Beltway 8 and the South Right of Way of the Westpark Tollway,

Thence East along the South Right of Way of the Westpark Tollway to the East Right of Way of Gessner,

Thence North along the East Right of Way of Gessner to the North Right of Way of Westpark,

Thence East along the North Right of Way of Westpark to the East Right of Way of Highway 59,

Thence Southwest along the East Right of Way of Highway 59 to the East Right of Way of Hillcroft,

Thence Southeast following South along the East Right of Way of Hillcroft to the South Right of Way of Bissonnet,

Thence Southwest along the South Right of Way of Bissonnet to the West Right of Way of Gessner,

Thence North along the West Right of Way of Gessner to the East Right of Way of Highway 59,

Thence Southwest along the East Right of Way of Highway 59 crossing to the North Right of Way of Sugar Branch Drive.

Thence West along the North Right of Way of Sugar Branch Drive to the East Right of Way of Beltway 8.

Thence North along the East Right of Way of Beltway 8, to the Point of Beginning.

Save and Except

1034150000001

RES D BLK 4 BELTWAY R/P & EXTN

1052570000001

RES D BLK 4 (061\*TR D4) TOWN PARK

0915050000007

TR 19C (001\*TR 19A-2) SHARPSTOWN ACREAGE

0930640000002

TRS 31 & 31E BLK 31 (001\*TRS 31A-2B 31A-2C 31A-4 & 31A-5)  
SHARPSTOWN INDUSTRIAL PARK 11

1071900000004

RES A3 BLK 3 (001\*TR A2) REGENCY SQ OFFICE PARK 3 R/P

1071900000005

RES A5 BLK 3 (001\*TR 4A) REGENCY SQ OFFICE PARK 3 R/P

0930630000017

TRS 28G & 28H BLK 28 (001\*TR 28J) SHARPSTOWN INDUSTRIAL PARK 11

1170330000001

RES A ROZNOV BUSINESS PARK

1059760000001

RES A BLK 1 COMMERCE PARK SEC 2

1080620000005

RES A6 & A7 BLK 1 (008\*LT 7 & TR 6A)(061\*TR A7) WESTWOOD CENTER  
SEC 2

1080620000009

RES A8 BLK 1 (008\*TR 6A) WESTWOOD CENTER SEC 2

1080620000010

RES A9 BLK 1 (061\*TR A2) WESTWOOD CENTER SEC 2

1080620000002

RES A1 BLK 1 (008\*TR 1 BLK 1 PT RES A) WESTWOOD CENTER SEC 2

1080560000011

RES A4 & A5 BLK 1 WESTWOOD CENTER SEC 1

1121370000043

RES B2 (061\*TR B2) SUGAR BRANCH

0915440000013

TR 2A-1 BLK 8 (001\*TR 2B-1) SHARPSTOWN INDUSTRIAL PARK 4

1150880000001

RES A CENTRE BUSINESS PARK

0472050000002

TR 1A ABST 1433 W YATES; and

(2) Beginning at the intersection of the South Right of Way of Bellaire Boulevard and the East Right of Way of Beltway 8,

Thence South along the East Right of Way of Beltway 8 to the South Right of Way of Highway 59, and at that intersection, crossing the Right of Way of Beltway 8 to the North Right of Way of Highway 59 following Southwest to the North Right of Way of West Belfort,

Thence West along the North Right of Way of West Belfort to the East Right of Way of Landsbury,

Thence North along the East Right of Way of Landsbury to the South Right of Way of Stancliff,

Thence East along the South Right of Way of Stancliff to the West Right of Way of Wilcrest,

Thence North along the West Right of Way of Wilcrest to the South Right of Way of South Street,

Thence West along the South Right of Way of South Street to the West Right of Way of Leawood Boulevard,

Thence North along the West Right of Way of Leawood Boulevard to the South Right of Way of Bissonnet,

Thence West along the South Right of Way of Bissonnet for a distance of 2,085 to the North East Corner of a 2.02 acre parcel, (Utility Eastment)

Thence South for a distance of 2,203 feet along the East line of a 2.02 acre parcel,

Thence West along a drainage easement for a total distance of 5,960 feet crossing the 2.02 acre parcel following the South line of a 2.02 acre parcel crossing the Right of Way of Grove Glen; then continuing west along the South line of a .82 acre parcel; then continuing west along the South line of a .13 acre parcel; crossing the Right of Way of Kirkwood, then continuing west along the South line of a 1.3 acre parcel; crossing the Right of Way of Keegan Road; then continuing west along the South line of a 1.13 acre parcel; crossing the Right of Way of Cook Road; then continuing west along the South line of a .77 acre parcel to the East Right of Way of Huntington Place,

Thence South along the East Right of Way of Huntington Place to the West Right of Way of Dairy Ashford,

Thence North along the West Right of Way of Dairy Ashford to the North Right of Way of Beechnut,

Thence East along the North Right of Way of Beechnut to the West Right of Way of Wilcrest,

Thence North along the West Right of Way of Wilcrest to the South Right of Way of Stroud,

Thence West along the South Right of Way of Stroud to the East Right of Way of Baneway,

Thence South along the East Right of Way of Baneway to the South Right of Way of Sandstone,

Thence West along the South Right of Way of Sandstone to the West Right of Way of Bellglen,

Thence North along the West Right of Way of Bellglen to the South Right of Way of Stroud,

Thence West along the South Right of Way of Stroud to the East Right of Way of Kirkwood,

Thence South along the East Right of Way of Kirkwood for a distance of 134 feet,

Thence West crossing the Right of Way of Kirkwood following the South Right of Way of Stroud to the East Right of Way of Jetty,

Thence South along the East Right of Way of Jetty for a distance of 134 feet,

Thence West crossing the Right of Way of Jetty following the South Right of Way of Sharpview to the East Right of Way of Cook Road,

Thence South along the East Right of Way of Cook Road for a distance of 447 feet,

Thence West crossing the Right of Way of Cook Road following the South Right of Way of Sandstone to the West Right of Way of Crownwest,

Thence North along the West Right of Way of Crownwest to the South Right of Way of Sharpview,

Thence West along the South Right of Way of Sharpview as it turns until it reaches the West Right of Way of Treewater,

Thence North along the West Right of Way of Treewater to the South Right of Way of Sharpview,

Thence West along the South Right of Way of Sharpview to the East Right of Way of Valwind,

Thence South along the East Right of Way of Valwind to the South Right of Way of Wispwind,

Thence West along the South Right of Way of Wispwind to the West Right of Way of Dairy Ashford,

Thence North along the West Right of Way of Dairy Ashford to the South Right of Way of Leader,

Thence West along the South Right of Way of Leader to the West Right of Way of Synott,

Thence North along the West Right of Way of Synott to the South Right of Way of Bellaire Boulevard,

Thence West along the South Right of Way of Bellaire Boulevard to the West line of the City of Houston City Limits,

Thence North for a distance of 1,264 feet along the West line of the City of Houston City Limits to the Northwest Corner of a 23.7 acre parcel,

Thence East following the North line of a 23.7 acre parcel crossing the Right of Way of Synott following the North Right of Way of Clarewood to the West line of a 2.1 acre parcel,

Thence North for a distance of 30 feet along the West line of a 2.1 acre parcel to the Northwest corner of said 2.1 acre parcel,

Thence East for a distance of 9,174 feet following the North line of a 2.1 acre parcel, crossing the Right of Way of Dairy Ashford, then continuing east along the North line of a 3.05 acre parcel, crossing the Right of Way of Cook Road, then continuing east along the North line of a 4.03 acre parcel, then continuing east along North line of a 6.27 acre parcel, crossing the Right of Way of Kirkwood, then continuing east along the North line of a 6.77 acre parcel, then continuing east along the North line of a .51 acre parcel, crossing the Right of Way of Belle Park, then continuing east along the North line of a .77 acre parcel to the East right of Way of Brays Bayou,

Thence Southeast along the North Right of Way of Brays Bayou until it crosses the Right of Way of Bellaire Boulevard to the South Right of Way of Bellaire Boulevard,

Thence East along the South Right of Way of Bellaire Boulevard to the East Right of Way of Beltway 8, to the Point of Beginning.

SAVE AND EXCEPT the following parcel, identified by its Harris County Appraisal District account number: 110738000001 Res B Blk 2 Westhampton Place. Clarewood to the West line of a 2.1 acre parcel,

Thence North for a distance of 30 feet along the West line of a 2.1 acre parcel to the Northwest corner of said 2.1 acre parcel,

Thence East for a distance of 9,174 feet following the North line of a 2.1 acre parcel, crossing the Right of Way of Dairy Ashford, then continuing east along the North line of a 3.05 acre parcel, crossing the Right of Way of Cook Road, then continuing east along the North line of a 4.03 acre parcel, then continuing east along North line of a

6.27 acre parcel, crossing the Right of Way of Kirkwood, then continuing east along the North line of a 6.77 acre parcel, then continuing east along the North line of a .51 acre parcel, crossing the Right of Way of Belle Park, then continuing east along the North line of a .77 acre parcel to the East right of Way of Brays Bayou, Thence Southeast along the North Right of Way of Brays Bayou until it crosses the Right of Way of Bellaire Boulevard to the South Right of Way of Bellaire Boulevard, Thence East along the South Right of Way of Bellaire Boulevard to the East Right of Way of Beltway 8, to the Point of Beginning.

Explanation: The change is necessary to modify the boundaries of the Greater Sharpstown Management District.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add a new Section to read as follows:

SECTION 5. (a) Not later than the 60th day after the effective date of this Act, the board of directors of the Greater Sharpstown Management District may by resolution create one new district out of territory removed out of the Greater Sharpstown Management District. The board shall name the new district in the resolution.

(b) The new district has the same powers and duties as the Greater Sharpstown Management District.

(c) The territory of the new district is the territory described by Section 2(2) of this Act. As of the date a resolution under this section is adopted, that territory is not part of the Greater Sharpstown Management District.

(d) The initial voting directors of the new district created under this section are:

Pos. No.	Name of Director
1	Adrian K. Collins
2	Toni Franklin
3	Richard Chen
4	Bill Wong
5	Helene Le
6	Wea H. Lee
7	D. W. Tan
8	Michael Caomy Nguyen
9	Daniel Hrna

(e) Of the initial voting directors for the new district, the terms of directors appointed for positions 1 through 5 expire June 1, 2007, and the terms of directors appointed for positions 6 through 9 expire June 1, 2009.

Explanation: The change is necessary to allow the Greater Sharpstown Management District to divide the district into two districts.

**SR 1075** was read and was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3526 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 3526**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1855 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 1855**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2668 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 2668**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1604 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **SB 1604**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1610 ADOPTED**

Senator Brimer called from the President's table the Conference Committee Report on **HB 1610**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Brimer, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1800 ADOPTED**

Senator Harris called from the President's table the Conference Committee Report on **HB 1800**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Harris, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1080**

Senator Ellis offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the

differences on **HB 3518** (creation of the Harris County Improvement District No. 6; providing authority to impose a tax and issue bonds) to consider and take action on the following matters:

(1) Senate Rule 12.03(1) is suspended to permit the committee to amend the recital of SECTION 1 of the bill to read as follows:

SECTION 1. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 6. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3843 to read as follows:

Explanation: The change is necessary to conform a citation.

(2) Senate Rule 12.03(1) is suspended to permit the committee to amend the text of added Subsection (b), Section 3843.005, Special District Local Laws Code, to read as follows:

(b) The boundaries and field notes of the district contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not in any way affect:

(1) the district's organization, existence, and validity;

(2) the district's right to issue any type of bond, including a refunding bond, for a purpose for which the district is created or to pay the principal of and interest on the bond;

(3) the district's right to impose and collect an assessment or tax; or

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

Explanation: The change is necessary to conform a citation.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change the names of the initial directors in added Subsection (a), Section 3843.053, Special District Local Laws Code, to read as follows:

<u>Pos. No.</u>	<u>Name of Director</u>
<u>1</u>	<u>Kathy Hubbard</u>
<u>2</u>	<u>James McDermaid</u>
<u>3</u>	<u>Charles Armstrong</u>
<u>4</u>	<u>Tom Fricke</u>
<u>5</u>	<u>Greg Jew</u>
<u>6</u>	<u>Jerry Simoneaux</u>
<u>7</u>	<u>Tammy Manning</u>
<u>8</u>	<u>Dale Harger</u>
<u>9</u>	<u>Marisol Rodriguez</u>
<u>10</u>	<u>Patti Thompson</u>
<u>11</u>	<u>Jack Rose</u>

Explanation: The change is necessary to ensure that the district has the proper initial directors.

**SR 1080** was read and was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3518 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 3518**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.



On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### SENATE BILL 410 WITH HOUSE AMENDMENTS

Senator Whitmire called **SB 410** from the President's table for consideration of the House amendments to the bill.

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

#### Floor Amendment No. 2

Amend **SB 410** by adding the following appropriately numbered section to the bill and renumbering existing sections accordingly:

SECTION \_\_. (a) Sections 481.074(o) and (p), Health and Safety Code, are amended to read as follows:

(o) A pharmacist may dispense a Schedule II controlled substance pursuant to a facsimile copy of an official prescription completed in the manner required by Section 481.075 and transmitted by the practitioner or the practitioner's agent to the pharmacy if:

(1) the prescription is written for:

(A) a Schedule II narcotic or nonnarcotic substance for a patient in a long-term care facility (LTCF), and the practitioner notes on the prescription "LTCF patient";

(B) a Schedule II narcotic product to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion; or

(C) a Schedule II narcotic substance for a patient with a medical diagnosis documenting a terminal illness or a patient enrolled in a hospice care program certified or paid for by Medicare under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.), as amended, or a hospice program that is licensed under Chapter 142, and the practitioner or the practitioner's agent notes on the prescription "terminally ill" or "hospice patient"; and

(2) after transmitting the prescription, the prescribing practitioner or the practitioner's agent:

(A) writes across the face of the official prescription "VOID—sent by fax to (name and telephone number of receiving pharmacy)"; and

(B) files the official prescription in the patient's medical records instead of delivering it to the patient [promptly complies with Subsection (p)].

~~(p) [Not later than the seventh day after the date a prescribing practitioner transmits the facsimile copy of the official prescription to the pharmacy, the prescribing practitioner shall deliver in person or mail the official written prescription to the dispensing pharmacist at the pharmacy where the prescription was dispensed. The envelope of a prescription delivered by mail must be postmarked not later than the seventh day after the date the official prescription was written.]~~ On receipt of the prescription, the dispensing pharmacy shall file the facsimile copy of the prescription [with the official prescription] and shall send information to the director as required by Section 481.075.

(b) This section 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 section takes effect September 1, 2005.

### Floor Amendment No. 3

Amend **SB 410** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The legislature finds that:

(1) prescription drugs are expensive to the point that some residents of this state have been forced to choose between purchasing prescription drugs and paying for other essentials, such as groceries or rent;

(2) prescription drugs can be purchased at much lower costs in Canada;

(3) scams offering low-cost prescription drugs are prevalent on the Internet and in spam e-mail, and these practices make it difficult for consumers in this state to determine how and where to purchase safe and effective prescription drugs at affordable prices;

(4) the Regulatory Procedures Manual of the Federal Drug Administration authorizes agency personnel to allow the importation of products regulated by that agency when the quantity and purpose are clearly for personal use and the product does not present an unreasonable risk to the user; and

(5) other states and municipalities provide Internet websites and other methods to allow residents of those states or municipalities to safely purchase prescription drugs from Canada.

SECTION \_\_\_\_\_. Subchapter A, Chapter 554, Occupations Code, is amended by adding Section 554.016 to read as follows:

Sec. 554.016. CANADIAN PHARMACY INSPECTION; DESIGNATION; FEES; INFORMATION. (a) The board shall designate at least one and not more than 10 Canadian pharmacies whose primary business is to dispense prescription drugs under prescription drug orders to Canadian residents, as having passed inspection by the board for shipping, mailing, or delivering to this state a prescription dispensed under a prescription drug order to a resident in this state.

(b) The board by rule shall set fees in amounts reasonable and necessary to cover the costs incurred by the board in inspecting Canadian pharmacies as provided by Subsection (a).

(c) The board shall establish and maintain an Internet website to provide information necessary to enable residents of this state to conveniently order prescription drugs from Canadian pharmacies designated by the board as having passed inspection to dispense prescription drugs to residents in this state in accordance with this subtitle and board rules. The board shall include on the website a statement that the board is not liable for any act or omission of a Canadian pharmacy designated as having passed inspection to dispense prescription drugs to residents in this state.

SECTION \_\_\_\_\_. Subchapter B, Chapter 556, Occupations Code, is amended by adding Section 556.0555 to read as follows:

Sec. 556.0555. INSPECTIONS. (a) At least annually, the board shall conduct random inspections of Canadian pharmacies designated under Section 554.016 as necessary to ensure compliance with the safety standards and other requirements of this subtitle and board rules.

(b) Notwithstanding the requirements of this chapter, the board by rule may establish the standards and procedures for inspections under this section.

(c) The board may enter into a written agreement with another state for an agency or employee of the state to perform services for the board related to inspecting a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state. This subsection does not apply to the initial inspection of the pharmacy.

SECTION \_\_\_\_. Section 560.001, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A pharmacy located in Canada may not ship, mail, or deliver to this state a prescription drug dispensed under a prescription drug order to a resident of this state unless the pharmacy is designated by the board under Section 554.016.

SECTION \_\_\_\_. Subchapter B, Chapter 560, Occupations Code, is amended by adding Section 560.0525 to read as follows:

Sec. 560.0525. ADDITIONAL QUALIFICATION REQUIREMENTS FOR CANADIAN PHARMACIES. (a) To pass an inspection by the board, a Canadian pharmacy must meet Texas licensing standards.

(b) In addition to satisfying the other requirements of this chapter, to qualify for designation by the board under Section 554.016, a Canadian pharmacy applicant must submit to the board:

(1) evidence satisfactory to the board that the applicant holds a pharmacy license, registration, or permit in good standing issued by Canada or the Canadian province in which the pharmacy is located and is not subject to any pending disciplinary action or legal action by any regulatory authority;

(2) the name and address of the pharmacy's owner and pharmacist-in-charge for service of process;

(3) evidence of the applicant's ability to provide to the board, not later than 72 hours after the time the board requests the record, a record of a prescription drug order authorizing the pharmacy to dispense a prescription drug to a resident of this state;

(4) an affidavit by the pharmacist-in-charge that states the pharmacist has read and understands this subtitle and the rules adopted under this subtitle that relate to a Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state;

(5) evidence satisfactory to the board that the applicant meets the standards established by board rule to ensure customer safety for each order filled and in the dispensing, storing, packaging, shipping, and delivering of prescription drugs; and

(6) evidence satisfactory to the board that the applicant's employees hold the appropriate Canadian licenses required to dispense prescription drugs in Canada.

(c) Before a Canadian pharmacy is designated as having passed inspection to dispense prescription drugs to residents in this state, a representative of the board shall visit the pharmacy's facilities and review the pharmacy's compliance with the requirements and safety standards established under this subtitle.

SECTION \_\_\_\_\_. Section 562.101, Occupations Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A Canadian pharmacy designated by the board as having passed inspection to dispense prescription drugs to residents in this state is required to be under the continuous on-site supervision of a pharmacist and shall designate one pharmacist licensed to practice pharmacy by the regulatory or licensing agency of Canada or of the Canadian province in which the Canadian pharmacy is located to serve as the pharmacist-in-charge of the Canadian pharmacy.

SECTION \_\_\_\_\_. Subchapter C, Chapter 562, Occupations Code, is amended by adding Section 562.111 to read as follows:

Sec. 562.111. PRESCRIPTION DRUG ORDER FOR CONSUMER. (a) A pharmacy in this state may order for a consumer a prescription drug from a Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state.

(b) A pharmacy may order a prescription drug under this section only with the knowledge and clear consent of the consumer.

SECTION \_\_\_\_\_. Chapter 562, Occupations Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. PRACTICE BY CANADIAN PHARMACY

Sec. 562.201. ADDITIONAL PRACTICE REQUIREMENTS. In addition to complying with the other requirements of this chapter, a Canadian pharmacy designated by the board under Section 554.016 shall:

(1) dispense a prescription drug to a resident of this state only under the lawful order of a practitioner licensed in the United States;

(2) dispense to a resident of this state only a prescription drug that is approved by Canada's Therapeutic Products Directorate for sale to residents of Canada;

(3) dispense to a resident of this state a prescription drug in the original, unopened manufacturer's packaging whenever possible; and

(4) dispense to a resident of this state only drugs prescribed for long-term use.

Sec. 562.202. LIMITATIONS ON PRACTICE. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state may not:

(1) dispense to a resident of this state a prescription drug for which there is not an equivalent drug approved by the United States Food and Drug Administration for sale in the United States;

(2) dispense to a resident of this state a prescription drug that cannot be safely shipped by mail, common carrier, or delivery service;

(3) dispense in one order to a resident of this state a quantity of a prescription drug that exceeds:

(A) a three-month supply; or

- (B) the amount ordered by the practitioner;  
(4) fill a prescription drug order for a consumer who is a resident of this state that the consumer indicates is the consumer's first prescription for that drug; or  
(5) dispense to a resident of this state any of the following:  
(A) a substance designated as a controlled substance under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);  
(B) a biological product, as described by Section 351, Public Health Service Act (42 U.S.C. Section 262);  
(C) an infused drug, including a peritoneal dialysis solution;  
(D) an intravenously injected drug; or  
(E) a drug that is inhaled during surgery.

Sec. 562.203. COMPLAINT REPORT. A Canadian pharmacy designated by the board under Section 554.016 to dispense prescription drugs to residents in this state shall provide to the board periodic reports in accordance with board rules on each complaint received by the pharmacy from a consumer in this state who purchases a prescription drug from the pharmacy.

Sec. 562.204. PRICE LIST. A Canadian pharmacy designated by the board under Section 554.016 shall:

- (1) compile and maintain a current price list for prescription drugs provided to residents in this state; and  
(2) guarantee those prices for not less than 30 days from the date the list is effective.

SECTION \_\_\_\_\_. (a) Not later than the 30th day after the effective date of this Act, the Texas State Board of Pharmacy shall adopt the initial rules necessary to implement the changes in law made by this Act to Subtitle J, Title 3, Occupations Code, in the manner provided by law for adoption of emergency rules. This subsection expires January 1, 2006.

(b) Not later than January 1, 2006, the Texas State Board of Pharmacy shall adopt the rules necessary to implement the changes in law made by this Act to Subtitle J, Title 3, Occupations Code.

(c) The requirements for a Canadian pharmacy to be designated under Section 554.016, Occupations Code, as added by this Act, to dispense prescription drugs in this state under Subtitle J, Title 3, Occupations Code, as amended by this Act, take effect March 1, 2006.

The amendments were read.

Senator Whitmire moved to concur in the House amendments to **SB 410**.

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

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 232**, In memory of U.S. Army Specialist Michael Greg Karr, Jr., of Mount Vernon.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 268** (143 Yeas, 0 Nays, 1 Present, not voting)

**HB 873** (138 Yeas, 0 Nays, 2 Present, not voting)

**HB 1357** (non-record vote)

**HB 2217** (140 Yeas, 0 Nays, 2 Present, not voting)

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

**HB 2525** (non-record vote)

**HB 2668** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 3485** (non-record vote)

**SB 1** (104 Yeas, 40 Nays, 1 Present, not voting)

**SB 982** (137 Yeas, 0 Nays, 3 Present, not voting)

**SB 1604** (non-record vote)

**SB 1830** (140 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 408 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 408**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1634 ADOPTED**

Senator Gallegos called from the President's table the Conference Committee Report on **HB 1634**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Gallegos, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RULE 12.09(a) SUSPENDED**  
**(Printing and Notice of Conference Committee Reports)**

Senator Ogden moved to suspend Senate Rule 12.09(a) as it relates to the Conference Committee Report on **HB 10**.

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

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

Nays: Barrientos, Gallegos.

**CONFERENCE COMMITTEE REPORT ON**  
**HOUSE BILL 10 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 10**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 28, Nays 3.

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

Nays: Barrientos, Duncan, Van de Putte.

**SENATE RESOLUTION 1084**

Senator Ogden offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 1863** (certain fiscal matters affecting governmental entities; providing a penalty) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add Article 5 to the bill to read as follows:

ARTICLE 5. EXTENDING STATE REIMBURSEMENT PROGRAM:  
PETROLEUM STORAGE TANKS

SECTION 5.01. Subsection (f), Section 26.351, Water Code, is amended to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete corrective action plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a corrective action plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a corrective action plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a corrective action plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a corrective action plan or groundwater monitoring, all deadlines set by the executive director concerning the corrective action plan or approved groundwater monitoring plan shall be met; and

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to ~~requests for all sites where~~ the executive director ~~[agreed in writing that no corrective action plan was required must be received by the agency]~~ no later than September 1, 2007 ~~[2005]~~. The request must be complete, as judged by the executive director.

SECTION 5.02. Subsection (b), Section 26.355, Water Code, is amended to read as follows:

(b) An owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless:

(1) the release was caused by:

(A) ~~[(1)]~~ an act of God;

(B) ~~[(2)]~~ an act of war;

(C) ~~[(3)]~~ the negligence of the State of Texas or the United States; or

(D) ~~[(4)]~~ an act or omission of a third party; or

(2) the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1).

SECTION 5.03. Subsection (b), Section 26.35731, Water Code, is amended to read as follows:

(b) The commission has discretion whether to postpone considering, processing, or paying ~~[may not consider, process, or pay]~~ a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005 ~~[without prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid].~~

SECTION 5.04. Section 26.3573, Water Code, is amended by amending Subsections (d), (r), and (s) and adding Subsection (r-1) to read as follows:



(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program[; ~~not to exceed an amount equal to: 11.8 percent of the gross receipts of that account for FY02/03; 16.40 percent of the gross receipts of that account for FY04/05; and 21.1 percent of the gross receipts of that account for FY06/07];~~

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) [~~of this section~~], expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) Except as provided by Subsection (r-1), the [The] petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) In this subsection, "state-lead program" means the petroleum storage tank state-lead program administered by the commission. The executive director shall grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. The petroleum storage tank remediation account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Not later than July 1, 2007, an eligible owner or operator who is granted an extension under this subsection may apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. The eligible owner or operator must agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. On receiving the application for placement in the state-lead program under this subsection, the executive director by order shall place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. An eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008 [~~2006~~].

SECTION 5.05. Subsection (b), Section 26.3574, Water Code, is amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) ~~\$12.50 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$10.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$5.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 06; and \$2.00 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for FY 07];~~

(2) ~~\$25.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$20.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$10.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 06; and \$4.00 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for FY 07];~~

(3) ~~\$37.50 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$30.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$15.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 06; and \$6.00 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for FY 07];~~

(4) ~~\$50.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$40.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$20.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 06; and \$8.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for FY 07]; and~~

(5) ~~a \$25.00 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2001, and the state fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and \$20.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2003, through the state fiscal year ending August 31, 2007 [FY 04 and FY 05; \$10.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a~~

~~capacity of 10,000 gallons or more for FY 06; and \$4.00 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for FY 07].~~

SECTION 5.06. Section 26.361, Water Code, is amended to read as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.

Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

SECTION 5.07. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill that extend a state reimbursement program relating to petroleum storage tanks.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add Article 6 to the bill to read as follows:

#### ARTICLE 6. DRUG PURCHASING FOR STATE AGENCIES

SECTION 6.01. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.080 to read as follows:

Sec. 531.080. JOINT PURCHASING OF PRESCRIPTION DRUGS AND OTHER MEDICATIONS. (a) Subject to Subsection (b), the commission and each health and human services agency authorized by the executive commissioner may enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program, the state child health plan, or another program under the authority of the commission.

(b) An agreement under this section may not be entered into until:

(1) the commission determines that entering into the agreement would be feasible and cost-effective; and

(2) if appropriated money would be spent under the proposed agreement, the governor and the Legislative Budget Board grant prior approval to expend appropriated money under the proposed agreement.

(c) If an agreement is entered into, the commission shall adopt procedures applicable to an agreement and joint purchase required by this section. The procedures must ensure that this state receives:

(1) all prescription drugs and other medications purchased with money provided by this state; and

(2) an equitable share of any price benefits resulting from the joint bulk purchase.

(d) In determining the feasibility and cost-effectiveness of entering into an agreement under this section, the commission shall identify:

(1) the most cost-effective existing joint bulk purchasing agreement; and

(2) any potential groups of states with which this state could enter into a new cost-effective joint bulk purchasing agreement.

SECTION 6.02. Not later than January 15, 2006, the Health and Human Services Commission shall determine the feasibility and cost-effectiveness of entering into an agreement under Section 531.080, Government Code, as added by this article.

If the commission determines that such action is feasible and cost-effective, the commission shall take action to enter into an agreement that takes effect March 1, 2006.

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.

Explanation: This change is necessary to add provisions to the bill relating to drug purchasing for state agencies.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add Article 7 to the bill to read as follows:

#### ARTICLE 7. CONTINUATION OF QUALITY ASSURANCE FEES

SECTION 7.01. Section 252.209, Health and Safety Code, is repealed.

Explanation: This change is necessary to add provisions to the bill relating to the continuation of certain quality assurance fees.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add Article 8 to the bill to read as follows:

#### ARTICLE 8. TEXAS MOBILITY FUND

SECTION 8.01. 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 8.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to the Texas mobility fund.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add Article 9 to the bill to read as follows:

#### ARTICLE 9. TELECOMMUNICATIONS INFRASTRUCTURE FUND

SECTION 9.01. Section 57.048, Utilities Code, is amended by adding Subsections (f)-(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 9.02. 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 9.03. 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 9.04. Section 57.043 and Subsections (c) and (d), Section 57.048, Utilities Code, are repealed.

SECTION 9.05. If, on the day before the effective date of this article, 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 article, reset the rate of the assessment to 1.25 percent.

SECTION 9.06. This article 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 article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to the Telecommunications Infrastructure Fund.

(6) Senate Rule 12.03(4) is suspended to permit the committee to add Article 10 to the bill to read as follows:

ARTICLE 10. COLLECTION OF CERTAIN COSTS, FEES, AND FINES  
IN CRIMINAL CASES

SECTION 10.01. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM. (a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

(1) a county with a population of 50,000 or greater; and

(2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and

(2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

(1) make available on the office's Internet website requirements for a program; and

(2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

SECTION 10.02. Section 133.058, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.03. Section 133.103, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c-1), the [The] treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) Except as provided by Subsection (c-1), the [The] treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.04. (a) Notwithstanding Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article, not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall identify those counties and municipalities that are able to implement a collection improvement program under Article 103.0033, Code of Criminal Procedure, as added by this article, before April 1, 2006. Beginning June 1, 2006, the Office of Court Administration of the Texas Judicial System shall comply with Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article.

(b) Not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website requirements for a program under Article 103.0033, Code of Criminal Procedure, as added by this article, in accordance with Subsection (g) of Article 103.0033.

Explanation: This change is necessary to add provisions to the bill relating to the collection of certain costs, fees, and fines in criminal cases.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add Article 11 to the bill to read as follows:

#### ARTICLE 11. INTEREST ON CERTAIN TAX REFUNDS

SECTION 11.01. Section 111.064, Tax Code, is amended by amending Subsections (a), (c), and (f) and adding Subsection (c-1) to read as follows:

(a) Except as otherwise provided by this section, for a refund under this chapter [~~Subsections (b) and (e), in a comptroller's final decision on a claim for refund or in an audit~~], interest is at the rate that is the lesser of the annual rate of interest earned on deposits in the state treasury during December of the previous calendar year, as determined by the comptroller, or the rate set in Section 111.060, and accrues on the amount found to be erroneously paid for a period:

(1) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(2) ending on, as determined by the comptroller, either the date of allowance of credit on account of the comptroller's final decision or audit or a date not more than 10 days before the date of the refund warrant.

(c) For a refund claimed before September 1, 2005, and granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060 [~~granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060~~].

(c-1) A refund, without regard to the date claimed, for a report period due before January 1, 2000, does not accrue interest.

(f) A local revenue fund is not subject to Subsections (a)-(c-1) [~~(a)-(e)~~]. In this subsection, "local revenue fund" includes a court cost, a fee, a fine, or a similar charge collected by a municipality, a county, or a court of this state and remitted to the comptroller.

SECTION 11.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to interest on certain tax refunds.

(8) Senate Rule 12.03(4) is suspended to permit the committee to add Article 12 to the bill to read as follows:

#### ARTICLE 12. PUBLIC SCHOOL FACILITIES

SECTION 12.01. Section 46.033, Education Code, is amended to read as follows:

Sec. 46.033. ELIGIBLE BONDS. Bonds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if:

(1) the district made payments on the bonds during the 2004-2005 [~~2002-2003~~] school year or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year; and



(2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.

SECTION 12.02. Subsection (c), Section 46.034, Education Code, is amended to read as follows:

(c) If the amount required to pay the principal of and interest on eligible bonds in a school year is less than the amount of payments made by the district on the bonds during the 2004-2005 [~~2002-2003~~] school year or the district's audited debt service collections for that school year, the district may not receive aid in excess of the amount that, when added to the district's local revenue for the school year, equals the amount required to pay the principal of and interest on the bonds.

Explanation: This change is necessary to add provisions to the bill relating to public school facilities.

(9) Senate Rule 12.03(4) is suspended to permit the committee to add Article 13 to the bill to read as follows:

ARTICLE 13. COMPENSATION FOR CERTAIN STATE EMPLOYEES WHO  
RETURN TO STATE EMPLOYMENT

SECTION 13.01. Section 659.042, Government Code, is amended to read as follows:

Sec. 659.042. EXCLUSIONS. The following are not entitled to longevity pay under this subchapter:

- (1) a member of the legislature;
- (2) an individual who holds a statewide office that is normally filled by vote of the people;
- (3) an independent contractor or an employee of an independent contractor;
- (4) a temporary employee;
- (5) an officer or employee of a public junior college; [~~or~~]
- (6) an academic employee of a state institution of higher education; or
- (7) a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee.

SECTION 13.02. Subsection (a), Section 659.043, Government Code, is amended to read as follows:

(a) A state employee is entitled to longevity pay to be included in the employee's monthly compensation if the employee:

- (1) is a full-time state employee on the first workday of the month;
- (2) is not on leave without pay on the first workday of the month; and
- (3) has accrued at least two [~~three~~] years of lifetime service credit not later than the last day of the preceding month.

SECTION 13.03. Section 659.044, Government Code, as amended by Section 32, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, and Section 104, Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 659.044. AMOUNT. (a) Except as provided by Subsections [~~Subsection~~] (e) and (f), the monthly amount of longevity pay is \$20 for every two [~~three~~] years of lifetime service credit.

(b) The amount increases when the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(c) An increase is effective beginning with the month following the month in which the 4th, 6th, 8th [~~9th~~], 10th, 12th, 14th [~~15th~~], 16th, 18th, 20th [~~21st~~], 22nd, 24th, 26th [~~27th~~], 28th, 30th, 32nd [~~33rd~~], 34th, 36th, 38th [~~39th~~], 40th, and 42nd years of lifetime service credit are accrued.

(d) An employee may not receive from the state as longevity pay more than the amount determined under Subsection (a) or (e), as applicable, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(e) This subsection applies only to an employee of the Texas Youth Commission who is receiving less than the maximum amount of hazardous duty pay that the commission may pay to the employee under Section 659.303. The employee's monthly amount of longevity pay is the sum of:

(1) \$4 for each year of lifetime service credit, which may not include any period served in a hazardous duty position; and

(2) the lesser of:

(A) \$4 for each year served in a hazardous duty position; or

(B) the difference between:

(i) \$7 for each year served in a hazardous duty position; and

(ii) the amount paid by the commission for each year served in a hazardous duty position.

(f) A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returns to state employment on or after September 1, 2005, is not entitled to receive longevity pay.

SECTION 13.04. Section 659.126, Government Code, is amended to read as follows:

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) An eligible state employee who leaves state employment after August 31, 1995, for at least 30 consecutive days [~~42 consecutive months~~], on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) An eligible state-paid judge who leaves office after August 31, 1995, for at least 30 consecutive days [~~42 consecutive months~~], on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

(c) For purposes of Subsection (a), a state employee is not considered to have left state employment:

(1) while the state employee is on an unpaid leave of absence as provided by Section 661.909; or

(2) during a period of time the employee is not working for the state because the employee's employment with the state customarily does not include that period of time, such as a teacher whose employment does not invariably include the summer months.

(d) An eligible state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee is ineligible to receive benefit replacement pay.

SECTION 13.05. Section 661.152, Government Code, is amended by adding Subsection (l) to read as follows:

(l) For purposes of computing vacation leave under Subsection (d) for a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

SECTION 13.06. Subsections (a), (b), (c), and (g), Section 659.305, Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the amount of a full-time state employee's hazardous duty pay for a particular month is the lesser of:

(1) \$10 [~~\$7~~] for each 12-month period of lifetime service credit accrued by the employee; or

(2) \$300 [~~\$210~~].

(b) This subsection applies only to a state employee whose compensation for services provided to the state during any month before August 1987 included hazardous duty pay that was based on total state service performed before May 29, 1987. The amount of a full-time state employee's hazardous duty pay for a particular month is the sum of:

(1) \$10 [~~\$7~~] for each 12-month period of state service credit the employee finished accruing before May 29, 1987; and

(2) \$10 [~~\$7~~] for each 12-month period of lifetime service credit that the employee accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12-month period of state service credit.

(c) The amount determined under Subsection (b)(2) may not exceed \$300 [~~\$210~~].

(g) A state employee may not receive more than \$10 [~~\$7~~] for each 12-month period of lifetime service credit, regardless of:

(1) the number of positions the employee holds; or

(2) the number of hours the employee works each week.

SECTION 13.07. (a) Except as provided by Subsection (b) of this section, the change in law made by this article to Section 659.126, Government Code, applies only to a state employee who leaves state employment on or after the effective date of this article. A state employee who leaves state employment before the effective date of this article is governed by the law as it existed on the date the employee left state employment and the former law is continued in effect for that purpose.

(b) A state employee who leaves state employment before the effective date of this article is ineligible to receive benefit replacement pay unless the employee returns to state employment before September 30, 2005.

SECTION 13.08. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to compensation for certain state employees who return to state employment.

(10) Senate Rule 12.03(4) is suspended to permit the committee to add Article 14 to the bill to read as follows:

#### ARTICLE 14. SYSTEM BENEFIT FUND

SECTION 14.01. Subsection (h), Section 39.903, Utilities Code, is amended to read as follows:

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

Explanation: This change is necessary to add provisions to the bill relating to the system benefit fund.

(11) Senate Rule 12.03(4) is suspended to permit the committee to add Article 15 to the bill to read as follows:

#### ARTICLE 15. FUNDING OF THE COASTAL PROTECTION FUND AND THE USE OF MONEY IN THE FUND

SECTION 15.01. Section 40.152, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33,

and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to the fund annually. This subsection expires September 1, 2007.

SECTION 15.02. Subsections (a) through (d), Section 40.155, Natural Resources Code, are amended to read as follows:

(a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents [~~two cents~~] per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached \$20 [~~\$25~~] million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million.

(b) If the unencumbered balance in the fund falls below \$10 [~~\$14~~] million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

- (1) the unencumbered balance in the fund is less than \$20 [~~\$25~~] million;
- (2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and
- (3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches \$20 [~~\$25~~] million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds \$20 [~~\$25~~] million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

Explanation: This change is necessary to add provisions to the bill relating to the funding of the coastal protection fund and the use of money in the fund.

(12) Senate Rule 12.03(4) is suspended to permit the committee to add Article 16 to the bill to read as follows:

#### ARTICLE 16. REIMBURSEMENT OF EXCESSIVE OR

#### UNFAIRLY DISCRIMINATORY RATES CHARGED BY CERTAIN INSURERS

SECTION 16.01. Article 5.144, Insurance Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Except as provided by Subsection (d) of this article, if the commissioner determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order the insurer to:

(1) issue a refund of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount, directly to each affected policyholder if the amount of that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if the amount of that portion of the premium is less than 7.5 percent:

(A) provide each affected policyholder who renews the policy a future premium discount in the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

(B) provide each affected policyholder who does not renew or whose coverage is otherwise terminated a refund in the amount described by Subdivision (1) of this subsection.

(b-1) The rate for interest assessed under Subsection (b) of this article is the prime rate for the calendar year in which the order is issued plus six percent. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. The interest accrues beginning on the date on which the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, as determined by the commissioner, and continues to accrue until the refund is paid. An insurer may not be required to pay any interest penalty or refund if the insurer prevails in a final appeal of the commissioner's order under Subchapter D, Chapter 36, of this code.

(b-2) An insurer may not claim a premium tax credit to which the insurer is otherwise entitled unless the insurer has complied with this article.

Explanation: This change is necessary to add provisions to the bill relating to reimbursement of excessive or unfairly discriminatory rates charged by insurers.

(13) Senate Rule 12.03(4) is suspended to permit the committee to add Article 17 to the bill to read as follows:

ARTICLE 17. CERTAIN PROVISIONS RELATING TO RETIREMENT SYSTEM CONTRIBUTIONS AND BENEFITS FOR RETIRED SCHOOL EMPLOYEES

SECTION 17.01. Subsection (a), Section 825.404, Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to at least six and not more than 10 ~~[eight]~~ percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

SECTION 17.02. Subsection (a), Section 1575.203, Insurance Code, is amended to read as follows:

(a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.65 ~~[0.5]~~ percent of the employee's salary.

SECTION 17.03. The change in law made by this article to Section 1575.203, Insurance Code, takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to certain benefits for retired school employees.

(14) Senate Rule 12.03(4) is suspended to permit the committee to add Article 18 to the bill to read as follows:

ARTICLE 18. COMPENSATION SUPPLEMENTATION FOR  
CERTAIN SCHOOL EMPLOYEES

SECTION 18.01. Subsections (a), (b), (c), (i), and (j), Section 22.004, Education Code, are amended to read as follows:

(a) A district shall participate in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, as provided by Subchapter D [~~Section 5~~] of that chapter [~~article~~].

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366 [~~Article 3.51-6~~], Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Chapter 1551, Insurance Code. The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

- (1) the deductible amount for service provided inside and outside of the network;
- (2) the coinsurance percentages for service provided inside and outside of the network;
- (3) the maximum amount of coinsurance payments a covered person is required to pay;
- (4) the amount of the copayment for an office visit;
- (5) the schedule of benefits and the scope of coverage;
- (6) the lifetime maximum benefit amount; and
- (7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Subchapter F, Chapter 1579 [~~Article 3.50-7~~], Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b) shall be shared by the

employees and the district using the contributions by the state described by Subchapter F, Chapter 1579 [Section 9, Article 3.50-7], Insurance Code, or Subchapter D [by Article 3.50-8, Insurance Code].

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Chapter 1579 [Article 3.50-7], Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579 [Article 3.50-7], Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Chapter 1579 [Article 3.50-7], Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

SECTION 18.02. Chapter 22, Education Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. COMPENSATION SUPPLEMENTATION

Sec. 22.101. DEFINITIONS. In this subchapter:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986.

(2) "Employee" means an active, contributing member of the Teacher Retirement System of Texas who:

(A) is employed by a district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center;

(B) is not a retiree eligible for coverage under the program established under Chapter 1575, Insurance Code;

(C) is not eligible for coverage by a group insurance program under Chapter 1551 or 1601, Insurance Code; and

(D) is not an individual performing personal services for a district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, or regional education service center as an independent contractor.

(3) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, that participates in the program established under Chapter 1579, Insurance Code.

(4) "Regional education service center" means a regional education service center established under Chapter 8.

Sec. 22.102. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY.

(a) The agency may adopt rules to implement this subchapter.

(b) The agency may enter into interagency contracts with any other agency of this state for the purpose of assistance in implementing this subchapter.

Sec. 22.103. ELIGIBILITY; WAITING PERIOD. A person is not eligible for a monthly distribution under this subchapter before the 91st day after the first day the person becomes an employee.

Sec. 22.104. DISTRIBUTION BY AGENCY. Subject to the availability of funds, each month the agency shall deliver to each district, including a district that is ineligible for state aid under Chapter 42, each other educational district that is a



member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the agency, equal to the product of the number of eligible employees employed by the district, school, or service center multiplied by the amount specified in the General Appropriations Act for purposes of this subchapter and divided by 12. The agency shall distribute funding to only one entity for employees who are employed by more than one entity listed in this section.

Sec. 22.105. FUNDS HELD IN TRUST. All funds received by a district, other educational district, participating charter school, or regional education service center under this subchapter are held in trust for the benefit of the employees on whose behalf the district, school, or service center received the funds.

Sec. 22.106. RECOVERY OF DISTRIBUTIONS. The agency is entitled to recover from a district, other educational district, participating charter school, or regional education service center any amount distributed under this subchapter to which the district, school, or service center was not entitled.

Sec. 22.107. DETERMINATION BY AGENCY FINAL. A determination by the agency under this subchapter is final and may not be appealed.

Sec. 22.108. DISTRIBUTION BY SCHOOL. Each month, each district, other educational district that is a member of the Teacher Retirement System of Texas, participating charter school, and regional education service center must distribute to its eligible employees the funding received under this subchapter. To receive the monthly distribution, an individual must meet the definition of an employee under Section 22.101 for that month.

Sec. 22.109. USE OF SUPPLEMENTAL COMPENSATION. An employee may use a monthly distribution received under this subchapter for any employee benefit, including depositing the amount of the distribution into a cafeteria plan, if the employee is enrolled in a cafeteria plan, or using the amount of the distribution for health care premiums through a premium conversion plan. The employee may take the amount of the distribution as supplemental compensation.

Sec. 22.110. SUPPLEMENTAL COMPENSATION. An amount distributed to an employee under this subchapter must be in addition to the rate of compensation that:

(1) the district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

SECTION 18.03. Subsection (c), Section 822.201, Government Code, is amended to read as follows:

(c) Excluded from salary and wages are:

- (1) expense payments;
- (2) allowances;
- (3) payments for unused vacation or sick leave;
- (4) maintenance or other nonmonetary compensation;
- (5) fringe benefits;
- (6) deferred compensation other than as provided by Subsection (b)(3);

(7) compensation that is not made pursuant to a valid employment agreement;

(8) payments received by an employee in a school year that exceed \$5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;

(9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;

(10) any amount ~~[contributions to a health reimbursement arrangement account]~~ received by an employee under Subchapter D, Chapter 22, Education Code, former Article 3.50-8, Insurance Code, former Chapter 1580, Insurance Code, or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act); and

(11) any compensation not described by Subsection (b).

SECTION 18.04. Subsection (b), Section 1579.253, Insurance Code, is amended to read as follows:

(b) The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Subchapter D, Chapter 22, Education Code ~~[1580]~~.

SECTION 18.05. Section 1581.702, Insurance Code, is amended to read as follows:

Sec. 1581.702. ADDITIONAL SUPPORT. The state shall provide additional support for a school district to which this section applies in an amount computed by multiplying the total amount of supplemental compensation received by district employees under Subchapter D, Chapter 22, Education Code, [1580] by 0.062.

SECTION 18.06. The following laws are repealed:

(1) Chapter 1580, Insurance Code;

(2) Section 57, Chapter 201, Acts of the 78th Legislature, Regular Session, 2003;

(3) Chapter 313, Acts of the 78th Legislature, Regular Session, 2003; and

(4) Section 1.01, Chapter 366, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 18.07. The functions and duties of the Teacher Retirement System of Texas with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program are transferred to the Texas Education Agency. A reference in law to the Teacher Retirement System of Texas with respect to the compensation supplementation program means the Texas Education Agency.

SECTION 18.08. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to compensation supplementation for certain school employees.

(15) Senate Rule 12.03(4) is suspended to permit the committee to add Article 19 to the bill to read as follows:

ARTICLE 19. RETIREMENT SYSTEM CONTRIBUTIONS FOR CERTAIN MEMBERS OF THE TEACHER RETIREMENT SYSTEM OF TEXAS

SECTION 19.01. Subchapter E, Chapter 825, Government Code, is amended by adding Section 825.4041 to read as follows:

Sec. 825.4041. EMPLOYER PAYMENTS. (a) For purposes of this section, a new member is a person first employed on or after September 1, 2005, including a former member who withdrew retirement contributions under Section 822.003 and is reemployed on or after September 1, 2005.

(b) During each fiscal year, an employer shall pay an amount equal to the state contribution rate, as established by the General Appropriations Act for the fiscal year, applied to the aggregate compensation of new members of the retirement system, as described by Subsection (a), during their first 90 days of employment.

(c) On a monthly basis an employer shall:

(1) report to the retirement system, in a form prescribed by the system, a certification of the total amount of salary paid during the first 90 days of employment of a new member and the total amount of employer payments due under this section for the payroll periods; and

(2) retain information, as determined by the retirement system, sufficient to allow administration of this section, including information for each employee showing the applicable salary as well as aggregate compensation for the first 90 days of employment for new employees.

(d) A person who was hired before September 1, 2005, and was subject to a 90-day waiting period for membership in the retirement system becomes eligible to participate in the retirement system as a member starting September 1, 2005. For the purpose of this section, the member shall be treated as a new member for the remainder of the waiting period.

(e) The employer must remit the amount required under this section to the retirement system at the same time the employer remits the member's contribution. In computing the amount required to be remitted, the employer shall include compensation paid to an employee for the entire pay period that contains the 90th calendar day of new employment.

(f) At the end of each school year, the retirement system shall certify to the commissioner of education and to the state auditor:

(1) the name of each employer that has failed to remit, within the period required by Section 825.408, all payments required under this section for the school year; and

(2) the amounts of the unpaid required payments.

(g) If the commissioner of education or the state auditor receives a certification under Subsection (f), the commissioner or the state auditor shall direct the comptroller to withhold the amount certified, plus interest computed at the rate and in the manner provided by Section 825.408, from the first state money payable to the employer. The amount withheld shall be deposited to the credit of the appropriate accounts of the retirement system.

(h) The board of trustees shall take this section into consideration in adopting the biennial estimate of the amount necessary to pay the state's contributions to the retirement system.

SECTION 19.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to add provisions to the bill relating to retirement system contributions for certain members of the Teacher Retirement System of Texas.

(16) Senate Rule 12.03(2) is suspended to permit the committee to omit the following provisions from the bill that are not in disagreement:

ARTICLE \_\_. COLLECTION OF MOTOR FUELS TAXES

SECTION \_\_.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 \_\_.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 \_\_.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 \_\_.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 \_\_.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 \_\_.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 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 \_\_.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~~;~~ 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 \_\_.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 \_\_.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 \_\_.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 \_\_.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, ~~to~~ terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

SECTION \_\_.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 \_\_.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 \_\_.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~~[7]~~ dyed diesel fuel sold to a purchaser under a signed statement~~[7]~~ 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 \_\_.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 \_\_.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 \_\_.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 \_\_.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 \_\_.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 \_\_.20. Subsection (h), Section 162.016, Tax Code, is repealed.

SECTION \_\_.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 \_\_.22. This article takes effect September 1, 2005.

Explanation: This change is necessary to remove provisions from the bill relating to the collection of motor fuel taxes.

(17) Senate Rule 12.03(2) is suspended to permit the committee to omit the following provisions from the bill that are not in disagreement:

ARTICLE \_\_. FEES FOR CERTAIN INSPECTIONS CONDUCTED  
BY THE COMMISSION ON JAIL STANDARDS

SECTION \_\_.01. Section 511.0091, Government Code, is amended by adding Subsection (c-1) and amending Subsection (d) to read as follows:

(c-1) In addition to the other fees authorized by this section, the commission may set and collect a reasonable fee to cover the cost of performing any reinspection of a municipal or county jail that is conducted by the commission:

(1) following a determination by the commission that the jail is not in compliance with minimum standards;

(2) in response to a request by the operator of the jail; and

(3) before the operator of the jail has taken actions as necessary to ensure that the jail is in compliance with minimum standards.

(d) All money paid to the commission under this chapter is subject to Subchapter F, Chapter 404. Fees collected under Subsection (c-1) shall be deposited to the credit of a special account in the general revenue fund to be appropriated only to pay costs incurred by the commission in performing services under this section.

SECTION \_\_.02. This article takes effect September 1, 2005.

Explanation: This change is necessary to remove provisions from the bill relating to fees for certain inspections conducted by the Commission on Jail Standards.

**SR 1084** was read and was adopted by the following vote: Yeas 26, Nays 5.

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

Nays: Deuell, Ellis, Eltife, Shapleigh, Zaffirini.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1863 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **SB 1863**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Barrientos, Brimer, Carona, Duncan, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Ogden, Seliger, Shapiro, Staples, Wentworth, Whitmire, Williams.

Nays: Averitt, Deuell, Ellis, Eltife, Janek, Nelson, Shapleigh, Van de Putte, West, Zaffirini.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 880** (non-record vote)

**HB 1800** (non-record vote)

**HB 2604** (non-record vote)

**HB 2928** (non-record vote)

**HB 3539** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**RECESS**

On motion of Senator Whitmire, the Senate at 4:16 p.m. recessed until 5:00 p.m. today.

**AFTER RECESS**

The Senate met at 5:37 p.m. and was called to order by Senator Carona.

**SENATE RESOLUTION 1061**

Senator Nelson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That the Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 6**, (protective services; providing penalties) to consider and take action on the following matters:

(1) Senate Rule 12.03(1), is suspended to permit the committee to change the text of added Section 261.3032, Family Code, so that Section 261.3032 reads as follows:

Sec. 261.3032. INTERFERENCE WITH INVESTIGATION; CRIMINAL PENALTY. (a) A person commits an offense if, with the intent to interfere with the department's investigation of a report of abuse or neglect of a child, the person relocates the person's residence, either temporarily or permanently, without notifying the department of the address of the person's new residence or conceals the child and the person's relocation or concealment interferes with the department's investigation.

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

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Explanation: The change is necessary to clarify the elements of the offense.

(2) Senate Rule 12.03(1), is suspended to permit the committee to change the text of added Section 264.0091, Family Code, so that Section 264.0091 reads as follows:

Sec. 264.0091. USE OF TELECONFERENCING AND VIDEOCONFERENCING TECHNOLOGY. Subject to the availability of funds, the department, in cooperation with district and county courts, shall expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts and other individuals in court proceedings.

Explanation: The change is necessary to ensure that the Department of Family and Protective Services is only required to implement the provisions of Section 264.0091, Family Code, if the department has funds to implement the project.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text to Subsection (j), Section 266.004, Family Code, so that Subsection (j), Section 266.004 reads as follows:

(j) Nothing in this section requires that the identity of a foster parent be publicly disclosed.

Explanation: The change is necessary to clarify that the section does not require public disclosure of the identity of foster parents.

(4) Senate Rule 12.03(1) is suspended to permit the committee to change the text of amended Subsection (b), Section 42.056, Human Resources Code, so that Subsection (b), Section 42.056 reads as follows:

(b) The department shall conduct background and criminal history checks using:

- (1) the information provided under Subsections [Subsection] (a) and (a-1);
- (2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and
- (3) the department's records of reported abuse and neglect.

Explanation: The changed text is necessary to ensure that under the bill the Department of Family and Protective Services may, but is not required to, complete a background check using information made available by the Federal Bureau of Investigation.

(5) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text in added Subsection (e), Section 42.056, Human Resources Code, so that Subsection (e), Section 42.056 reads as follows:

(e) If the residential child-care facility does not receive the results of the background or criminal history check within two working days, the facility may obtain that information for the facility's employee, subcontractor, or volunteer directly from the Department of Public Safety. If the information obtained verifies that the person does not have a criminal record, the facility may allow the person to have unsupervised client contact until the department has performed the department's own criminal history check and notified the facility.

Explanation: It is necessary to omit the text to remove a proposed requirement that under the bill the Department of Family and Protective Services complete background checks within 24 hours. It is necessary to change the remaining text to clarify a reference to the omitted 24-hour deadline.

(6) Senate Rule 12.03(2) is suspended to permit the committee to omit the following text in added Section 111.001, Government Code:

(10) "Statutory probate court" has the meaning assigned by Section 601, Texas Probate Code.

Explanation: The change is necessary to conform the language of the bill to the modification made to the provision of the bill relating to the composition of the Guardianship Certification Board.

(7) Senate Rule 12.03(1) is suspended to permit the committee to change the text of added Subsection (b), Section 111.011, Government Code, so that Subsection (b), Section 111.011 reads as follows:

(b) The supreme court shall appoint members under Subsection (a)(1) from the different geographical areas of this state.

Explanation: The change is necessary to conform the language of the bill to the modification made to the provision of the bill relating to the composition of the Guardianship Certification Board.

(8) Senate Rule 12.03(1) is suspended to permit the committee to change the text of added Subsection (g), Section 111.011, Government Code, so that Subsection (g), Section 111.011 reads as follows:

(g) The members of the board serve for staggered six-year terms, with the terms of one-third of the members expiring on February 1 of each odd-numbered year. Board members are not entitled to receive compensation or reimbursement for expenses.

Explanation: The change is necessary to prohibit members of the Guardianship Certification Board from receiving reimbursement for expenses incurred in the performance of their duties.

(9) Senate Rule 12.03(2) is suspended to permit the committee to omit text in added Subdivision (5), Section 111.013, Government Code, so that Subdivision (5) reads as follows:

(5) uses or receives a substantial amount of tangible goods, services, or funds from the Office of Court Administration.

Explanation: The change is necessary to conform the language of the bill to the provision of the bill prohibiting the members of the Guardianship Certification Board from receiving compensation or reimbursement for expenses.

(10) Senate Rule 12.03(1) is suspended to permit the committee to change the text of added Subsection (c), Section 111.015, Government Code, so that Subsection (c), Section 111.015 reads as follows:

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the chief justice of the supreme court that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the board, who shall then notify the chief justice of the supreme court that a potential ground for removal exists.

Explanation: The change is necessary to enable the director to notify the appropriate appointing official regarding the existence of a potential ground for removal of a board member.

(11) Senate Rule 12.03(2) is suspended to permit the committee to omit the following text in added Section 111.017, Government Code:

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

Explanation: The change is necessary to conform the language of the bill to the provision of the bill prohibiting the members of the Guardianship Certification Board from receiving compensation or reimbursement for expenses.

(12) Senate Rule 12.03(2) is suspended to permit the committee to omit text in added Section 111.023, Government Code, so that Section 111.023 reads as follows:

Sec. 111.023. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The director shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Explanation: The change is necessary to prohibit the director from delegating to another individual the director's duty under this section to provide information to board members regarding the requirements for holding office and to reflect the removal of references to the hiring of employees, other than the director, that are made throughout added Chapter 111, Government Code.

(13) Senate Rule 12.03(4) is suspended to permit the committee to add additional text as Subsection (f), Section 111.042, Government Code, to read as follows and to reletter existing Subsection (f) and subsequent subsections appropriately:

(f) An employee of the Department of Aging and Disability Services who is applying for a certificate under this section to provide guardianship services to a ward of the department is exempt from payment of an application fee required by this section.

Explanation: The added text is necessary to provide an exemption from payment of application fees to employees of the Department of Aging and Disability Services applying for a certificate to provide guardianship services on behalf of the department.

**SR 1061** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 6 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 6**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Shapleigh.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 7 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **HB 7**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **REMARKS ORDERED PRINTED**

On motion of Senator Duncan and by unanimous consent, the remarks between Senator Staples and Senator Duncan regarding the Conference Committee Report on **HB 7** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Duncan:** Senator Staples, as you know, one of the major changes in this bill from the one this body passed in March is the governance of the system. In Senate Bill 5 the Senate set up a single commissioner of workers' compensation to ensure accountability for the quality of our system. Can you describe for us how the conference report addressed that issue?

**Senator Staples:** The conference report takes from the work of both houses on the governance issue. It creates a Workers' Compensation Division of TDI to handle most of the functions the Texas Workers' Compensation Commission handles today.

**Senator Duncan:** Can you describe for us what is different about this division of workers' compensation compared to other divisions at TDI?

**Senator Staples:** The main difference is that it would be headed by a Governor-appointed commissioner of workers' compensation, subject to Senate confirmation. That commissioner would have authority over issues under his or her purview, including rulemaking authority which, as you know, is very important in workers' compensation, given the complexity of the issue and the frequent need for rules. The TDI commissioner would have the authority to review and comment on workers' compensation rules. While we wanted to integrate the functions of TDI and the workers' compensation division as much as possible, it is also important that proper focus, attention, and accountability remain on workers' compensation.

**Senator Duncan:** So while the workers' compensation functions are housed in a division of TDI, that division is also headed by a Governor-appointed commissioner?

**Senator Staples:** That is correct.

**Senator Duncan:** And the commissioner of that division has the authority to adopt rules?

**Senator Staples:** That is correct.

**Senator Duncan:** And the commissioner of that division can be held directly accountable for the performance of the system?

**Senator Staples:** That is correct.

**SENATE RULE 12.09(a) SUSPENDED  
(Printing and Notice of Conference Committee Reports)**

On motion of Senator Gallegos and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **HB 580**.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 580 ADOPTED**

Senator Gallegos called from the President's table the Conference Committee Report on **HB 580**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Gallegos, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 182 ADOPTED**

Senator Janek called from the President's table the Conference Committee Report on **HB 182**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Janek, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.



**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 34 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 34**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 809 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **SB 809**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 982 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **SB 982**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 330 ADOPTED**

Senator Deuell called from the President's table the Conference Committee Report on **SB 330**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Deuell, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 409 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 409**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1055 WITH HOUSE AMENDMENTS**

Senator Janek called **SB 1055** 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 1055** (House committee report) by inserting the following SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 247, Health and Safety Code, is amended by adding Section 247.069 to read as follows:

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if:

(1) consumers are advised of all other community care options; and

(2) the facility:

(A) has never been licensed by the department as anything other than an assisted living facility;

(B) is not physically connected to a skilled nursing facility;

(C) was constructed before September 1, 2005; and

(D) otherwise meets all other community care program standards.

**Floor Amendment No. 2**

Amend **SB 1055** (House committee printing) as follows:

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

SECTION \_\_\_\_\_. (a) The Health and Human Services Commission shall convene a workgroup composed of providers, consumer advocates, building inspectors, fire marshals, and other individuals as appropriate to study state laws relating to the delivery of personal care services to four or more persons who are unrelated to the proprietor in settings that are not licensed as assisted living facilities, but are instead settings where residents receive personal care services through one or more home and community support services agencies. The workgroup shall consider:

(1) state licensing laws;

(2) the nature, extent, and differences of consumer needs and preferences;

(3) the qualifications of persons authorized to provide personal care services; and

(4) the settings in which personal care services are provided, including the life safety codes applicable to those settings.

(b) Not later than December 1, 2006, the workgroup, with the assistance of the Health and Human Services Commission, shall prepare and deliver a report and make recommendations on the issues studied to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) Notwithstanding any other law, the Department of Aging and Disability Services and the attorney general may not initiate or continue any action or investigation that seeks to enjoin or otherwise impose any sanction against a person for operating an assisted living facility without a license if the person offers personal care services to four or more persons who are unrelated to the proprietor in a setting

that is not licensed as an assisted living facility, but is instead a setting where residents receive personal care services through one or more home and community support services agencies.

(d) This section expires September 1, 2007.

SECTION \_\_\_\_. Not later than June 1, 2007, the Department of Aging and Disability Services shall accept an accreditation survey and implement the procedures required by Section 247.032, Health and Safety Code, as added by this Act.

(2) Strike SECTION 2 of the bill and substitute the following:

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

### Floor Amendment No. 3

Amend Floor Amendment No. 2 to **SB 1055** by Davis of Harris by striking page 1, line 4 through page 2, line 8, and substituting the following:

SECTION \_\_\_\_. (a) The Health and Human Services Commission shall convene a workgroup composed of providers, consumer advocates, building inspectors, fire marshals, and other individuals as appropriate to study state laws relating to the delivery of personal care services to four or more persons who are unrelated to the proprietor in settings that are not licensed as assisted living facilities, but are instead settings where one or more residents receive personal care services through one or more home and community support services agencies. The purpose of the study is to perform a comprehensive review of the changing environment in the personal care services delivery system to determine if changes in state licensing and regulation are warranted, and if so, what changes should be considered. The workgroup shall consider, among other things:

- (1) state licensing laws;
- (2) the nature, extent, and differences of consumer needs and preferences;
- (3) the qualifications of persons authorized to provide personal care services; and
- (4) the settings in which personal care services are provided, including the life safety codes applicable to those settings.

(b) Not later than December 1, 2006, the workgroup, with the assistance of the Health and Human Services Commission, shall prepare and deliver a report and make recommendations on the issues studied to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) This section expires February 1, 2007.

The amendments were read.

Senator Janek moved to concur in the House amendments to **SB 1055**.

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

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 265 ADOPTED

Senator Williams called from the President's table the Conference Committee Report on **SB 265**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

- HB 10** (126 Yeas, 18 Nays, 1 Present, not voting)
- HB 698** (non-record vote)
- HB 1610** (144 Yeas, 0 Nays, 2 Present, not voting)
- HB 2510** (non-record vote)
- HB 2572** (non-record vote)
- HB 2876** (non-record vote)
- HB 3518** (non-record vote)
- HB 3563** (140 Yeas, 0 Nays, 1 Present, not voting)
- HJR 80** (135 Yeas, 7 Nays, 1 Present, not voting)
- SB 11** (non-record vote)
- SB 34** (143 Yeas, 0 Nays, 2 Present, not voting)
- SB 39** (non-record vote)
- SB 330** (non-record vote)
- SB 444** (140 Yeas, 0 Nays, 2 Present, not voting)
- SB 771** (142 Yeas, 0 Nays, 1 Present, not voting)
- SB 1670** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 1093**

Senator West offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1690** (common nuisance) to consider and take action on the following matters:

(1) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add the following language to Subsection (d), Section 125.004, Civil Practice and Remedies Code, as added by the bill:

The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

Explanation: The added language is necessary to ensure that posting of a sign by a real property owner prohibiting the activity constituting a common nuisance alleged to have occurred does not conclusively establish that the owner did not tolerate the alleged activity.

(2) Senate Rules 12.03(3) and (4) are suspended to permit the committee to add the following language to Section 125.044, Civil Practice and Remedies Code, as amended by the bill:

(b-1) The posting of a sign prohibiting the activity alleged is not conclusive evidence that the owner did not tolerate the activity.

Explanation: The added language is necessary to ensure that posting of a sign by a real property owner prohibiting the activity constituting a common nuisance alleged to have occurred does not conclusively establish that the owner did not tolerate the alleged activity.

**SR 1093** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1690 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **HB 1690**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **SENATE RESOLUTION 1078**

Senator Hinojosa offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1068** (collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty) to consider and take action on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Subsection (b), Section 411.142, Government Code. The omitted language reads as follows:

(b)(1) The director may maintain a a ~~the~~ DNA database in the department's crime laboratory in Austin or another suitable location.

(2) The director may maintain a separate database containing a name or other personally identifying information cross-referenced and searchable by name, code, or other identifier.

(3) A CODIS DNA database:

(A) may not store a name or other personally identifying information;

(B) must be compatible with the national DNA index system to the extent required by the FBI to permit the useful exchange and storage of DNA records or information derived from those records; and

(C) may store a code, file, or reference number to another information system only if the director determines the information is necessary to:

(i) generate an investigative lead or exclusion;

(ii) support the statistical interpretation of a test result; or

(iii) allow for the successful implementation of a DNA database.

(4) A non-CODIS DNA database:

(A) may store a name or other personally identifying information; and

(B) must be compatible with the national DNA index system to the extent possible to permit the useful exchange and storage of DNA records or information derived from those records.

Explanation: The change is necessary to permit the continuation of current law.

(2) Senate Rule 12.03(1) is suspended to permit the committee to add text to amended Subdivision (1), Subsection (g), Section 411.142, Government Code, to read as follows:

(1) an individual [a person] described by this subchapter, including Section 411.1471, 411.148, or 411.150;

Explanation: The change is necessary to clarify that the DNA records of an individual described by Section 411.1471, Government Code, may be contained in the DNA database.

(3) Senate Rule 12.03(1) is suspended to permit the committee to add text to amended Subsection (f), Section 411.148, Government Code, to read as follows:

~~(f) [The institutional division shall obtain the sample or specimen from an inmate confined in another penal institution as soon as practicable if the Board of Pardons and Paroles informs the division that the inmate is likely to be paroled before being admitted to the division. The administrator of the other penal institution shall cooperate with the institutional division as necessary to allow the institutional division to perform its duties under this section.]~~

~~[(e) The institutional division shall:~~

~~[(1) preserve each blood sample or other specimen collected;~~

~~[(2) maintain a record of the collection of the sample or specimen; and~~

~~[(3) send the sample or specimen to the director for scientific analysis under this subchapter.]~~

~~[(d) An inmate may not be held past a statutory release date if the inmate fails or refuses to provide a blood sample or other specimen under this section. A penal institution may take other lawful administrative action against the inmate.]~~

[(e)] The Texas Department of Criminal Justice and the Texas Youth Commission, as appropriate, [institutional division] shall notify the director that an individual [inmate] described by Subsection (a) is to be released from custody [the

~~institutional division~~] not earlier than the 120th day before the individual's ~~[inmate's]~~ release date and not later than the 90th day before the individual's ~~[inmate's]~~ release date. The Texas Youth Commission shall notify the director that an individual described by Subsection (a) is to be released from custody not earlier than the 10th day before the individual's release date. The Texas Department of Criminal Justice and the Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

Explanation: The change is necessary to require the Texas Youth Commission to notify the director of the Department of Public Safety of the release from custody of certain individuals not earlier than the 10th day before the date each individual is to be released.

(4) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Section 411.150, Government Code. The omitted text reads as follows:

Sec. 411.150. COURT-ORDERED DNA RECORDS [OF CERTAIN JUVENILES]. (a) A magistrate or court may order a suspect or defendant to provide one or more DNA samples to a criminal justice agency for the purpose of creating a DNA record if the individual:

(1) is the target of an evidentiary search warrant seeking the sample under Article 18.02(10), Code of Criminal Procedure, for any offense;

(2) is released on any form of bail or bond after arrest for a felony offense;

or

(3) is indicted or waives indictment for a felony offense.

(b) A court shall order a defendant to provide one or more samples to a criminal justice agency for the purpose of creating a DNA record if the individual is placed on community supervision or deferred adjudication for a felony offense.

(c) A magistrate or court:

(1) shall order a sheriff, deputy sheriff, or other peace officer or employee representing a local law enforcement agency or a community supervision and corrections department to collect or cause to be collected one or more samples from an individual as required or permitted under this section unless a DNA sample has already been obtained under this subchapter; and

(2) shall order the sample to be forwarded to the director.

(d) An employee of a criminal justice agency may collect a sample from an individual under this section if the employee complies with each rule adopted by the director under this subchapter, including collecting, preserving, maintaining a record of the collection of, and forwarding the sample to the director. This subsection does not authorize an otherwise unqualified person to collect a blood sample.

(e) If in consultation with the director it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director. ~~[(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood samples or other specimens taken by or at the request of the commission for the purpose of creating a DNA record if the juvenile has not already provided the required specimen under other state law and if the juvenile is ordered by a juvenile court to give the sample or specimen or is committed to the commission for an adjudication as having engaged in delinquent conduct that violates:~~

~~[(1) an offense:~~

~~[(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);~~

~~[(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (e)(2) or (d) of that section; or~~

~~[(C) for which the juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or~~

~~[(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~

~~[(A) a violation of a penal law described in Subsection (a)(1); or~~

~~[(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).]~~

~~[(b) The department, in conjunction with the Texas Youth Commission, shall adopt rules regarding the collection, preservation, and shipment of a blood sample or other specimen of a juvenile described by this section.~~

~~[(c) The Texas Youth Commission shall:~~

~~[(1) obtain blood samples or other specimens from juveniles under this section;~~

~~[(2) preserve each sample or other specimen collected;~~

~~[(3) maintain a record of the collection of the sample or specimen; and~~

~~[(4) send the sample or specimen to the director for scientific analysis under this subchapter.~~

~~[(d) A medical staff employee of the Texas Youth Commission may obtain a voluntary sample or specimen from any juvenile.~~

~~[(e) An employee of the Texas Youth Commission may use force against a juvenile required to provide a sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to obtain the sample or specimen.~~

~~[(f) The Texas Youth Commission may contract with an individual or entity for the provision of phlebotomy services under this section.]~~

Explanation: The change is necessary to permit the continuation of current law.

(5) Senate Rule 12.03(2) is suspended to permit the committee to omit Sections 411.155 and 411.156, Government Code. The omitted language reads as follows:

Sec. 411.155. OFFENSE: REFUSAL TO PROVIDE SAMPLE. (a) A person commits an offense if the person knowingly fails or refuses to provide a DNA sample and the person:

(1) is required to provide a sample under this subchapter; and

(2) receives notification of the requirement to provide the sample.

(b) An offense under this section is a felony of the third degree.

Sec. 411.156. LIABILITY. (a) This section applies to a person:

(1) ordering, collecting with or without force, preserving, possessing, transmitting, receiving, analyzing, releasing, disclosing, using, or maintaining a DNA sample or record under this subchapter; or

(2) administering this subchapter.



(b) A person described in Subsection (a) is immune from civil liability for any act or omission resulting in death, damage, or injury if the person:

(1) acts in the course of duties under this subchapter or a rule adopted under this subchapter;

(2) reasonably believes the person's act or omission was in substantial compliance with this subchapter or a rule adopted under this subchapter; and

(3) collects the sample in a reasonable manner according to generally accepted medical or other professional practices.

Explanation: The change is necessary to prevent the creation of an offense based on the refusal to provide a DNA sample and the imposition of liability on certain individuals.

(6) Senate Rule 12.03(3) is suspended to permit the committee to add text to amended Article 17.47, Code of Criminal Procedure, to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

(a) A magistrate may ~~shall~~ require as a condition of release on bail or bond of a defendant ~~[described by Section 411.1471(a), Government Code,]~~ that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

(b) A magistrate shall require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

Explanation: The change is necessary to require the provision of a DNA sample by certain defendants.

(7) Senate Rule 12.03(1) is suspended to permit the committee to change the text of amended Subdivision (19), Subsection (a), Section 11, Article 42.12, Code of Criminal Procedure, to read as follows:

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

Explanation: The change is necessary to permit the continuation of current law.

(8) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Subsections (a) and (h), Article 102.020, Code of Criminal Procedure. The omitted language reads as follows:

(a) A person shall pay \$160 ~~[\$250]~~ as a court cost on conviction of or adjudication for an offense described in Section 411.148 ~~[listed in Section 411.1471(a)(1)],~~ Government Code, to reimburse the department for services provided under Subchapter G, Chapter 411, Government Code. Payment of a court cost under this article shall be required as a condition of community supervision under Article 42.12~~], and \$50 as a court cost on conviction of an offense listed in Section 411.1471(a)(3) of that code].~~

(h) The comptroller shall deposit 90 ~~[35]~~ percent of the funds received under this article in the state treasury to the credit of the state highway fund and 10 ~~[65]~~ percent of the funds received under this article to the credit of an institution

administering the functions of the Missing Persons DNA Database as described by Section 105.451, Education Code [the criminal justice planning account in the general revenue fund].

Explanation: The change is necessary to prevent the imposition of additional costs on conviction that are related to the regulation of DNA samples and forensic labs.

(9) Senate Rule 12.03(2) is suspended to permit the committee to omit Section 411.1471, Government Code, from the list of sections to be repealed.

Explanation: The change is necessary to permit the continuation of current law.

(10) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Subsections (a) and (c) of SECTION 22 to read as follows:

SECTION 22. (a) The change in law made by this Act applies to:

(1) evidence tested or offered into evidence on or after the effective date of this Act; and

(2) an individual who, on or after the effective date of this Act:

(A) is confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice as described in Section 411.148(a)(1)(B), Government Code, as amended by this Act;

(B) is confined in a facility operated by or under contract with the Texas Youth Commission after adjudication for conduct constituting a felony as described in Section 411.148(a)(2), Government Code, as amended by this Act;

(C) voluntarily submits or causes to be submitted a DNA sample as described in Section 411.149, Government Code, as amended by this Act; or

(D) is ordered by a magistrate or court to provide a DNA sample under Subsection G, Chapter 411, Government Code.

(c) As required by Section 411.148, Government Code, as amended by this Act, the Texas Youth Commission shall collect a DNA sample from a juvenile committed to the Texas Youth Commission for a felony from whom a DNA sample was not required before the effective date of this Act or from a juvenile previously committed to the Texas Youth Commission for a felony. The commission shall collect the sample during the initial examination or at any other reasonable time determined by the commission.

Explanation: The change is necessary to conform the transition language to the substantive provisions of the bill.

**SR 1078** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1068 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **HB 1068**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 444 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **SB 444**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 266 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **HB 266**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lindsay, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE JOINT RESOLUTION 80 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HJR 80**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2928 ADOPTED**

Senator Seliger called from the President's table the Conference Committee Report on **HB 2928**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 585 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **HB 585**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON  
SENATE BILL 568 DISCHARGED**

On motion of Senator Deuell and by unanimous consent, the Senate conferees on **SB 568** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 568**?

On motion of Senator Deuell, the Senate concurred in the House amendments to **SB 568** by the following vote: Yeas 31, Nays 0.

#### **STATEMENT OF LEGISLATIVE INTENT**

Senator Deuell submitted the following statement of legislative intent for **SB 568**:

It is my intent with the language in **SB 568**, Section 214.199 to prohibit cities and municipal police departments from eliminating first response to consumer alarm systems without first holding public hearings where citizen alarm users will have the opportunity to voice concerns or support with such a municipal ordinance or policy.

It is also my intent to prohibit cities and municipal police departments from adopting an ordinance or policy requiring a third-party alarm response or "verified-response" to alarm systems without first conducting such open and public hearings.

It is my intent that a city and municipal police department not circumvent this statute language requiring a notice to citizen alarm users and a public hearing before terminating first response to alarm systems by the municipal police department, by simply adopting a policy rather than an ordinance.

And it is my intent that the notice requirement in SB 568, Section 214.199 to be given to "permit holders" would include all or a substantial number of citizen alarm users within the respective jurisdiction.

DEUELL

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 664 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 664**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 468 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 468**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 260 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **HB 260**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 880 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 880**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**(Senator Brimer in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 955 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **HB 955**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1094**

Senator Estes offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2201** (implementing a clean coal project in this state) to consider and take action on the following matter:

Senate Rules 12.03(1) and (3) are suspended to permit the committee to revise proposed Section 5.558(a), Water Code, to read as follows:

(a) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile as defined by Section 382.0565, Health and Safety Code.

Explanation: The change is necessary to conform the meaning of the phrase "FutureGen emissions profile" in proposed Section 5.558(a), Water Code, to the phrase as it is defined by proposed Section 382.0565, Health and Safety Code.

**SR 1094** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2201 ADOPTED**

Senator Estes called from the President's table the Conference Committee Report on **HB 2201**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Estes, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2421 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 2421**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1077**

Senator Duncan offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2233** (state and certain local fiscal matters; providing a penalty) to consider and take action on the following matter:

Senate Rules 12.03(3) and (4) are suspended to permit the conference committee to add the following:

SECTION 125.5. 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.

Explanation: This change is necessary to add provisions to the bill related to eligibility for credits for diesel fuel taxes paid.

**SR 1077** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2233 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 2233**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2525 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **HB 2525**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lindsay, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2876 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2876**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2604 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **HB 2604**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 698 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **HB 698**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 836 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 836**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2005.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 872 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 872**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1072**

Senator Armbrister offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by

Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2027** (the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty) to consider and take action on the following matter:

Senate Rule 12.03(2) is suspended to permit the committee to omit "KERR," in the chapter heading to added Chapter 284, Parks and Wildlife Code, and "Kerr," in added Subsection (b), Section 284.001, Parks and Wildlife Code.

Explanation: This change is necessary to exempt Kerr County from the application of Chapter 284, Parks and Wildlife Code, as added by H.B. No. 2027.

**SR 1072** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2027 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2027**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**(Senator Averitt in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 712 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 712**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1142 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 1142**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 988 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 988**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.



**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2048 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 2048**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Ellis, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2572 ADOPTED**

Senator Janek called from the President's table the Conference Committee Report on **HB 2572**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Janek, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 260** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 265** (non-record vote)

**HB 266** (non-record vote)

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

**HB 580** (non-record vote)

**HB 585** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 664** (non-record vote)

**HB 955** (non-record vote)

**HB 1207** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1225** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 1634** (non-record vote)

**HB 1772** (140 Yeas, 1 Nays, 2 Present, not voting)  
**HB 1773** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2027** (non-record vote)  
**HB 2221** (128 Yeas, 9 Nays, 2 Present, not voting)  
**HB 2421** (140 Yeas, 1 Nays, 3 Present, not voting)  
**HB 2491** (non-record vote)  
**HB 2793** (non-record vote)  
**HB 3333** (139 Yeas, 0 Nays, 3 Present, not voting)  
**SB 567** (142 Yeas, 1 Nays, 3 Present, not voting)  
**SB 988** (non-record vote)  
**SB 1142** (non-record vote)  
**SB 1189** (non-record vote)  
**SB 1273** (non-record vote)  
**SB 1297** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2161 ADOPTED**

Senator Seliger called from the President's table the Conference Committee Report on **HB 2161**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Ogden.

### **SENATE RESOLUTION 1091**

Senator Jackson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2309** (certain election processes and procedures) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add language to the statute validating and recreating the Lake Cities Municipal Utility Authority (Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999) to allow the governing body of the authority to be elected at large by place and to repeal a prior obsolete statute governing the operations of the authority to read as follows:

SECTION 1.26. (a) Section 6(b), Chapter 1137, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(b) Each director is [~~Directors are~~] elected at large to one of five numbered places by the qualified voters residing within the boundaries of LCMUA.

(b) The directors serving on the effective date of this section shall draw lots to determine in which place each director serves. The two directors whose terms expire in 2006 shall draw lots for places 1 and 2. The three directors whose terms expire in 2008 shall draw lots for places 3, 4, and 5. At the directors election in 2006 a candidate may file for place 1 or 2. At the directors election in 2008, a candidate may file for place 3, 4, or 5.

(c) Chapter 312, Acts of the 58th Legislature, Regular Session, 1963, is repealed.

Explanation: This change is necessary to allow the Lake Cities Municipal Utility Authority to elect its board of directors at large by place and to repeal an obsolete statute creating the authority.

**SR 1091** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2309 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 2309**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2221 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **HB 2221**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Zaffirini.

#### **HOUSE CONCURRENT RESOLUTION 157 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business, Senate Rule 8.02, and all necessary rules were suspended to take up for consideration **HCR 157** at this time on its second reading:

**HCR 157**, Directing the Texas Building and Procurement Commission to have a Texas Youth Commission facility in San Saba County named after John Shero.

The resolution was read second time and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

### SENATE RESOLUTION 1079

Senator Duncan offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 334** (the remedy provided for failure to disclose certain information in certain residential construction contracts) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add SECTIONS 1 and 3 to the bill to read as follows:

SECTION 1. Chapter 26, Civil Practice and Remedies Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. CERTAIN CLASS ACTIONS PROHIBITED

Sec. 26.151. FAILURE TO DISCLOSE CERTAIN INFORMATION IN RESIDENTIAL CONSTRUCTION CONTRACT. A cause of action under Section 27.007, Property Code, may not be the subject of a class action.

SECTION 3. The change in law made by Subchapter C, Chapter 26, Civil Practice and Remedies Code, as added by this Act, applies only to the certification of a class action on or after June 1, 2005. Certification of a class action before June 1, 2005, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Explanation: The addition is necessary to ensure that on and after June 1, 2005, actions under Section 27.007, Property Code, are not maintained as class action suits.

**SR 1079** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 334 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **SB 334**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1188 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 1188**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 882 ADOPTED**

Senator Lucio called from the President's table the Conference Committee Report on **SB 882**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lucio, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3563 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **HB 3563**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 11 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **SB 11**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1670 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **SB 1670**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1225 ADOPTED**

Senator Duncan called from the President's table the Conference Committee Report on **HB 1225**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Duncan, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 843** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 1116** (non-record vote)

**HB 1126** (non-record vote)

**HB 1690** (non-record vote)

**HB 2048** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 2201** (140 Yeas, 3 Nays, 2 Present, not voting)

**SB 265** (non-record vote)

**SB 568** (non-record vote)

**SB 712** (non-record vote)

**SB 882** (non-record vote)

**SB 1176** (non-record vote)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 3526** (142 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### SENATE RESOLUTION 1098

Senator Staples offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2702** (construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, and safety of transportation in this state) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Section 91.054, Transportation Code:

(c) The department may not enter into a comprehensive development agreement with a private entity under this chapter that provides for the lease or use of rights-of-way or related property by the private entity to construct, operate, or maintain a facility that is unrelated to the operation of the rail facility or system.

Explanation: The addition is necessary to address the differences between the conferees on the issue of comprehensive development agreements for facilities that are unrelated to the operation of a rail facility or system by the Texas Department of Transportation.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Section 203.092, Transportation Code:

(a-1) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required by the improvement of a nontolled highway to add one or more tolled lanes. This subsection expires September 1, 2007.

(a-2) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the improvement of a nontolled highway that has been converted to a turnpike project or toll project. This subsection expires September 1, 2007.

(a-3) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required for the construction of a new location of a turnpike project or toll project or the expansion of a new location of a turnpike project or toll project. This subsection expires September 1, 2007.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the payment of utility relocation costs when the relocation is required because of construction related to toll lanes, turnpike projects, or toll projects.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Subsection (a), Section 223.201, Transportation Code:

(5) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

Explanation: The addition is necessary to allow the Texas Department of Transportation to enter into a comprehensive development agreement to design, develop, finance, construct, maintain, repair, operate, extend, or expand a state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Section 223.201, Transportation Code:

(g) The department may combine in a comprehensive development agreement under this subchapter a toll project and a rail facility as defined by Section 91.001.

Explanation: The addition is necessary to allow the Texas Department of Transportation to combine in a comprehensive development agreement a toll project and a rail facility.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Section 223.203, Transportation Code:

(e-1) Notwithstanding the requirements of this section, the department may prequalify a private entity to submit a detailed proposal to provide services under a design-build contract. The department is not required to publish a request under Subsection (c) for a design-build contract, and may enter into a design-build contract based solely on an evaluation of detailed proposals submitted in response to a request under Subsection (f) by prequalified private entities. The commission shall adopt rules establishing criteria for the prequalification of a private entity that include the precertification requirements applicable to providers of engineering services and the qualification requirements for bidders on highway construction contracts. Rules for design-build projects adopted pursuant to this subsection shall also provide for an expedited selection process that includes design innovation as a selection criterion.

(e-2) In this section, "design-build contract" means a comprehensive development agreement that includes the design and construction of a turnpike project, does not include the financing of a turnpike project, and may include the acquisition, maintenance, or operation of a turnpike project.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the prequalification of private entities for design-build contracts for certain highway projects.

(6) Senate Rule 12.03(4) is suspended to permit the committee to add the following to Section 223.206, Transportation Code:

(d) The department may not enter into a comprehensive development agreement with a private entity under this subchapter or Section 227.023 that provides for the lease, license, or other use of rights-of-way or related property by the private entity for the purpose of constructing, operating, or maintaining an ancillary facility that is used for commercial purposes.

Explanation: The addition is necessary to address the differences between the conferees on the issue of comprehensive development agreements by the Texas Department of Transportation relating to the use of highway rights-of-way for certain ancillary facilities.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add the following SECTION to the bill:

SECTION 2.100. Notwithstanding any law to the contrary, neither the Texas Department of Transportation nor a regional mobility authority may acquire property, enter into a contract, grant a franchise, or lease or license property for the purpose of constructing or operating an ancillary facility to be used for a commercial purpose under Chapter 228 or 370, Transportation Code. This section does not apply to a segment of highway under the jurisdiction of a regional mobility authority if the regional mobility authority awarded a comprehensive development agreement for the improvement of that segment before September 1, 2005. This segment does not apply to a segment of the state highway system in Travis or Williamson County if the Texas Department of Transportation awarded an exclusive development agreement for the improvement of that section before September 1, 2005. This section expires September 1, 2007.

Explanation: The addition is necessary to address the differences between the conferees on the issue of the acquisition of property, granting a franchise, or leasing or licensing property for the purpose of constructing or operating an ancillary facility by certain entities.

(8) Senate Rule 12.03(4) is suspended to permit the committee to add the following to SECTION 8.02 of the bill:

(b) Before the executive director of the Texas Department of Transportation or the director's designee may authorize a person to use a state-operated aircraft, the person must sign an affidavit stating that the person is traveling on official state business. On filing of the affidavit, the person may be authorized to use state-operated aircraft for official state business for a period of one year. A member of the legislature is not required to receive any other additional authorization to use a state-operated aircraft.



Explanation: The addition is necessary to address the differences between the conferees on issues relating to the State Aircraft Pooling Board.

**SR 1098** was read and was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RULE 12.09(a) SUSPENDED  
(Printing and Notice of Conference Committee Reports)**

On motion of Senator Staples and by unanimous consent, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **HB 2702**.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2702 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **HB 2702**. The Conference Committee Report was filed with the Senate on Sunday, May 29, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1273 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **SB 1273**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Staples.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3333 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 3333**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1090**

Senator Fraser offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1772** (permitting a general-law municipality to annex land in certain circumstances) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add a new Subdivision (7) to Subsection (a), Section 43.033, Local Government Code, that requires a general-law municipality to offer a development agreement to a landowner before annexing land that is appraised for ad valorem tax purposes as agricultural or wildlife management use, to read as follows:

(7) if the area is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code:

(A) the municipality offers to make a development agreement with the landowner in the manner provided by Section 212.172 that would:

(i) guarantee the continuation of the extraterritorial status of the area; and

(ii) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the agricultural or wildlife management use of the area; and

(B) the landowner fails to accept an offer described by Paragraph (A) within 30 days after the date the offer is made.

Explanation: This change is necessary to protect owners of property that is appraised as agricultural or wildlife management use for property tax purposes from annexation by a municipality in a manner that would interfere with the use of the land for agricultural or wildlife management purposes.

**SR 1090** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1772 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 1772**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3539 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **HB 3539**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 771 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 771**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2217 ADOPTED**

Senator Staples called from the President's table the Conference Committee Report on **HB 2217**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Staples, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 843 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 843**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1207 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **HB 1207**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Lindsay, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1820 ADOPTED**

Senator Eltife called from the President's table the Conference Committee Report on **HB 1820**. 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.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 52 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **SB 52**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Brimer in Chair)

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 805 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **SB 805**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1773 ADOPTED**

Senator Averitt called from the President's table the Conference Committee Report on **HB 1773**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Averitt, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1099**

Senator Nelson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1116** (the governmental entities subject to the sunset review process) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to allow the committee to add the following new language as Subsections (a) and (b) of Section 1.04 of the conference committee report:

(a) Section 21.035(a), Education Code, is amended to read as follows:

(a) ~~[The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2005.]~~

~~[(b)]~~ The ~~[board and the]~~ Texas Education Agency shall provide ~~[enter into a memorandum of understanding to consolidate]~~ administrative functions and services.

~~[(c) The sunset commission shall focus its review of the board on the appropriateness of recommendations made by the sunset commission to the 78th Legislature and compliance with the MOU to consolidate functions.]~~

(b) Section 21.039, Education Code, is repealed.

Explanation: This addition is necessary to adjust the language in the legislation regarding the administrative relationship between the State Board for Educator Certification and the Texas Education Agency.

**SR 1099** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1116 ADOPTED**

Senator Nelson called from the President's table the Conference Committee Report on **HB 1116**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Nelson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2423 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2423**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1176 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **SB 1176**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1297 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **SB 1297**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent: Barrientos.

**SENATE RESOLUTION 1082**

Senator Madla offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 1126** (emergency medical services vehicles and personnel and the collection and use of certain health-related data) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following new SECTIONS to read as follows:

SECTION 1. Section 104.042(e), Health and Safety Code, is amended to read as follows:

(e) Data received by the department under this section containing information identifying specific patients ~~[persons or health care facilities]~~ is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless the ~~[all identifying]~~ information identifying the patient is removed. This subsection does not authorize the release of information that is confidential under Chapter 108.

SECTION 2. Subchapter D, Chapter 104, Health and Safety Code, is amended by adding Section 104.044 to read as follows:

Sec. 104.044. SORTING COLLECTED DATA. (a) The department shall compile the health data collected under this subchapter and organize the results, to the extent possible, according to the following geographic areas:

- (1) the Texas-Mexico border region;
- (2) each public health region;
- (3) rural areas;
- (4) urban areas;
- (5) each county; and
- (6) the state.

(b) Health data released under this subchapter must be released in accordance with the way it is compiled under this section.

SECTION 3. Subchapter A, Chapter 191, Health and Safety Code, is amended by adding Section 191.008 to read as follows:

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

- (1) the Texas-Mexico border region;
- (2) each public health region;
- (3) rural areas;
- (4) urban areas;
- (5) each county; and
- (6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

SECTION 8. The change in law made by this Act to Chapters 104 and 191, Health and Safety Code, applies only to the furnishing of data under Chapters 104 and 191, Health and Safety Code, or a rule adopted under that chapter that is originally required to be furnished on or after the effective date of this Act. The furnishing of data originally required to be furnished before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 9. The Department of State Health Services shall consult with a group of affected persons and entities to define rural and urban areas for purposes of Sections 104.044 and 191.008, Health and Safety Code, as added by this Act, including:

(1) individuals with expertise in rural health services research, epidemiology, rural public health services delivery, demography, health planning, and large data sets; and

(2) representatives from universities, the Department of State Health Services, the Office of Rural Community Affairs, area health education centers, and local and county health departments.

Explanation: The changes are necessary to require the Department of State Health Services to compile and organize certain health and vital statistics related data by region, and to protect the confidentiality of the data collected.

**SR 1082** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1126 ADOPTED**

Senator Madla called from the President's table the Conference Committee Report on **HB 1126**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Madla, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2491 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2491**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 567 ADOPTED**

Senator Deuell called from the President's table the Conference Committee Report on **SB 567**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Deuell, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 233**, Instructing the enrolling clerk of the house to make corrections to H.B. No. 2110.

**HCR 238**, Instructing the enrolling clerk of the house to make corrections in H.B. No. 2201.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 1835** (142 Yeas, 0 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### SENATE RESOLUTION 1096

Senator Jackson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2793**, relating to the removal and collection of convenience switches from motor vehicles, to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change "375.004" to "375.003" in newly added Subchapter A of Chapter 375, Health and Safety Code, and to omit added Section 375.003, Health and Safety Code:

Sec. 375.003. PURPOSE; COMMISSION AUTHORITY TO AMEND PROCEDURES. (a) It is the purpose of this chapter to establish a convenience switch recovery program for this state that is recognized by the United States Environmental Protection Agency as a method of compliance with regulations promulgated under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to the extent that the regulations recognize state convenience switch recovery programs as a method of compliance.

(b) Consistent with the purpose expressed in Subsection (a), the commission may amend procedures adopted to implement this chapter to include additional program elements paid for from the convenience switch recovery account established under Section 375.251 if, after January 1, 2007, the attorney general certifies that the state will not have a recognized program without implementing those additional elements based on:

(1) information included in the annual implementation report required under Section 375.151; and

(2) a final written guidance document or rule, including a preamble to the guidance document or rule, developed for Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and provided by the United States Environmental Protection Agency.



Explanation: This change is necessary to eliminate the purpose statement for the chapter and the authority of the commission to amend program procedures.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change added Section 375.101, Health and Safety Code to read as follows:

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches from eligible vehicles in accordance with educational materials received under this chapter shall be provided regulatory incentives by the commission under programs implemented pursuant to Section 5.755, Water Code, including on-site technical assistance and compliance history classification adjustments.

(b) In order to qualify for the regulatory incentives provided by this Section, a vehicle recycler or scrap metal recycling facility must submit a report to the commission by November 15 of each year documenting:

(1) the number of convenience switches collected during the prior 12 months; and

(2) the total number of eligible vehicles processed for recycling during the same time period.

(c) Nothing in this chapter shall be construed to require scrap metal recycling facilities or vehicle recyclers to remove convenience switches or maintain records regarding convenience switches they have not removed, and the commission shall not promulgate regulations that create such requirements.

Explanation: This change is necessary in order for the convenience switch recovery program to be implemented as a voluntary program.

(3) Senate Rule 12.03(2) is suspended to permit the committee to omit the following Sections from newly added Chapter 375, Health and Safety Code that were included in both the house and senate versions:

Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING FACILITY RECORDS. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches under Section 375.101 shall maintain records documenting:

(1) the number of convenience switches collected;

(2) the total number of end-of-life vehicles processed for recycling; and

(3) the number of convenience switches that were inaccessible because of damage to the end-of-life vehicle.

(b) A vehicle recycler that removes convenience switches shall note on the inventory receipt for surrendered certificates of title or other evidence of ownership required to be maintained under Chapter 2302, Occupations Code, the following additional information:

(1) whether a vehicle for which title or other evidence of ownership was surrendered was an eligible vehicle; and

(2) a certification that all identified convenience switches were recovered and placed in containers specified by the applicable convenience switch recovery program.

Sec. 375.103. LIMITATION ON DUTIES OF VEHICLE RECYCLER OR SCRAP METAL RECYCLING FACILITY. (a) The commission may not require a vehicle recycler or scrap metal recycling facility to undertake any action beyond the actions reasonably arising from obligations created under this chapter.

(b) A summary of the records required under Section 375.102 must be reported to the commission by September 1 of each year.

Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) A person may not represent that a convenience switch has been removed from an end-of-life vehicle being conveyed for recycling or other processing unless that person:

(1) removed the convenience switch; or

(2) has good cause to believe that another person removed the convenience switch.

(b) A scrap metal recycling facility or other person that acquires scrap metal, including scrap metal in the form of an intentionally flattened, crushed, shredded, or baled vehicle, is not considered to be in violation of this subchapter solely because a convenience switch is found in the scrap metal after acquisition.

Explanation: This change is necessary to eliminate language governing recordkeeping requirements and other obligations of vehicle recyclers and scrap metal recycling facilities and to make other conforming changes necessary to implement the convenience switch recovery program as a voluntary program.

(4) Senate Rule 12.03(1) is suspended to permit the committee to change added Section 375.151(a), Health and Safety Code to read as follows:

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall:

(1) publish a report that documents the capture rate achieved through the implementation of this chapter; and

(2) issue recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of each standing committee of the legislature with jurisdiction over environmental issues, which identifies legislative action that may be appropriate to improve the capture rate referenced in Subsection (a)(1) while promoting vehicle recycling and preventing the export of scrap metal from the state.

Explanation: This change is necessary to change the reporting requirements to reflect the implementation of the convenience switch recovery program as a voluntary program and the elimination of the mandatory recordkeeping requirements for vehicle recyclers and scrap metal recycling facilities.

(5) Senate Rule 12.03(1), is suspended to permit the committee to change "January" to "November" and "calendar year" to "12 months" in added Section 375.152, Health and Safety Code.

Explanation: This change is necessary to ensure that the annual manufacturer's report is provided to the commission before the commission is required to publish its annual implementation report.

(6) Senate Rule 12.03(2) is suspended to permit the committee to omit the following language from newly added Chapter 375, Health and Safety Code, that was included in both the house and senate versions:

SUBCHAPTER E. PENALTIES AND ENFORCEMENT

Sec. 375.201. PENALTIES AND ENFORCEMENT. A person who violates a provision of this chapter, or a rule or order issued under this chapter, is subject to the penalty and enforcement provisions of Chapter 7, Water Code.

Explanation: This change is necessary as a conforming change to reflect the implementation of the convenience switch recovery program as a voluntary program.

(7) Senate Rule 12.03(2) is suspended to permit the committee to omit the following section of the bill amending Section 386.252, Health and Safety Code, which was included in both the house and senate versions:

SECTION 2. Section 386.252, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), money [Money] in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston; and

(3) for administrative costs incurred by the commission and the laboratory, three percent.

(c) Except as provided by Section 375.003(b), this subsection takes effect only if the attorney general certifies that the United States Environmental Protection Agency has promulgated final regulations under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) that recognize state convenience switch recovery programs as a method of compliance with those final regulations and that require an incentive as provided by Section 375.055 for a program's approval by the United States Environmental Protection Agency. If the attorney general's certification is made before September 1, 2006, money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year beginning September 1, 2005, shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not later than August 31, 2006, in an amount not to exceed \$24 million. If the attorney general's certification is made on or after September 1, 2006, or the attorney general's certification under Section 375.003 is made on or after January 1, 2007, money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year immediately preceding the fiscal year in which the certification occurs shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not later than August 31 of the fiscal year in which the certification occurs in an amount not to

exceed \$24 million. If after an attorney general's certification is made, the amount collected and reallocated to the convenience switch recovery account is less than \$24 million, additional reallocations of money collected in excess of the amounts appropriated for any program or activity under Subsection (a) to the convenience switch recovery account shall occur before November 1 of each fiscal year after the fiscal year of the initial reallocation until the total cumulative amount reallocated equals \$24 million.

Explanation: This change is necessary to eliminate the use of a portion of the unexpended balance of the Texas emissions reduction plan fund to fund the convenience switch recovery program.

**SR 1096** was read and was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2793 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 2793**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **STATEMENT OF LEGISLATIVE INTENT**

Senator Jackson submitted the following statement of legislative intent for **HB 2793**:

I would like to state, for purposes of legislative intent, that it is my intent as the Senate sponsor of **HB 2793** that the goal of this legislation is for the State of Texas to have a mercury switch removal program in place that is at all times sufficient to meet EPA criteria for such programs, so that steel mills in Texas can rely upon the program as a method of compliance with the EPA mercury emissions regulations soon to be promulgated.

House Bill 2793 creates a voluntary program that will give the automobile industry a chance to prove to this body that a switch removal program with no financial incentives will both pass EPA muster and accomplish sufficient removal of switches.

If this voluntary program does not work, it is my intent that the Legislature re-visit this issue next session and act accordingly.

JACKSON

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2129 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on **HB 2129**. The Conference Committee Report was again filed with the Senate on Sunday, May 29, 2005.

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1095**

Senator Jackson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **HB 2510** (regulation of on-site sewage disposal systems and the maintenance of those systems; imposing administrative and criminal penalties) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add new Subsections (h), (i), and (j), Section 366.0515, Health and Safety Code, to read as follows:

(h) If the owner of an on-site sewage disposal system using aerobic treatment for a single-family residence elects to maintain the system directly, the owner must obtain from the manufacturer or installer of the system an amount of on-site training specified by commission rule not to exceed six hours, either at the time of acceptance of the system from the installer or at the time of an on-site maintenance visit by a maintenance company under the initial term of the maintenance contract for the system, if applicable. The training must include instruction regarding the importance to public health and safety of proper maintenance of the system and a demonstration of the procedure for performing a scheduled maintenance. On the owner's completion of the training, the manufacturer or installer shall provide the owner with a certificate or letter stating that the owner has received the required training. An owner who elects to maintain the owner's system is subject to any inspection and reporting requirements imposed by an authorized agent or the commission under Subsection (k) applicable to a maintenance company that contracts to maintain a system. If the residence is sold, the new owner, not later than the 30th day after the date the owner takes possession of the property, must obtain the training required by this subsection from an installer certified by the manufacturer of the system under Subsection (n) or contract with a maintenance company for the maintenance of the system.

(i) An authorized agent or the commission may periodically inspect an on-site sewage disposal system using aerobic treatment for a single-family residence that is maintained directly by the owner of the system. The commission by rule may specify the procedure for conducting the inspections and the frequency with which inspections must be conducted, except that inspections may not be required more often than once every five years.

(j) Notwithstanding Subsections (a) and (b), an authorized agent or the commission may condition the permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the owner's contracting with a maintenance company for the maintenance of the system if:

(1) the authorized agent or commission determines that the system is a nuisance or has failed a periodic inspection under Subsection (i);

(2) the owner fails to timely inspect the system or submit a report on the inspection as required by Subsection (k), if applicable, for three consecutive intervals;  
or

(3) the owner is notified under Section 366.017 at least three times during a 12-month period that the system is malfunctioning.

Explanation: The change is necessary to require an owner of an on-site sewage disposal system using aerobic treatment for a single-family residence who elects to maintain the system directly to obtain training in system maintenance from the manufacturer or installer of the system, to provide that the owner is subject to the same inspection and reporting requirements as apply to a maintenance company that contracts to maintain a system, to permit an authorized agent or the commission to periodically inspect the system, and to permit an authorized agent or the commission to condition the permit for the system on the owner's contracting with a maintenance company for the maintenance of the system if the system is determined to be a nuisance or fails an inspection, the owner fails to inspect the system or report on inspections, or the owner is notified that the system is malfunctioning.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 6 of the bill to read as follows:

SECTION 6. The Texas Commission on Environmental Quality shall be prepared to accept applications for licenses or registrations described by Section 366.071(a), Health and Safety Code, as amended by this Act, not later than March 1, 2006.

Explanation: The change is necessary to postpone until March 1, 2006, the deadline by which the Texas Commission on Environmental Quality shall be prepared to accept licenses or registrations for persons who service or maintain on-site sewage disposal systems.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Section 7(b) of the bill to read as follows:

(b) Section 2 of this Act takes effect September 1, 2006.

Explanation: The change is necessary to postpone until September 1, 2006, the deadline by which a person must hold a license or registration to service or maintain an on-site sewage disposal system.

**SR 1095** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2510 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 2510**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1189 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **SB 1189**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE CONCURRENT RESOLUTION 42**

The Presiding Officer, Senator Brimer in Chair, laid before the Senate the following resolution:

WHEREAS, **SB 568** has been adopted by the Texas Senate and the Texas House of Representatives and is being prepared for enrollment; and

WHEREAS, The bill contains a technical error that should be corrected; now, therefore, be it

RESOLVED by the 79th Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct Senate Bill No. 568, in SECTION 9 of the bill, in the first sentence of proposed Subsection (a), Section 781.201, Health and Safety Code, as amended by House Floor Amendment No. 1, by Truitt, between "each applicant for" and "registration", by inserting "a license or".

DEUELL

**SCR 42** was read.

On motion of Senator Deuell and by unanimous consent, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**SENATE CONCURRENT RESOLUTION 43**

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, **SB 39** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains technical 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 senate be instructed to correct Senate Bill No. 39 in SECTION 1 of the bill by striking proposed Subsection (b), Section 156.057, Occupations Code, as amended by Floor Amendment No. 1 by Goolsby, and substituting the following Subsection (b):

(b) The board shall adopt rules to establish the content of continuing medical education relating to forensic evidence collection. The board may adopt other rules to implement this section.

ZAFFIRINI

**SCR 43** was read.

On motion of Senator Zaffirini and by unanimous consent, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**AT EASE**

The Presiding Officer, Senator Brimer in Chair, at 8:47 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

The President at 10:40 p.m. called the Senate to order as In Legislative Session.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1227 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **SB 1227**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON  
SENATE BILL 14 DISCHARGED**

On motion of Senator Jackson and by unanimous consent, the Senate conferees on **SB 14** were discharged.

Question — Shall the Senate concur in the House amendments to **SB 14**?

On motion of Senator Jackson, the Senate concurred in the House amendments to **SB 14** by the following vote: Yeas 31, Nays 0.

**(Senator Armbrister in Chair)**

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
May 29, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 2120** (138 Yeas, 2 Nays, 1 Present, not voting)

**HB 2161** (non-record vote)

**SB 1863** (89 Yeas, 53 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**VOTE RECONSIDERED ON  
SENATE BILL 14**

On motion of Senator Jackson and by unanimous consent, the vote by which the Senate conferees on **SB 14** were discharged and the Senate concurred in the House amendments was reconsidered.



Question — Shall the conferees on **SB 14** be discharged and the Senate concur in the House amendments?

On motion of Senator Jackson, the motion to discharge the conferees and concur in the House amendments was withdrawn.

### SENATE RESOLUTION 1100

Senator Jackson offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on **SB 14** (rates for certain property and casualty insurance) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add the following SECTION to the bill:

SECTION 6. Article 5.43(d), Insurance Code, is amended to read as follows:

(d) This article applies to an insurer that uses a tier classification or discount program that has a premium consequence based in whole or in part on claims experience without regard to whether any of the policies that continuously covered the policyholder, as described by Subsections (b)(1) and (2) of this article, was a different type of residential property insurance policy from the policy eligible for the discount.

Explanation: Amending Article 5.43(d), Insurance Code, is necessary to make certain that Article 5.43(d), Insurance Code, applies to insurers that use certain types of tier classifications or discount programs.

**SR 1100** was read and was adopted by the following vote: Yeas 31, Nays 0.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 14 ADOPTED

Senator Jackson called from the President's table the Conference Committee Report on **SB 14**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### BILLS SIGNED

The Presiding Officer, Senator Armbrister in Chair, announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**SB 150, SB 293, SB 419, SB 427, SB 495, SB 563, SB 565, SB 569, SB 578, SB 624, SB 810, SB 907, SB 990, SB 1063, SB 1107, SB 1113, SB 1122, SB 1133, SB 1137, SB 1139, SB 1147, SB 1151, SB 1202, SB 1204, SB 1205, SB 1206, SB 1226, SB 1271, SB 1275, SB 1282, SB 1339, SB 1353, SB 1370, SB 1377, SB 1395, SB 1421, SB 1426, SB 1450, SB 1458, SB 1498, SB 1507, SB 1533, SB 1589, SB 1591, SB 1592, SB 1663, SB 1673, SB 1686, SB 1692, SB 1730, SB 1769, SB 1809, SB 1811, SB 1826, SB 1828, SB 1844, SB 1846, SB 1850, SB 1853, SB 1866, SB 1867, SB 1870, SB 1875, SB 1883, SB 1889, SB 1894.**

(Senator Whitmire in Chair)

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2120 ADOPTED**

Senator Lindsay called from the President's table the Conference Committee Report on **HB 2120**. The Conference Committee Report was filed with the Senate on Saturday, May 28, 2005.

(President in Chair)

On motion of Senator Lindsay, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**REMARKS ORDERED PRINTED**

On motion of Senator Wentworth and by unanimous consent, the remarks by Senators Armbrister, Lindsay, and Wentworth regarding **HB 2120** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Armbrister:** Is there a pending and unresolved notice of violation issued by TCEQ relating to an incident of spillage of hazardous waste, i.e. broken cathode ray tubes that occurred in my district, Hays County, in October 1997?

**Senator Lindsay:** I have been so advised.

**Senator Armbrister:** Is it your view that such an incident should have been handled with adequate enforcement and appropriate penalties assessed long before now?

**Senator Lindsay:** Yes.

**Senator Armbrister:** Are you aware that due to an action by the TCEQ that hazardous waste, commingled with municipal waste, is presently sitting in containers at a major non hazardous waste facility in Senator Barrientos' district?

**Senator Lindsay:** I am aware of the situation.

**Senator Armbrister:** Will you work with me in the weeks ahead to ensure that the pending matter of abandonment of waste by the trucking company involved in the October 1997 incident is resolved by the TCEQ with appropriate penalties being assessed for the seven and one half years of inaction?

**Senator Lindsay:** Yes.

**Senator Armbrister:** Are you also of the opinion that this inaction by TCEQ is creating significant issues for others that wish to do business within Texas?

**Senator Lindsay:** Yes.

**Senator Wentworth:** In this new Chapter, the County must provide reasonable notice to a "Concerned Party" about the need for the cleanup, removal, and disposal of the hazardous materials. What do you envision as being the reasonable time period for such notice?

**Senator Lindsay:** Obviously, this can depend on the exact circumstances and potential threat to public safety and the environment, but in no event more than 21 calendar days.

**Senator Wentworth:** If the material, at the time of its original leaking, spilling, release, or abandonment, was a hazardous waste, am I correct in assuming that it is your intent that the final disposal of such material must be at a fully licensed hazardous waste management and disposal facility?

**Senator Lindsay:** Yes.

**Senator Wentworth:** Is your answer the same even when the hazardous material has been commingled with nonhazardous materials?

**Senator Lindsay:** Yes.

**Senator Wentworth:** Am I also correct in assuming that both the county where the an incident occurred or where an abandonment of hazardous materials occurred has the authority under this law to take the actions contemplated by this new Chapter?

**Senator Lindsay:** Yes.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2702**

Senator Staples submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2702** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

STAPLES  
ELLIS  
FRASER

KRUSEE  
HILL  
HEGAR  
PHILLIPS  
R. COOK

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2702** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2120**

Senator Lindsay submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2120** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH  
MADLA  
BRIMER  
WEST

R. ALLEN  
NIXON  
TRUITT  
ROSE  
HAMRIC

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2120** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2129

Senator Armbrister submitted the following Conference Committee Report:

Austin, Texas  
May 29, 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 2129** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ESTES  
HINOJOSA  
MADLA

BONNEN  
GEREN  
HAMRIC  
RITTER  
WEST

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2129** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2423

Senator Armbrister again submitted the following Conference Committee Report:

Austin, Texas  
May 29, 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 2423** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ARMBRISTER  
JACKSON  
LUCIO  
MADLA

PUENTE  
GEREN  
HARDCASTLE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2423** was again filed with the Secretary of the Senate.

### RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

#### Memorial Resolutions

**SR 1073** by Barrientos and Lucio, In memory of Henry Romo of San Antonio.

**HCR 189** (Eltife), In memory of J. E. "Gene" Buster of Paris.

**HCR 190** (Eltife), In memory of Floyd Weger of Paris.

**HCR 218** (Wentworth), In memory of Frank Elder, assistant chief of the Driver License Division of DPS.

**HCR 232** (Eltife), In memory of U.S. Army Specialist Michael Greg Karr, Jr., of Mount Vernon.

#### Congratulatory Resolutions

**SR 1074** by Seliger, Recognizing Sam Brown of Oldham County for his contributions to the culture and literature of the Old West.

**SR 1076** by Madla, Congratulating the golf team of Iraan High School in Iraan for winning a state championship.

**SR 1083** by Madla, Recognizing the efforts of the City and County of Presidio regarding the ownership of the Presidio International Bridge.

**SR 1085** by West, Commending Mike Frazier of Dallas for his dedication and commitment to helping others.

**SR 1086** by Ellis, Congratulating Timothy and Amy Barbera on the birth of their son, Andrew Barbera.

**SR 1087** by Ellis, Congratulating Camille Abrams and Jerry Arceneaux on the birth of their son, Jerrick Riley Arceneaux.

**SR 1088** by Ellis, Congratulating McKen V. Carrington for his appointment as dean of the Thurgood Marshall School of Law at Texas Southern University in Houston.

**SR 1089** by Ellis, Recognizing the Encore Theatre in Houston on the occasion of its 10th anniversary.

**HCR 158** (Fraser), Honoring Lampasas County on the occasion of its 150th anniversary.

**HCR 201** (Duncan), Honoring the employees of Southwest Airlines at the Lubbock International Airport.

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

**HCR 217** (Eltife), Congratulating Carol Rhodes on earning the 2005 Texas Crime Victim Clearinghouse Award.

**HCR 224** (Eltife), Congratulating Eddie Almond on his retirement as director of the Regional Controlled Substance Apprehension Program Drug Task Force.

#### **ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 11:40 p.m. adjourned, in memory of Doris Frost of San Antonio, until 11:00 a.m. tomorrow.