

# SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-SIXTH DAY**

(Thursday, May 24, 2007)

The Senate met at 1:25 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Gallegos.

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

The Reverend J. C. Cain, Our Lady of Guadalupe Catholic Church, Austin, offered the invocation as follows:

God of justice, we pray this day that You send down Your blessings upon this assembly here in our State Senate today, that they may rule justly. Guide their thoughts so as to always do what is right and moral. Help them to overcome division among themselves and grow in unity for the sake of the people they have been called to serve. Open their eyes that they may see the plight of the poor, the widowed, and the orphaned that have been put in their charge. Help them to be a constant source of peace for those who experience violence through the loss of dignity in their homes and their communities. Open their hearts that they may feel the yearnings throughout this state for respect and equal opportunity. May their hearts never be filled with so much pride that they lose sight of the people who have elected them. Open their minds so that they may use all of the education and experiences of their lives for the good of the State of Texas. Lastly, bless this great state of ours, that in troubled times we may be a beacon of mature and fearless leadership for others to look up to when in need. Help us to always use to our full potential the gifts You have given to each of us for all those we have been called to serve and protect. Amen.

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

The motion prevailed without objection.

**LEAVE OF ABSENCE**

On motion of Senator Whitmire, Senator Gallegos was granted leave of absence for today on account of illness.

**MESSAGE FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

May 24, 2007

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 121**, Posthumously awarding the Texas Legislative Medal of Honor to Sergeant Alfredo Gonzalez for his heroic actions in Vietnam during the Tet Offensive.

**HCR 138**, Granting WB IND-HP, Ltd., permission to sue the state, the Texas Building and Procurement Commission, and the Texas Department of Public Safety.

**HCR 155**, Granting the Chishty family permission to sue the State of Texas, the Department of Aging and Disability Services, and the Denton State School.

**HCR 257**, Honoring Texans who have died while serving in the Global War on Terrorism and all men and women who have served in the United States armed forces.

**HCR 266**, Honoring the 100th anniversary of Saint Joseph Catholic Church in Rowena.

**HCR 267**, In memory of Emma Louise Stengel Bean of Menard.

**SB 3**, Relating to the development, management, and preservation of the water resources of the state; providing penalties.  
(Committee Substitute/Amended)

**SB 9**, Relating to the dissemination of criminal history record information and child abuse investigation reports for certain purposes, including the certification and employment of educators and other public school employees who engage in certain misconduct.  
(Committee Substitute/Amended)

**SB 10**, Relating to the operation and financing of the medical assistance program and other programs to provide health care benefits and services to persons in this state; providing penalties.  
(Committee Substitute/Amended)

**SB 11**, Relating to homeland security; providing penalties.  
(Committee Substitute/Amended)

**SB 23**, Relating to promoting the purchase and availability of health coverage.  
(Amended)

**SB 101**, Relating to the automatic admission of undergraduate students to general academic teaching institutions.  
(Committee Substitute/Amended)

**SB 228**, Relating to suits affecting the parent-child relationship, including proceedings for the establishment, modification, and enforcement of child support; providing a civil penalty.  
(Committee Substitute/Amended)

**SB 530**, Relating to physical activity requirements and physical fitness assessment for certain public school students.  
(Committee Substitute/Amended)

**SB 758**, Relating to child protective services.  
(Committee Substitute/Amended)

**SB 766**, Relating to the transfer of powers and duties for accident reports from the Department of Public Safety of the State of Texas to the Texas Department of Transportation.  
(Committee Substitute/Amended)

**SB 909**, Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Correctional Managed Health Care Committee, and to the functions of the Board of Pardons and Paroles.  
(Committee Substitute/Amended)

**SB 1091**, Relating to the creation of the Somerset Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute)

**SB 1092**, Relating to the creation of the Somerset Municipal Utility District No. 2; providing authority to impose a tax and issue bonds; granting the power of eminent domain.  
(Committee Substitute/Amended)

**SB 1332**, Relating to the establishment of debt management policies and guidelines by the Bond Review Board, including the approval by the board of certain interest rate management agreements.  
(Amended)

**SB 1436**, Relating to the transfer of responsibility for the National Flood Insurance Program from the Texas Commission on Environmental Quality to the Texas Water Development Board and the administration and funding of the program.  
(Amended)

**SB 1523**, Relating to facilitating and supporting efforts of certain municipalities and counties to promote economic development by hosting certain major sporting or athletic events.  
(Committee Substitute/Amended)

**SB 1604**, Relating to responsibilities of certain state agencies concerning radioactive substances; imposing fees and surcharges; providing administrative and civil penalties.

(Amended)

**SB 1719**, Relating to the authority of the comptroller to pay certain claims and to directing payment, after approval, of certain miscellaneous claims and judgments against the state out of funds designated by this Act; making appropriations.

(Committee Substitute/Amended)

**SB 1731**, Relating to consumer access to health care information and consumer protection for services provided by or through health benefit plans, hospitals, ambulatory surgical centers, birthing centers, and other health care facilities; providing penalties.

(Amended)

**SB 1846**, Relating to funding for, and benefits provided under, the Teacher Retirement System of Texas.

(Committee Substitute/Amended)

**SB 1879**, Relating to the regulation of controlled substances.

(Committee Substitute/Amended)

**SB 1908**, Relating to affordable housing.

(Committee Substitute/Amended)

**SB 1951**, Relating to the creation of judicial districts, the creation of the office of district attorney in certain counties, and the election and duties of certain district attorneys in certain counties.

(Committee Substitute/Amended)

**SB 2003**, Relating to the creation of the King's Crossing Municipal Utility District of Grayson County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

(Amended)

**SB 2031**, Relating to requiring legislative consent or approval of the settlement or compromise of a claim or action against the state that will involve state expenditures exceeding a certain amount.

(Amended)

**SCR 1**, Encouraging the National Health Services Corps Ambassador Program to coordinate with the Primary Care Office at the Texas Department of State Health Services.

**SCR 9**, Honoring the Sunset Advisory Commission for its 30 years of service to the State of Texas.

**SCR 60**, Urging Congress to maintain the states as the sole regulators of the business of insurance and to oppose the establishment of a federal insurance regulatory system.

**SCR 84**, Recognizing Phil Hatlen on the occasion of his retirement from the Texas School for the Blind and Visually Impaired.

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

**HB 724** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 957** (145 Yeas, 2 Nays, 1 Present, not voting)

**HB 1092** (138 Yeas, 0 Nays, 1 Present, not voting)

**HB 1303** (147 Yeas, 0 Nays, 2 Present, not voting)

**HB 1316** (147 Yeas, 0 Nays, 1 Present, not voting)

**HB 1944** (144 Yeas, 0 Nays, 1 Present, not voting)

**HB 1955** (144 Yeas, 0 Nays, 1 Present, not voting)

**HB 2328** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 2548** (147 Yeas, 0 Nays, 1 Present, not voting)

**HB 3060** (147 Yeas, 0 Nays, 1 Present, not voting)

**HB 3106** (148 Yeas, 0 Nays, 1 Present, not voting)

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

**HB 1521** (non-record vote)

House Conferees: Kolkhorst - Chair/Cook, Robby/Crownover/Gattis/Hopson

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

**SB 222** (non-record vote)

House Conferees: Thompson - Chair/Castro/Giddings/Howard, Charlie/Smith, Todd

**SB 759** (non-record vote)

House Conferees: Parker - Chair/Hughes/King, Susan/Naishtat/Pierson

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

**HB 3392** (144 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### PHYSICIAN OF THE DAY

Senator Brimer was recognized and presented Dr. Joane Baumer of Fort Worth as the Physician of the Day.

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

**SENATE RESOLUTION 1042**

Senator Whitmire offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pride in recognizing Carleton Turner, who recently stepped down from his position as Sergeant-at-Arms of the Senate after 20 years of loyal and outstanding service; and

WHEREAS, Throughout his tenure at the Senate, Carleton Turner enjoyed the enduring respect of the Senate body, legislative staff members, and Capitol employees from all walks of life; and

WHEREAS, Mr. Turner joined the office of the sergeant-at-arms in 1983; he was elected the Senate's sergeant-at-arms in 1986 and has ably and effectively maintained the order and decorum of the Senate chamber over the past two decades; and

WHEREAS, During his time in office, he was a witness to Texas history and played an important part in its making, and he handled his multifaceted responsibilities with tact and skill, often under complex and difficult circumstances; and

WHEREAS, His role during legislative sessions involved coordinating security measures with the Texas Department of Public Safety, enforcing floor rules, and securing the attendance of senators; he also supervised the Senate messengers, the parking attendants, the assistant sergeants, and the porters; and

WHEREAS, Mr. Turner set high standards in carrying out his duties and was noted for his fair-mindedness, integrity, and political neutrality; and

WHEREAS, He served on the Executive Committee of the National Conference of State Legislatures and was a member of the National Legislative Services and Security Association; he served as the association's president from 1995 to 1997 and was the recipient of the association's Tony Beard Memorial Award in 2000 and its John Everhardt "Trooper" Award in 2003; and

WHEREAS, In Austin, he has served as an active member of the community and as a leader in various humanitarian projects; he is a member of the Capitol of Texas Rotary Club and has given of his time and energy in support of the Ronald McDonald House; and

WHEREAS, Mr. Turner's many talents and interests include managing his ranch near Junction, where he raises longhorn cattle, and tending to his vineyard; he is also known for his culinary skills and is famous for his mouth-watering and tear-inducing chili; Mr. Turner shares his joy of life and his many interesting pursuits with his wife, Cindy, whom he married in 1997; and

WHEREAS, Noted for his courteous and friendly style of management and for his easygoing charm and sense of humor, Carleton Turner is beloved by members of the Senate and innumerable legislative employees, and his presence in the Capitol is greatly missed; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby express sincerest appreciation to Carleton Turner for his many years of dedication to his work and his exceptional service as Senate sergeant-at-arms and extend to him congratulations on his many accomplishments and best wishes for his future endeavors; and, be it further

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

**SR 1042** was read and was adopted without objection.

### GUESTS PRESENTED

Senator Whitmire was recognized and introduced to the Senate former Sergeant-at-Arms Carleton Turner and his wife, Cindy.

The Senate welcomed its guests.

### VIDEO RELEASE POLICY WAIVED

On motion of Senator Brimer and by unanimous consent, the Senate policy that governs the release of recordings of the Senate proceedings was waived in order to grant the request of Carleton Turner for a DVD of today's session.

### REMARKS ORDERED PRINTED

On motion of Senator West and by unanimous consent, the remarks regarding Carleton Turner and his retirement were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Whitmire:** Mr. President. Members, it's a pleasure on behalf of each and every Senator present today and those who have served before us who had the pleasure of working with Carleton, to recognize him today and have with him his wife, Cindy; stepson, Matt; stepdaughter, Jessica; and her husband, Charles. I tried to talk Carleton out of leaving us, as many of you did. I, quite frankly, didn't know if he could be replaced, but I should remember what my mother said, all of us are, no one is indispensable, and even me. But, Carleton, we have had a great session, we've missed you, you've set very high standards for Rick and others to follow you. Oftentimes when we introduce someone we say the person needs no introduction, and sometimes that's not literally true, but in this instance, I don't have to introduce you to this body or the people in the Capitol. I will suggest to you, on a personal note, I needed you last week, there was a tall guy threatening me here on the floor. And I think you could have probably handled that situation. But you know we respect you and love you and we would do anything in the world for you, and it's great that the Members came together today to recognize you and we can slow down and do it properly. And, on behalf of all the Senators and their staff and the Senate staff, we want to really publicly tell you how special you are. I'm not sure you could ever truly be replaced because you were such a professional at what you did and also had such a personal relationship with each and every one of us, and can't ever think of a situation that you didn't handle properly, and you're always welcome back. And, with that said, Mr. President, I'm proud to yield.

**Senator Fraser:** Thank you Mr. President. As we started this I was, you know, going back over my mind, you've actually created a huge problem. I'm trying to make sure that I was always nice to you because now you're going to be my constituent, and I'm going to be begging you to vote for me. Actually, when he walked in today, I looked at the fuzz on his face, realizing he's from Junction, and I realized, now he's become a cedar chopper, he's moved out in the wilderness. And he informed me that as soon as session is over I need to start growing my beard just so the constituents that we represent will recognize us. But, Carleton, you've been an amazing friend to all of us through the years, it was a very interesting relationship. You had a job to do, you did it extremely well, you know, at the same time making sure there was never any

indication of favor, you know, favoritism, partisanship, you did the job that you were assigned to do in an amazing fashion but still maintaining a great friendship to all of us. I'm very proud to call you my friend, you and your family, I hope, at some point, it becomes full-time in Junction where you will be a full-time constituent, but I'm very honored to call you my friend and have you out in our part of the world. Thank you.

**Senator Zaffirini:** Thank you Mr. President. Carleton, thank you so much for coming today. As you can imagine at this time of the session, many of our Members have been under severe stress, we've had some challenging days and problems, and just your presence brings joy into our lives. The way that you have always conducted yourself bringing peace and harmony to all of us because of your character, because of your personality, and because of your incredible standards of professionalism. For bringing that joy into our lives today as you did every day that we worked with you, we thank you. You are aware that you have a very special relationship with every Member of this body with whom you served and for that, we appreciate you, you are a legacy of the Texas Senate. My prayer for you is that the Lord will bless you always and inspire you to excel always and to enjoy peace and harmony with your loved ones. Thank you for everything you did for us.

**Senator Van de Putte:** Thank you Mr. President. Thank you Dean and Members of this Senate. I think we all have our own personal stories and the recollections and special moments regarding Carleton, but what I would like to comment today is that I never knew what national stature he actually held, in my duties within NCSL, and very early on, the amount of professionalism that is in the organization that Carleton led. Understand that there are 99 people like Carl. You'd say, well, the 50 states, but you've got to remember Nebraska's unicameral. But these men and women who are the sergeants of all of our state legislatures have a professional organization. Carleton is held in such high esteem, he was given the highest honor, the Tony Beard Award. Tony was a longtime sergeant in the California Legislature, and, in fact, his best friend is actually Tony Beard, Jr. And, so, today, Carleton, I have to tell you that the E-mails went out to your colleagues that hold your same positions all over the country, both active and retired, and they want to join the Texas Senate in giving you the respect and the honor. They also, one new sergeant in the State of Indiana asked me to tell you thank you for helping him through a tough time. Members, we think that he helps us get over those speed bumps, but he is the symbol of professionalism for sergeants across this nation. We thank you and, on behalf of your colleagues from around the country, they wish you well and they said if you ever really want to go hunting, just call them. Thank you, Carleton, we love you.

**Senator Ellis:** Thank you Mr. President. Senator Whitmire, thank you for doing this today. We are very fortunate in this body to have such great staff to stay up long hours of the night, get up early the next morning, and still always act nice to us. Carleton, I heard Senator Zaffirini talk about her prayer for you, my prayer is that you don't write a book about the things that you know about so many of us. Members, I've known Carleton since we, since we both had hair. In fact, I knew him at a time in his life when he was trying to sport an Afro, and I think that was probably because Carleton has always had that unique ability to fit in regardless of whether you were to the left or right, the middle, Democrat or Republican. Over his many years of working in this



building, he always made every one of us feel like our conversation with him was special, unique, and that bond between him and each one of us was special and unique. So, Carleton, I'm glad that you are going to have time to spend with your lovely wife and that family that you probably had to miss so many times to do things for us. But we wanted to have you back here today, it was the Dean's idea, not just to thank you but to also let other people who make it a career of supporting us, to make us look good, and keep our blemishes from showing, to let them know through you that we appreciate what you have done for us and for the people of Texas. Congratulations on your retirement and welcome back.

**Senator West:** Thank you very much Mr. President. And I, too, say, Dean, thank you for bringing this resolution and slowing the body down so we could make certain that another one of our family members, Carleton, was recognized for all of the things that you've done for all of us in this family. I can only imagine, Carleton, I've been here now 14 years, I can only imagine some of the most difficult days that you had as a sergeant. And I can recall when those 11 patriots from Texas had to leave the state. And I recall you being on the airplane with us, and we said, Carleton, no, you can't go with us because we had to leave one of us behind. You know, no, that was just a joke, guys, that was just a joke. But thanks for being on the airplane and all that. But, I mean, I can only imagine though what you went through as the sergeant of this body, and I can say as a Democrat in this body, and we had, that was probably the most divisive time that we've had since I've been here. And I don't know that there's a Member that would not agree with what I'm saying. You didn't betray any of us. You maintained the same relationship that you've had with all of us. And as Senator Ellis said a few moments ago, you made certain that when we had conversations with you about any issue, that you made us feel special, and I will always remember that. You're still a member of this family even though you may be retired and you need a razor or something like that, you're still a member of this family and you can always come home.

**Senator Harris:** Carleton, when I think back over your 20 years, when I look at the number of years, I, of that 20 that I was here with you, it is unbelievable to me that everyone has talked about how accommodating you were. Everyone has talked about how you made them feel special. Carleton, how in the world did you put up with 32 superegos through all that time? And particularly when you consider there was a changeover in the Lite Governor's office during that time? There was a changeover of Members, but yet, all those Members, Carleton, always felt that you made them special. One of the things that's probably sad is that we, as Members, were so busy worrying about what we needed to get done or wanted to get done, as far as being legislators, that we didn't realize and appreciate the strain that Carleton was put under. And, maybe, just maybe, if we had, we would still have Carleton as our Sergeant-at-Arms. In a way, Carleton, I apologize to you that we did not see it and did not help you, help make it better for you. Again, it's a real honor to see you again, and I am going to get out and see your vineyard.

**Senator Shapiro:** Thank you very much Mr. President, Members. When I look at you, Carleton, and I see you here where you belong I think about your smile because you always have a kind word and a kind smile. And I think about what does that smile

represent about you. I think your smile might be on your face, but it goes directly to your heart. And in that smile what I see is honesty. In that smile what I see is integrity. In that smile what I see is friendship. And the minute I saw you it was not as though I had been away from you for the time that you've been gone. You are always welcome in this body as long as all of us are here because what you bring to this body is that smile and it leads right to your heart. And you have a very special place in all of our hearts as well. You served this body with integrity and with distinction and that will always be a part of what we do and what we remember about you and your smile. To your wife and to your family I know this is a very special day. And our loss was your gain and at some point in time everybody does decide it's time to hang 'em up around here. Carleton, you are sorely missed and you are welcome back any day. Thank you.

**Senator Lucio:** Thank you Mr. President. Carleton, I want to thank you for all that you did for all of us. I had the privilege of working with you for 16 years in the Chamber and during that period of time I know that you helped many of us, if not all of us, quite frankly, give our young constituents an opportunity to work on this wonderful floor. And I'm sure that those young men and women went on to be very successful because of the work ethic that they were involved with and the professionalism that you taught them. I would often ask my young constituents that worked for you, worked for us, how can you describe your boss? They say, there's no nonsense, Sir, no nonsense. And that's what we saw right here on the floor. And everywhere we moved and turned were those sergeants that worked for us that you gave an opportunity to have, that very few in our state have, when we think about so many of our youngsters that thousands and thousands attend the university here in Austin and other institutions of higher learning. For them to have an opportunity to work here at the Capitol and to work under you, I think gave them the right foundation to go on and to be successful in their lives. So, on behalf of all of us, thank you for all that you did for us during that period of time. Thank you.

**Senator Deuell:** Thank you Mr. President, Members. Carleton, great to see you again, we do miss you. Your replacement's doing great. I just wanted to comment in line with what Senator Lucio said of how you treated the people that worked with you in the sergeant's office. I think the impression that these young people get when they leave here will affect them and their attitude toward our government for the rest of their lives. And you always treated them with respect and made them sit, they learned how to sit still, it's just probably not something that most of us haven't learned to do. But, you know, sometimes you can judge people by how they treat their subordinates, and I think it was a credit to you in the way that you treated them. Thank you Mr. President. Thank you Senator Whitmire.

**Senator Brimer:** Thank you Mr. President. I'll be very brief because my experience and knowing Carleton firsthand in the Senate was brief, we served two terms together. But I always worried when he had come to me, and I was Chairman of Administration, and tell me it was time for a change. All of us have to make that decision from time to time. We had a lot in common. We both like a good cigar and

looking at a good Longhorn, and now you get to enjoy that more often. But one of the concerns I had when he sat down with me and told me he thought it was time to change, I thought, Carleton, is it about your office? And he said, no, not really. I said, well I know we've got that sign out there that says Sergeant-at-Arms, but you never get to sit in there because some Senator from North Texas is always holding court in there. I thought that was it. And you're going, I've got to give you an update, he stopped smoking and anybody can go in that office now. So come on back anytime, Rick will be glad to show you your old office.

**Senator Whitmire:** Thank you Mr. President, Members. Carleton, I don't want to put you on the spot but I think, on behalf of the Senate, we'd welcome it if you have any remarks you'd like to make. We'd like for you to go up to Betty, Patsy's mike, take a deep breath and, I probably did put you on the spot, didn't I?

**Carleton Turner:** Dean, that indeed puts me on the spot, but I appreciate the opportunity. Through the years I was here I always heard this was the most excellent deliberative body in the United States and therefore the world. It's just been an honor for me to call it home for the last 25 years and to work with the excellent staff, as some of you mentioned, work with the Members, and it's just been a joy. So thank y'all very much. Thank you for this day.

#### **GUEST PRESENTED**

Senator Uresti was recognized and introduced to the Senate his son, Lance Corporal Carlos Uresti, Jr.

The Senate welcomed its guest.

#### **ANNIVERSARY WISHES EXTENDED**

Senator Deuell was recognized and, on behalf of the Senate, extended anniversary wishes to Senator Fraser and his wife, Linda.

#### **SENATE RESOLUTION 1120**

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Chris Harris, Jr., for his many achievements in the sport of rodeo; and

WHEREAS, A standout performer in the bareback riding event, Chris is currently ranked fifth in the world in the ProRodeo Cowboys World Standings; and

WHEREAS, Chris joined the Professional Rodeo Cowboys Association in 1996 and has won more than \$500,000 in prize money during his career; he has won numerous rodeos since becoming a professional, including the Pasadena ProRodeo, the Four States Fair Rodeo, and the Star of Texas Fair and Rodeo; he was cochampionof the 1998 Calgary Stampede; and

WHEREAS, Chris shared Texas hospitality and rodeo camaraderie at the San Antonio Stock Show and Rodeo, entertaining the wounded troops who are recovering at the Brooke Army Medical Center; he is truly deserving of legislative recognition for his many achievements; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby commend Chris Harris, Jr., for his outstanding accomplishments in rodeo and extend to him best wishes in all his future endeavors; and, be it further

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

**SR 1120** was again read.

The resolution was previously adopted on Tuesday, May 22, 2007.

### RECESS

On motion of Senator Whitmire, the Senate at 2:14 p.m. recessed until 2:45 p.m. today.

### AFTER RECESS

The Senate met at 3:15 p.m. and was called to order by the President.

### SENATE JOINT RESOLUTION 29 WITH HOUSE AMENDMENT

Senator Carona called **SJR 29** from the President's table for consideration of the House amendment to the resolution.

The President laid the resolution and the House amendment before the Senate.

### Floor Amendment No. 1

Amend **SJR 29** (House committee printing) as follows:

(1) Between SECTIONS 1 and 2 of the resolution (on page 1, between lines 15 and 16), insert the following SECTIONS to the resolution and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 2(b), Article VIII, Texas Constitution, is amended to read as follows:

(b) The Legislature may, by general law, exempt property owned by a disabled veteran or by the surviving spouse and surviving minor children of a disabled veteran. A disabled veteran is a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or by a successor to that agency[~~s~~] or by the military service in which the veteran [~~he~~] served. A veteran who is certified as having a disability of less than 10 percent is not entitled to an exemption. A veteran having a disability rating of not less than 10 percent but less [~~not more~~] than 30 percent may be granted an exemption from taxation for property valued at up to \$5,000. A veteran having a disability rating of not less [~~more~~] than 30 percent but less [~~not more~~] than 50 percent may be granted an exemption from taxation for property valued at up to \$7,500. A veteran having a disability rating of not less [~~more~~] than 50 percent but less [~~not more~~] than 70 percent may be granted an exemption from taxation for property valued at up to \$10,000. A veteran who has a disability rating of [~~more than~~] 70 percent or more, or a veteran who has a disability rating of not less than 10 percent and has attained the age of 65, or a disabled veteran whose disability consists of the loss or loss of use of one or more limbs, total blindness in one or both eyes, or paraplegia, may be granted an exemption from taxation for property valued at up to \$12,000. The spouse and children of any member of the United States Armed Forces who dies while on active duty may be granted an exemption from taxation for

property valued at up to \$5,000. A deceased disabled veteran's surviving spouse and children may be granted an exemption which in the aggregate is equal to the exemption to which the veteran was entitled when the veteran died.

SECTION \_\_\_\_\_. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled and expires January 1, 2009.

(b) The amendments to Sections 1-b and 2(b), Article VIII, of this constitution take effect January 1, 2008, and apply only to a tax year beginning on or after that date.

(2) In SECTION 2 of the resolution, the proposed constitutional election ballot language (on page 1, line 21), between "taxation" and the period, insert "and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled".

The amendment was read.

Senator Carona moved to concur in the House amendment to **SJR 29**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### SENATE BILL 7 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 7** 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 7** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to instruction in cardiopulmonary resuscitation, the availability and use of automated external defibrillators at certain school campuses and athletic events, and the creation of a cardiovascular screening pilot program.

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

SECTION 1. Section 5.001, Education Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Private school" means a school that:

(A) offers a course of instruction for students in one or more grades from prekindergarten through grade 12; and

(B) is not operated by a governmental entity.

SECTION 2. Subsection (a), Section 7.026, Education Code, is amended to read as follows:

(a) The agency may accept donations, including donations of equipment, for use in providing cardiopulmonary resuscitation (CPR) instruction to students. The agency:

(1) shall distribute the donations to school districts for the purpose of providing [that provide] CPR instruction to students under Sections 28.0023 and [Section] 29.903; and

(2) may use a portion of the donations to the extent necessary to pay administrative expenses related to the donations.

SECTION 3. Subchapter Z, Chapter 22, Education Code, is amended by adding Section 22.902 to read as follows:

Sec. 22.902. INSTRUCTION RELATED TO CARDIOPULMONARY RESUSCITATION AND USE OF AUTOMATED EXTERNAL DEFIBRILLATOR.

(a) A school district shall annually make available to district employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator, as defined by Section 779.001, Health and Safety Code.

(b) The instruction provided in the use of an automated external defibrillator must meet guidelines for automated external defibrillator training approved under Section 779.002, Health and Safety Code.

(c) Each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other school employee specified by the commissioner and each student who serves as an athletic trainer must participate in the instruction in the use of an automated external defibrillator. A person described by this subsection must receive and maintain certification in the use of an automated external defibrillator from the American Heart Association, the American Red Cross, or a similar nationally recognized association.

(d) The commissioner shall adopt rules as necessary to implement this section.

(e) This subsection applies only to a private school that receives an automated external defibrillator from the agency or receives funding from the agency to purchase or lease an automated external defibrillator. A private school shall adopt a policy under which the school makes available to school employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation and the use of an automated external defibrillator. The policy must comply with the requirements prescribed by this section and commissioner rules adopted under this section, including the requirements prescribed by Subsection (c).

SECTION 4. Subchapter A, Chapter 28, Education Code, is amended by adding Section 28.0023 to read as follows:

Sec. 28.0023. CARDIOPULMONARY RESUSCITATION AND AUTOMATED EXTERNAL DEFIBRILLATOR INSTRUCTION. (a) In this section, "automated external defibrillator" has the meaning assigned by Section 779.001, Health and Safety Code.

(b) The State Board of Education by rule shall include elements relating to instruction in cardiopulmonary resuscitation and the use of an automated external defibrillator as part of the essential knowledge and skills of the health curriculum under Section 28.002(a)(2)(B).

(c) This subsection applies only to a private school that receives an automated external defibrillator from the agency or receives funding from the agency to purchase or lease an automated external defibrillator. A private school shall provide instruction to students in cardiopulmonary resuscitation and the use of an automated external defibrillator in a manner consistent with the requirements of this section and State Board of Education rules adopted under this section.

SECTION 5. Subsection (a), Section 29.903, Education Code, is amended to read as follows:

(a) A school district [~~that provides instruction to students in the principles and techniques of cardiopulmonary resuscitation (CPR)~~] may accept from the agency donations the agency receives under Section 7.026 for [~~The district must~~] use [~~those donations~~] in providing instruction to students in the principles and techniques of CPR. A district may accept other donations, including donations of equipment, for use in providing the instruction.

SECTION 6. Subchapter A, Chapter 38, Education Code, is amended by adding Sections 38.017, 38.018, and 38.019 to read as follows:

Sec. 38.017. AVAILABILITY OF AUTOMATED EXTERNAL DEFIBRILLATOR. (a) Each school district shall make available at each campus in the district at least one automated external defibrillator, as defined by Section 779.001, Health and Safety Code. A campus defibrillator must be readily available during any University Interscholastic League athletic competition held on the campus. In determining the location at which to store a campus defibrillator, the principal of the campus shall consider the primary location on campus where students engage in athletic activities.

(b) To the extent practicable, each school district, in cooperation with the University Interscholastic League, shall make reasonable efforts to ensure that an automated external defibrillator is available at each University Interscholastic League athletic practice held at a district campus. If a school district is not able to make an automated external defibrillator available in the manner provided by this subsection, the district shall determine the extent to which an automated external defibrillator must be available at each University Interscholastic League athletic practice held at a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information.

(c) Each school district, in cooperation with the University Interscholastic League, shall determine the extent to which an automated external defibrillator must be available at each University Interscholastic League athletic competition held at a location other than a district campus. The determination must be based, in addition to any other appropriate considerations, on relevant medical information and whether emergency services personnel are present at the athletic competition under a contract with the school district.

(d) Each school district shall ensure the presence at each location at which an automated external defibrillator is required under Subsection (a), (b), or (c) of at least one campus or district employee trained in the proper use of the defibrillator at any time a substantial number of district students are present at the location.

(e) A school district shall ensure that an automated external defibrillator is used and maintained in accordance with standards established under Chapter 779, Health and Safety Code.

(f) This section does not:

(1) waive any liability or immunity of a school district or its officers or employees; or

(2) create any liability for or a cause of action against a school district or its officers or employees.

(g) This subsection applies only to a private school that receives an automated external defibrillator from the agency or receives funding from the agency to purchase or lease an automated external defibrillator. A private school shall:

(1) make available at the school at least one automated external defibrillator; and

(2) in coordination with the Texas Association of Private and Parochial Schools, adopt a policy concerning the availability of an automated external defibrillator at athletic competitions and practices in a manner consistent with the requirements prescribed by this section, including the training and maintenance requirements prescribed by this section.

Sec. 38.018. PROCEDURES REGARDING RESPONSE TO CARDIAC ARREST. (a) Each school district and private school shall develop safety procedures for a district or school employee or student to follow in responding to a medical emergency involving cardiac arrest, including the appropriate response time in administering cardiopulmonary resuscitation, using an automated external defibrillator, as defined by Section 779.001, Health and Safety Code, or calling a local emergency medical services provider.

(b) A private school is required to develop safety procedures under this section only if the school receives an automated external defibrillator from the agency or receives funding from the agency to purchase or lease an automated external defibrillator.

Sec. 38.019. CARDIOVASCULAR SCREENING PILOT PROGRAM. (a) In this section, "pilot program" means the cardiovascular screening pilot program.

(b) The commissioner shall establish a pilot program under which sixth grade students at participating campuses are administered a cardiovascular screening, including an electrocardiogram and an echocardiogram.

(c) The commissioner shall select campuses to participate in the pilot program. In selecting campuses, the commissioner shall ensure that the cardiovascular screening is administered to an ethnically diverse range of students.

(d) The commissioner may accept grants and donations for use in administering the pilot program.

(e) The commissioner shall require a participating campus to provide the results of a student's cardiovascular screening to the student's parent or guardian.

(f) Each campus selected to participate in the pilot program shall provide a summary of the results of the cardiovascular screenings to the commissioner in a manner that does not identify specific students. Not later than January 1, 2009, the



commissioner shall prepare and deliver to each member of the legislature a report summarizing the results of the cardiovascular screenings. This subsection expires June 1, 2009.

(g) The commissioner may adopt rules necessary to administer this section.

SECTION 7. Subchapter B, Chapter 44, Education Code, is amended by adding Section 44.047 to read as follows:

Sec. 44.047. PURCHASE OR LEASE OF AUTOMATED EXTERNAL DEFIBRILLATOR. (a) A school district or private school that purchases or leases an automated external defibrillator, as defined by Section 779.001, Health and Safety Code, shall ensure that the automated external defibrillator meets standards established by the federal Food and Drug Administration.

(b) A private school that purchases or leases an automated external defibrillator is required to comply with the requirements of this section only if the school receives funding from the agency to purchase or lease the automated external defibrillator.

SECTION 8. Subsection (b), Section 29.903, Education Code, is repealed.

SECTION 9. (a) Except as otherwise provided by this Act, this Act applies beginning with the 2007-2008 school year.

(b) The State Board of Education shall adopt rules relating to instruction in cardiopulmonary resuscitation and the use of an automated external defibrillator in accordance with Section 28.0023, Education Code, as added by this Act, not later than March 1, 2008. The rules shall require each school district and open-enrollment charter school to provide instruction in cardiopulmonary resuscitation and the use of an automated external defibrillator beginning with the 2008-2009 school year.

(c) Each private school to which Subsection (c), Section 28.0023, Education Code, as added by this Act, applies shall provide instruction in cardiopulmonary resuscitation and the use of an automated external defibrillator as required by that section beginning with the 2008-2009 school year.

(d) The State Board of Education is not required to review and adopt textbooks for the health curriculum to comply with the requirements of Section 28.0023, Education Code, as added by this Act, until those textbooks are otherwise scheduled for review and adoption under the cycle adopted under Section 31.022, Education Code.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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

Amend **CSSB 7** in SECTION 6 of the substitute by striking added Section 38.017(f), Education Code (page 5, line 26, through page 6, line 3), and substituting:

(f) This section does not:

(1) waive any immunity from liability of a school district or its officers or employees;

(2) create any liability for or a cause of action against a school district or its officers or employees; or

(3) waive any immunity from liability under Section 74.151, Civil Practice and Remedies Code.

**Floor Amendment No. 2**

Amend **CSSB 7** (House committee printing) in SECTION 6 of the bill, in added Section 38.017, Education Code (page 6, between lines 15 and 16), by inserting the following:

(h) A school district may seek and accept gifts, grants, or other donations to pay the district's cost of purchasing automated external defibrillators required under this section.

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 7**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 1531 WITH HOUSE AMENDMENTS**

Senator Hinojosa called **SB 1531** 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.

**Floor Amendment No. 1**

Amend **SB 1531** (House committee printing) by adding the numbered section to add Sec. 60.004, Water Code to read as follows:

Section \_\_\_\_\_. Subchapter A, Chapter 60, Water Code, is amended by adding Section 60.004 to read as follows:

Sec. 60.004. ACT OR PROCEEDING OF DISTRICT PRESUMED VALID. (a) An act or proceeding of a district, its governing body, or any local government corporation, development corporation, or nonprofit corporation of the district is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:

(1) the second anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that second anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred; or

(3) a matter that on the second anniversary of the effective date of the act or proceeding:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment; or

(B) has been held invalid by a final court judgment.

**Committee Amendment No. 2**

Amend **SB 1531** between the enacting clause and SECTION 1 of the bill (Senate engrossment, page 1, between lines 4 and 5) by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 60.077, Water Code, is amended to read as follows:

Sec. 60.077. AUTHORITY OF PEACE OFFICERS. (a) In prosecutions involving the enforcement of the provisions of this subchapter or the enforcement of any ordinance, rule, or regulation of the district, any sheriff, constable, or other duly constituted peace officer of the State of Texas or any peace officer employed or appointed by the commission may make arrests, serve criminal warrants, subpoenas, or writs, and perform any other service or duty which may be performed by any sheriff, constable, or other duly constituted peace officer of the State of Texas in enforcing other laws of this state.

(b) A peace officer employed or appointed by the commission has the same powers and duties as a peace officer described by Article 2.12, Code of Criminal Procedure.

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 1531**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 29 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 29** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 29** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of a minimum data set for the collection of information on health professionals by the statewide health coordinating council.

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

SECTION 1. Section 105.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3), (f), (g), and (h) to read as follows:

(c) The Department of Information Resources, through TexasOnline and in consultation with the council and the Health Professions Council, shall add and label as "mandatory" the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

- (1) full name and last four digits of social security number;
- (2) full mailing address; and

(3) educational background and training, including basic health professions degree, school name and location of basic health professions degree, and graduation year for basic health professions degree, and, as applicable, highest professional degree obtained, related professional school name and location, and related graduation year ~~[At a minimum, the data collected by the council must include the following in regard to health professionals:~~

- ~~(1) their number and geographic distribution;~~
- ~~(2) licensure or certification status;~~
- ~~(3) specialty areas, if applicable; and~~
- ~~(4) trends or changes in license holders according to number or geographic distribution].~~

(c-1) The Department of Information Resources, through TexasOnline and in consultation with the council and the Health Professions Council, shall add the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

- (1) date and place of birth;
- (2) sex;
- (3) race and ethnicity;
- (4) location of high school;
- (5) mailing address of primary practice;
- (6) number of hours per week spent at primary practice location;
- (7) description of primary practice setting;
- (8) primary practice information, including primary specialty practice, practice location zip code, and county; and
- (9) information regarding any additional practice, including description of practice setting, practice location zip code, and county.

(c-2) The following health professionals are subject to this section:

- (1) audiologists;
- (2) chiropractors;
- (3) licensed professional counselors;
- (4) licensed chemical dependency counselors;
- (5) dentists;
- (6) dental hygienists;
- (7) emergency medical services personnel;
- (8) marriage and family therapists;
- (9) medical radiologic technologists;
- (10) licensed vocational nurses;
- (11) registered nurses;
- (12) certified nurse aides;
- (13) occupational therapists;
- (14) optometrists;
- (15) pharmacists;
- (16) physical therapists;
- (17) physicians;
- (18) physician assistants;
- (19) psychologists;

(20) social workers; and

(21) speech-language pathologists.

(c-3) The relevant members of the Health Professions Council shall encourage each person described by Subsection (c-2) licensed, certified, or registered under that council's authority to submit application and renewal information under Subsections (c) and (c-1) through the system developed by the Department of Information Resources and TexasOnline.

(f) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the information collected under Subsections (c) and (c-1) is transmitted to the statewide health coordinating council. The council shall store the information as needed and conduct related workforce studies, including a determination of the geographical distribution of the reporting professionals.

(g) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the following information is submitted to the statewide health coordinating council for a person subject to Subsection (c-2):

(1) certification, registration, or license number;

(2) issuance date;

(3) method of certification, registration, or licensure; and

(4) certification, registration, or licensure status.

(h) The Department of Information Resources shall work with the health occupation regulatory agencies that are members of the Health Professions Council to minimize the costs to Health Professions Council members of obtaining the information under Subsections (c) and (c-1). The Department of Information Resources shall provide the Health Professions Council with the appropriate federal information processing standards code based on the information in Subsections (c-1)(8) and (9).

SECTION 2. This Act takes effect March 1, 2008.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 29**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### **SENATE BILL 155 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 155** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 155** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of chemical dependency counselors.

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

SECTION 1. Section 504.001, Occupations Code, is amended to read as follows:

Sec. 504.001. DEFINITIONS. In this chapter:

(1) "Certified clinical supervisor" means a person certified in accordance with Section 504.1521.

(2) "Chemical dependency counseling" means assisting an individual or group to:

(A) develop an understanding of chemical dependency problems;

(B) define goals; and

(C) plan action reflecting the individual's or group's interest, abilities, and needs as affected by claimed or indicated chemical dependency problems.

(3) ~~[(2)]~~ "Chemical dependency counselor" means a person licensed under this chapter.

(4) "Clinical training institution" means a person registered with the department in accordance with Section 504.1521 to supervise a counselor intern.

(5) "Commissioner" means the commissioner of state health services ~~[(3) "Commission" means the Texas Commission on Alcohol and Drug Abuse].~~

(6) ~~[(2-a)]~~ "Counselor intern" means a person registered with the department [commission] in accordance with Section 504.1515.

(7) "Department" means the Department of State Health Services.

(8) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "Peer assistance program" means a program approved by the department under Section 504.057.

(10) ~~[(4) "Executive director" means the executive director of the Texas Commission on Alcohol and Drug Abuse.~~

~~[(5)]~~ "Person" means an individual, corporation, partnership, association, or other business or professional entity.

(11) ~~[(6)]~~ "Practice of chemical dependency counseling" means providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession.

SECTION 2. Subsection (b), Section 504.002, Occupations Code, is amended to read as follows:

(b) This chapter does not apply to an activity or service of a person who:

(1) is employed as a counselor by a federal institution and is providing chemical dependency counseling within the scope of the person's employment;

(2) except as provided by Section 504.1515 ~~[504.057]~~, is a student, intern, or trainee pursuing a supervised course of study in counseling at a regionally accredited institution of higher education or training institution, if the person:

(A) is designated as a "counselor intern"; and

(B) is engaging in the activity or providing the service as part of the course of study;

(3) is not a resident of this state, if the person:

(A) engages in the activity or provides the service in this state for not more than 30 days during any year; and

(B) is authorized to engage in the activity or provide the service under the law of the state of the person's residence;

(4) is a licensed physician, psychologist, professional counselor, or social worker;

(5) is a religious leader of a congregation providing pastoral chemical dependency counseling within the scope of the person's duties;

(6) is working for or providing counseling with a program exempt under Subchapter C, Chapter 464, Health and Safety Code; or

(7) is a school counselor certified by the State Board for Educator Certification.

SECTION 3. Subchapters B and C, Chapter 504, Occupations Code, are amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT [~~TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE~~]

Sec. 504.051. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [~~COMMISSION~~]. The executive commissioner [~~commissioner~~] shall:

(1) adopt [~~and enforce~~] rules as necessary for the performance of its duties under this chapter;

(2) establish standards of conduct and ethics for persons licensed under this chapter; and

(3) establish any additional criteria for peer assistance programs for chemical dependency counselors that the executive commissioner determines necessary [~~ensure strict compliance with and enforcement of this chapter~~].

Sec. 504.0515. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department shall:

(1) enforce rules as necessary for the performance of its duties under this chapter; and

(2) ensure strict compliance with and enforcement of this chapter.

Sec. 504.052. DISCRIMINATION PROHIBITED. In taking an action or making a decision under this chapter, the executive commissioner, commissioner, and department [~~commissioner~~] shall do so without regard to the sex, race, religion, national origin, color, or political affiliation of the person affected. For purposes of this section, taking an action or making a decision under this chapter includes:

(1) considering a license application;

(2) conducting an examination;

(3) adopting or enforcing a rule; and

(4) conducting a disciplinary proceeding.

Sec. 504.053. FEEES; ACCOUNT. (a) The executive commissioner [~~commissioner~~] shall set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering this chapter. The amount of the license renewal fee may not exceed \$200.

(b) General revenue taxes may not be used to administer this chapter.

Sec. 504.054. COLLECTION ACTION. A district court in Travis County has exclusive jurisdiction of an action to collect an obligation owed to the department [commission], including an administrative penalty assessed under Subchapter G.

Sec. 504.055. OFFICIAL ROSTER. (a) The department [commission] may prepare and publish a roster showing the name and address, as reflected by the department's [commission's] records, of each chemical dependency counselor.

(b) If the department [commission] publishes a roster under this section, the department [commission] shall mail a copy of the roster to each person licensed by the department [commission] and shall file a copy of the roster with the secretary of state.

(c) A person's name and address may appear in the roster only if each fee assessed against the person under this chapter is current and paid in full at the time the roster is sent to the printer or publisher.

(d) The department [commission] may charge a fee for the roster published under this section.

Sec. 504.056. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner [commission] may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department [commission] under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) The executive commissioner [commission] may not include in rules adopted under this chapter a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

Sec. 504.057. APPROVAL OF PEER ASSISTANCE PROGRAMS. (a) The department shall approve one or more peer assistance programs established by the department or a professional association in accordance with Chapter 467, Health and Safety Code, from which persons licensed under this chapter may seek assistance.

(b) The department shall approve a peer assistance program that:

- (1) meets the minimum criteria established by the executive commissioner or department under Chapter 467, Health and Safety Code;
- (2) meets any additional criteria established by the executive commissioner or department for chemical dependency counselors licensed under this chapter; and
- (3) is designed to assist a chemical dependency counselor whose ability to perform a professional service is impaired by abuse of or dependency on drugs or alcohol.

(c) The department shall maintain a list of approved peer assistance programs for licensed chemical dependency counselors on the department's Internet website.

#### SUBCHAPTER C. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 504.101. CONSUMER INTEREST INFORMATION. (a) The department [commission] shall prepare information of consumer interest describing the regulatory functions of the department [commission] and the procedures by which consumer complaints are filed with and resolved by the department [commission].



(b) The department [~~commission~~] shall make the information available to the public and appropriate state agencies.

Sec. 504.102. CONSUMER INFORMATION FOR FILING COMPLAINTS. Each person licensed under this chapter shall display prominently at all times in the person's place of business a sign containing:

(1) the name, mailing address, and telephone number of the department [~~commission~~]; and

(2) a statement informing a consumer that a complaint against a person licensed under this chapter may be directed to the department [~~commission~~].

Sec. 504.103. RECORDS OF COMPLAINTS. (a) The department [~~commission~~] shall keep information about each complaint filed with the department [~~commission~~]. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

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

and

(6) for a complaint for which the department [~~commission~~] took no action, an explanation of the reason the complaint was closed without action.

(b) The department [~~commission~~] shall keep an information file about each complaint filed with the department [~~commission~~] that the department [~~commission~~] has authority to resolve.

(c) The department [~~commission~~], at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity that is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 4. Subchapter D, Chapter 504, Occupations Code, is amended by adding Section 504.1511 to read as follows:

Sec. 504.1511. OTHER CERTIFICATIONS INCLUDED ON LICENSE. A license issued under this chapter must include an area on which a license holder may apply an adhesive label issued by the Texas Certification Board of Addiction Professionals with the designation and expiration date of any other related certification held by the license holder that is approved by the International Certification Reciprocity Consortium or another entity approved by the department.

SECTION 5. Sections 504.1515 and 504.152, Occupations Code, are amended to read as follows:

Sec. 504.1515. COUNSELOR INTERNS. (a) A person seeking a license as a chemical dependency counselor shall register with the department [~~commission~~] as a counselor intern by submitting, in a form acceptable to the department [~~commission~~], the following:

(1) an application fee and a background investigation fee;

(2) a completed, signed, dated, and notarized application on a form prescribed by the department [~~commission~~];

(3) a recent full-face wallet-sized photograph of the applicant;

(4) two sets of fingerprints completed in accordance with department [~~commission~~] instructions on cards issued by the department [~~commission~~];

(5) documentation verifying the applicant successfully completed:

(A) 270 total hours of approved curricula described by Section 504.152(3)(A); and

(B) 300 hours of approved supervised field work practicum described by Section 504.152(3)(C); and

(6) documentation verifying the applicant received a high school diploma or its equivalent.

(b) The department [~~commission~~] may obtain criminal history record information relating to a counselor intern or an applicant for registration as a counselor intern from the Department of Public Safety and the Federal Bureau of Investigation.

Sec. 504.152. ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, a person must:

(1) be at least 18 years of age;

(2) hold an associate degree or a more advanced degree;

(3) have completed:

(A) 135 hours, or nine semester hours, specific to substance abuse disorders and treatment and an additional 135 hours, or nine semester hours, specific or related to chemical dependency counseling;

(B) 4,000 hours of approved supervised experience working with chemically dependent persons; and

(C) 300 hours of approved supervised field work practicum;

(4) provide two letters of reference from chemical dependency counselors;

(5) pass a written examination approved by the department [~~commission~~];

(6) submit a case presentation to the test administrator;

(7) pass an oral examination approved by the department [~~commission~~];

(8) be determined by the department [~~commission~~] to be worthy of the public trust and confidence;

(9) successfully complete the chemical dependency counselor examination under Section 504.156; [~~and~~]

(10) sign a written agreement to comply with the standards of ethics approved by the department; and

(11) provide to the department written assurance that the applicant has access to a peer assistance program [~~commission~~].

(b) The department may waive the requirement under Subsection (a)(11) if the department determines that a peer assistance program is not reasonably available to the license holder.

SECTION 6. Subchapter D, Chapter 504, Occupations Code, is amended by adding Section 504.1521 to read as follows:

Sec. 504.1521. SUPERVISED WORK EXPERIENCE. (a) A counselor intern shall obtain the supervised work experience required under Section 504.152 that is obtained in this state at a clinical training institution or under the supervision of a certified clinical supervisor.

(b) The executive commissioner shall adopt rules necessary to:

(1) register clinical training institutions that meet the criteria established by the executive commissioner, commissioner, or department to protect the safety and welfare of the people of this state; and

(2) certify clinical supervisors who hold certification credentials approved by the department or by a person designated by the department, such as the International Certification and Reciprocity Consortium or another person that meets the criteria established by the executive commissioner, commissioner, or department to protect the safety and welfare of the people of this state.

SECTION 7. Sections 504.1525, 504.153, and 504.155, Occupations Code, are amended to read as follows:

Sec. 504.1525. CERTAIN GROUNDS FOR LICENSE, REGISTRATION, OR CERTIFICATION REFUSAL; EXCEPTION. (a) Except as provided by Subsection (b), the department [The commission] may not issue a license, registration, or certification under this chapter to an applicant who has been:

(1) convicted or placed on community supervision during the five years preceding the date of application in any jurisdiction for an offense equal to a Class B misdemeanor specified by executive commissioner [commission] rule;

(2) convicted or placed on community supervision in any jurisdiction for an offense equal to or greater than a Class A misdemeanor specified by executive commissioner [commission] rule; or

(3) found to be incapacitated by a court on the basis of a mental defect or disease.

(b) The department may issue a license to a person convicted or placed on community supervision in any jurisdiction for a drug or alcohol offense described by Subsection (a)(1) or (2) if the department determines that the applicant has successfully completed participation in an approved peer assistance program.

(c) Subsection (a) does not apply to an applicant who has, with respect to Subsection (a)(1) or (2), received a full pardon based on the person's wrongful conviction or, with respect to Subsection (a)(3), been found by a court to no longer be incapacitated.

Sec. 504.153. ALTERNATIVE QUALIFICATIONS AND EVIDENCE OF LICENSE REQUIREMENT SATISFACTION. (a) An applicant is exempt from the requirements of Sections 504.152(3)(A) and (C) if the applicant holds a baccalaureate degree or a more advanced degree in:

(1) chemical dependency counseling; or

(2) psychology, sociology, or any other related program approved by the department [commission].

(b) On presentation of documentation by an applicant who holds a degree described by Subsection (a), the department [commission] may waive any portion of the requirement established by Section 504.152(3)(B) that the department [commission] determines has been satisfied as evidenced by the documentation.

Sec. 504.155. LICENSE APPLICATION. (a) An application for a license under this chapter must:

(1) be on a form prescribed and furnished by the department [commission];  
and

(2) contain a statement made under oath of the applicant's education, experience, and other qualifications established by the department [~~commission~~] as required for a license under this chapter.

(b) The department [~~commission~~] may require additional information regarding the quality, scope, and nature of the experience and competence of the applicant if the department [~~commission~~] determines that a person's application lacks sufficient information for consideration by the department [~~commission~~].

(c) The department [~~commission~~] may obtain criminal history record information relating to an applicant for a license under this chapter from the Department of Public Safety and the Federal Bureau of Investigation. The department [~~commission~~] may deny an application for a license if the applicant fails to provide two complete sets of fingerprints on a form prescribed by the department [~~commission~~].

(d) The issuance of a license by the department [~~commission~~] is conditioned on the receipt by the department [~~commission~~] of the applicant's criminal history record information.

SECTION 8. Subsection (a), Section 504.156, Occupations Code, is amended to read as follows:

(a) At least twice each year, the department [~~commission~~] may prepare and administer or contract with an organization approved by the International Certification Reciprocity Consortium to prepare and administer an examination to determine the qualifications of an applicant for a license under this chapter. The examination shall be conducted as determined by the department [~~commission~~] and in a manner that is fair and impartial to and takes into consideration each school or system of chemical dependency counseling.

SECTION 9. Sections 504.157 through 504.161, Occupations Code, are amended to read as follows:

Sec. 504.157. EXAMINATION RESULTS; REEXAMINATION. (a) The department [~~commission~~] shall notify each examinee of the results of the examination not later than the 45th [~~30th~~] day after the date the examination is administered.

(b) If requested by an applicant who fails the examination, the department [~~commission~~] shall furnish the applicant with an analysis of the applicant's performance on the examination.

(c) An applicant who fails the examination may take a subsequent examination on payment of the required examination fee.

(d) The executive commissioner [~~commissioner~~] by rule shall establish the criteria under which an applicant may take a subsequent examination under Subsection (c).

Sec. 504.158. PROVISIONAL LICENSE. (a) The department [~~commission~~] may issue a provisional license to an applicant who is licensed in another state. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a chemical dependency counselor at least two years in another state or country that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the department [~~commission~~] relating to the practice of chemical dependency counseling; and

(3) be sponsored by a person licensed by the department [~~commission~~] under this chapter with whom the provisional license holder may practice.

(b) The department [~~commission~~] may waive the requirement of Subsection (a)(3) if the department [~~commission~~] determines that compliance with that subsection would constitute a hardship to the applicant.

(c) The department [~~commission~~] may establish a fee for a provisional license in an amount reasonable and necessary to cover the cost of issuing the license.

(d) A provisional license is valid until the date the department [~~commission~~] approves or denies the provisional license holder's application for a license under Section 504.159.

Sec. 504.159. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The department [~~commission~~] shall issue a license under this chapter to a provisional license holder who satisfies the eligibility requirements established by Section 504.152. When issuing a license under this subsection, the department [~~commission~~] may waive the requirements established by Sections 504.152(6), (7), and (9).

(b) The department [~~commission~~] shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department [~~commission~~] may extend the 180-day period if the department [~~commission~~] has not received information necessary to determine whether the applicant is eligible for a license as provided by Subsection (a).

Sec. 504.160. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS. (a) The department [~~commission~~] may, on application and payment of the appropriate fee, issue a license to a person who is licensed or certified by another state as a chemical dependency counselor if the department [~~commission~~] determines that the license or certificate requirements of that state are substantially equivalent to the requirements of this chapter.

(b) The department [~~commission~~] may waive any license requirement for an applicant with a license or certificate issued by another state with which this state has a reciprocity agreement.

Sec. 504.161. CRIMINAL HISTORY RECORD INFORMATION. (a) The department [~~commission~~] may obtain criminal history record information as provided by Section 411.1105 [~~411.132~~], Government Code, [~~as added by Chapter 18, Acts of the 75th Legislature, Regular Session, 1997,~~] and consider that information in determining a person's license, registration, or certification status under this chapter.

(b) The department [~~commission~~] may charge a person on whom criminal history record information is sought a fee in an amount set by the department [~~commission~~] as reasonably necessary to cover the costs of administering this section. A fee collected under this subsection may be appropriated only to the department [~~commission~~] to administer this section.

SECTION 10. Subsection (a), Section 504.201, Occupations Code, is amended to read as follows:

(a) A license issued under this chapter expires on the second anniversary of the date of issuance. The executive commissioner [~~commission~~] by rule shall adopt a system under which licenses expire on various dates during the year.

SECTION 11. Sections 504.202 and 504.2025, Occupations Code, are amended to read as follows:

Sec. 504.202. NOTICE OF LICENSE EXPIRATION AND REQUIREMENTS TO RENEW. Not later than the 31st day before the expiration date of a person's license, the department [~~commission~~] shall send to the license holder at the license holder's last known address according to department [~~commission~~] records written notice of:

- (1) the impending license expiration;
- (2) the amount of the renewal fee; and
- (3) any continuing education required to renew the license.

Sec. 504.2025. CERTAIN GROUNDS FOR REFUSAL TO RENEW LICENSE, REGISTRATION, OR CERTIFICATION. (a) Except as provided by Subsection (b), the department [~~The commission~~] shall refuse to renew a license, registration, or certification under this chapter on receipt of information from the Department of Public Safety or another law enforcement agency that the person has been convicted, placed on community supervision, or found to be incapacitated as described by Section 504.1525.

(b) The department may renew a license under this chapter if the department determines that the person has successfully completed participation in an approved peer assistance program subsequent to the conviction or placement on community supervision for an offense described by Section 504.1525(b).

SECTION 12. Subchapter E, Chapter 504, Occupations Code, is amended by adding Section 504.2026 to read as follows:

Sec. 504.2026. REFUSAL TO RENEW LICENSE: ACCESS TO PEER ASSISTANCE PROGRAM. (a) Except as provided by Subsection (b), the department may not renew a license under this chapter unless the license holder provides to the department written documentation that the license holder has access to an approved peer assistance program.

(b) The department may waive the requirement of Subsection (a) if the department determines that a peer assistance program is not reasonably available to the license holder.

SECTION 13. Subsections (a), (b), and (c), Section 504.203, Occupations Code, are amended to read as follows:

(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department [~~commission~~] before the expiration date of the license.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the department [~~commission~~] a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the department [~~commission~~] a fee in an amount equal to two times the required renewal fee.

SECTION 14. Section 504.204, Occupations Code, is amended to read as follows:

Sec. 504.204. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. (a) The department [~~commission~~] may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department [~~commission~~] a fee in an amount equal to two times the required renewal fee for the license.

SECTION 15. Subsections (a), (b), and (d), Section 504.205, Occupations Code, are amended to read as follows:

(a) The department [~~commission~~] shall recognize, prepare, or administer a continuing education program for chemical dependency counselors. The executive commissioner [~~commission~~] by rule shall provide for the administration of the continuing education requirements established under this section.

(b) As a prerequisite for renewal of a license issued under this chapter, a license holder, other than a license holder subject to Subsection (c), must participate in the continuing education program and complete [~~at least 60 hours of~~] continuing education hours in each two-year licensing period as follows:

(1) 40 hours if the license holder holds an associate's or bachelor's degree;

and  
(2) 24 hours if the license holder holds a master's degree or a more advanced degree.

(d) Except for the number of hours required, the executive commissioner [~~commission~~] may not adopt a rule under Subsection (a) that distinguishes between the continuing education requirements for a license holder subject to Subsection (b) and a license holder subject to Subsection (c).

SECTION 16. Subsections (b) and (d), Section 504.206, Occupations Code, are amended to read as follows:

(b) The department [~~commission~~] shall recognize, prepare, or administer a training component that satisfies the requirement of Subsection (a) for use in continuing education for chemical dependency counselors.

(d) In developing the training component, the department [~~commission shall consult with the Texas Department of Health and~~] may, to the extent appropriate, consider the training course relating to hepatitis C developed by the department under Section 94.002 [~~93.003~~], Health and Safety Code [~~as added by Chapter 823, Acts of the 76th Legislature, Regular Session, 1999~~].

SECTION 17. Subchapter F, Chapter 504, Occupations Code, is amended to read as follows:

#### SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

Sec. 504.251. GROUND FOR LICENSE, REGISTRATION, OR CERTIFICATION DENIAL OR DISCIPLINARY ACTION. The department [~~commission~~] shall refuse to issue a license, registration, or certification issued by the department to an applicant, refuse to renew a license, registration, or certification holder's license, registration, or certification issued by the department, or take disciplinary action against the holder of a license, registration, or certification issued by the department [~~holder~~] if the applicant or license, registration, or certification holder:

- (1) violates or assists another to violate this chapter or a rule adopted under this chapter;
- (2) circumvents or attempts to circumvent this chapter or a rule adopted under this chapter;
- (3) directly or indirectly participates in a plan to evade this chapter or a rule adopted under this chapter;
- (4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department [~~commission~~] determines would constitute a violation of this chapter or a rule adopted under this chapter;
- (5) engages in false, misleading, or deceptive conduct as defined by Section 17.46, Business & Commerce Code;
- (6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;
- (7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required by law;
- (8) refuses to perform an act or service the person is licensed, registered, or certified to perform under this chapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or
- (9) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Sec. 504.252. DISCIPLINARY POWERS OF DEPARTMENT [~~COMMISSION~~]. (a) On a determination that grounds exist to deny a license, registration, or certification issued by the department or license, registration, or certification renewal issued by the department or to take disciplinary action against the holder of a license, registration, or certification issued by the department [~~holder~~], the department [~~commission~~] may:

- (1) refuse to issue or renew a license, registration, or certification;
- (2) revoke or suspend a license, registration, or certification;
- (3) place on probation a license, registration, or certification holder whose license, registration, or certification is suspended; or
- (4) reprimand a license, registration, or certification holder.

(b) If the department [~~commission~~] places on probation a license, registration, or certification holder whose license, registration, or certification issued by the department is suspended, the department [~~commission~~] may require the license, registration, or certification holder to:

- (1) report regularly to the department [~~commission~~] on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the department [~~commission~~]; or
- (3) continue or review professional education until the license, registration, or certification holder attains a degree of skill satisfactory to the department [~~commission~~] in the areas that are the basis of the probation.

Sec. 504.2525. SUMMARY LICENSE, REGISTRATION, OR CERTIFICATION SUSPENSION. (a) The department [~~commission~~] shall suspend the license, registration, or certification issued by the department of a license, registration, or certification holder if the department [~~commission~~] receives written



notice from the Department of Public Safety or another law enforcement agency that the license, registration, or certification holder has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described by Section 504.1525.

(b) To initiate a proceeding to take action under Subsection (a), the department [~~commission~~] must serve notice on the license, registration, or certification holder. The notice must:

(1) state the grounds for summary suspension; and

(2) be personally served on the license, registration, or certification holder or sent to the license, registration, or certification holder by certified or registered mail, return receipt requested, to the license, registration, or certification holder's mailing address as it appears in the department's [~~commission's~~] records.

(c) The suspension is effective at the time notice is served. The license, registration, or certification holder is entitled to appeal the suspension as provided by Section 504.255.

Sec. 504.253. COMPLAINT AND INVESTIGATION. (a) A person may file a complaint with the department [~~commission~~] alleging a violation of this chapter. The complaint must be in writing and under oath.

(b) The department [~~commission~~] shall provide to the person filing the complaint and to each person or entity that is the subject of the complaint the department's [~~commission's~~] policies and procedures pertaining to complaint investigation and resolution.

Sec. 504.254. RIGHT TO ADMINISTRATIVE HEARING. (a) If the department [~~commission~~] proposes to suspend, revoke, or refuse to renew a person's license, registration, or certification issued by the department, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for disciplinary action are governed by Chapter 2001, Government Code. Rules of practice adopted by the executive commissioner [~~commission~~] under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Sec. 504.255. APPEAL OF CERTAIN [~~LICENSE~~] DENIALS, REFUSALS TO RENEW, AND SUSPENSIONS. (a) A person whose license, registration, or certification application is denied under Section 504.1525, whose license, registration, or certification renewal is refused under Section 504.2025, or whose license, registration, or certification is suspended under Section 504.2525 may appeal the denial, refusal to renew, or suspension on the grounds that:

(1) the sole basis for the department's [~~commission's~~] determination is a conviction or placement on community supervision for an offense described by Section 504.1525; and

(2) sufficient time, as determined by executive commissioner [~~commission~~] rule, has expired since the date of the conviction or placement.

(b) A proceeding under this section is governed by Chapter 2001, Government Code.

(c) After a hearing under this section, the department [~~commission~~] may determine that the person is entitled to a license, registration, or certification under this chapter.

SECTION 18. Sections 504.301 and 504.303 through 504.307, Occupations Code, are amended to read as follows:

Sec. 504.301. IMPOSITION OF PENALTY. The department [~~commission~~] may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Sec. 504.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department [~~commission~~] determines that a violation occurred, the department [~~commission~~] shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the proposed administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 504.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 504.303, the person may:

- (1) accept the department's [~~commission's~~] determination and proposed administrative penalty; or
- (2) make a written request for a hearing on that determination.

(b) If the person accepts the department's [~~commission's~~] determination, the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee by order shall approve the determination and assess the proposed penalty.

Sec. 504.305. HEARING. (a) If the person requests a hearing in a timely manner, the department [~~commission~~] shall set a hearing and give written notice of the hearing to the person.

(b) The department [~~commission~~] may employ a hearings examiner for this purpose.

(c) The hearings examiner shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 504.306. DECISION BY DEPARTMENT [~~COMMISSION~~]. (a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee by order may determine that:

- (1) a violation occurred and assess an administrative penalty; or
- (2) a violation did not occur.

(b) The department [~~commission~~] shall give notice of the order to the person. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and

(3) a statement of the person's right to judicial review of the order.

Sec. 504.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the department's [~~commission's~~] order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account;

or

(B) giving to the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [~~commission~~] by certified mail.

(c) If the department [~~commission~~] receives a copy of an affidavit under Subsection (b)(2), the department [~~commission~~] may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

SECTION 19. Section 504.310, Occupations Code, is amended to read as follows:

Sec. 504.310. COLLECTION OF PENALTY. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department [~~commission~~] and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed under Section 504.307, the department [~~commission~~] may refer the matter to the attorney general for collection of the penalty.

(c) The department [~~commission~~] may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the commissioner [~~executive director~~] or the commissioner's [~~executive~~

~~director's~~] designee requiring the payment of expenses and costs is final. The ~~department~~ [~~commission~~] may refer the matter to the attorney general for collection of expenses and costs.

(d) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for the administrative penalty, the attorney general may recover, on behalf of the attorney general and the ~~department~~ [~~commission~~], reasonable expenses and costs.

SECTION 20. Subsections (a) and (b), Section 504.351, Occupations Code, are amended to read as follows:

(a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the ~~department~~ [~~commission~~] or the attorney general at the request of the ~~department~~ [~~commission~~] may institute an action in district court for an injunction, a civil penalty, or both.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule adopted under this chapter, the district court may grant injunctive relief as the facts warrant. The ~~department~~ [~~commission~~] is not required to give an appeal bond in an appeal of an action seeking injunctive relief under this section.

SECTION 21. Subdivisions (1), (2), and (5), Section 467.001, Health and Safety Code, are amended to read as follows:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the ~~department~~ [~~Texas Commission on Alcohol and Drug Abuse~~] and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services [~~"Commission" means the Texas Commission on Alcohol and Drug Abuse~~].

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes); or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

SECTION 22. Section 467.003, Health and Safety Code, is amended to read as follows:

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the ~~department~~ [~~commission~~] and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the department [commission] and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the department [commission] and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the department [commission] or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

SECTION 23. Section 411.1105, Government Code, is amended to read as follows:

Sec. 411.1105. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES [TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE]. (a) The Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a chemical dependency counselor's license, a counselor intern's registration, or a clinical supervisor certification under Chapter 504, Occupations Code; or

(2) the holder of a license, registration, or certification under that chapter.

(b) In addition to information obtained from the Federal Bureau of Investigation under Section 411.087, the Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] is entitled to obtain information relating to the wanted persons status of an individual listed in Subsection (a).

(c) Criminal history record information obtained by the Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] under Subsection (a) may not be released or disclosed to any person except on court order, with the consent of the person who is the subject of the criminal history record information, or as provided by Subsection (d).

(d) The Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] may provide the applicant or licensee with a copy of the person's criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation identification division, or another law enforcement agency.

SECTION 24. Section 504.154, Occupations Code, is repealed.

SECTION 25. (a) Not later than May 1, 2008, the executive commissioner of the Health and Human Services Commission shall adopt the rules and the Department of State Health Services shall adopt the procedures necessary to implement the changes in law made by this Act.

(b) The Department of State Health Services shall approve one or more peer assistance programs as required under Section 504.057, Occupations Code, as added by this Act, not later than September 1, 2008, provided that applicants for approval under that section meet the criteria established by the department.

(c) Section 504.1521, Occupations Code, as added by this Act, and Section 504.1525, Occupations Code, as amended by this Act, apply only to an initial license application filed on or after September 1, 2008. An initial license application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose for the initial license application.

(d) The changes in law made by this Act to Section 504.2025, Occupations Code, apply only to a renewal application filed on or after September 1, 2008. A renewal application filed before that date is governed for that renewal term by the law in effect on the date the renewal application was filed, and the former law is continued in effect for that purpose. A subsequent renewal application filed on or after the date of expiration of that license renewal term is subject to the changes in law made by this Act to Section 504.2025, Occupations Code.

SECTION 26. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Sections 504.1521 and 504.2025, Occupations Code, as added by this Act, take effect September 1, 2008.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 155**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### **SENATE BILL 772 WITH HOUSE AMENDMENTS**

Senator Van de Putte called **SB 772** 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 772** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to conditions of employment for certain peace officers.

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

SECTION 1. Section 142.051(b), Local Government Code, is amended to read as follows:

(b) This subchapter does not apply to:

(1) a peace officer who is covered by [a municipality that]:

(A) a collective bargaining agreement [~~(1) has~~] adopted under Chapter 174; or

(B) an agreement adopted under [~~(2) is covered by~~] Subchapter H, I, or J, Chapter 143; or

(2) a municipality that [~~(3)~~] has a population of one million or more and has not adopted Chapter 143.

SECTION 2. Subchapter B, Chapter 142, Local Government Code, is amended by adding Section 142.069 to read as follows:

Sec. 142.069. CERTAIN PEACE OFFICERS EMPLOYED BY MUNICIPALITY. (a) In this section:

(1) "Peace officer" means a peace officer under Article 2.12, Code of Criminal Procedure.

(2) "Peace officers association" means an employee organization in which peace officers employed by a municipal department other than the police department participate that exists for the purpose, wholly or partly, of dealing with the municipality or public employer concerning grievances, labor disputes, wages, rates of pay, hours of work, or conditions of work affecting peace officers.

(b) This section applies only in relation to a peace officer employed by a municipality in a department other than the police department. This section does not apply in relation to members of the police department.

(c) Not later than the 30th day after the date the governing body of a municipality receives from a peace officers association a petition signed by the majority of all peace officers employed by a department of the municipality other than the police department, excluding the head of the affected department, that requests recognition of the association as the sole and exclusive bargaining agent for all peace officers employed in that department, excluding the head of the department, the governing body shall:

(1) grant recognition of the association as requested in the petition and determine by majority vote that a public employer may meet and confer with the peace officers association under this subchapter without conducting an election by the voters in the municipality under the procedures prescribed by Section 142.055;

(2) defer granting recognition of the association and order an election by the voters in the municipality held under the procedures prescribed by Section 142.055 regarding whether a public employer may meet and confer with the peace officers association under this subchapter; or

(3) order a certification election held under the procedures prescribed by Section 142.054 to determine whether the association represents a majority of the affected peace officers.

(d) If more than one department within a municipality, excluding the police department, employs peace officers, a separate petition must be submitted under Subsection (c) for each department's peace officers.

(e) If the governing body of a municipality orders a certification election under Subsection (c)(3) and the association named in the petition is certified to represent a majority of the peace officers of the affected municipal department, the governing body shall, not later than the 30th day after the date the results of that election are certified:

(1) grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer with the peace officers association under this subchapter without conducting an election by the voters in the municipality under the procedures prescribed by Section 142.055; or

(2) defer granting recognition of the association and order an election by the voters in the municipality held under the procedures prescribed by Section 142.055 regarding whether a public employer may meet and confer with a peace officers association under this subchapter.

(f) The ballot for an election ordered under this section and held under the procedures prescribed by Section 142.055 shall be printed to permit voting for or against the proposition: "Authorizing \_\_\_\_\_ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing \_\_\_\_\_ (description of affected municipal peace officers) as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(g) If a municipality recognizes a peace officers association under this section, this subchapter applies to the municipality, the recognized peace officers association for the affected municipal department, and the affected peace officers in the same manner as it applies to a police officers association and police officers. The wording of any ballot proposition not covered by Subsection (f) shall be conformed accordingly.

(h) General Provisions Relating to Agreements.

(1) A municipality acting under Section 142.069 may not be denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the police officers association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and not withdrawn in accordance with this subchapter. Applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

(2) A meet and confer agreement under this subchapter must be written.

(3) This subchapter does not require a public employer or a recognized police officers association to meet and confer on any issue or reach an agreement.

(4) A public employer and the recognized police officers association may meet and confer only if the association does not advocate an illegal strike by public employees.

(5) While a meet and confer agreement under this subchapter between the public employer and the recognized police officers association is in effect, the public employer may not accept a petition, with regard to the police officers of the municipality requesting an election to adopt:

(A) municipal civil service under Chapter 143; or

(B) collective bargaining under Chapter 174.

SECTION 3. This Act takes effect September 1, 2007.



**Floor Amendment No. 1**

Amend **CSSB 772** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 142.051, Local Government Code, is amended to read as follows:

Sec. 142.051. APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies only to ~~[a municipality]~~:

(1) a municipality, and a police officer in a municipality, with a population of 50,000 or more; ~~[or]~~

(2) a municipality, and a police officer in a municipality, that has adopted Chapter 143; or

(3) police officer not covered by a collective bargaining agreement adopted under Chapter 174 in a municipality that has adopted Chapter 174 for police officers in the police department, and the municipality that appoints or employs such a police officer.

(b) This subchapter does not apply to ~~[a municipality that]~~:

(1) a police officer who is covered by a collective bargaining agreement ~~[has]~~ adopted under Chapter 174;

(2) a police officer who is covered by an agreement adopted under Subchapter H, I, or J, Chapter 143; ~~[or]~~

(3) a municipality that has a population of one million or more and has not adopted Chapter 143; or

(4) a municipality that has adopted Subchapter I, Chapter 143, in an election authorized by Section 143.3015.

SECTION 2. This Act takes effect September 1, 2007.

The amendments were read.

Senator Van de Putte moved to concur in the House amendments to **SB 772**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 778 WITH HOUSE AMENDMENT**

Senator Harris called **SB 778** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 778** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the use of certain technology to conduct certain mental health proceedings.

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

SECTION 1. Section 573.012, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (h) and (i) to read as follows:

(a) Except as provided by Subsection (h), an ~~Att~~ applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

- (1) presented personally to the court; or
- (2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(h) A judge or magistrate may permit an applicant who is a physician to present an application by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that:

- (1) is secure;
- (2) is available to the judge or magistrate; and
- (3) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

SECTION 2. The heading to Subchapter I, Chapter 574, Health and Safety Code, is amended to read as follows:

SUBCHAPTER I. USE OF VIDEO TECHNOLOGY ~~[TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING]~~ AT PROCEEDINGS

SECTION 3. Subchapter I, Chapter 574, Health and Safety Code, is amended by adding Section 574.203 to read as follows:

Sec. 574.203. USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge, associate judge, or master, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge, associate judge, or master or the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

(c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

SECTION 4. This Act takes effect September 1, 2007.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 778**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### **SENATE BILL 1723 WITH HOUSE AMENDMENTS**

Senator Ogden called **SB 1723** 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 1723** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the collection of surcharges assessed under the driver responsibility program.

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

SECTION 1. Section 708.153(b), Transportation Code, is amended to read as follows:

(b) A rule under this section:

(1) may not permit a person to pay a surcharge over a period of more than 36 consecutive months; and

(2) may provide that if the person fails to make a required installment payment, the department may reestablish the installment plan or declare the amount of the unpaid surcharge immediately due and payable.

SECTION 2. Section 708.155, Transportation Code, is amended to read as follows:

Sec. 708.155. CONTRACTS FOR COLLECTION OF SURCHARGES. (a) The department may enter into a contract with a private attorney or a public or private vendor for the provision of services for the collection of surcharges receivable and related costs under this chapter.

(b) To provide for alternative or additional collection methods for surcharges receivable, the department may amend a contract entered into under Subsection (a) and enter into additional contracts under Subsection (a).

(c) The total amount of compensation under a contract entered into under this section may not exceed 30 percent of the amount of the surcharges and related costs collected.

SECTION 3. Subchapter D, Chapter 708, Transportation Code, is amended by adding Section 708.157 to read as follows:

Sec. 708.157. AMNESTY AND INCENTIVES. (a) The department by rule may establish a periodic amnesty program for holders of a driver's license on which a surcharge has been assessed for certain offenses, as determined by the department.

(b) The department by rule may offer a holder of a driver's license on which a surcharge has been assessed an incentive for compliance with the law and efforts at rehabilitation, including a reduction of a surcharge or a decrease in the length of an installment plan.

SECTION 4. The changes in law made by this Act to Section 708.155, Transportation Code, do not affect the entitlement of a private attorney or a public or private vendor with whom the Department of Public Safety contracts under that section immediately before September 1, 2007, to bid on the additional contract.

SECTION 5. This Act takes effect September 1, 2007.

### Floor Amendment No. 1

Amend **CSSB 1723** as follows:

Amend Section 708.157 by adding the following:

(c) The department by rule may establish an indigency program for holders of a driver's license on which a surcharge has been assessed for certain offenses, as determined by the department."

The amendments were read.

Senator Ogden moved to concur in the House amendments to **SB 1723**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### SENATE BILL 2000 WITH HOUSE AMENDMENT

Senator Eltife called **SB 2000** from the President's table for consideration of the House amendment to the bill.

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

### Floor Amendment No. 1

Amend **SB 2000** as follows:

(1) In SECTION 1 of the bill, in the recital to that section, strike "Subsections (d) and (e)" and substitute "Subsection (d)".

(2) In SECTION 1 of the bill, in amended Section 382.051866, Health and Safety Code, strike Subsection (e).

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 382.051866(e), Health and Safety Code, is repealed.

The amendment was read.

Senator Eltife moved to concur in the House amendment to **SB 2000**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### **SENATE BILL 548 WITH HOUSE AMENDMENT**

Senator Carona called **SB 548** from the President's table for consideration of the House amendment to the bill.

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

#### **Floor Amendment No. 1 on Third Reading**

Amend **SB 548** on third reading as follows:

(1) In the introductory language to SECTION 1 of the bill (page 1, lines 4-5), strike "Subsection (b), Section 31.06, Penal Code, is amended" and substitute "Section 31.06, Penal Code, is amended by amending Subsection (b) and adding Subsection (g)".

(2) In SECTION 1 of the bill, immediately following amended Subsection (b), Section 31.06, Penal Code (page 2, between lines 2 and 3), insert the following:

(g) Notwithstanding Subsections (a) and (f), the prima facie evidence or presumption established by those subsections do not apply until 40 days after receipt of notice under Subsection (b) if:

(1) the notice was given only under Subsection (b)(1)(A); and

(2) the defendant claims that the defendant did not receive that notice.

(3) In the introductory language to SECTION 2 of the bill (page 2, lines 3-4), strike "Subsection (c), Section 32.41, Penal Code, is amended" and substitute "Section 32.41, Penal Code, is amended by amending Subsection (c) and adding Subsection (h)".

(4) In SECTION 2 of the bill, immediately following amended Subsection (c), Section 32.41, Penal Code (between page 2, line 27, and page 3, line 1), insert the following:

(h) Notwithstanding Subsections (b) and (d), the presumption established by Subsection (b) does not apply until 40 days after receipt of notice under Subsection (c), and the presumption established by Subsection (d) does not apply, if:

(1) the notice was given only under Subsection (c)(1)(A); and

(2) the defendant claims that the defendant did not receive that notice.

The amendment was read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 548** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Averitt, Lucio, Van de Putte, and Watson.

### **SENATE BILL 903 WITH HOUSE AMENDMENTS**

Senator Brimer called **SB 903** 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 903** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Office of State-Federal Relations and the administrative attachment of that agency to the office of the governor.

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

SECTION 1. Section 751.002(a), Government Code, is amended to read as follows:

(a) The Office of State-Federal Relations is an agency of the state and operates within the executive department. The office is administratively attached to the office of the governor. The governor's office shall provide human resources and other administrative support for the office. The office is funded by appropriations made to the office of the governor.

SECTION 2. Section 751.003, Government Code, is amended to read as follows:

Sec. 751.003. SUNSET PROVISION. The Office of State-Federal Relations is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2013 [~~2007~~].

SECTION 3. The heading to Section 751.005, Government Code, is amended to read as follows:

Sec. 751.005. GENERAL POWERS AND DUTIES OF OFFICE [~~DIRECTOR~~].

SECTION 4. Section 751.005(b), Government Code, is amended to read as follows:

(b) The director shall:

(1) help coordinate state and federal programs dealing with the same subject;

(2) inform the governor and the legislature of federal programs that may be carried out in the state or that affect state programs;

(3) provide federal agencies and the United States Congress with information about state policy and state conditions on matters that concern the federal government;

(4) provide the legislature with information useful in measuring the effect of federal actions on the state and local programs;

(5) prepare and supply to the governor and all members of the legislature an annual report that:

(A) describes the office's operations;

(B) contains the office's priorities and strategies for the following year;

(C) details projects and legislation pursued by the office;

(D) discusses issues in the following congressional session of interest to this state; ~~and~~

(E) contains an analysis of federal funds availability and formulae; and

(F) evaluates the performance of the office based on performance measures developed by the board;

(6) prepare annually a complete and detailed written report accounting for all funds received and disbursed by the office during the preceding fiscal year;

(7) notify the governor, the lieutenant governor, and the speaker of the house of representatives of federal activities relevant to the state and inform the Texas congressional delegation of state activities;

(8) conduct frequent conference calls with the lieutenant governor and the speaker of the house of representatives or their designees regarding state-federal relations and programs;

(9) respond to requests for information from the legislature, the United States Congress, and federal agencies; and

(10) coordinate with the Legislative Budget Board regarding the effects of federal funding on the state budget.

SECTION 5. Section 751.006(g), Government Code, is amended to read as follows:

(g) The director and the staff of the office working in Washington, D.C., may receive a ~~[the same]~~ cost-of-living salary adjustment ~~[as is established for an employee of another state agency under Section 751.012(d)].~~

SECTION 6. Subchapter A, Chapter 751, Government Code, is amended by adding Sections 751.015 and 751.016 to read as follows:

Sec. 751.015. CONTRACTS BETWEEN OFFICE AND CONSULTANTS PROHIBITED. The office may not contract with federal-level government relations consultants.

Sec. 751.016. CONTRACTS BY STATE AGENCIES OR POLITICAL SUBDIVISIONS. (a) In this section, "political subdivision" includes a river authority.

(b) An agency or political subdivision of the state shall report to the office on any contract between the agency or subdivision and a federal-level government relations consultant. A state agency or political subdivision shall submit one report under this section not later than the 30th day after the date the contract is executed and a second report not later than the 30th day after the date the contract is terminated. The report must include:

(1) the name of the consultant or consulting firm;

(2) the issue on which the consultant was hired to consult; and

(3) the amount of compensation paid or to be paid to the consultant under the contract.

(b-1) A state agency or political subdivision contracting with a federal-level government relations consultant before September 1, 2007, shall, if the contract has not terminated before that date, submit a report as required by Subsection (b) not later than September 30, 2007. This subsection expires September 1, 2008.

(c) If a state agency contracts with a federal-level government relations consultant and the consultant subcontracts the work to another firm or individual, the state agency shall report the subcontract to the office.

(d) The office shall post the information reported to the office under this section on the Internet website maintained by the office.

SECTION 7. The following provisions of the Government Code are repealed:

- (1) Sections 751.006(b), (c), (d), (e), and (f);
- (2) Sections 751.012(b), (e), and (f); and
- (3) Sections 751.013, 751.014, and 751.024.

SECTION 8. The Office of State-Federal Relations and the office of the governor shall establish a plan for the administrative attachment of the Office of State-Federal Relations to the office of the governor.

SECTION 9. This Act takes effect September 1, 2007.

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

Amend **CSSB 903** as follows:

(1) On page 3, line 8, between "calls" and "with", insert ", open to any member of the legislature who chooses to participate,".

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

Amend **CSSB 903** on third reading as follows:

(1) In the recital to SECTION 5 of the bill (page 3, line 15), strike "Section 751.006(g), Government Code, is" and substitute "Sections 751.006(a) and (g), Government Code, are".

(2) In SECTION 5 of the bill, immediately before amended Subsection (g), Section 751.006, Government Code (page 3, between lines 16 and 17), insert the following:

(a) The director may employ staff necessary to carry out the director's powers and duties under this chapter. Except as provided by Section 751.004, regarding the appointment of the director, the board shall approve the hiring of all employees for the office. The director or the director's designee shall provide to office employees, as often as necessary, information regarding their qualification for employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state employees.

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 903** on third reading as follows:

In SECTION 751.016 replace the words "office with "Texas Ethics Commission."

The amendments were read.



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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 903** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Brimer, Chair; Lucio, Deuell, Hegar, and Williams.

### SENATE BILL 1154 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1154** 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 1154** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to regulation of metal recycling entities; providing penalties.

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

SECTION 1. The heading to Chapter 1956, Occupations Code, is amended to read as follows:

#### CHAPTER 1956. ~~[SALES TO METAL DEALERS AND]~~ METAL RECYCLING ENTITIES

SECTION 2. Subchapter A, Chapter 1956, Occupations Code, is amended to read as follows:

#### SUBCHAPTER A. SALE OF REGULATED MATERIAL ~~[ALUMINUM, BRONZE, OR COPPER OR BRASS MATERIAL TO SECONDHAND METAL DEALERS]~~

Sec. 1956.001. DEFINITIONS. In this ~~chapter~~ ~~[subchapter]~~:

(1) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(2) "Bronze material" means:

(A) a cemetery vase, receptacle, or memorial made from bronze;

(B) bronze statuary; or

(C) material readily identifiable as bronze, including bronze wiring.

(3) "Commission" means the Public Safety Commission.

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that consists of at least 50 percent copper; ~~[or]~~

(B) a copper or brass item of a type commonly used in construction or by a public utility; or

(C) copper pipe or copper tubing.

(5) ~~(4)~~ "Department" means the Texas Department of Public Safety.

(6) "Director" means the public safety director.

(7) "Metal recycling entity" means a business that is predominantly engaged

in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal; or

(B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods.

(8) ~~(5)~~ "Personal identification document" means:

(A) a valid driver's license issued by a state in the United States;

(B) a United States military identification card; or

(C) ~~[a passport issued by the United States or by another country and recognized by the United States; or~~

~~(D)~~ a personal identification certificate issued by the department under Section 521.101, Transportation Code, or a corresponding card or certificate issued by another state.

(9) ~~(6)~~ "Regulated material" means:

(A) aluminum material;

(B) bronze material; ~~[or]~~

(C) copper or brass material; or

(D) regulated metal.

(10) "Regulated metal" means metal items regulated under this chapter in accordance with department rules, including:

(A) manhole covers;

(B) guardrails;

(C) compressed cylinders;

(D) beer kegs made from metal other than aluminum;

(E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

(J) communication, transmission, and service wire or cable;

(K) condensing or evaporator coils for heating or air conditioning units;

(L) electric light poles, including the fixtures and hardware;

(M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; and

(N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions.

~~[(7) "Secondhand metal dealer" means:~~

~~[(A) an auto wrecker, a scrap metal processor, or another person or organization that purchases, collects, or solicits regulated material; or~~

~~[(B) a person who operates or maintains a scrap metal yard or other place in which scrap metal or cast off regulated material is collected or kept for shipment, sale, or transfer.]~~

Sec. 1956.002. EXCEPTION. This chapter ~~[subchapter]~~ does not apply to:

~~(1) a purchase of regulated material from a public utility or a manufacturing, industrial, [or other] commercial, retail, or other seller [vendor] that sells regulated material in the ordinary course of the seller's [vendor's] business; or~~

~~(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel.~~

Sec. 1956.0025. LOCAL LAW. (a) A county, municipality, or political subdivision of this state may adopt a rule, charter, or ordinance or issue an order or impose standards that are more stringent than but do not conflict with this chapter or rules adopted under this chapter.

~~(b) A county, municipality, or political subdivision of this state may issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality.~~

Sec. 1956.003. NOTICE TO SELLERS. (a) A metal recycling entity ~~[secondhand metal dealer]~~ shall at all times maintain in a prominent place in the entity's ~~[dealer's]~~ place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) includes the following language:

"A PERSON ATTEMPTING TO SELL ANY REGULATED MATERIAL MUST PRESENT SUFFICIENT IDENTIFICATION AND WRITTEN PROOF OF OWNERSHIP REQUIRED BY STATE LAW."

"WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY ~~[SECONDHAND METAL DEALER]~~ WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL."; and

(2) states the metal recycling entity's ~~[secondhand metal dealer's]~~ usual business hours.

(b) The notice required by this section may be contained on a sign that contains another notice if the metal recycling entity ~~[secondhand metal dealer]~~ is required to display another notice under applicable law.

Sec. 1956.004. INFORMATION PROVIDED BY SELLER. (a) Except as provided by Subsection (f), a ~~[A]~~ person attempting to sell regulated material to a metal recycling entity ~~[secondhand metal dealer]~~ shall:

(1) display to the metal recycling entity ~~[secondhand metal dealer]~~ the person's personal identification document;

(2) provide to the metal recycling entity the make, model, and license plate number of the motor vehicle used to transport the regulated material ~~[or sign a statement that the person does not possess such a document]; and~~

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) ~~(2)~~ sign a written statement provided by the metal recycling entity ~~[secondhand metal dealer]~~ that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(3) ~~[(a)(1) or (2)]~~ may use the statement required by the municipality to comply with Subsection (a)(3) ~~[(a)(1) or (2)]~~.

(c) The metal recycling entity ~~[secondhand metal dealer]~~ or the entity's ~~[dealer's]~~ agent shall visually verify the accuracy of the identification presented by the seller at the time of the purchase of regulated material and make a copy of the identification to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) The metal recycling entity or the entity's agent for recordkeeping purposes may photograph the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) The metal recycling entity or the entity's agent for recordkeeping purposes may take a photograph of the motor vehicle of the seller in which the make, model, and license plate number of the motor vehicle are identifiable in lieu of the information required under Subsection (a)(2).

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(2) if:

(1) the seller signs the written statement as required under Subsection (a)(3);

(2) the seller has previously provided the information required under Subsections (a)(1), (2), and (3); and

(3) that information has not changed.

Sec. 1956.005. RECORD OF PURCHASE. (a) Each metal recycling entity ~~[A secondhand metal dealer]~~ in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase made in the course of the entity's ~~[dealer's]~~ business from an individual of:

(1) copper or brass material ~~[in excess of 50 pounds];~~

(2) bronze material; ~~[or]~~

(3) aluminum material; or

(4) regulated metal ~~[in excess of 40 pounds].~~

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of each individual from whom the regulated material is purchased or obtained;

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and

(5) the information ~~[statement]~~ required by Section 1956.004(a)(3) ~~[1956.004(a)(2)]~~.

Sec. 1956.006. PRESERVATION OF RECORDS. A metal recycling entity [~~secondhand metal dealer~~] shall preserve each record required by Sections 1956.004 and ~~Section~~ 1956.005 until the third anniversary of the date the record was made.

Sec. 1956.007. INSPECTION OF RECORDS BY PEACE OFFICER. (a) On request, a metal recycling entity [~~secondhand metal dealer~~] shall permit a peace officer of this state to inspect, during the entity's [~~dealer's~~] usual business hours:

- (1) a record required by Section 1956.005; or
- (2) regulated material in the entity's [~~dealer's~~] possession.

(b) The inspecting officer shall inform the entity [~~dealer~~] of the officer's status as a peace officer.

Sec. 1956.008. FURNISHING OF REPORT TO DEPARTMENT. (a) Except as provided by Subsection (b), not later than the seventh day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.005, a metal recycling entity [~~secondhand metal dealer~~] shall mail to or file with the department a report containing the information required to be recorded under that section.

(b) If a metal recycling entity [~~secondhand metal dealer~~] purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity [~~dealer~~] shall:

- (1) not later than the close of business on the entity's [~~dealer's~~] first working day after the purchase date, [~~orally~~] notify the department; and
- (2) not later than the fifth day after the purchase date, mail to or file with the department a report containing the information required to be recorded under Section 1956.005.

(c) Subsection (b) does not apply to a purchase from:

- (1) the manufacturer or fabricator of the material or pipe;
- (2) a seller bearing a bill of sale for the material or pipe; or
- (3) the owner of the material or pipe.

Sec. 1956.009. PLACEMENT OF ITEMS ON HOLD. (a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

- (1) the entity acquired the item more than 72 hours before the disposal, processing, sale, or removal; or
- (2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

(b) A peace officer who has reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity [~~secondhand metal dealer~~] is stolen may place the item on hold by issuing to the entity [~~dealer~~] a written notice that:

- (1) specifically identifies the item alleged to be stolen and subject to the hold; and
- (2) informs the entity [~~dealer~~] of the requirements of Subsection (c) [~~(b)~~].

(c) ~~(b)~~ On receiving the notice, the entity ~~[dealer]~~ may not, except as provided by Subsection (e), process or remove from the entity's ~~[dealer's]~~ premises the identified item before the 60th ~~[11th]~~ day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) ~~(e)~~ After the holding period expires, the entity ~~[dealer]~~ may dispose of the item unless disposition violates a court order.

(e) If a hold is placed on a purchase of regulated material, a metal recycling entity may not dispose of, process, sell, or remove from the premises any item from the purchased material unless the hold on the material is released.

Sec. 1956.010. PROHIBITED ACTS. A person may not, with the intent to deceive:

(1) display to a metal recycling entity ~~[secondhand metal dealer]~~ a false or invalid personal identification document in connection with the person's attempted sale of regulated material; ~~[or]~~

(2) make a false, material statement or representation to a metal recycling entity ~~[secondhand metal dealer]~~ in connection with:

(A) that person's execution of a written statement required by Section 1956.004(a)(3) ~~[1956.004(a)(1) or (2)]~~; or

(B) the entity's ~~[dealer's]~~ efforts to obtain the information required under Section 1956.005(b); or

(3) display or provide to a metal recycling entity any information required under Section 1956.004 that the person knows is false or invalid.

Sec. 1956.0105. HOURS FOR PURCHASING MATERIAL. (a) Subject to Subsection (b), a county, municipality, or political subdivision may establish the hours during which a metal recycling entity may purchase regulated material.

(b) A metal recycling entity may not purchase regulated material:

(1) more than 15 consecutive hours in one day; or

(2) later than 9 p.m.

Sec. 1956.011. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 1956.005 or 1956.006 ~~[this subchapter]~~.

An ~~(b) Except as provided by Subsection (e), an~~ offense under this subsection ~~[section]~~ is a Class B misdemeanor unless it is shown on the trial of the offense that ~~[-~~

~~[(e) An offense under this section is a Class A misdemeanor if] the person has previously been convicted of a violation of this subchapter, in which event the offense is a Class A misdemeanor ~~[within the 36 months preceding the date of the offense]~~.~~

(b) A person commits an offense if the person knowingly violates Section 1956.010. An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony.

(c) A person commits an offense if the person knowingly buys stolen regulated material. An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a state jail felony.

(d) A person commits an offense if the person knowingly sells stolen regulated material. An offense under this subsection is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a third degree felony.

(e) ~~(d)~~ On the conviction of a metal recycling entity ~~[secondhand metal dealer]~~ for an offense punishable under Subsection (a) or (c), a court, in addition to imposing any other applicable penalty, may order that the entity ~~[dealer]~~ cease doing business as a metal recycling entity ~~[secondhand metal dealer]~~ for a period not to exceed:

(1) 30 days from the date of the order for each violation that forms the basis of the conviction for a first offense; and

(2) 180 days from the date of the order for each violation that forms the basis of the conviction if it is shown on trial of the offense that the person has previously been convicted under this section.

(f) 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.

SECTION 3. The heading to Subchapter C, Chapter 1956, Occupations Code, is amended to read as follows:

SUBCHAPTER C. RESTRICTIONS ON SALE OF CERTAIN ITEMS TO METAL RECYCLING ENTITIES

SECTION 4. The change in law made by this Act applies only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2007, if any element of the offense was committed before that date.

SECTION 5. This Act takes effect September 1, 2007.

**Floor Amendment No. 1**

Amend **CSSB 1154** (House committee printing) in SECTION 2 of the bill, by striking added Subdivision (7), Section 1956.001, Occupations Code (page 2, lines 12 through 24), and substituting the following:

(7) "Metal recycling entity" means a business that is operated from a fixed location and is predominantly engaged in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;

(B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods; or

(C) purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by Paragraph (A) or (B).

**Floor Amendment No. 2**

Amend **CSSB 1154**, in SECTION 2 of the bill, in proposed Paragraph (L), Subdivision (10), Section 1956.001, Occupations Code (page 4, line 4), by striking "electric light poles" and substituting "utility structure".

**Floor Amendment No. 3**

Amend **CSSB 1154** (House committee printing) in SECTION 2 of the bill, by striking added Subdivision (10), Section 1956.001, Occupations Code (page 3, line 14, through page 3, line 15), and substituting the following:

(10) "Regulated Metal" means:

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1154** on third reading as follows:

(1) In SECTION 2, amend Chapter 1956, Occupations Code, Subchapter A, Section 1956.001, page 2, beginning on line 2 of the bill, to read as follows:

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that ~~consists of at least 50%~~ contains copper or an alloy of copper or zinc.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1154** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; West, Hinojosa, Seliger, and Williams.

**SENATE BILL 1499 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 1499** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1499** by adding the following appropriately numbered section and renumber subsequent sections of the bill accordingly:

SECTION \_\_\_\_ . Section 214.199(a), Local Government Code, is amended to read as follows:

(a) The governing body of a municipality may not adopt an ordinance or policy providing that law enforcement personnel of the municipality will not respond to any alarm signal indicated by an alarm system in the municipality unless, before adopting the ordinance or policy, the governing body of the municipality:



(1) makes reasonable efforts to notify permit holders of its intention to adopt the ordinance or policy; and

(2) conducts a public hearing at which persons interested in the response of the municipality to alarm systems are given the opportunity to be heard.

The amendment was read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1499** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Carona, Ellis, Averitt, and Eltife.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 24, 2007

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

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

**HB 492** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 550** (141 Yeas, 3 Nays, 2 Present, not voting)

**HB 1038** (136 Yeas, 2 Nays, 3 Present, not voting)

**HB 1086** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 1265** (138 Yeas, 6 Nays, 2 Present, not voting)

**HB 1290** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 1667** (140 Yeas, 3 Nays, 2 Present, not voting)

**HB 1669** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 1977** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 2173** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 2438** (142 Yeas, 2 Nays, 1 Present, not voting)

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

**HB 892** (non-record vote)

House Conferees: Hilderbran - Chair/Corte, Frank/Farabee/Harless/Heflin

**HB 1498** (non-record vote)

House Conferees: Hopson - Chair/Cook, Robby/Frost/McReynolds/Ritter

**HB 1638** (non-record vote)

House Conferees: Taylor - Chair/Eiland/Macias/Martinez, "Mando"/Murphy

**HB 2542** (non-record vote)

House Conferees: Kolkhorst - Chair/Aycock/Cook, Robby/Hardcastle/Heflin

**HB 2960** (non-record vote)

House Conferees: Smithee - Chair/Driver/Eiland/Hancock/Taylor

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**HB 2399**

Point of order sustained due to non-germane Senate amendments. The House hereby returns HB 2399 to the Senate for further action.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE ON HOUSE BILL 1610**

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1610** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1610** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Seliger, Williams, Hinojosa, and Hegar.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 103 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **SB 103**. The Conference Committee Report was filed with the Senate on Monday, May 21, 2007.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 161 WITH HOUSE AMENDMENT**

Senator Wentworth called **SB 161** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 161** (House committee printing) in SECTION 1 of the bill as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 6), strike "adding Section 54.5381" and substitute "adding Sections 54.5381 and 54.5382".

(2) In the heading to added Section 54.5381, Education Code (page 1, line 7), immediately preceding "TEXAS STATE", insert "CERTAIN INSTITUTIONS IN".

(3) In added Subsection (a), Section 54.5381, Education Code (page 1, line 11), between "System" and "in", insert ", other than Texas State University–San Marcos,".

(4) Immediately following added Section 54.5381, Education Code (page 2, between lines 14 and 15), insert the following:

Sec. 54.5382. INTERCOLLEGIATE ATHLETICS FEE: TEXAS STATE UNIVERSITY–SAN MARCOS. (a) The board of regents of the Texas State University System may impose an intercollegiate athletics fee on each student enrolled at Texas State University–San Marcos in an amount not to exceed:

(1) \$8.75 per semester credit hour for each regular semester; and

(2) \$4.50 per semester credit hour for each summer session.

(b) The fee may not be imposed unless approved by a majority vote of the students of the university who participate in a general student election held at the university for that purpose.

(c) A fee imposed under this section may be used to develop and maintain an intercollegiate athletics program at the university.

(d) Not more than once in an academic year, the board may increase the amount of the fee authorized by this section by not more than five percent if the increase is approved by the student government of the university. An increase of more than five percent must be approved by a majority vote of the students of the university who participate in a general student election called for that purpose.

(e) A fee imposed under this section is in addition to any other fee authorized by law and may not be considered in determining the maximum amount of student services fees that may be imposed under Section 54.503.

(f) An intercollegiate athletics fee committee is established at the university to advise the board and the administration of the university regarding the expenditure of revenue generated by the fees imposed under this section. The committee is composed of the following members:

(1) three students of the university appointed by the student government of the university;

(2) two students of the university who participate in intercollegiate athletics appointed by the student athlete advisory committee;

(3) the university's athletic director; and

(4) the university's assistant athletic director for business affairs.

(g) A student member of the intercollegiate athletics fee committee serves a one-year term. A student member of the committee who withdraws from the university must resign from the committee. A vacancy in an appointive position on the committee shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(h) The intercollegiate athletics fee committee shall study the amounts of the fee imposed under this section and make recommendations to the appropriate administrators of the university regarding the expenditure of revenue generated by the fees imposed under this section.

(i) Before recommending the intercollegiate athletics fee budget to the board of regents each year, the president of the university shall consider the recommendations of the intercollegiate athletics fee committee. If the president's recommendations to the board are substantially different from the committee's recommendations, the president of the university shall notify the committee not later than the last date on which the committee may request an appearance at the meeting of the board of regents at which the intercollegiate athletics fee budget will be considered. On request of a member of the committee, the president shall provide the member with a written report of the president's recommendations to the board.

(j) If the imposition of a mandatory intercollegiate athletics fee as described by this section was approved by a majority vote of the students of the university who participated in a general student election held on or after January 1, 2005, the board may impose the fee as prescribed by the results of the election without calling an additional election. This subsection expires January 1, 2008.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 161**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### **SENATE RESOLUTION 669**

Senator Zaffirini offered the following resolution:

WHEREAS, For 52 years, J. O. Barrera of San Diego has faithfully served as a Duval County veterans service officer, dutifully meeting the needs of United States military veterans and their families; and

WHEREAS, A San Diego native, Mr. Barrera was called to military service on November 18, 1942, shortly after he was graduated from high school; he spent 19 months in Iceland during his three-year stint before being discharged on December 21, 1945; and

WHEREAS, In 1946, Mr. Barrera began employment with the Duval County Tax Collector's Office, a position he held until February 1, 1955, when he was appointed Duval County veterans service officer; and

WHEREAS, Due to Mr. Barrera's hard work and dedication, he earned the opportunity to become a service officer in the San Antonio Office of the Veterans Affairs Commission in 1973, but his loyalty to the veterans of Duval County led him to decline that offer; and

WHEREAS, Named Outstanding Veterans County Service Officer for the 60-county San Antonio Region by the Texas County Service Officers Association in 1979, Mr. Barrera received the AMVETS National Commander's Appreciation Certificate from the American Veterans Organization Office in Houston on February 26, 1999; that same year, the man known as the "Dean of Texas Veterans Service Officers" was awarded certificates from State Representative Ignacio Salinas, Jr., and State Senator Judith Zaffirini in commemoration of his 44 years of service as Duval County veterans service officer; and

WHEREAS, Mr. Barrera is a member of the American Legion in Benavides and Veterans of Foreign Wars Post 8931 in San Diego; he is the recipient of a lifetime membership in the Veterans of Foreign Wars by the members of Post 8621 in Alice, and he is a member of AMVETS in Houston and the Veterans County Service Officers Association of Texas; and

WHEREAS, Over the past five decades, J. O. Barrera has earned the respect and admiration of countless individuals who have benefited from his commitment to serving his fellow veterans, and he is most worthy of recognition for his continuing efforts to aid and assist these valued Texans; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby commend J. O. Barrera for his 52 years of service as a Duval County veterans service officer and extend to him best wishes for continued success in that role; and, be it further

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

**SR 669** was again read.

The resolution was previously adopted on Thursday, May 17, 2007.

### GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate J. O. Barrera from Duval County, accompanied by his nephew, Ashley Barrera.

The Senate welcomed its guests.

### CONFERENCE COMMITTEE ON HOUSE BILL 463

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 463** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 463** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Brimer, Fraser, Watson, and Wentworth.

**CONFERENCE COMMITTEE ON HOUSE BILL 1623**

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1623** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1623** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Brimer, Williams, Ellis, and Wentworth.

**CONFERENCE COMMITTEE ON HOUSE BILL 1060**

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1060** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1060** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Brimer, Watson, Janek, and Lucio.

**CONFERENCE COMMITTEE ON HOUSE BILL 899**

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 899** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 899** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Hinojosa, Van de Putte, Estes, and Nichols.

**SENATE BILL 1169 WITH HOUSE AMENDMENT**

Senator Janek called **SB 1169** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1169**, House committee printing, by inserting the following new SECTIONS in the bill, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_ .1. Section 410.032, Labor Code, is amended to read as follows:

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) ~~The [As designated by the commissioner, division staff, other than the] benefit review officer who presides [presided or will preside] at the benefit review conference[.] shall:~~

(1) consider a written or verbal request for an interlocutory order for the payment of benefits; and

(2) [shall issue an interlocutory order] if the benefit review officer determines that issuance of an interlocutory order is [determined to be] appropriate, issue the interlocutory order not later than the third day after the date of receipt of the request under Subdivision (1).

(b) The interlocutory order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

SECTION \_\_\_\_ . Section 410.032, Labor Code, as amended by this Act, applies only to a request for an interlocutory order made in conjunction with a workers' compensation benefit review conference that is conducted by a benefit review officer on or after the effective date of this Act. A request made before that date is governed by the law in effect on the date the request is made, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Janek moved to concur in the House amendment to **SB 1169**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 6 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 6** 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.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 6** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Chapter 37, Education Code, is amended by adding Subchapter I to read as follows:

**SUBCHAPTER I. PLACEMENT OF REGISTERED SEX OFFENDERS**

Sec. 37.301. DEFINITION. In this subchapter, "board of trustees" includes the board's designee.

Sec. 37.302. APPLICABILITY. This subchapter:

(1) applies to a student who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) does not apply to a student who is no longer required to register as a sex offender under Chapter 62, Code of Criminal Procedure, including a student who receives an exemption from registration under Subchapter H, Chapter 62, Code of Criminal Procedure, or a student who receives an early termination of the obligation to register under Subchapter I, Chapter 62, Code of Criminal Procedure.

Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM REGULAR CLASSROOM. Notwithstanding any provision of Subchapter A, on receiving notice under Article 15.27, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, that a student is required to register as a sex offender under that chapter, a school district shall remove the student from the regular classroom and determine the appropriate placement of the student in the manner provided by this subchapter.

Sec. 37.304. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS UNDER COURT SUPERVISION. (a) A school district shall place a student to whom this subchapter applies and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program as provided by Section 37.309 for at least one semester.

(b) If a student transfers to another school district during the student's mandatory placement in an alternative education program under Subsection (a), the district to which the student transfers may:

(1) require the student to complete an additional semester in the appropriate alternative education program without conducting a review of the student's placement for that semester under Section 37.306; or

(2) count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement under Subsection (a).

Sec. 37.305. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS NOT UNDER COURT SUPERVISION. A school district may place a student to whom this subchapter applies and who is not under any form of court supervision in the appropriate alternative education program as provided by Section 37.309 for one semester or in the regular classroom. The district may not place the student in the regular classroom if the district board of trustees determines that the student's presence in the regular classroom:

(1) threatens the safety of other students or teachers;

(2) will be detrimental to the educational process; or

(3) is not in the best interests of the district's students.

Sec. 37.306. REVIEW OF PLACEMENT IN ALTERNATIVE EDUCATION PROGRAM. (a) At the end of the first semester of a student's placement in an alternative education program under Section 37.304 or 37.305, the school district board of trustees shall convene a committee to review the student's placement in the alternative education program. The committee must be composed of:

(1) a classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;

(2) the student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department;



(3) an instructor from the alternative education program to which the student is assigned;

(4) a school district designee selected by the board of trustees; and

(5) a counselor employed by the school district.

(b) The committee by majority vote shall determine and recommend to the school district board of trustees whether the student should be returned to the regular classroom or remain in the alternative education program.

(c) If the committee recommends that the student be returned to the regular classroom, the board of trustees shall return the student to the regular classroom unless the board determines that the student's presence in the regular classroom:

(1) threatens the safety of other students or teachers;

(2) will be detrimental to the educational process; or

(3) is not in the best interests of the district's students.

(d) If the committee recommends that the student remain in the alternative education program, the board of trustees shall continue the student's placement in the alternative education program unless the board determines that the student's presence in the regular classroom:

(1) does not threaten the safety of other students or teachers;

(2) will not be detrimental to the educational process; and

(3) is not contrary to the best interests of the district's students.

(e) If, after receiving a recommendation under Subsection (b), the school district board of trustees determines that the student should remain in an alternative education program, the board shall before the beginning of each school year convene the committee described by Subsection (a) to review, in the manner provided by Subsections (b), (c), and (d), the student's placement in an alternative education program.

Sec. 37.307. PLACEMENT AND REVIEW OF STUDENT WITH DISABILITY. (a) The placement under this subchapter of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(b) The review under Section 37.306 of the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee. The admission, review, and dismissal committee may request that the board of trustees convene a committee described by Section 37.306(a) to assist the admission, review, and dismissal committee in conducting the review.

Sec. 37.308. TRANSFER OF REGISTERED SEX OFFENDER. Except as provided by Section 37.304(b), a school district shall determine whether to place a student to whom this subchapter applies and who transfers to the district in the appropriate alternative education program as provided by Section 37.309 or in a regular classroom. The school district shall follow the procedures specified under Section 37.306 in making the determination.

Sec. 37.309. PLACEMENT IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OR JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. (a) Except as provided by Subsection (b), a school

district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a disciplinary alternative education program.

(b) A school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a juvenile justice alternative education program if:

(1) the memorandum of understanding entered into between the school district and juvenile board under Section 37.011(k) provides for the placement of students to whom this subchapter applies in the juvenile justice alternative education program; or

(2) a court orders the placement of the student in a juvenile justice alternative education program.

Sec. 37.310. FUNDING FOR REGISTERED SEX OFFENDER PLACED IN JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. A juvenile justice alternative education program is entitled to funding for a student who is placed in the program under this subchapter in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 for a student who is expelled and placed in a juvenile justice alternative education program for conduct for which expulsion is permitted but not required under Section 37.007.

Sec. 37.311. CONFERENCE. (a) A student or the student's parent or guardian may appeal a decision by a school district board of trustees to place the student in an alternative education program under this subchapter by requesting a conference among the board of trustees, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) If the school district board of trustees determines at the conclusion of the conference that the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, the student is subject to placement in an alternative education program in the manner provided by this subchapter.

(c) A decision by the board of trustees under this section is final and may not be appealed.

Sec. 37.312. LIABILITY. This subchapter does not:

(1) waive any liability or immunity of a governmental entity or its officers or employees; or

(2) create any liability for or a cause of action against a governmental entity or its officers or employees.

Sec. 37.313. CONFLICTS OF LAW. To the extent of any conflict between a provision of this subchapter and a provision of Subchapter A, this subchapter prevails.

SECTION \_\_\_\_. Article 15.27, Code of Criminal Procedure, is amended by amending Subsections (b) and (c) and adding Subsections (a-1) and (j) to read as follows:

(a-1) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice

under Subsection (a) if the superintendent or the person designated by the superintendent determines that the employee needs the information for educational purposes or for the protection of the person informed or others.

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication and whether the student is required to register as a sex offender under Chapter 62. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall, within 24 hours of receiving notification from the office of the prosecuting attorney, ~~promptly~~ notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62.

(c) A parole, ~~or~~ probation, or community supervision office, including a community supervision and corrections department, a juvenile probation department, the paroles division of the Texas Department of Criminal Justice, and the Texas Youth Commission, having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall within 24 hours of learning of the student's transfer or reenrollment notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials shall, within 24 hours of receiving notification under this subsection, ~~promptly~~ notify all instructional and support personnel who have regular contact with the student.

(j) The notification provisions of this section concerning a person who is required to register as a sex offender under Chapter 62 do not lessen the requirement of a person to provide any additional notification prescribed by that chapter.

SECTION \_\_\_\_\_. Subsection (d), Article 15.27, Code of Criminal Procedure, is repealed.

SECTION \_\_\_\_\_. Subchapter I, Chapter 37, Education Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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

Amend **SB 6** on third reading by adding the following appropriately numbered SECTION to the bill and by renumbering the existing SECTIONS of the bill as appropriate:

SECTION \_\_\_\_\_. (a) Section 521.103, Transportation Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) If the department issues or renews a personal identification certificate under this section to a person who is subject to Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger than 14 years of age at the time the offense was committed or the conduct was engaged in, the department shall print "RSO" in black on the face of each personal identification certificate issued to or renewed by the person before the 20th anniversary of the date that the person was first required to register under Chapter 62, Code of Criminal Procedure.

(d) The department may collect an additional fee to implement the requirements of Subsection (c).

(e) The department shall post information on the department's Internet website explaining that a person whose personal identification certificate has "RSO" on the certificate is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger than 14 years of age at the time the offense was committed or the conduct was engaged in.

(b) Section 521.272, Transportation Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) If the department issues or renews a driver's license under this section to a person who is subject to Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger than 14 years of age at the time the offense was committed or the conduct was engaged in, the department shall print "RSO" in black on the face of each driver's license issued to or renewed by the person before the 20th anniversary of the date that the person was first required to register under Chapter 62, Code of Criminal Procedure.

(e) The department may collect an additional fee to implement the requirements of Subsection (d).

(f) The department shall post information on the department's Internet website explaining that a person whose driver's license has "RSO" on the license is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger than 14 years of age at the time the offense was committed or the conduct was engaged in.

(c) Section 522.033, Transportation Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) If the department issues or renews a commercial driver's license or commercial driver learner's permit under this section to a person who is subject to Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger

than 14 years of age at the time the offense was committed or the conduct was engaged in, the department shall print "RSO" in black on the face of each license or learner's permit issued to or renewed by the person before the 20th anniversary of the date that the person was first required to register under Chapter 62, Code of Criminal Procedure.

(d) The department may collect an additional fee to implement the requirements of Subsection (c).

(e) The department shall post information on the department's Internet website explaining that a person whose commercial driver's license or commercial driver learner's permit has "RSO" on the license or learner's permit is subject to the registration requirements of Chapter 62, Code of Criminal Procedure, as a result of a reportable conviction or adjudication that is based on an offense or conduct the victim of which was younger than 14 years of age at the time the offense was committed or the conduct was engaged in.

(d) The change in law made by this section applies only to a personal identification certificate, driver's license, commercial driver's license, or commercial driver learner's permit issued or renewed on or after the effective date of this Act.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 6** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Hinojosa, Carona, Eltife, and Averitt.

**(Senator Brimer in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2261 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 2261**. The Conference Committee Report was filed with the Senate on Tuesday, May 22, 2007.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**SENATE BILL 765 WITH HOUSE AMENDMENT**

Senator Eltife called **SB 765** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 2**

Amend **SB 765** (House committee printing) by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 351.102(c), Tax Code, is amended to read as follows:

(c) A municipality to which Subsection (b) applies is entitled to receive all funds that an owner of a project may receive under Sections 151.429(a) and (h) [~~Section 151.429(h)~~].

SECTION \_\_\_\_\_. Section 2303.003(8), Government Code, is amended to read as follows:

(8) "Qualified hotel project" means a hotel that is constructed on land owned by a municipality or proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, and that is within 1,000 feet of a convention center owned by a municipality having a population of 1.1 million [~~1,500,000~~] or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 765** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Eltife, Chair; Estes, Watson, Averitt, and Ogden.

**SENATE BILL 831 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 831** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 831** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to energy savings performance contracts.

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

SECTION 1. Subsections (f) and (i), Section 44.901, Education Code, are amended to read as follows:

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 [~~15~~] years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures [~~15 years from the final date of installation~~].

(i) Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment [~~is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract or the offeror~~]. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

SECTION 2. Subsections (f), (g), and (i), Section 51.927, Education Code, are amended to read as follows:

(f) The board may enter into an energy savings performance contract for a period of more than one year only if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 [~~15~~] years from the date of installation. If the term of the contract exceeds one year, the institution's contractual obligation in any year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the board in this subsection, divided by the number of years in the contract term beginning after the final date of installation. The board shall consider all costs of the energy or water conservation measures, including costs of design, engineering, installation, maintenance, repairs, and debt service.

(g) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 [~~15~~] years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232, Government Code;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures [~~15 years from the final date of installation~~].

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be given in the manner provided by Section 2156.002, Government Code. The Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office with regard to energy and water conservation measures, shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment [~~is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract~~]. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. A contract is not required to be reviewed or approved by the State Energy Conservation Office. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

SECTION 3. Subsections (f), (g), and (i), Section 2166.406, Government Code, are amended to read as follows:

(f) The state agency may enter into an energy savings performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20 [~~15~~] years from the date of installation.

(g) An energy savings performance contract with respect to existing buildings or facilities may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 [~~15~~] years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures [~~15 years from the final date of installation~~].

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004. Notice of the request for qualifications shall be given in the manner



provided by Section 2156.002. The State Energy Conservation Office shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines adopted under this subsection must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment ~~[is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract]~~. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. An energy savings performance contract may not be entered into unless the contract has been approved by the State Energy Conservation Office. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

SECTION 4. Section 302.001, Local Government Code, is amended to read as follows:

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that may be based on historical costs, revenues, accuracy, or related components and used for determining:

(A) the costs for energy or water usage by a local government and related net operating costs;

(B) the billable revenues from providing energy, water, or other utilities to users; or

(C) the efficiency or accuracy of metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(A) the installation or implementation of any of the items, equipment, modifications, alterations, improvements, systems, and other measures described by Subdivision (4) that are intended to provide:

(i) estimated energy savings;

(ii) an estimated increase in billable revenues; or

(iii) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, other utility costs, or related net operating costs from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(4) "Energy savings performance contract" means a contract between a local government and a provider for energy or water conservation or usage measures ~~[to reduce energy or water consumption or operating costs of local government facilities]~~

in which the estimated energy savings, increase in billable revenues, or increase in meter accuracy [in utility costs] resulting from the measures is subject to guarantee [guaranteed] to offset the cost of the energy or water conservation or usage measures over a specified period. The term includes a contract for the installation or implementation of the following, including all causally connected work:

(A) insulation of a building structure and systems within the building;  
 (B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(C) automatic energy control systems, including computer software and technical data licenses;

(D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(E) lighting fixtures that increase energy efficiency;

(F) energy recovery systems;

(G) electric systems improvements;

(H) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(I) water-conserving landscape irrigation equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces; and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems [equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings]; or

(O) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(5) "Guarantee" means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) [(2)] "Local government" means a county, municipality, or other political subdivision of this state. The term does not include a school district authorized to enter into an energy savings performance contract under Section 44.901, Education Code.

(9) "Meter guarantee" means a guarantee of a stipulated or agreed upon increase in billable revenues to result from the estimated increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in an energy savings performance contract.

(10) "Provider" means an entity in the business of designing, implementing, and installing of energy or water conservation or usage measures or an affiliate of such an entity.

SECTION 5. Subsection (b), Section 302.002, Local Government Code, is amended to read as follows:

(b) Each energy or water conservation or usage measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section 302.001 [~~302.001(1)~~], an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.

SECTION 6. Section 302.003, Local Government Code, is amended to read as follows:

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law, before entering into an energy savings performance contract, the governing body of the local government shall require the provider of the energy or water conservation or usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253, Government Code. The governing body may also require a separate bond to cover the value of the guarantee [~~guaranteed savings on the contract~~].

SECTION 7. Section 302.004, Local Government Code, is amended to read as follows:

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a) An energy savings performance contract may be financed:

(1) under a lease-purchase contract that has a term not to exceed 20 [~~15~~] years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation or usage measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures [~~15 years from the final date of installation~~].

(b) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee ~~[the amount of the savings to be realized by the local government under the contract]~~. If the term of the contract exceeds one year, the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy and~~[ ]~~ water savings, the net~~[, wastewater, and]~~ operating cost savings, and the stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy ~~[including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the local government in this subsection]~~, divided by the number of years in the contract term.

SECTION 8. Section 302.005, Local Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Before entering into an energy savings performance contract, the governing body must require that the energy savings, increase in billable revenues, or increase in meter accuracy estimated or ~~[cost savings]~~ projected by a provider ~~[an offeror]~~ be reviewed by a licensed professional engineer who:

(1) has a minimum of three years of experience in energy calculation and review;

(2) is not an officer or employee of a provider ~~[an offeror]~~ for the contract under review; and

(3) is not ~~[or]~~ otherwise associated with the contract.

(c) In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment ~~[or the offeror]~~. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

SECTION 9. Chapter 302, Local Government Code, is amended by adding Section 302.006 to read as follows:

Sec. 302.006. METER GUARANTEES. (a) This section applies to any energy savings performance contract that:

(1) provides for any metering or related equipment, system, or process or procedure; and

(2) includes a meter guarantee by the provider, regardless of whether the meter guarantee is a part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work.

(b) Not later than the fifth anniversary of the effective date of an energy savings performance contract, an engineer shall test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate the actual average accuracy and shall compare the actual average accuracy to the baseline average accuracy of those tested meters.

(c) A meter guarantee applies if the engineer reports to the local government and the provider that the average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of the tested meters as of the testing date.

(d) The amount payable under the meter guarantee must be determined for each year subject to the engineer's report and is equal to the difference between:

(1) the agreed increase in billable revenues based on the estimated accuracy of all of the meters for each year, according to the energy savings performance contract; and

(2) the revenues for the same year that would result from applying the engineer's reported actual average accuracy of the tested meters to all of the meters subject to the energy savings performance contract, using the same contract components that were used to calculate the agreed increase in billable revenues for that year, assuming the annual decrease in actual average accuracy of all the meters was a pro rata percentage of the reported total decrease in actual average accuracy.

(e) Notwithstanding Subsection (d), if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, the amount payable under the meter guarantee for any year during the measurement period is reduced or offset by the difference between:

(1) the sum of the energy savings and the increase in billable revenues resulting from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period; and

(2) the guaranteed amount of the energy savings and the increase in billable revenues from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period.

(f) A test conducted under this section must be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(g) An engineer conducting a test under this section shall:

(1) verify that the tested meters have been properly maintained and are operating properly; and

(2) comply with Section 302.005(c).

SECTION 10. Section 39.107, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (b), a nonresidential customer may have a meter installed and metering services provided on a competitive basis as part of an energy savings performance contract.

SECTION 11. The changes in law made by this Act apply only to an energy savings performance contract entered into on or after the effective date of this Act. An energy savings performance contract entered into before the effective date of this Act is governed by the law in effect at the time the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 831**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

### CONFERENCE COMMITTEE ON HOUSE BILL 2458

Senator Carona, on behalf of Senator Brimer, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2458** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2458** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Brimer, Chair; Whitmire, Averitt, Shapleigh, and Eltife.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 24, 2007

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

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

**HB 53** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 317** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 638** (146 Yeas, 0 Nays, 1 Present, not voting)

**HB 681** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1460** (142 Yeas, 4 Nays, 1 Present, not voting)

**HB 1889** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 1899** (142 Yeas, 2 Nays, 2 Present, not voting)

**HB 2118** (141 Yeas, 4 Nays, 2 Present, not voting)

**HB 2918** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 3672** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 3876** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 4062** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 4091** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 4109** (142 Yeas, 0 Nays, 2 Present, not voting)

**HJR 72** (138 Yeas, 1 Nays, 3 Present, not voting)

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

**HB 3066** (non-record vote)

House Conferees: Truitt - Chair/Anchia/Isett, Carl/Menendez/Woolley

**HB 3732** (non-record vote)

House Conferees: Hardcastle - Chair/Cook, Robby/Darby/Deshotel/Solomons

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

**HB 1009** (143 Yeas, 0 Nays, 3 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### SENATE BILL 8 WITH HOUSE AMENDMENTS

Senator Janek called **SB 8** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 8** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to random testing of certain public school students for steroid use.

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

SECTION 1. The heading to Section 33.091, Education Code, is amended to read as follows:

Sec. 33.091. PREVENTION OF ILLEGAL STEROID USE; RANDOM TESTING.

SECTION 2. Section 33.091, Education Code, is amended by amending Subsections (b) and (h) and adding Subsections (d), (e), (f), and (f-1) to read as follows:

(b) The league shall adopt rules prohibiting a student from participating in an athletic competition sponsored or sanctioned by the league unless:

(1) the student agrees not to use steroids and, if the student is enrolled in high school, the student submits to random testing for the presence of illegal steroids in the student's body, in accordance with the program established under Subsection (d); and

(2) the league obtains from the student's parent a statement signed by the parent and acknowledging that:

(A) state law prohibits possessing, dispensing, delivering, or administering a steroid in a manner not allowed by state law;

(B) state law provides that bodybuilding, muscle enhancement, or the increase of muscle bulk or strength through the use of a steroid by a person who is in good health is not a valid medical purpose;

(C) only a physician or a person acting under the delegation and supervision of a physician in conformity with Subchapter B, Chapter 157, Occupations Code, ~~medical doctor~~ may prescribe a steroid for a person; and

(D) a violation of state law concerning steroids is a criminal offense punishable by confinement in jail or imprisonment in the Texas Department of Criminal Justice.

(d) The league shall adopt rules for the administration of a steroid testing program under which high school students participating in an athletic competition sponsored or sanctioned by the league are tested for the presence of steroids in the students' bodies. The rules must:

(1) require each school district to submit to the league a list of students who are subject to testing under the program;

(2) establish a statistically significant number of students to be tested;

(3) provide for the league to generate a random list of selected students to be tested by each school district for steroids;

(4) require each school district to test the selected students at a laboratory:

(A) approved by the league; and

(B) certified or accredited:

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

(ii) under the Forensic Urine Drug Testing Program of the College of American Pathologists;

(5) provide for a process for confirming any initial positive test result through a subsequent test conducted as soon as practicable after the initial test, using a sample that was obtained at the same time as the sample used for the initial test; and

(6) provide for a period of ineligibility from participation in an athletic competition sponsored or sanctioned by the league for any student with a confirmed positive test result.

(e) Results of a steroid test conducted under Subsection (d) are confidential and, unless required by court order, may be disclosed only to the student and the student's parent and the activity directors, principal, and assistant principals of the school attended by the student.



(f) The league shall pay the costs of the steroid testing program established under Subsection (d). If necessary to provide adequate revenue to pay those costs, the league shall impose an admission fee for spectators at athletic competitions sponsored or sanctioned by the league. Revenue raised through an admission fee under this subsection shall be used only to pay the costs of the steroid testing program.

(f-1) The league shall conduct a study on the procedures used for specimen collection for the steroid testing program conducted under Subsection (d) and on whether the persons performing specimen collection services used by school districts for the steroid testing are trained and certified. The league shall submit the results of the study to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1, 2008. This subsection expires September 1, 2009.

(h) Subsection (b)(1) does not apply to the use by a student of a steroid that is dispensed, prescribed, delivered, and administered by a medical practitioner for a valid medical purpose and in the course of professional practice, and a student is not subject to a period of ineligibility under Subsection (d)(6) on the basis of that steroid use.

SECTION 3. This Act applies beginning with the 2007-2008 school year.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 8** (House committee printing) on third reading as follows:

(1) In SECTION 2 of the bill, in the introductory language (page 1, line 11), strike "and (f-1)" and substitute "(f-1), and (f-2)".

(2) In SECTION 2 of the bill, in amended Section 33.091, Education Code (page 4, between lines 7 and 8), insert the following:

(f-2) The league shall periodically evaluate the list of substances banned by the United States Anti-Doping Agency and determine whether any of those substances is appropriate for inclusion in the steroid testing program conducted under Subsection (d). Notwithstanding any other provision of this section, if the league determines that inclusion is appropriate, the league may include the banned substance in the scope of the steroid testing program conducted under Subsection (d). A banned substance included in the scope of the steroid testing program in accordance with this subsection is treated as if the substance were a steroid, and all provisions of this section that refer to a steroid apply equally to the banned substance.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 8** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Janek, Chair; Zaffirini, Van de Putte, Seliger, and Averitt.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1973**

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1973** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1973** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Janek, Uresti, Deuell, and Nichols.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 119**

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 119** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 119** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Ellis, Hegar, Nichols, and Lucio.

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

HOUSE CHAMBER

Austin, Texas

May 24, 2007

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

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

**HB 589** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1470** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 1609** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 2365** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 3552** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 4139** (146 Yeas, 0 Nays, 2 Present, not voting)

**HJR 90** (116 Yeas, 26 Nays, 1 Present, not voting)

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

**HB 109** (non-record vote)

House Conferees: Turner - Chair/Davis, John/Dukes/Hughes/King, Susan

**HB 945** (non-record vote)

House Conferees: Herrero - Chair/Branch/Eissler/Hochberg/Zedler

**HB 1111** (non-record vote)

House Conferees: Turner - Chair/Bailey/Bolton/Dutton/Madden

**HB 1457** (non-record vote)

House Conferees: McReynolds - Chair/Chisum/Homer/Kuempel/Miller

**HB 3275** (non-record vote)

House Conferees: Miller - Chair/Callegari/Escobar/O'Day/Pena

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### CONFERENCE COMMITTEE ON HOUSE BILL 1594

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1594** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1594** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Nelson, Fraser, Van de Putte, and Watson.

**SENATE BILL 1714 WITH HOUSE AMENDMENT**

Senator Seliger called **SB 1714** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1714** by removing subsection (b) from Section 4 of the bill and removing reference to subsection (b) on page 2, line 13 of the bill.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1714** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Estes, Eltife, Hegar, and Hinojosa.

**SENATE BILL 1383 WITH HOUSE AMENDMENT**

Senator Seliger called **SB 1383** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1383** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to district hearings and citizen suits for illegally drilling or operating a water well.

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

SECTION 1. Subsections (a), (b), and (c), Section 36.119, Water Code, are amended to read as follows:

(a) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a district rule adopted under Section 36.116(a)(2) ~~[operating a well at a higher rate of production than the rate approved for the well]~~ is declared to be illegal, wasteful per se, and a nuisance.

(b) Except as provided by this section, a landowner or other [A] person who has a right to produce groundwater from land that is [an estate in land] adjacent to the land on which a [the] well or wells are drilled or operated without a required permit or permits or from which groundwater is produced in violation of a district rule adopted under Section 36.116(a)(2) [is located], or who owns or otherwise has a right to produce groundwater from land [a part] that lies within one-half mile of the well or

wells, may sue the owner of the well or wells in a court of competent jurisdiction to restrain or enjoin the illegal drilling, ~~or~~ operation, or both. The suit may be brought with or without the joinder of the district.

(c) Except as provided by this section, the [The] aggrieved party may also sue the owner of the well or wells for damages for injuries suffered by reason of the illegal operation or production and for other relief to which the party [they] may be entitled. In a suit for damages against the owner of the well or wells, the existence [or operation] of a well or wells drilled without a required permit or the operation of a well or wells in violation of a district rule adopted under Section 36.116(a)(2) [~~in violation of the rules of the district]~~ is prima facie evidence of illegal drainage.

SECTION 2. Section 36.119, Water Code, as amended by this Act, applies only to a violation occurring on or after the effective date of this Act. Any violation occurring before the effective date of this Act is governed by the law in effect on the date the violation occurred, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1383** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Averitt, Lucio, Zaffirini, and Eltife.

### SENATE BILL 1119 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1119** 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 1119** in SECTION 1 of the bill, in proposed Section 707.003, Transportation Code (House committee printing, page 3, between lines 16 and 17), by inserting a new Subsection (f) to read as follows:

(f) A local authority shall report results of the traffic engineering study required by Subsection (c) to a citizen advisory committee consisting of one person appointed by each member of the governing body of the local authority. The committee shall advise the local authority on the installation and operation of a photographic traffic signal enforcement system established under this chapter.

**Floor Amendment No. 2**

Amend **SB 1119** in SECTION 1 of the bill, in proposed Section 707.003, Transportation Code (House committee printing, page 3, between lines 16 and 17), by inserting a new Subsection (f) to read as follows:

(f) A local authority or the person the local authority contracts for the administration and enforcement of a photographic traffic signal enforcement system may not provide information about a civil penalty imposed under this chapter to a credit bureau, as defined by Section 392.001, Finance Code.

**Floor Amendment No. 3**

Amend **SB 1119** in SECTION 1 of the bill, in proposed Section 707.003, Transportation Code (House committee printing, page 3, between lines 13 and 14), by inserting a new Subsections (f) and (g) to read as follows:

(f) Before installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall report the number and type of traffic accidents that occur annually at the intersection.

(g) After installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall monitor and report the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

**Floor Amendment No. 4**

Amend **SB 1119** as follows:

(1) In SECTION 1 of the bill, in proposed Section 707.009, Transportation Code (House committee printing, page 9, between lines 13 and 14), add a new Subsection (e) to read as follows:

(e) On the written request of the person who files a timely request for administrative adjudication hearing under this section, an officer or employee of the local authority or of the entity with which the local authority contracts under Section 707.003(a)(1) who is responsible for inspecting and maintaining the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation must appear at the hearing.

(2) In SECTION 1 of the bill, in proposed Section 707.009, Transportation Code (page 9, line 14), strike "(e) The" and substitute "(f) If a request is not made under Subsection (e), the" and reletter subsequent subsections of proposed Section 707.009, Transportation Code, accordingly.

**Floor Amendment No. 5**

Amend **SB 1119** as follows:

On page 1, line 21, strike "and". One page 2, line 2, insert the following:

"(c) does not include a video camera that continuously transmits or records the images of all vehicles that pass through an intersection."

On page 3, line 17, insert the following:

"(f) A local authority that contracts for the administration and enforcement of a photographic traffic signal enforcement system shall ensure that the system only photographs vehicles that have violated or are suspected of violating a traffic-control signal.

(g) A local authority may not operate a video camera that continuously transmits or records the images of all vehicles that pass through an intersection."

### Floor Amendment No. 6

Amend **SB 1119** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 707.007, Transportation Code (page 6, line 19), strike the section heading and substitute "Sec. 707.007. NO ADMISSION OF LIABILITY.".

(2) In SECTION 1 of the bill, in proposed Section 707.007, Transportation Code (page 6, line 23), strike "is considered to" and substitute "does not".

(3) In SECTION 1 of the bill, in proposed Section 707.009, Transportation Code (page 9, line 24), strike "and in an appeal under Section 707.011".

(4) In SECTION 1 of the bill, in proposed Section 707.011(e), Transportation Code (page 11, line 25), between "court" and "by" insert "or jury, at the election of the owner,".

(5) In SECTION 1 of the bill, in proposed Section 707.011, Transportation Code (page 11, lines 20 to 23), strike proposed Subsection (d) and substitute the following:

(d) An appeal stays enforcement and collection of the civil penalty imposed against the owner. The owner of the motor vehicle shall file a promise to pay affidavit to perfect the owner's appeal.

(6) In SECTION 1 of the bill, in proposed Section 707.012, Transportation Code (page 12, line 2), between "may" and "refuse", insert "not".

(7) In SECTION 1 of the bill, in proposed Section 707.013, Transportation Code (page 12, lines 5 and 6), strike "(a) Except as provided by Subsection (b), the" and substitute "The".

(8) In SECTION 1 of the bill, in proposed Section 707.013, Transportation Code (page 12, lines 9 and 10), strike proposed Subsection (b).

(9) Strike SECTION 2 of the bill (page 12, line 25, through page 13, line 11) and renumber subsequent SECTIONS of the bill accordingly.

### Floor Amendment No. 7

Amend **SB 1119** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 707.002, Transportation Code (page 2, line 6), strike "The" and substitute "(a) Except as provided by Subsection (b), the".

(2) In SECTION 1 of the bill, in proposed Section 707.002, Transportation Code (page 2, between lines 14 and 15), insert the following:

(b) The governing body of a local authority may not implement or operate a photographic traffic signal enforcement system after September 1, 2009, unless the legislature specifically authorizes a system to operate after that date.

(3) In SECTION 1 of the bill, at the end of proposed Chapter 707, Transportation Code (page 12, after line 24), add the following new section:

Sec. 707.016. REPORT OF RED LIGHT VIOLATIONS AND ACCIDENTS.

(a) In this section, "department" means the Department of Public Safety of the State of Texas.

(b) The department by rule shall require a local authority that implements a photographic traffic signal enforcement system under this chapter to report to the department not later than October 1 of each year:

(1) the number of accidents and red light violations at each intersection operating a photographic traffic signal enforcement system; and

(2) the number of accidents and red light violations at each intersection that does not operate a photographic traffic signal enforcement system.

(c) The report must be in writing in the form prescribed by the department.

(d) Not later than December 1 of each year, the department shall publish the information submitted by a local authority under Subsection (a).

(4) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. (a) Not later than January 1, 2008, the Department of Public Safety of the State of Texas shall adopt rules as required by Section 707.016, Transportation Code, as added by this Act.

(b) The reporting and publication requirements imposed by Section 707.016, Transportation Code, as added by this Act, apply only to a year beginning on or after January 1, 2008.

#### **Floor Amendment No. 8**

Amend **SB 1119** (House committee printing) in SECTION 1 of the bill, in added Subdivision (2), Subsection (a), Section 707.005, Transportation Code, between "chapter" and the period (page 4, line 13), by inserting ", if the peace officer personally witnesses the violation".

#### **Floor Amendment No. 9**

Amend **SB 1119** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subdivision (9), Subsection (c), Section 707.006, Transportation Code (page 6, line 3), strike "and".

(2) In SECTION 1 of the bill, in added Subdivision (10), Subsection (c), Section 707.006, Transportation Code (page 6, line 16), strike the underlined period and substitute "; and".

(3) In SECTION 1 of the bill, following Subdivision (10), Subsection (c), Section 707.006, Transportation Code (page 6, between lines 16 and 17), insert the following:

"(11) a preprinted, self-addressed, postage-paid envelope for the payment of the civil penalty."

#### **Floor Amendment No. 10**

Amend **SB 1119** (House committee printing) in SECTION 1 of the bill, in added Subsection (b), Section 707.006, Transportation Code, between "mail" and "the notice" (page 4, line 26), by inserting ", by certified mail return receipt requested,".

#### **Floor Amendment No. 11**

Amend **SB 1119** (House committee printing) in Section 1 of the bill, added Section 707.003, Transportation Code (on page 3, between lines 16 and 17, by inserting the following:



(f) The municipality shall install signs along each roadway that leads to an intersection at which a photographic traffic monitoring system is in active use. The signs must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Section 544.001, be easily readable to any operator approaching the intersection, and clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty.

### **Floor Amendment No. 12**

Amend **SB 1119** as follows:

(1) In SECTION 1 of the bill, strike added Subsection (d), Section 707.006, Transportation Code (page 6, lines 17-18).

(2) In SECTION 1 of the bill, strike added Section 707.012, Transportation Code (page 11, line 26 through page 12, line 3).

(3) In SECTION 1 of the bill, in added Section 707.013, Transportation Code (page 12, line 4), strike "Sec. 707.013." and substitute "Sec. 707.012.".

(4) In SECTION 1 of the bill, in added Section 707.013, Transportation Code (page 12, line 5), strike "(a)".

(5) In SECTION 1 of the bill, in added Section 707.013, Transportation Code (page 12, lines 9 and 10), strike added Subsection (b).

(6) In SECTION 1 of the bill, in added Section 707.014, Transportation Code (page 12, line 11), strike "Sec. 707.014." and substitute "Sec. 707.013.".

(7) In SECTION 1 of the bill, in added Section 707.015, Transportation Code (page 12, line 16), strike "Sec. 707.015." and substitute "Sec. 707.014.".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1119** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Watson, Deuell, Ellis, and Wentworth.

### **SENATE BILL 36 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 36** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

### **Amendment**

Amend **SB 36** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the examination of certain applicants for a license to practice medicine.

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

SECTION 1. Section 155.056, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Notwithstanding Subsection (a), an applicant who, on September 1, 2005, held a physician-in-training permit issued under Section 155.105 or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

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

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

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

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

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

(d) The limitation on examination attempts by an applicant under Subsection (a) does not apply to an applicant who:

(1) is licensed and in good standing as a physician in another state;

(2) has been licensed for at least five years; and

(3) does not hold a medical license in the other state that has any restrictions, disciplinary orders, or probation.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 36** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; West, Janek, Uresti, and Deuell.

**(Senator Deuell in Chair)****BILLS AND RESOLUTIONS SIGNED**

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

**SB 162, SB 191, SB 230, SB 297, SB 309, SB 333, SB 401, SB 415, SB 469, SB 556, SB 585, SB 589, SB 610, SB 653, SB 683, SB 684, SB 685, SB 704, SB 707, SB 791, SB 878, SB 994, SB 1046, SB 1051, SB 1070, SB 1071, SB 1083, SB 1127, SB 1128, SB 1138, SB 1205, SB 1254, SB 1271, SB 1380, SB 1414, SB 1433, SB 1440, SB 1483, SB 1495, SB 1548, SB 1619, SB 1668, SB 1669, SB 1713, SB 1733, SB 1762, SB 1946, SB 1955, SB 1969, SB 1976, SB 1987, SB 1988, SB 1989, SB 1990, SB 1991, SB 2029, SB 2033, SB 2042, SB 2043, HB 14, HB 41, HB 52, HB 56, HB 120, HB 149, HB 198, HB 264, HB 308, HB 323, HB 387, HB 401, HB 434, HB 462, HB 538, HB 587, HB 590, HB 618, HB 629, HB 643, HB 713, HB 738, HB 764, HB 842, HB 868, HB 887, HB 891, HB 922, HB 948, HB 963, HB 1005, HB 1049, HB 1052, HB 1082, HB 1179, HB 1187, HB 1188, HB 1204, HB 1318, HB 1346, HB 1373, HB 1418, HB 1561, HB 1572, HB 1585, HB 1586, HB 1634, HB 1678, HB 1679, HB 1719, HB 1734, HB 1764, HB 1788, HB 1789, HB 1839, HB 1930, HB 2010, HB 2015, HB 2042, HB 2132, HB 2171, HB 2216, HB 2235, HB 2293, HB 2313, HB 2341, HB 2348, HB 2350, HB 2359, HB 2371, HB 2398, HB 2444, HB 2462, HB 2471, HB 2489, HB 2503, HB 2504, HB 2518, HB 2580, HB 2622, HB 2664, HB 2691, HB 2718, HB 2754, HB 2765, HB 2796, HB 2834, HB 2882, HB 2910, HB 2945, HB 2983, HB 2992, HB 3092, HB 3123, HB 3132, HB 3135, HB 3143, HB 3325, HB 3410, HB 3492, HB 3514, HB 3537, HB 3955, HB 3972, HB 3995, HB 4044, HCR 67, HCR 215, HCR 216, HCR 217, HCR 246, HJR 103.**

**CONFERENCE COMMITTEE ON HOUSE BILL 3928**

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3928** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3928** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Fraser, Van de Putte, Lucio, and Averitt.

**CONFERENCE COMMITTEE ON HOUSE BILL 155**

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 155** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 155** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Carona, Van de Putte, Hegar, and Ellis.

### SENATE BILL 10 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 10** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 10** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the operation and financing of the medical assistance program and other programs to provide health care benefits and services to persons in this state; providing penalties.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02114 and 531.02192 to read as follows:

Sec. 531.02114. PILOT PROJECT TO SIMPLIFY, STREAMLINE, AND REDUCE COSTS ASSOCIATED WITH MEDICAID COST REPORTING AND AUDITING PROCESS FOR CERTAIN PROVIDERS. (a) In this section:

(1) "Pilot project" means the pilot project to simplify, streamline, and reduce costs associated with the Medicaid cost reporting and auditing process for providers implemented by the commission under this section.

(2) "Provider" means a private ICF-MR facility or home and community-based services waiver program provider.

(b) The commission shall develop and implement a pilot project to simplify, streamline, and reduce costs associated with the Medicaid cost reporting and auditing process for private ICF-MR facilities and home and community-based services waiver program providers.

(c) The executive commissioner by rule shall, with the assistance of the work group established under Subsection (d), adopt cost reporting and auditing processes and guidelines similar to standard business financial reporting processes and guidelines. The rules must:

(1) require that cost report forms:

(A) not exceed 20 letter-size pages in length, including any appendices;

and

(B) be distributed to providers at least one month before the beginning of the applicable reporting period;

(2) require that a provider summarize information regarding program revenue, administrative costs, central office costs, facility costs, and direct-care costs, including the hourly wage detail of direct-care staff;

(3) allow a provider to electronically submit cost reports;

(4) require the filing of cost reports in alternating years as follows:

(A) in even-numbered years, private ICF-MR facility providers; and

(B) in odd-numbered years, home and community-based services

waiver program providers;

(5) allow a provider to request and receive from the commission information, including reports, relating to the services provided by the provider that is maintained by the commission in a database or under another program or system to facilitate the cost reporting process; and

(6) require that each provider receive a full audit by the commission's office of inspector general at least once during the period the pilot project is in operation.

(d) In developing the pilot project, the commission shall establish a work group that reports to the executive commissioner and is responsible for:

(1) developing and proposing cost report forms and processes, audit processes, and rules necessary to implement the pilot project;

(2) developing:

(A) a plan for monitoring the pilot project's implementation; and

(B) recommendations for improving and expanding the pilot project to

other Medicaid programs;

(3) establishing an implementation date for the pilot project that allows the commission to have sufficient information related to the pilot project for purposes of preparing the commission's legislative appropriations request for the state fiscal biennium beginning September 1, 2009;

(4) monitoring wage levels of the direct-care staff of providers to assess the value and need for minimum spending levels; and

(5) submitting a quarterly report to the lieutenant governor, the speaker of the house of representatives, the senate finance committee, and the house appropriations committee regarding the status of the pilot project.

(e) The executive commissioner shall determine the number of members of the work group described by Subsection (d). The executive commissioner shall ensure that the work group includes members who represent:

(1) public and private providers of ICF-MR services and home and community-based waiver program services;

(2) experienced cost report preparers who have received cost report training from the commission;

(3) accounting firms licensed under Chapter 901, Occupations Code, that are familiar with the provision of program services described by Subdivision (1);

(4) commission staff; and

(5) other interested stakeholders, as determined by the executive commissioner.

(f) Not later than September 1, 2012, the commission shall submit a report to the legislature that:

(1) evaluates the operation of the pilot project; and

(2) makes recommendations regarding the continuation or expansion of the pilot project.

(g) This section expires September 1, 2013.

Sec. 531.02192. FEDERALLY QUALIFIED HEALTH CENTER AND RURAL HEALTH CLINIC SERVICES. (a) In this section:

(1) "Federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(1)(2)(B).

(2) "Federally qualified health center services" has the meaning assigned by 42 U.S.C. Section 1396d(1)(2)(A).

(3) "Rural health clinic" and "rural health clinic services" have the meanings assigned by 42 U.S.C. Section 1396d(1)(1).

(b) Notwithstanding any provision of this chapter, Chapter 32, Human Resources Code, or any other law, the commission shall:

(1) promote Medicaid recipient access to federally qualified health center services or rural health clinic services; and

(2) ensure that payment for federally qualified health center services or rural health clinic services is in accordance with 42 U.S.C. Section 1396a(bb).

SECTION 2. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02413 and 531.02414 to read as follows:

Sec. 531.02413. BILLING COORDINATION SYSTEM. (a) If cost-effective and feasible, the commission shall, on or before September 1, 2008, contract for the implementation of an acute care billing coordination system that will, on submission at the point of service of a claim for a service provided to a Medicaid recipient by a Medicaid provider, identify within 24 hours whether another entity has primary responsibility for paying the claim and submit the claim to the issuer the system determines is the primary payor.

(b) The executive commissioner shall adopt rules for the purpose of enabling the system to identify an entity with primary responsibility for paying a claim and establish reporting requirements for any entity that may have a contractual responsibility to pay for the types of acute care services provided under the Medicaid program.

(c) An entity that holds a permit, license, or certificate of authority issued by a regulatory agency of the state must allow the contractor under Subsection (a) access to databases to allow the contractor to carry out the purposes of this section, subject to the contractor's contract with the commission and rules adopted under this subchapter, and the entity is subject to an administrative penalty or other sanction as provided by the law applicable to the permit, license, or certificate of authority for a violation of a rule adopted under this subchapter.

(d) After March 1, 2009, no public funds shall be expended on entities not in compliance with this section unless a memorandum of understanding is entered into between the entity and the executive commissioner.

(e) Information obtained under this section is confidential. The contractor may use the information only for the purposes authorized under this section. A person commits an offense if the person knowingly uses information obtained under this section for any purpose not authorized under this section. An offense under this subsection is a Class B misdemeanor.

(f) In addition to the criminal penalty under Subsection (e), a person who violates that subsection is subject to any applicable administrative or civil penalty imposed under state or federal law.

(g) Providing a person access to or transmitting or otherwise using information obtained under this section must be done in a manner that is consistent with all applicable state and federal law, including rules.

Sec. 531.02414. ADMINISTRATION AND OPERATION OF MEDICAL TRANSPORTATION PROGRAM. (a) In this section, "medical transportation program" means the program that provides nonemergency transportation services to and from covered health care services, based on medical necessity, to recipients under the Medicaid program, the children with special health care needs program, and the transportation for indigent cancer patients program, who have no other means of transportation.

(b) Notwithstanding any other law, the commission shall directly supervise the administration and operation of the medical transportation program.

(c) Notwithstanding any other law, the commission may not delegate the commission's duty to supervise the medical transportation program to any other person, including through a contract with the Texas Department of Transportation for the department to assume any of the commission's responsibilities relating to the provision of services through that program.

(d) The commission may contract with a public transportation provider, as defined by Section 461.002, Transportation Code, a private transportation provider, or a regional transportation broker for the provision of public transportation services, as defined by Section 461.002, Transportation Code, under the medical transportation program.

(b) Section 531.02412(b), Government Code, is amended to read as follows:

(b) This section does not affect the duty of the Texas Department of Transportation to manage the delivery of transportation services, including the delivery of transportation services for clients of health and human services programs, subject to Section 531.02414(c).

(c) Section 455.0015, Transportation Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) Except as provided by Subsection (c-1), the [~~The Texas Department of Health and the~~] Health and Human Services Commission shall contract with the department for the department to assume all responsibilities of the [~~Texas Department of Health and the~~] Health and Human Services Commission relating to the provision of transportation services for clients of eligible programs. The department shall hold at least one public hearing to solicit the views of the public concerning the transition of transportation services to the department under this subsection and shall meet with and consider the views of interested persons, including persons representing transportation clients.

(c-1) The Health and Human Services Commission may not contract with the department for the department to assume any responsibilities of the commission relating to the provision of transportation services under the medical transportation program, as defined by Section 531.02414, Government Code.

(d) The Health and Human Services Commission shall take any action allowed under state law that is necessary to terminate or modify a contract prohibited by Section 455.0015(c-1), Transportation Code, as added by this section, and to ensure compliance with Section 531.02414, Government Code, as added by this section, as soon as possible after the effective date of this section. On the date a contract termination or modification as described by this subsection takes effect:

(1) all powers, duties, functions, activities, property, and records related to the medical transportation program, as defined by Section 531.02414, Government Code, as added by this section, are transferred to the commission; and

(2) a reference in law to the Texas Department of Transportation with respect to that program means the commission.

SECTION 3. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.094, 531.0941, 531.097, and 531.0971 to read as follows:

Sec. 531.094. PILOT PROGRAM AND OTHER PROGRAMS TO PROMOTE HEALTHY LIFESTYLES. (a) The commission shall develop and implement a pilot program in one region of this state under which Medicaid recipients are provided positive incentives to lead healthy lifestyles, including through participating in certain health-related programs or engaging in certain health-conscious behaviors, thereby resulting in better health outcomes for those recipients.

(b) Except as provided by Subsection (c), in implementing the pilot program, the commission may provide:

(1) expanded health care benefits or value-added services for Medicaid recipients who participate in certain programs, such as specified weight loss or smoking cessation programs;

(2) individual health rewards accounts that allow Medicaid recipients who follow certain disease management protocols to receive credits in the accounts that may be exchanged for health-related items specified by the commission that are not covered by Medicaid; and

(3) any other positive incentive the commission determines would promote healthy lifestyles and improve health outcomes for Medicaid recipients.

(c) The commission shall consider similar incentive programs implemented in other states to determine the most cost-effective measures to implement in the pilot program under this section.

(d) Not later than December 1, 2010, the commission shall submit a report to the legislature that:

(1) describes the operation of the pilot program;

(2) analyzes the effect of the incentives provided under the pilot program on the health of program participants; and

(3) makes recommendations regarding the continuation or expansion of the pilot program.

(e) In addition to developing and implementing the pilot program under this section, the commission may, if feasible and cost-effective, develop and implement an additional incentive program to encourage Medicaid recipients who are younger than 21 years of age to make timely health care visits under the early and periodic screening, diagnosis, and treatment program. The commission shall provide incentives under the program for managed care organizations contracting with the commission



under Chapter 533 and Medicaid providers to encourage those organizations and providers to support the delivery and documentation of timely and complete health care screenings under the early and periodic screening, diagnosis, and treatment program.

(f) This section expires September 1, 2011.

Sec. 531.0941. MEDICAID HEALTH SAVINGS ACCOUNT PILOT PROGRAM. (a) If the commission determines that it is cost-effective and feasible, the commission shall develop and implement a Medicaid health savings account pilot program that is consistent with federal law to:

(1) encourage health care cost awareness and sensitivity by adult recipients; and

(2) promote appropriate utilization of Medicaid services by adult recipients.

(b) If the commission implements the pilot program, the commission may only include adult recipients as participants in the program.

(c) If the commission implements the pilot program, the commission shall ensure that:

(1) participation in the pilot program is voluntary; and

(2) a recipient who participates in the pilot program may, at the recipient's option and subject to Subsection (d), discontinue participation in the program and resume receiving benefits and services under the traditional Medicaid delivery model.

(d) A recipient who chooses to discontinue participation in the pilot program and resume receiving benefits and services under the traditional Medicaid delivery model before completion of the health savings account enrollment period forfeits any funds remaining in the recipient's health savings account.

Sec. 531.097. TAILORED BENEFIT PACKAGES FOR CERTAIN CATEGORIES OF THE MEDICAID POPULATION. (a) The executive commissioner may seek a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) to develop and, subject to Subsection (c), implement tailored benefit packages designed to:

(1) provide Medicaid benefits that are customized to meet the health care needs of recipients within defined categories of the Medicaid population through a defined system of care;

(2) improve health outcomes for those recipients;

(3) improve those recipients' access to services;

(4) achieve cost containment and efficiency; and

(5) reduce the administrative complexity of delivering Medicaid benefits.

(b) The commission:

(1) shall develop a tailored benefit package that is customized to meet the health care needs of Medicaid recipients who are children with special health care needs, subject to approval of the waiver described by Subsection (a); and

(2) may develop tailored benefit packages that are customized to meet the health care needs of other categories of Medicaid recipients.

(c) If the commission develops tailored benefit packages under Subsection (b)(2), the commission shall submit a report to the standing committees of the senate and house of representatives having primary jurisdiction over the Medicaid program that specifies, in detail, the categories of Medicaid recipients to which each of those

packages will apply and the services available under each package. The commission may not implement a package developed under Subsection (b)(2) before September 1, 2009.

(d) Except as otherwise provided by this section and subject to the terms of the waiver authorized by this section, the commission has broad discretion to develop the tailored benefit packages under this section and determine the respective categories of Medicaid recipients to which the packages apply in a manner that preserves recipients' access to necessary services and is consistent with federal requirements.

(e) Each tailored benefit package developed under this section must include:

(1) a basic set of benefits that are provided under all tailored benefit packages; and

(2) to the extent applicable to the category of Medicaid recipients to which the package applies:

(A) a set of benefits customized to meet the health care needs of recipients in that category; and

(B) services to integrate the management of a recipient's acute and long-term care needs, to the extent feasible.

(f) In addition to the benefits required by Subsection (e), a tailored benefit package developed under this section that applies to Medicaid recipients who are children must provide at least the services required by federal law under the early and periodic screening, diagnosis, and treatment program.

(g) A tailored benefit package developed under this section may include any service available under the state Medicaid plan or under any federal Medicaid waiver, including any preventive health or wellness service.

(g-1) A tailored benefit package developed under this section must increase the state's flexibility with respect to the state's use of Medicaid funding and may not reduce the benefits available under the Medicaid state plan to any Medicaid recipient population.

(h) In developing the tailored benefit packages, the commission shall consider similar benefit packages established in other states as a guide.

(i) The executive commissioner, by rule, shall define each category of recipients to which a tailored benefit package applies and a mechanism for appropriately placing recipients in specific categories. Recipient categories must include children with special health care needs and may include:

(1) persons with disabilities or special health needs;

(2) elderly persons;

(3) children without special health care needs; and

(4) working-age parents and caretaker relatives.

(j) This section does not apply to a tailored benefit package or similar package of benefits if, before September 1, 2007:

(1) a federal waiver was requested to implement the package of benefits;

(2) the package of benefits is being developed, as directed by the legislature;

or

(3) the package of benefits has been implemented.

Sec. 531.0971. TAILORED BENEFIT PACKAGES FOR NON-MEDICAID POPULATIONS. (a) The commission shall identify state or federal non-Medicaid programs that provide health care services to persons whose health care needs could be met by providing customized benefits through a system of care that is used under a Medicaid tailored benefit package implemented under Section 531.097.

(b) If the commission determines that it is feasible and to the extent permitted by federal and state law, the commission shall:

(1) provide the health care services for persons identified under Subsection (a) through the applicable Medicaid tailored benefit package; and

(2) if appropriate or necessary to provide the services as required by Subdivision (1), develop and implement a system of blended funding methodologies to provide the services in that manner.

(b) Not later than September 1, 2008, the Health and Human Services Commission shall implement the pilot program under Section 531.094, Government Code, as added by this section.

SECTION 4. (a) Subchapter C, Chapter 531, Government Code, is amended by adding Section 531.1112 to read as follows:

Sec. 531.1112. STUDY CONCERNING INCREASED USE OF TECHNOLOGY TO STRENGTHEN FRAUD DETECTION AND DETERRENCE; IMPLEMENTATION. (a) The commission and the commission's office of inspector general shall jointly study the feasibility of increasing the use of technology to strengthen the detection and deterrence of fraud in the state Medicaid program. The study must include the determination of the feasibility of using technology to verify a person's citizenship and eligibility for coverage.

(b) The commission shall implement any methods the commission and the commission's office of inspector general determine are effective at strengthening fraud detection and deterrence.

(b) Not later than December 1, 2008, the Health and Human Services Commission shall submit to the legislature a report detailing the findings of the study required by Section 531.1112, Government Code, as added by this section. The report must include a description of any method described by Subsection (b), Section 531.1112, Government Code, as added by this section, that the commission has implemented or intends to implement.

SECTION 5. (a) Chapter 531, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. TEXAS HEALTH OPPORTUNITY POOL TRUST FUND

Sec. 531.501. DEFINITION. In this subchapter, "fund" means the Texas health opportunity pool trust fund established under Section 531.503.

Sec. 531.502. DIRECTION TO OBTAIN FEDERAL WAIVER. (a) The executive commissioner may seek a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) to the state Medicaid plan to allow the commission to more efficiently and effectively use federal money paid to this state under various programs to defray costs associated with providing uncompensated health care in this state by using that federal money, appropriated state money to the extent necessary, and any other money described by this section for purposes consistent with this subchapter.

(b) The executive commissioner may include the following federal money in the waiver:

(1) all money provided under the disproportionate share hospitals and upper payment limit supplemental payment programs;

(2) money provided by the federal government in lieu of some or all of the payments under those programs;

(3) any combination of funds authorized to be pooled by Subdivisions (1) and (2); and

(4) any other money available for that purpose, including federal money and money identified under Subsection (c).

(c) The commission shall seek to optimize federal funding by:

(1) identifying health care related state and local funds and program expenditures that, before September 1, 2007, are not being matched with federal money; and

(2) exploring the feasibility of:

(A) certifying or otherwise using those funds and expenditures as state expenditures for which this state may receive federal matching money; and

(B) depositing federal matching money received as provided by Paragraph (A) with other federal money deposited as provided by Section 531.504, or substituting that federal matching money for federal money that otherwise would be received under the disproportionate share hospitals and upper payment limit supplemental payment programs as a match for local funds received by this state through intergovernmental transfers.

(d) The terms of a waiver approved under this section must:

(1) include safeguards to ensure that the total amount of federal money provided under the disproportionate share hospitals and upper payment limit supplemental payment programs that is deposited as provided by Section 531.504 is, for a particular state fiscal year, at least equal to the greater of the annualized amount provided to this state under those supplemental payment programs during state fiscal year 2007, excluding amounts provided during that state fiscal year that are retroactive payments, or the state fiscal years during which the waiver is in effect; and

(2) allow for the development by this state of a methodology for allocating money in the fund to:

(A) offset, in part, the uncompensated health care costs incurred by hospitals;

(B) reduce the number of persons in this state who do not have health benefits coverage; and

(C) maintain and enhance the community public health infrastructure provided by hospitals.

(e) In a waiver under this section, the executive commissioner shall seek to:

(1) obtain maximum flexibility with respect to using the money in the fund for purposes consistent with this subchapter;

(2) include an annual adjustment to the aggregate caps under the upper payment limit supplemental payment program to account for inflation, population growth, and other appropriate demographic factors that affect the ability of residents of this state to obtain health benefits coverage;

(3) ensure, for the term of the waiver, that the aggregate caps under the upper payment limit supplemental payment program for each of the three classes of hospitals are not less than the aggregate caps that applied during state fiscal year 2007; and

(4) to the extent allowed by federal law, including federal regulations, and federal waiver authority, preserve the federal supplemental payment program payments made to hospitals, the state match with respect to which is funded by intergovernmental transfers or certified public expenditures that are used to optimize Medicaid payments to safety net providers for uncompensated care, and preserve allocation methods for those payments, unless the need for the payments is revised through measures that reduce the Medicaid shortfall or uncompensated care costs.

(f) The executive commissioner shall seek broad-based stakeholder input in the development of the waiver under this section and shall provide information to stakeholders regarding the terms and components of the waiver for which the executive commissioner seeks federal approval.

(g) The executive commissioner shall seek the advice of the Legislative Budget Board before finalizing the terms and conditions of the negotiated waiver.

Sec. 531.503. ESTABLISHMENT OF TEXAS HEALTH OPPORTUNITY POOL TRUST FUND. Subject to approval of the waiver authorized by Section 531.502, the Texas health opportunity pool trust fund is created as a trust fund outside the state treasury to be held by the comptroller and administered by the commission as trustee on behalf of residents of this state who do not have private health benefits coverage and health care providers providing uncompensated care to those persons. The commission may make expenditures of money in the fund only for purposes consistent with this subchapter and the terms of the waiver authorized by Section 531.502.

Sec. 531.504. DEPOSITS TO FUND. (a) The comptroller shall deposit in the fund:

(1) all federal money provided to this state under the disproportionate share hospitals and upper payment limit supplemental payment programs, and all other non-supplemental payment program federal money provided to this state that is included in the waiver authorized by Section 531.502, other than money provided under the disproportionate share hospitals and upper payment limit supplemental payment programs to state-owned and operated hospitals; and

(2) state money appropriated to the fund.

(b) The commission and comptroller may accept gifts, grants, and donations from any source for purposes consistent with this subchapter and the terms of the waiver. The comptroller shall deposit a gift, grant, or donation made for those purposes in the fund.

Sec. 531.505. USE OF FUND IN GENERAL; RULES FOR ALLOCATION. (a) Except as otherwise provided by the terms of a waiver authorized by Section 531.502, money in the fund may be used:

(1) subject to Section 531.506, to provide reimbursements to health care providers that:

(A) are based on the providers' costs related to providing uncompensated care; and

- (B) compensate the providers for at least a portion of those costs;
- (2) to reduce the number of persons in this state who do not have health benefits coverage;
- (3) to reduce the need for uncompensated health care provided by hospitals in this state; and
- (4) for any other purpose specified by this subchapter or the waiver.
- (b) On approval of the waiver, the executive commissioner shall:
  - (1) seek input from a broad base of stakeholder representatives on the development of rules with respect to, and the administration of, the fund; and
  - (2) by rule develop a methodology for allocating money in the fund that is consistent with the terms of the waiver.

Sec. 531.506. REIMBURSEMENTS FOR UNCOMPENSATED HEALTH CARE COSTS. (a) Except as otherwise provided by the terms of a waiver authorized by Section 531.502 and subject to Subsections (b) and (c), money in the fund may be allocated to hospitals in this state and political subdivisions of this state to defray the costs of providing uncompensated health care in this state.

(b) To be eligible for money from the fund under this section, a hospital or political subdivision must use a portion of the money to implement strategies that will reduce the need for uncompensated inpatient and outpatient care, including care provided in a hospital emergency room. Strategies that may be implemented by a hospital or political subdivision, as applicable, include:

- (1) fostering improved access for patients to primary care systems or other programs that offer those patients medical homes, including the following programs:
  - (A) three share or multiple share programs;
  - (B) programs to provide premium subsidies for health benefits coverage; and

(C) other programs to increase access to health benefits coverage; and  
(2) creating health care systems efficiencies, such as using electronic medical records systems.

(c) The allocation methodology adopted by the executive commissioner under Section 531.505(b) must specify the percentage of the money from the fund allocated to a hospital or political subdivision that the hospital or political subdivision must use for strategies described by Subsection (b).

Sec. 531.507. INCREASING ACCESS TO HEALTH BENEFITS COVERAGE. (a) Except as otherwise provided by the terms of a waiver authorized by Section 531.502, money in the fund that is available to reduce the number of persons in this state who do not have health benefits coverage or to reduce the need for uncompensated health care provided by hospitals in this state may be used for purposes relating to increasing access to health benefits coverage for low-income persons, including:

- (1) providing premium payment assistance to those persons through a premium payment assistance program developed under this section;
- (2) making contributions to health savings accounts for those persons; and
- (3) providing other financial assistance to those persons through alternate mechanisms established by hospitals in this state or political subdivisions of this state that meet certain criteria, as specified by the commission.

(b) The commission and the Texas Department of Insurance shall jointly develop a premium payment assistance program designed to assist persons described by Subsection (a) in obtaining and maintaining health benefits coverage. The program may provide assistance in the form of payments for all or part of the premiums for that coverage. In developing the program, the executive commissioner shall adopt rules establishing:

(1) eligibility criteria for the program;

(2) the amount of premium payment assistance that will be provided under the program;

(3) the process by which that assistance will be paid; and

(4) the mechanism for measuring and reporting the number of persons who obtained health insurance or other health benefits coverage as a result of the program.

(c) The commission shall implement the premium payment assistance program developed under Subsection (b), subject to availability of money in the fund for that purpose.

Sec. 531.508. INFRASTRUCTURE IMPROVEMENTS. (a) Except as otherwise provided by the terms of a waiver authorized by Section 531.502 and subject to Subsection (c), money in the fund may be used for purposes related to developing and implementing initiatives to improve the infrastructure of local provider networks that provide services to Medicaid recipients and low-income uninsured persons in this state.

(b) Infrastructure improvements under this section may include developing and implementing a system for maintaining medical records in an electronic format.

(c) Not more than 10 percent of the total amount of the money in the fund used in a state fiscal year for purposes other than providing reimbursements to hospitals for uncompensated health care may be used for infrastructure improvements described by Subsection (b).

(b) If the executive commissioner of the Health and Human Services Commission obtains federal approval for a waiver under Section 531.502, Government Code, as added by this section, the executive commissioner shall submit a report to the Legislative Budget Board that outlines the components and terms of that waiver as soon as possible after federal approval is granted.

SECTION 6. (a) Chapter 531, Government Code, is amended by adding Subchapter O to read as follows:

#### SUBCHAPTER O. UNCOMPENSATED HOSPITAL CARE

Sec. 531.551. UNCOMPENSATED HOSPITAL CARE REPORTING AND ANALYSIS. (a) The executive commissioner shall adopt rules providing for:

(1) a standard definition of "uncompensated hospital care";

(2) a methodology to be used by hospitals in this state to compute the cost of that care that incorporates the standard set of adjustments described by Section 531.552(g)(4); and

(3) procedures to be used by those hospitals to report the cost of that care to the commission and to analyze that cost.

(b) The rules adopted by the executive commissioner under Subsection (a)(3) may provide for procedures by which the commission may periodically verify the completeness and accuracy of the information reported by hospitals.

(c) The commission shall notify the attorney general of a hospital's failure to report the cost of uncompensated care on or before the date the report was due in accordance with rules adopted under Subsection (a)(3). On receipt of the notice, the attorney general shall impose an administrative penalty on the hospital in the amount of \$1,000 for each day after the date the report was due that the hospital has not submitted the report, not to exceed \$10,000.

(d) If the commission determines through the procedures adopted under Subsection (b) that a hospital submitted a report with incomplete or inaccurate information, the commission shall notify the hospital of the specific information the hospital must submit and prescribe a date by which the hospital must provide that information. If the hospital fails to submit the specified information on or before the date prescribed by the commission, the commission shall notify the attorney general of that failure. On receipt of the notice, the attorney general shall impose an administrative penalty on the hospital in an amount not to exceed \$10,000. In determining the amount of the penalty to be imposed, the attorney general shall consider:

- (1) the seriousness of the violation;
- (2) whether the hospital had previously committed a violation; and
- (3) the amount necessary to deter the hospital from committing future

violations.

(e) A report by the commission to the attorney general under Subsection (c) or (d) must state the facts on which the commission based its determination that the hospital failed to submit a report or failed to completely and accurately report information, as applicable.

(f) The attorney general shall give written notice of the commission's report to the hospital alleged to have failed to comply with a requirement. The notice must include a brief summary of the alleged violation, a statement of the amount of the administrative penalty to be imposed, and a statement of the hospital's right to a hearing on the alleged violation, the amount of the penalty, or both.

(g) Not later than the 20th day after the date the notice is sent under Subsection (f), the hospital must make a written request for a hearing or remit the amount of the administrative penalty to the attorney general. Failure to timely request a hearing or remit the amount of the administrative penalty results in a waiver of the right to a hearing under this section. If the hospital timely requests a hearing, the attorney general shall conduct the hearing in accordance with Chapter 2001, Government Code. If the hearing results in a finding that a violation has occurred, the attorney general shall:

- (1) provide to the hospital written notice of:
  - (A) the findings established at the hearing; and
  - (B) the amount of the penalty; and
- (2) enter an order requiring the hospital to pay the amount of the penalty.

(h) Not later than the 30th day after the date the hospital receives the order entered by the attorney general under Subsection (g), the hospital shall:

- (1) pay the amount of the administrative penalty;



(2) remit the amount of the penalty to the attorney general for deposit in an escrow account and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both and file with the court a sworn affidavit stating that the hospital is financially unable to pay the amount of the penalty.

(i) The attorney general's order is subject to judicial review as a contested case under Chapter 2001, Government Code.

(j) If the hospital paid the penalty and on review the court does not sustain the occurrence of the violation or finds that the amount of the administrative penalty should be reduced, the attorney general shall remit the appropriate amount to the hospital not later than the 30th day after the date the court's judgment becomes final.

(k) If the court sustains the occurrence of the violation:

(1) the court:

(A) shall order the hospital to pay the amount of the administrative penalty; and

(B) may award to the attorney general the attorney's fees and court costs incurred by the attorney general in defending the action; and

(2) the attorney general shall remit the amount of the penalty to the comptroller for deposit in the general revenue fund.

(l) If the hospital does not pay the amount of the administrative penalty after the attorney general's order becomes final for all purposes, the attorney general may enforce the penalty as provided by law for legal judgments.

Sec. 531.552. WORK GROUP ON UNCOMPENSATED HOSPITAL CARE.

(a) In this section, "work group" means the work group on uncompensated hospital care.

(b) The executive commissioner shall establish the work group on uncompensated hospital care to assist the executive commissioner in developing rules required by Section 531.551 by performing the functions described by Subsection (g).

(c) The executive commissioner shall determine the number of members of the work group. The executive commissioner shall ensure that the work group includes representatives from the office of the attorney general and the hospital industry. A member of the work group serves at the will of the executive commissioner.

(d) The executive commissioner shall designate a member of the work group to serve as presiding officer. The members of the work group shall elect any other necessary officers.

(e) The work group shall meet at the call of the executive commissioner.

(f) A member of the work group may not receive compensation for serving on the work group but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the work group as provided by the General Appropriations Act.

(g) The work group shall study and advise the executive commissioner in:

(1) identifying the number of different reports required to be submitted to the state that address uncompensated hospital care, care for low-income uninsured persons in this state, or both;

(2) standardizing the definitions used to determine uncompensated hospital care for purposes of those reports;

(3) improving the tracking of hospital charges, costs, and adjustments as those charges, costs, and adjustments relate to identifying uncompensated hospital care and maintaining a hospital's tax-exempt status;

(4) developing and applying a standard set of adjustments to a hospital's initial computation of the cost of uncompensated hospital care that account for all funding streams that:

(A) are not patient-specific; and

(B) are used to offset the hospital's initially computed amount of uncompensated care;

(5) developing a standard and comprehensive center for data analysis and reporting with respect to uncompensated hospital care; and

(6) analyzing the effect of the standardization of the definition of uncompensated hospital care and the computation of its cost, as determined in accordance with the rules adopted by the executive commissioner, on the laws of this state, and analyzing potential legislation to incorporate the changes made by the standardization.

(b) The executive commissioner of the Health and Human Services Commission shall:

(1) establish the work group on uncompensated hospital care required by Section 531.552, Government Code, as added by this section, not later than October 1, 2007; and

(2) adopt the rules required by Section 531.551, Government Code, as added by this section, not later than January 1, 2009.

(c) The executive commissioner of the Health and Human Services Commission shall review the methodology used under the Medicaid disproportionate share hospitals supplemental payment program to compute low-income utilization costs to ensure that the Medicaid disproportionate share methodology is consistent with the standardized adjustments to uncompensated care costs described by Section 531.552(g)(4), Government Code, as added by this section, and adopted by the executive commissioner.

SECTION 7. Chapter 531, Government Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. PHYSICIAN-CENTERED NURSING FACILITY MODEL  
DEMONSTRATION PROJECT

Sec. 531.601. DEFINITIONS. In this subchapter:

(1) "Nursing facility" has the meaning assigned by Section 242.301, Health and Safety Code.

(2) "Project" means the physician-centered nursing facility model demonstration project implemented under this subchapter.

Sec. 531.602. PHYSICIAN-CENTERED NURSING FACILITY MODEL DEMONSTRATION PROJECT. (a) The commission may develop and implement a demonstration project to determine whether paying an enhanced Medicaid reimbursement rate to a nursing facility that provides continuous, on-site oversight of residents by physicians specializing in geriatric medicine results in:

(1) improved overall health of residents of that facility; and

(2) cost savings resulting from a reduction of acute care hospitalization and pharmaceutical costs.

(b) In developing the project, the commission may consider similar physician-centered nursing facility models implemented in other states to determine the most cost-effective measures to implement in the project under this subchapter.

(c) The commission may consider whether the project could involve the Medicare program, subject to federal law and approval.

Sec. 531.603. REPORT. (a) If the commission develops and implements the project, the commission shall, not later than December 1, 2008, submit a preliminary status report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives having primary jurisdiction over the Medicaid program. The report must:

(1) describe the project, including the implementation and performance of the project during the preceding year; and

(2) evaluate the operation of the project.

(b) If the commission develops and implements the project, the commission shall submit a subsequent report to the persons listed in Subsection (a) preceding the regular session of the 82nd Legislature. The report must make recommendations regarding:

(1) the continuation or expansion of the project, to be determined based on the cost-effectiveness of the project; and

(2) if the commission recommends expanding the project, any necessary statutory or budgetary changes.

Sec. 531.604. EXPIRATION. This subchapter expires September 1, 2011.

SECTION 8. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0051 to read as follows:

Sec. 533.0051. PERFORMANCE MEASURES AND INCENTIVES FOR VALUE-BASED CONTRACTS. (a) The commission shall establish outcome-based performance measures and incentives to include in each contract between a health maintenance organization and the commission for the provision of health care services to recipients that is procured and managed under a value-based purchasing model. The performance measures and incentives must be designed to facilitate and increase recipients' access to appropriate health care services.

(b) Subject to Subsection (c), the commission shall include the performance measures and incentives established under Subsection (a) in each contract described by that subsection in addition to all other contract provisions required by this chapter.

(c) The commission may use a graduated approach to including the performance measures and incentives established under Subsection (a) in contracts described by that subsection to ensure incremental and continued improvements over time.

(d) The commission shall assess the feasibility and cost-effectiveness of including provisions in a contract described by Subsection (a) that require the health maintenance organization to provide to the providers in the organization's provider network pay-for-performance opportunities that support quality improvements in the care of Medicaid recipients. If the commission determines that the provisions are

feasible and may be cost-effective, the commission shall develop and implement a pilot program in at least one health care service region under which the commission will include the provisions in contracts with health maintenance organizations offering managed care plans in the region.

SECTION 9. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.019 to read as follows:

Sec. 533.019. VALUE-ADDED SERVICES. The commission shall actively encourage managed care organizations that contract with the commission to offer benefits, including health care services or benefits or other types of services, that:

(1) are in addition to the services ordinarily covered by the managed care plan offered by the managed care organization; and

(2) have the potential to improve the health status of enrollees in the plan.

(b) The changes in law made by Section 533.019, Government Code, as added by this section, apply to a contract between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this section. The commission shall seek to amend contracts entered into with managed care organizations under that chapter before the effective date of this section to authorize those managed care organizations to offer value-added services to enrollees in accordance with Section 533.019, Government Code, as added by this section.

SECTION 10. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0214 to read as follows:

Sec. 32.0214. DESIGNATIONS OF PRIMARY CARE PROVIDER BY CERTAIN RECIPIENTS. (a) If the department determines that it is cost-effective and feasible and subject to Subsection (b), the department shall require each recipient of medical assistance to designate a primary care provider with whom the recipient will have a continuous, ongoing professional relationship and who will provide and coordinate the recipient's initial and primary care, maintain the continuity of care provided to the recipient, and initiate any referrals to other health care providers.

(b) A recipient who receives medical assistance through a Medicaid managed care model or arrangement under Chapter 533, Government Code, that requires the designation of a primary care provider shall designate the recipient's primary care provider as required by that model or arrangement.

SECTION 11. Section 32.0422, Human Resources Code, is amended to read as follows:

Sec. 32.0422. HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAM FOR MEDICAL ASSISTANCE RECIPIENTS.

(a) In this section:

(1) "Commission" [~~"Department"~~] means the Health and Human Services Commission [~~Texas Department of Health~~].

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Group health benefit plan" means a plan described by Section 1207.001, Insurance Code.

(b) The commission [department] shall identify individuals, otherwise entitled to medical assistance, who are eligible to enroll in a group health benefit plan. The commission [department] must include individuals eligible for or receiving health care services under a Medicaid managed care delivery system.

(b-1) To assist the commission in identifying individuals described by Subsection (b):

(1) the commission shall include on an application for medical assistance and on a form for recertification of a recipient's eligibility for medical assistance:

(A) an inquiry regarding whether the applicant or recipient, as applicable, is eligible to enroll in a group health benefit plan; and

(B) a statement informing the applicant or recipient, as applicable, that reimbursements for required premiums and cost-sharing obligations under the group health benefit plan may be available to the applicant or recipient; and

(2) not later than the 15th day of each month, the office of the attorney general shall provide to the commission the name, address, and social security number of each newly hired employee reported to the state directory of new hires operated under Chapter 234, Family Code, during the previous calendar month.

(c) The commission [department] shall require an individual requesting medical assistance or a recipient, during the recipient's eligibility recertification review, to provide information as necessary relating to any [the availability of a] group health benefit plan that is available to the individual or recipient through an employer of the individual or recipient or an employer of the individual's or recipient's spouse or parent to assist the commission in making the determination required by Subsection (d).

(d) For an individual identified under Subsection (b), the commission [department] shall determine whether it is cost-effective to enroll the individual in the group health benefit plan under this section.

(e) If the commission [department] determines that it is cost-effective to enroll the individual in the group health benefit plan, the commission [department] shall:

(1) require the individual to apply to enroll in the group health benefit plan as a condition for eligibility under the medical assistance program; and

(2) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207, Insurance Code.

(e-1) This subsection applies only to an individual who is identified under Subsection (b) as being eligible to enroll in a group health benefit plan offered by an employer. If the commission determines under Subsection (d) that enrolling the individual in the group health benefit plan is not cost-effective, but the individual prefers to enroll in that plan instead of receiving benefits and services under the medical assistance program, the commission, if authorized by a waiver obtained under federal law, shall:

(1) allow the individual to voluntarily opt out of receiving services through the medical assistance program and enroll in the group health benefit plan;

(2) consider that individual to be a recipient of medical assistance; and

(3) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207, Insurance Code.

(f) Except as provided by Subsection (f-1), the commission [The department] shall provide for payment of:

- (1) the employee's share of required premiums for coverage of an individual enrolled in the group health benefit plan; and
- (2) any deductible, copayment, coinsurance, or other cost-sharing obligation imposed on the enrolled individual for an item or service otherwise covered under the medical assistance program.

(f-1) For an individual described by Subsection (e-1) who enrolls in a group health benefit plan, the commission shall provide for payment of the employee's share of the required premiums, except that if the employee's share of the required premiums exceeds the total estimated Medicaid costs for the individual, as determined by the executive commissioner, the individual shall pay the difference between the required premiums and those estimated costs. The individual shall also pay all deductibles, copayments, coinsurance, and other cost-sharing obligations imposed on the individual under the group health benefit plan.

(g) A payment made by the commission [department] under Subsection (f) or (f-1) is considered to be a payment for medical assistance.

(h) A payment of a premium for an individual who is a member of the family of an individual enrolled in a group health benefit plan under Subsection (e) [this section] and who is not eligible for medical assistance is considered to be a payment for medical assistance for an eligible individual if:

(1) enrollment of the family members who are eligible for medical assistance is not possible under the plan without also enrolling members who are not eligible; and

(2) the commission [department] determines it to be cost-effective.

(i) A payment of any deductible, copayment, coinsurance, or other cost-sharing obligation of a family member who is enrolled in a group health benefit plan in accordance with Subsection (h) and who is not eligible for medical assistance:

(1) may not be paid under this chapter; and

(2) is not considered to be a payment for medical assistance for an eligible individual.

(i-1) The commission shall make every effort to expedite payments made under this section, including by ensuring that those payments are made through electronic transfers of money to the recipient's account at a financial institution, if possible. In lieu of reimbursing the individual enrolled in the group health benefit plan for required premium or cost-sharing payments made by the individual, the commission may, if feasible:

(1) make payments under this section for required premiums directly to the employer providing the group health benefit plan in which an individual is enrolled;  
or

(2) make payments under this section for required premiums and cost-sharing obligations directly to the group health benefit plan issuer.

(j) The commission [department] shall treat coverage under the group health benefit plan as a third party liability to the program. Subject to Subsection (j-1), enrollment [Enrollment] of an individual in a group health benefit plan under this section does not affect the individual's eligibility for medical assistance benefits, except that the state is entitled to payment under Sections 32.033 and 32.038.

(j-1) An individual described by Subsection (e-1) who enrolls in a group health benefit plan is not ineligible for community-based services provided under a Section 1915(c) waiver program or another federal waiver program solely based on the individual's enrollment in the group health benefit plan, and the individual may receive those services if the individual is otherwise eligible for the program. The individual is otherwise limited to the health benefits coverage provided under the health benefit plan in which the individual is enrolled, and the individual may not receive any benefits or services under the medical assistance program other than the premium payment as provided by Subsection (f-1) and, if applicable, waiver program services described by this subsection.

(k) The commission [department] may not require or permit an individual who is enrolled in a group health benefit plan under this section to participate in the Medicaid managed care program under Chapter 533, Government Code, or a Medicaid managed care demonstration project under Section 32.041.

(l) The commission, in consultation with the Texas Department of Insurance, shall provide training to agents who hold a general life, accident, and health license under Chapter 4054, Insurance Code, regarding the health insurance premium payment reimbursement program and the eligibility requirements for participation in the program. Participation in a training program established under this subsection is voluntary, and a general life, accident, and health agent who successfully completes the training is entitled to receive continuing education credit under Subchapter B, Chapter 4004, Insurance Code, in accordance with rules adopted by the commissioner of insurance.

(m) The commission may pay a referral fee, in an amount determined by the commission, to each general life, accident, and health agent who, after completion of the training program established under Subsection (l), successfully refers an eligible individual to the commission for enrollment in a [Texas Department of Human Services shall provide information and otherwise cooperate with the department as necessary to ensure the enrollment of eligible individuals in the] group health benefit plan under this section.

(n) The commission shall develop procedures by which an individual described by Subsection (e-1) who enrolls in a group health benefit plan may, at the individual's option, resume receiving benefits and services under the medical assistance program instead of the group health benefit plan.

(o) The commission shall develop procedures which ensure that, prior to allowing an individual described by Subsection (e-1) to enroll in a group health benefit plan or allowing the parent or caretaker of an individual described by Subsection (e-1) under the age of 21 to enroll that child in a group health benefit plan:

(1) the individual must receive counseling informing them that for the period in which the individual is enrolled in the group health benefit plan:

(A) the individual shall be limited to the health benefits coverage provided under the health benefit plan in which the individual is enrolled;

(B) the individual may not receive any benefits or services under the medical assistance program other than the premium payment as provided by Subsection (f-1);

(C) the individual shall pay the difference between the required premiums and the premium payment as provided by Subsection (f-1) and shall also pay all deductibles, copayments, coinsurance, and other cost-sharing obligations imposed on the individual under the group health benefit plan; and

(D) the individual may, at the individual's option through procedures developed by the commission, resume receiving benefits and services under the medical assistance program instead of the group health benefit plan; and

(2) the individual must sign and the commission shall retain a copy of a waiver indicating the individual has provided informed consent.

(p) The executive commissioner [~~department~~] shall adopt rules as necessary to implement this section.

SECTION 12. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0641 to read as follows:

Sec. 32.0641. COST SHARING FOR CERTAIN HIGH-COST MEDICAL SERVICES. (a) If the department determines that it is feasible and cost-effective, and to the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or regulation or under a federal waiver or other authorization, the executive commissioner of the Health and Human Services Commission shall adopt cost-sharing provisions that require a recipient who chooses a high-cost medical service provided through a hospital emergency room to pay a copayment, premium payment, or other cost-sharing payment for the high-cost medical service if:

(1) the hospital from which the recipient seeks service:

(A) performs an appropriate medical screening and determines that the recipient does not have a condition requiring emergency medical services;

(B) informs the recipient:

(i) that the recipient does not have a condition requiring emergency medical services;

(ii) that, if the hospital provides the nonemergency service, the hospital may require payment of a copayment, premium payment, or other cost-sharing payment by the recipient in advance; and

(iii) of the name and address of a nonemergency Medicaid provider who can provide the appropriate medical service without imposing a cost-sharing payment; and

(C) offers to provide the recipient with a referral to the nonemergency provider to facilitate scheduling of the service; and

(2) after receiving the information and assistance described by Subdivision (1) from the hospital, the recipient chooses to obtain emergency medical services despite having access to medically acceptable, lower-cost medical services.

(b) The department may not seek a federal waiver or other authorization under Subsection (a) that would:



(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

SECTION 13. Chapter 32, Human Resources Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. ELECTRONIC COMMUNICATIONS

Sec. 32.101. DEFINITIONS. In this subchapter:

(1) "Electronic health record" means electronically originated and maintained health and claims information regarding the health status of an individual that may be derived from multiple sources and includes the following core functionalities:

(A) a patient health and claims information or data entry function to aid with medical diagnosis, nursing assessment, medication lists, allergy recognition, demographics, clinical narratives, and test results;

(B) a results management function that may include computerized laboratory test results, diagnostic imaging reports, interventional radiology reports, and automated displays of past and present medical or laboratory test results;

(C) a computerized physician order entry of medication, care orders, and ancillary services;

(D) clinical decision support that may include electronic reminders and prompts to improve prevention, diagnosis, and management; and

(E) electronic communication and connectivity that allows online communication:

(i) among physicians and health care providers; and

(ii) among the Health and Human Services Commission, the operating agencies, and participating providers.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health care provider" means a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state.

(4) "Health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, electronic medical record, computerized physician or health care provider order entry, electronic prescribing, and clinical decision support technology.

(5) "Operating agency" means a health and human services agency operating part of the medical assistance program.

(6) "Participating provider" means a physician or health care provider who is a provider of medical assistance, including a physician or health care provider who contracts or otherwise agrees with a managed care organization to provide medical assistance under this chapter.

(7) "Physician" means an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code, or a person that is:

(A) a professional association of physicians formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code;

(B) an approved nonprofit health corporation certified under Chapter 162, Occupations Code, that employs or contracts with physicians to provide medical services;

(C) a medical and dental unit, as defined by Section 61.003, Education Code, a medical school, as defined by Section 61.501, Education Code, or a health science center described by Subchapter K, Chapter 74, Education Code, that employs or contracts with physicians to teach or provide medical services, or employs physicians and contracts with physicians in a practice plan; or

(D) a person wholly owned by a person described by Paragraph (A), (B), or (C).

(8) "Recipient" means a recipient of medical assistance.

Sec. 32.102. ELECTRONIC COMMUNICATIONS. (a) To the extent allowed by federal law, the executive commissioner may adopt rules allowing the Health and Human Services Commission to permit, facilitate, and implement the use of health information technology for the medical assistance program to allow for electronic communication among the commission, the operating agencies, and participating providers for:

(1) eligibility, enrollment, verification procedures, and prior authorization for health care services or procedures covered by the medical assistance program, as determined by the executive commissioner, including diagnostic imaging;

(2) the update of practice information by participating providers;

(3) the exchange of recipient health care information, including electronic prescribing and electronic health records;

(4) any document or information requested or required under the medical assistance program by the Health and Human Services Commission, the operating agencies, or participating providers; and

(5) the enhancement of clinical and drug information available through the vendor drug program to ensure a comprehensive electronic health record for recipients.

(b) If the executive commissioner determines that a need exists for the use of health information technology in the medical assistance program and that the technology is cost-effective, the Health and Human Services Commission may, for the purposes prescribed by Subsection (a):

(1) acquire and implement the technology; or

(2) evaluate the feasibility of developing and, if feasible, develop, the technology through the use or expansion of other systems or technologies the commission uses for other purposes, including:

(A) the technologies used in the pilot program implemented under Section 531.1063, Government Code; and

(B) the health passport developed under Section 266.006, Family Code.

(c) The commission:

(1) must ensure that health information technology used under this section complies with the applicable requirements of the Health Insurance Portability and Accountability Act;

(2) may require the health information technology used under this section to include technology to extract and process claims and other information collected, stored, or accessed by the medical assistance program, program contractors, participating providers, and state agencies operating any part of the medical assistance program for the purpose of providing patient information at the location where the patient is receiving care;

(3) must ensure that a paper record or document is not required to be filed if the record or document is permitted or required to be filed or transmitted electronically by rule of the executive commissioner;

(4) may provide for incentives to participating providers to encourage their use of health information technology under this subchapter;

(5) may provide recipients with a method to access their own health information; and

(6) may present recipients with an option to decline having their health information maintained in an electronic format under this subchapter.

(d) The executive commissioner shall consult with participating providers and other interested stakeholders in developing any proposed rules under this section. The executive commissioner shall request advice and information from those stakeholders concerning the proposed rules, including advice regarding the impact of and need for a proposed rule.

SECTION 14. (a) Chapter 32, Human Resources Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. ELECTRONIC HEALTH INFORMATION PILOT PROGRAM

Sec. 32.151. DEFINITIONS. In this subchapter:

(1) "Electronic health record" means an ambulatory electronic health record that is certified by the Certification Commission for Healthcare Information Technology or that meets other federally approved interoperability standards.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health information technology" means information technology used to improve the quality, safety, and efficiency of clinical practice, including the core functionalities of an electronic health record, computerized physician order entry, electronic prescribing, and clinical decision support technology.

(4) "Physician" means:

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code; or

(B) a professional association of four or fewer physicians formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code.

(5) "Recipient" means a recipient of medical assistance.

Sec. 32.152. ELECTRONIC HEALTH INFORMATION PILOT PROGRAM. The executive commissioner, from money appropriated for this purpose, shall develop and implement a pilot program for providing health information technology, including electronic health records, for use by primary care physicians who provide medical assistance to recipients.

Sec. 32.153. PROVIDER PARTICIPATION. For participation in the pilot program, the department shall select physicians who:

(1) volunteer to participate in the program;  
(2) are providers of medical assistance, including physicians who contract or otherwise agree with a managed care organization to provide medical assistance under this chapter; and

(3) demonstrate that at least 40 percent of the physicians' practice involves the provision of primary care services to recipients in the medical assistance program.

Sec. 32.154. SECURITY OF PERSONALLY IDENTIFIABLE HEALTH INFORMATION. (a) Personally identifiable health information of recipients enrolled in the pilot program must be maintained in an electronic format or technology that meets interoperability standards that are recognized by the Certification Commission for Healthcare Information Technology or other federally approved certification standards.

(b) The system used to access a recipient's electronic health record must be secure and maintain the confidentiality of the recipient's personally identifiable health information in accordance with applicable state and federal law.

Sec. 32.155. GIFTS, GRANTS, AND DONATIONS. The department may request and accept gifts, grants, and donations from public or private entities for the implementation of the pilot program.

Sec. 32.156. PROTECTED HEALTH INFORMATION. To the extent that this subchapter authorizes the use or disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity shall ensure that the use or disclosure complies with all applicable requirements, standards, or implementation specifications of the privacy rule.

Sec. 32.157. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2011.

(b) Not later than December 31, 2008, the executive commissioner of the Health and Human Services Commission shall submit to the governor, lieutenant governor, speaker of the house of representatives, presiding officer of the House Committee on Public Health, and presiding officer of the Senate Committee on Health and Human Services a report regarding the preliminary results of the pilot program established under Subchapter D, Chapter 32, Human Resources Code, as added by this section, and any recommendations regarding expansion of the pilot program, including any recommendations for legislation and requests for appropriation necessary for the expansion of the pilot program.

SECTION 15. (a) In this section, "committee" means the committee on health and long-term care insurance incentives.

(b) The committee on health and long-term care insurance incentives is established to study and develop recommendations regarding methods by which this state may reduce the need for residents of this state to rely on the Medicaid program by providing incentives for employers to provide health insurance, long-term care insurance, or both, to their employees.

(c) The committee on health and long-term care insurance incentives is composed of:

(1) the presiding officers of:

- (A) the Senate Committee on Health and Human Services;
- (B) the House Committee on Public Health;
- (C) the Senate Committee on State Affairs; and
- (D) the House Committee on Insurance;

(2) three public members, appointed by the governor, who collectively represent the diversity of businesses in this state, including diversity with respect to:

- (A) the geographic regions in which those businesses are located;
- (B) the types of industries in which those businesses are engaged; and
- (C) the sizes of those businesses, as determined by number of

employees; and

(3) the following ex officio members:

- (A) the comptroller of public accounts;
- (B) the commissioner of insurance; and
- (C) the executive commissioner of the Health and Human Services

Commission.

(d) The committee shall elect a presiding officer from the committee members and shall meet at the call of the presiding officer.

(e) The committee shall study and develop recommendations regarding incentives this state may provide to employers to encourage those employers to provide health insurance, long-term care insurance, or both, to employees who would otherwise rely on the Medicaid program to meet their health and long-term care needs. In conducting the study, the committee shall:

(1) examine the feasibility and determine the cost of providing incentives through:

(A) the franchise tax under Chapter 171, Tax Code, including allowing exclusions from an employer's total revenue of insurance premiums paid for employees, regardless of whether the employer chooses under Section 171.101(a)(1)(B)(ii), Tax Code, as effective January 1, 2008, to subtract cost of goods sold or compensation for purposes of determining the employer's taxable margin;

(B) deductions from or refunds of other taxes imposed on the employer; and

(C) any other means, as determined by the committee; and

(2) for each incentive the committee examines under Subdivision (1) of this subsection, determine the impact that implementing the incentive would have on reducing the number of individuals in this state who do not have private health or long-term care insurance coverage, including individuals who are Medicaid recipients.

(f) Not later than September 1, 2008, the committee shall submit to the Senate Committee on Health and Human Services, the House Committee on Public Health, the Senate Committee on State Affairs, and the House Committee on Insurance a report regarding the results of the study required by this section. The report must include a detailed description of each incentive the committee examined and determined is feasible and, for each of those incentives, specify:

- (1) the anticipated cost associated with providing that incentive;
- (2) any statutory changes needed to implement the incentive; and
- (3) the impact that implementing the incentive would have on reducing:

(A) the number of individuals in this state who do not have private health or long-term care insurance coverage; and

(B) the number of individuals in this state who are Medicaid recipients.

SECTION 16. (a) The Health and Human Services Commission shall conduct a study regarding the feasibility and cost-effectiveness of developing and implementing an integrated Medicaid managed care model designed to improve the management of care provided to Medicaid recipients who are aging, blind, or disabled or have chronic health care needs and are not enrolled in a managed care plan offered under a capitated Medicaid managed care model, including recipients who reside in:

(1) rural areas of this state; or

(2) urban or surrounding areas in which the Medicaid Star + Plus program or another capitated Medicaid managed care model is not available.

(b) Not later than September 1, 2008, the Health and Human Services Commission shall submit a report regarding the results of the study to the standing committees of the senate and house of representatives having primary jurisdiction over the Medicaid program.

SECTION 17. (a) In this section:

(1) "Child health plan program" means the state child health plan program authorized by Chapter 62, Health and Safety Code.

(2) "Medicaid" means the medical assistance program provided under Chapter 32, Human Resources Code.

(b) The Health and Human Services Commission shall conduct a study of the feasibility of providing a health passport for:

(1) children under 19 years of age who are receiving Medicaid and are not provided a health passport under another law of this state; and

(2) children enrolled in the child health plan program.

(c) The feasibility study must:

(1) examine the cost-effectiveness of the use of a health passport in conjunction with the coordination of health care services under each program;

(2) identify any barriers to the implementation of the health passport developed for each program and recommend strategies for the removal of those barriers;

(3) examine whether the use of a health passport will improve the quality of care for children described in Subsection (b) of this section; and

(4) determine the fiscal impact to this state of the proposed initiative.

(d) Not later than January 1, 2009, the Health and Human Services Commission shall submit to the governor, lieutenant governor, speaker of the house of representatives, and presiding officers of each standing committee of the legislature with jurisdiction over the commission a written report containing the findings of the study and the commission's recommendations.

(e) This section expires September 1, 2009.

SECTION 18. (a) The Medicaid Reform Legislative Oversight Committee is created to facilitate the reform efforts in Medicaid, the process of addressing the issues of uncompensated hospital care, and the establishment of programs addressing the uninsured.

(b) The committee is composed of six members, as follows:

(1) three members of the senate, appointed by the lieutenant governor not later than October 1, 2007; and

(2) three members of the house of representatives, appointed by the speaker of the house of representatives not later than October 1, 2007.

(c) A member of the committee serves at the pleasure of the appointing official.

(d) The lieutenant governor shall designate a member of the committee as the presiding officer.

(e) A member of the committee may not receive compensation for serving on the committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(f) The committee shall:

(1) facilitate the design and development of any Medicaid waivers needed to affect reform as directed by this Act;

(2) facilitate a smooth transition from existing Medicaid payment systems and benefit designs to the new model of Medicaid enabled by waiver or policy change by the Health and Human Services Commission;

(3) meet at the call of the presiding officer; and

(4) research, take public testimony, and issue reports requested by the lieutenant governor or speaker of the house of representatives.

(g) The committee may:

(1) request reports and other information from the Health and Human Services Commission; and

(2) review the findings of the work group on uncompensated hospital care established under Section 531.552, Government Code, as added by this Act.

(h) The committee shall use existing staff of the senate, the house of representatives, and the Texas Legislative Council to assist the committee in performing its duties under this section.

(i) Chapter 551, Government Code, applies to the committee.

(j) The committee shall report to the lieutenant governor and speaker of the house of representatives not later than November 15, 2008. The report must include:

(1) identification of significant issues that impede the transition to a more effective Medicaid program;

(2) the measures of effectiveness associated with changes to the Medicaid program;

(3) the impact of Medicaid changes on safety net hospitals and other significant traditional providers; and

(4) the impact on the uninsured in Texas.

(k) This section expires September 1, 2009, and the committee is abolished on that date.

(l) 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 this section to have immediate effect, this section takes effect September 1, 2007.

SECTION 19. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 20. Except as otherwise provided by this Act, this Act takes effect September 1, 2007.

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

Amend **CSSB 10** on page 44, lines 12, by inserting a new Subsection 32.0641(c) to read as follows:

(c) If the executive commissioner of the Health and Human Services Commission adopts a copayment or other cost-sharing payment under Subsection (a), the commission shall not reduce hospital payments to reflect the potential receipt of a copayment or other payment from a recipient for any hospital emergency room services.

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

Amend **CSSB 10** (House committee printing) by inserting the following new SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) In this section:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Texas Department of Insurance.

(b) The department and the commission shall jointly study a small employer premium assistance program to provide financial assistance for the purchase of small employer health benefit plans by small employers.

(c) The study conducted under this section must address:

(1) options for program funding, including use of money in the Texas health opportunity pool trust fund as described by Section 531.507, Government Code;

(2) coordination with any other premium assistance effort operated, under development, or under consideration by either agency; and

(3) recommended program design, including:

(A) the manner of targeting small employers;

(B) provisions to discourage employers and others from electing to discontinue other private coverage for employees;

(C) a minimum premium, or percentage of premium, that a small employer must pay for each eligible employee's coverage;



(D) eligibility requirements for enrollees for whom financial assistance is provided to individuals;

(E) allocation of opportunities for enrollment in the program;

(F) the duration of enrollment in the program and requirements for renewal; and

(G) verification that small employers participating in the program use premium assistance to purchase and maintain a small employer health benefit plan.

(d) In conducting the study, the department and the commission may consider programs and efforts undertaken by other states to provide premium assistance to small employers.

(e) Not later than November 1, 2008, the department and the commission shall jointly submit a report to the 81st Legislature. The report must summarize the results of the study conducted under this section and the recommendations of the department and commission and may include recommendations for proposed legislation to implement a small employer premium assistance program as described by Subsection (b) of this section.

### Floor Amendment No. 3

Amend **CSSB 10** (House committee printing) as follows:

(1) In the recital to SECTION 2(a) of the bill (page 5, line 10), strike "Sections 531.02413 and 531.02414" and substitute "Section 531.02414".

(2) In SECTION 2(a) of the bill, strike added Section 531.02413, Government Code (page 5, line 12, through page 6, line 25).

### Floor Amendment No. 4

Amend **CSSB 10** in SECTION 5 of the bill, immediately following proposed Subsection (c), Section 531.506, Government Code (House committee report, page 22, between lines 20 and 21), by inserting the following:

(d) Except as otherwise provided by the terms of a waiver authorized by Section 531.502, money in the fund may also be allocated to federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B), in this state to defray the costs of providing uncompensated health care in this state.

### Floor Amendment No. 5

Amend **CSSB 10** (House committee report) as follows:

(1) In Section 14 of the bill, in added Section 32.151, Human Resources Code (page 49, lines 22 through 27), strike Subdivision (4) and substitute the following:

(4) "Provider" means:

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association of four or fewer physicians formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code; or

(C) an advanced practice nurse licensed and authorized to practice under Subtitle E, Title 3, Occupations Code.

(2) In SECTION 14 of the bill, in added Section 32.152, Human Resources Code (page 50, line 7), strike "physicians" and substitute "providers".

(3) In SECTION 14 of the bill, in added Section 32.153, Human Resources Code (page 50, lines 10 and 13), strike "physicians" each time it appears and substitute "providers".

(4) In SECTION 14 of the bill, in Subdivision (3), in added Section 32.153, Human Resources Code (page 50, line 16), strike "physicians" and substitute "providers".

### **Floor Amendment No. 6**

Amend **CSSB 10** (House committee report) as follows:

(1) In Section 14 of the bill, in added Section 32.151, Human Resources Code (page 49, lines 22 through 27), strike Subdivision (4) and substitute the following:

(4) "Provider" means:

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association of four or fewer physicians formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code; or

(C) an advanced practice nurse licensed and authorized to practice under Subtitle E, Title 3, Occupations Code.

(2) In SECTION 14 of the bill, in added Section 32.152, Human Resources Code (page 50, line 7), strike "physicians" and substitute "providers".

(3) In SECTION 14 of the bill, in added Section 32.153, Human Resources Code (page 50, lines 10 and 13), strike "physicians" each time it appears and substitute "providers".

(4) In SECTION 14 of the bill, in Subdivision (3), in added Section 32.153, Human Resources Code (page 50, line 16), strike "physicians" and substitute "providers".

### **Floor Amendment No. 7**

Amend **CSSB 10** (House committee printing) as follows:

(1) In SECTION 18(b) of the bill (page 56, line 22), strike "six" and substitute "10".

(2) In SECTION 18(b)(1) of the bill (page 56, line 23), strike "three" and substitute "five".

(3) In SECTION 18(b)(2) of the bill (page 56, line 25), strike "three" and substitute "five".

### **Floor Amendment No. 9**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 32.058, Human Resources Code, is amended to read as follows:

Sec. 32.058. LIMITATION ON MEDICAL ASSISTANCE IN CERTAIN ALTERNATIVE COMMUNITY-BASED CARE SETTINGS. (a) In this section, "medical assistance waiver program" means a program administered by the

Department of Aging and Disability Services, other than the Texas home living program, that provides services under a waiver granted in accordance with 42 U.S.C. Section 1396n(c)~~[-~~

~~[(1) "Institution" means a nursing facility or an ICF MR facility.~~

~~[(2) "Medical assistance waiver program" means:~~

~~[(A) the community based alternatives program;~~

~~[(B) the community living assistance and support services program;~~

~~[(C) the deaf blind/multiple disabilities program;~~

~~[(D) the consolidated waiver pilot program; or~~

~~[(E) the medically dependent children program].~~

(b) Except as provided by Subsection (c), ~~[or]~~ (d), (e), or (f), the department may not provide services under a medical assistance waiver program to a person ~~[receiving medical assistance]~~ if the projected cost of providing those services over a 12-month period exceeds the individual cost limit specified in the medical assistance waiver program.

(c) The department shall continue to provide services under a medical assistance waiver program to a person who was ~~[is]~~ receiving those services on September 1, 2005, at a cost that exceeded ~~[exceeds]~~ the individual cost limit specified in the medical assistance waiver program, if continuation of those services:

(1) is necessary for the person to live in the most integrated setting appropriate to the needs of the person; and

(2) does not affect the department's compliance with the federal average per capita expenditure requirement ~~[cost effectiveness and efficiency requirements]~~ of the medical assistance waiver program under 42 U.S.C. Section ~~[Sections 1396n(b) and]~~ 1396n(c)(2)(D).

(d) The department may continue to provide services under a medical assistance waiver program, other than the home and community-based services program, to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if:

(1) the projected cost of providing those services to the person under the medical assistance waiver program over a 12-month period does not exceed 133.3 percent of the individual cost limit specified in the medical assistance waiver program; and

(2) continuation of those services does not affect the department's compliance with the federal average per capita expenditure requirement ~~[cost effectiveness and efficiency requirements]~~ of the medical assistance waiver program under 42 U.S.C. Section ~~[Sections 1396n(b) and]~~ 1396n(c)(2)(D).

(e) The department may exempt a person from the cost limit established under Subsection (d)(1) for a medical assistance waiver program if the department determines that:

(1) the person's health and safety cannot be protected by the services provided within the cost limit established for the program under that subdivision; and

(2) there is no available living arrangement, other than one provided through the program or another medical assistance waiver program, in which the person's health and safety can be protected, as evidenced by:

(A) an assessment conducted by clinical staff of the department; and

(B) supporting documentation, including the person's medical and service records.

(f) The department may continue to provide services under the home and community-based services program to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if the department makes, with regard to the person's receipt of services under the home and community-based services program, the same determinations required by Subsections (e)(1) and (2) in the same manner provided by Subsection (e) and determines that continuation of those services does not affect:

(1) the department's compliance with the federal average per capita expenditure requirement of the home and community-based services program under 42 U.S.C. Section 1396n(c)(2)(D); and

(2) any cost-effectiveness requirements provided by the General Appropriations Act that limit expenditures for the home and community-based services program.

(g) The executive commissioner of the Health and Human Services Commission may adopt rules to implement Subsections (d), (e), and (f) ~~under which the department may exempt a person from the cost limit established under Subsection (d)(1).~~

(h) If a federal agency determines that compliance with any provision in this section would make this state ineligible to receive federal funds to administer a program to which this section applies, a state agency may, but is not required to, implement that provision.

(b) The changes in law made by this section apply only to a person receiving medical assistance on or after the effective date of this section, regardless of when eligibility for that assistance was determined.

### **Floor Amendment No. 11**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subsection (a), Section 773.004, Health and Safety Code, is amended to read as follows:

(a) This chapter does not apply to:

~~(1) [a ground transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence, unless it is medically necessary to transport the patient using a stretcher;~~

~~(2)~~ [2] air transfer that does not advertise as an ambulance service and that is not licensed by the department;

~~(3)~~ [3] the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

~~(4)~~ [4] an industrial ambulance; or

~~(5)~~ [5] a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

(b) Section 773.041, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A person may not transport a patient by stretcher in a vehicle unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter. For purposes of this subsection, "person" means an individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(c) Not later than November 1, 2007, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this section to Chapter 773, Health and Safety Code.

### **Floor Amendment No. 12**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.072 to read as follows:

Sec. 32.072. DIRECT ACCESS TO EYE HEALTH CARE SERVICES. (a) Notwithstanding any other law, a recipient of medical assistance is entitled to:

(1) select an ophthalmologist or therapeutic optometrist who is a medical assistance provider to provide eye health care services that are within the scope of:

(A) services provided under the medical assistance program; and

(B) the professional specialty practice for which the ophthalmologist or therapeutic optometrist is licensed and credentialed; and

(2) have direct access to the selected ophthalmologist or therapeutic optometrist for the provision of the services without any requirement to obtain:

(A) a referral from a primary care physician or other gatekeeper or health care coordinator; or

(B) any other prior authorization or precertification.

(b) The department may require an ophthalmologist or therapeutic optometrist selected as provided by this section by a recipient of medical assistance who is otherwise required to have a primary care physician or other gatekeeper or health care coordinator to forward to the recipient's physician, gatekeeper, or health care coordinator information concerning the eye health care services provided to the recipient.

(c) This section may not be construed to expand the scope of eye health care services provided under the medical assistance program.

(b) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0026 to read as follows:

Sec. 533.0026. DIRECT ACCESS TO EYE HEALTH CARE SERVICES UNDER MEDICAID MANAGED CARE MODEL OR ARRANGEMENT. Notwithstanding any other law, the commission shall ensure that a managed care plan offered by a managed care organization that contracts with the commission under this chapter and any other Medicaid managed care model or arrangement implemented

under this chapter allow a Medicaid recipient who receives services through the plan or other model or arrangement to, in the manner and to the extent required by Section 32.072, Human Resources Code:

(1) select an ophthalmologist or therapeutic optometrist to provide eye health care services; and

(2) have direct access to the selected ophthalmologist or therapeutic optometrist for the provision of the services.

(c) The changes in law made by Section 533.0026, Government Code, as added by this section, apply to a contract between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this section.

### **Floor Amendment No. 13**

Amend **CSSB 10** as follows:

(1) In SECTION 5(a) of the bill, at the end of proposed Paragraph (C), Subdivision (1), Subsection (b), Section 531.506, Government Code (page 22, line 13), by striking "and".

(2) In SECTION 5(a) of the bill, at the end of proposed Subdivision (2), Subsection (b), Section 531.506, Government Code (page 22, line 15), between "systems" and the period, insert:

; and

(3) implementing one or more programs to prevent the spread of HIV, hepatitis B, hepatitis C and other infectious and communicable diseases, which may include a disease control program that provides for the anonymous exchange of used hypodermic needles and syringes

### **Floor Amendment No. 14**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . SEVERABILITY. If any provision of this Act is held by a court to be invalid, that invalidity does not affect the other provisions of this Act, and to this end the provisions of this Act are severable.

### **Floor Amendment No. 15**

Amend **CSSB 10** by inserting the following sections, appropriately numbered, and renumbering sections of the bill accordingly:

SECTION \_\_\_\_ . Subtitle C, Title 2, Health and Safety Code, is amended by adding Chapter 75 to read as follows:

CHAPTER 75. REGIONAL OR LOCAL HEALTH CARE PROGRAMS FOR  
EMPLOYEES OF SMALL EMPLOYERS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 75.001. PURPOSE. The purpose of this chapter is to:

(1) improve the health of employees of small employers and their families by improving the employees' access to health care and by reducing the number of those employees who are uninsured;

(2) reduce the likelihood that those employees and their families will require services from state-funded entitlement programs such as Medicaid;

(3) contribute to economic development by helping small businesses remain competitive with a healthy workforce and health care benefits that will attract employees; and

(4) encourage innovative solutions for providing and funding health care services and benefits.

Sec. 75.002. DEFINITIONS. In this chapter:

(1) "Employee" means an individual employed by an employer. The term includes a partner of a partnership and the proprietor of a sole proprietorship.

(2) "Governing body" means:

(A) the commissioners courts of the counties participating in a regional health care program;

(B) the commissioners court of a county participating in a local health care program; or

(C) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.

(3) "Local health care program" means a local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B.

(4) "Regional health care program" means a regional health care program operating in two or more counties and established for the benefit of the employees of small employers under Subchapter B.

(5) "Small employer" means a person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

[Sections 75.003-75.050 reserved for expansion]

#### SUBCHAPTER B. REGIONAL OR LOCAL HEALTH CARE PROGRAM

Sec. 75.051. ESTABLISHMENT OF PROGRAM; MULTICOUNTY COOPERATION. (a) The commissioners court of a county may, by order, establish or participate in a local health care program under this subchapter.

(b) The commissioners courts of two or more counties may, by joint order, establish or participate in a regional health care program under this subchapter.

Sec. 75.052. GOVERNANCE OF PROGRAM. (a) A regional health care program may be operated subject to the direct governance of the commissioners courts of the participating counties. A local health care program may be operated subject to the direct governance of the commissioners court of the participating county. A regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity that:

(1) operates the program under a contract with the commissioners court or courts, as applicable; or

(2) is an entity in which the county or counties participate or that is established or designated by the commissioners court or courts, as applicable, to operate the program.

(b) In selecting an entity described by Subsection (a)(1) or (2) to operate a regional or local health care program, the commissioners court or courts, as applicable, shall require, to the extent possible, that the entity be authorized under federal law to accept donations on a basis that is tax-deductible or otherwise tax-advantaged for the contributor.

Sec. 75.053. OPERATION OF PROGRAM. A regional or local health care program provides health care services or benefits to the employees of participating small employers who are located within the boundaries of the participating county or counties, as applicable. A program may also provide services or benefits to the dependents of those employees.

Sec. 75.054. PARTICIPATION BY SMALL EMPLOYERS; SHARE OF COST. The governing body may establish criteria for participation in a regional or local health care program by small employers, the employees of the small employers, and their dependents. The criteria must require that participating employers and participating employees pay a share of the premium or other cost of the program.

Sec. 75.055. ADDITIONAL FUNDING. (a) A governing body may accept and use a gift, grant, or donation from any source to operate the regional or local health care program and to provide services or benefits under the program.

(a-1) A governing body may apply for and receive a grant under Subchapter D to support a regional or local health care program. This subsection expires September 1, 2009.

(b) A governing body shall actively solicit gifts, grants, and donations to:

(1) fund services and benefits provided under the regional or local health care program; and

(2) reduce the cost of participation in the program for small employers and their employees.

[Sections 75.056-75.100 reserved for expansion]

#### SUBCHAPTER C. HEALTH CARE SERVICES AND BENEFITS

Sec. 75.101. ALTERNATIVE PROGRAMS AUTHORIZED; PROGRAM OBJECTIVES. In developing a regional or local health care program, a governing body may provide health care services or benefits as described by this subchapter or may develop another type of program to accomplish the purposes of this chapter. A regional or local health care program must be developed, to the extent practicable, to:

(1) reduce the number of individuals without health benefit plan coverage within the boundaries of the participating county or counties;

(2) address rising health care costs and reduce the cost of health care services or health benefit plan coverage for small employers and their employees within the boundaries of the participating county or counties;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, and diabetes and low birth weight in infants;

(4) promote efficient and collaborative delivery of health care services;

(5) serve as a model for the innovative use of health information technology to promote efficient delivery of health care services, reduce health care costs, and improve the health of the community; and

(6) provide fair payment rates for health care providers.



Sec. 75.102. HEALTH BENEFIT PLAN COVERAGE. (a) A regional or local health care program may provide health care benefits to the employees of small employers by purchasing or facilitating the purchase of health benefit plan coverage for those employees from a health benefit plan issuer, including coverage under:

(1) a small employer health benefit plan offered under Chapter 1501, Insurance Code;

(2) a standard health benefit plan offered under Chapter 1507, Insurance Code; or

(3) any other health benefit plan available in this state.

(b) The governing body may form one or more cooperatives under Subchapter B, Chapter 1501, Insurance Code.

(c) Notwithstanding Chapter 1251, Insurance Code, an insurer may issue a group accident and health insurance policy, including a group contract issued by a group hospital service corporation, to cover the employees of small employers participating in a regional or local health care program. The group policyholder of a policy issued in accordance with this subsection is the governing body or the designee of the governing body.

(d) A health maintenance organization may issue a health care plan to cover the employees of small employers participating in a regional or local health care program. The group contract holder of a contract issued in accordance with this subsection is the governing body or the designee of the governing body.

Sec. 75.103. OTHER HEALTH BENEFIT PLANS OR PROGRAMS. To the extent authorized by federal law, the governing body may establish or facilitate the establishment of self-funded health benefit plans or may facilitate the provision of health benefit coverage through health savings accounts and high-deductible health plans.

Sec. 75.104. HEALTH CARE SERVICES. (a) A regional or local health care program may contract with health care providers within the boundaries of the participating county or counties to provide health care services directly to the employees of participating small employers and the dependents of those employees.

(b) A regional or local health care program shall allow any individual who receives state premium assistance to buy into the health benefit plan offered by the regional or local health care program.

(c) A governing body that operates a regional or local health care program under this section may require that participating employees and dependents obtain health care services only from health care providers that contract to provide those services under the program and may limit the health care services provided under the program to services provided within the boundaries of the participating county or counties.

(d) A governing body operating a regional or local health care program operated under this section is not an insurer or health maintenance organization and the program is not subject to regulation by the Texas Department of Insurance.

[Sections 75.105-75.150 reserved for expansion]

#### SUBCHAPTER D. GRANTS FOR DEMONSTRATION PROJECTS

Sec. 75.151. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the commission.

Sec. 75.152. GRANT PROGRAM. (a) The executive commissioner may establish a grant program to support the initial establishment and operation of one or more regional or local health care programs as demonstration projects.

(b) In selecting grant recipients, the executive commissioner shall consider the extent to which the regional or local health care program proposed by the applicant accomplishes the purposes of this chapter and meets the objectives established under Section 75.101.

(c) The commission shall establish performance objectives for a grant recipient and shall monitor the performance of the grant recipient.

Sec. 75.153. REVIEW OF DEMONSTRATION PROJECT; REPORT. Not later than December 1, 2008, the commission shall complete a review of each regional or local health care program that receives a grant under this subchapter and shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that includes:

(1) an evaluation of the success of regional and local health care programs in accomplishing the purposes of this chapter; and

(2) the commission's recommendations for any legislation needed to facilitate or improve regional and local health care programs.

Sec. 75.154. EXPIRATION. This subchapter expires September 1, 2009.

SECTION \_\_\_\_\_. The heading to Subtitle C, Title 2, Health and Safety Code, is amended to read as follows:

SUBTITLE C. PROGRAMS PROVIDING ~~[INDIGENT]~~ HEALTH CARE BENEFITS AND SERVICES

### **Floor Amendment No. 16**

Amend Section **CSSB 10** by adding the following:

Section \_\_\_\_\_. The Health & Human Services commission shall study the impact of managed care in areas of the state in which it is not currently being utilized, including those under section 533.0025

The study should include:

(1) Feasibility;

(2) Cost comparisons around the state for capitated & non-capitated models of care and;

(3) Delivering the most cost effective measure of care and;

(4) Increasing provider rates with additional cost savings.

The Commission shall report their findings to the Governor, Lt. Governor & Speaker of the House by September 1, 2008.

### **Floor Amendment No. 17**

Amend **CSSB 10** by adding the appropriately numbered section.

SECTION \_\_\_\_\_. Subchapter A, Chapter 533, Government Code, is amended by adding a new Section 533.0051(e) to read as follows:

Sec. 533.0051(e) The commission shall post the financial statistical report on the commission's web page in a comprehensive and understandable format.

**Floor Amendment No. 18**

Amend **CSSB 10** (House committee printing) by adding the following SECTIONS to the bill, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1508 to read as follows:

CHAPTER 1508. HEALTHY TEXAS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1508.001. PURPOSE. (a) The purposes of the Healthy Texas Program established under this chapter are to:

(1) provide for access to quality small employer health benefit plans at an affordable price; and

(2) maximize reliance on strategies and procedures of managed care proven by the private sector.

(b) The program is not intended to diminish availability of traditional small employer health plan coverage to persons who are eligible for that coverage.

Sec. 1508.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the program.

(2) "Group health benefit plan issuer" means an insurance company, association, organization, group hospital service corporation, or health maintenance organization that delivers or issues for delivery a group insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage that provides health insurance or health care benefits. The term includes:

(A) a life, health, and accident insurance company operating under Chapter 841 or 982;

(B) a fraternal benefit society operating under Chapter 885; and

(C) a stipulated premium company operating under Chapter 884.

(3) "Program" means the Healthy Texas Program.

SUBCHAPTER B. CREATION OF PROGRAM; POWERS AND DUTIES OF COMMISSIONER

Sec. 1508.051. CREATION ON COMMISSIONER DETERMINATION. (a) If the commissioner by rule determines that, in all or any part of this state, small employer group health benefit plan coverage is not reasonably available to all market segments in the voluntary market, the commissioner may establish the Healthy Texas Program to deliver small employer group health benefit plans under this chapter to market segments identified as underserved.

(b) The program shall be administered by a board of directors and a management company in accordance with this chapter.

(c) The program is subject to the supervision and control of the commissioner.

Sec. 1508.052. GENERAL POWERS OF COMMISSIONER. (a) The commissioner shall provide general supervision for the program.

(b) In exercising authority under this chapter, the commissioner may:

(1) examine the operation of the program, and shall have free access to all the books, records, files, papers, and documents relating to the operation of the program as necessary to conduct an examination under this subdivision;

(2) summon, qualify, and examine as witnesses all persons having knowledge of program operations, including the members of the board, and officers and employees of the board;

(3) take any action necessary to enable this state and the program to fully participate in any federal program which may be enacted for purposes similar to the purposes of this chapter; and

(4) require the program to report to the department concerning risks insured by the program under this chapter, as considered necessary by the commissioner.

(c) The commissioner may review and approve policy forms, endorsements, and riders used by the program.

(d) The commissioner may receive and review rates and any rating methodology established for use by the program.

Sec. 1508.053. RULES. The commissioner may adopt rules as necessary to implement this chapter in the manner prescribed by Subchapter A, Chapter 36.

#### SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 1508.101. BOARD OF DIRECTORS. (a) The commissioner of insurance shall appoint the members of the board not later than the 31st day after the effective date of the commissioner rule under Section 1508.051(a) establishing the program. The board is composed of nine members appointed by the commissioner as follows:

(1) four members who are full-time employees of authorized small employer health benefit plan issuers;

(2) three public members who reside in this state; and

(3) two members who are licensed life and health insurance agents.

(b) Members serve staggered six-year terms.

(c) The commissioner or the commissioner's designated representative from the department shall serve as an ex officio member.

Sec. 1508.102. BOARD MEMBER IMMUNITY. (a) A member of the board is not liable for an act performed, or omission made, in good faith in the performance of powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Sec. 1508.103. OPEN MEETINGS; PUBLIC INFORMATION. The board is subject to:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the public information law, Chapter 552, Government Code.

#### SUBCHAPTER D. PROGRAM ADMINISTRATION

Sec. 1508.151. PROGRAM AUTHORITY. (a) The program may exercise any of the authority that a health benefit plan issuer authorized to write health benefit plans in this state may exercise under the laws of this state.

(b) The program shall operate as a health benefit plan issuer, and is subject to the maintenance tax imposed under Chapter 257 as if the program were an insurer.

Sec. 1508.152. PLAN OF OPERATION; COMMISSIONER APPROVAL. (a) The board shall submit to the commissioner a plan of operation and any amendments to that plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program.

(b) The plan of operation must be approved by the commissioner before inception of any program operations.

(c) The commissioner by rule may approve the plan of operation and any subsequent amendments if the commissioner determines the plan or the plan as amended is suitable to ensure the fair, reasonable, and equitable administration of the program.

(d) The plan of operation is effective on the written approval of the commissioner.

Sec. 1508.153. MANAGEMENT COMPANY. (a) To fully carry out the purposes of the program, the board shall contract with a management company that is qualified to administer, manage, and operate the program. The management company must hold a certificate of authority as an administrator under Chapter 4151.

(b) The management company must be approved by the commissioner.

Sec. 1508.154. FILING OF RATES. The board shall file with the commissioner the proposed rates and rate information to be used by the program in connection with the issuance of policies, riders, or endorsements. Rates must be set in amounts sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

Sec. 1508.155. AUDIT. (a) The board shall by contract secure the services of an independent auditor, who shall annually audit:

(1) the operations and transactions of the program; and

(2) the manner in which the management company is performing the company's duties.

(b) The independent auditor shall deliver to the board a report of the results of the audit conducted under this section.

Sec. 1508.156. ANNUAL REPORT. (a) The board shall compile a calendar year annual operating report regarding the program, and shall submit the report to the commissioner not later than March 31 of the following calendar year.

(b) The annual report must be accompanied by a copy of the auditor's report under Section 1508.155(b).

Sec. 1508.157. PROGRAM COVERAGE; ELIGIBILITY. (a) A small employer health benefit plan offered through the program must provide coverage consistent with that offered under a small employer health benefit plan subject to Subchapter F, Chapter 1501.

(b) An applicant for coverage from the program is eligible for the coverage if the applicant has:

(1) not been covered by a health benefit plan during the 12-month period preceding the date of the application; or

(2) has lost health benefit plan coverage due to a qualifying event.

(c) The commissioner by rule shall establish employer contribution and employee participation requirements applicable to coverage under the program, as well as other participation criteria applicable to small employer participation.

Sec. 1508.158. CONTRACTS. The board may, subject to commissioner approval, enter into contracts as necessary or proper to implement this chapter.

SUBCHAPTER E. PROGRAM DISSOLUTION

Sec. 1508.201. DEFINITION. In this subchapter, "plan" means the plan of dissolution and termination of the program required by this subchapter.

Sec. 1508.202. PLAN OF DISSOLUTION. (a) The board, at the direction of the commissioner and not later than the seventh anniversary of the date on which the program is established, shall develop and submit to the commissioner a plan for dissolution of the program and termination of program operations in accordance with this subchapter.

(b) The plan must:

(1) ensure the fair, reasonable, and equitable winding down and dissolution of the program and termination of program operations; and

(2) provide for the sharing of any remaining program assets on a proportionate basis in accordance with this subchapter.

Sec. 1508.203. APPROVAL OF PLAN BY COMMISSIONER; COMMISSIONER ACTION IF PLAN NOT APPROVED. (a) The commissioner may approve the plan if the commissioner determines the plan meets the requirements of Sections 1508.202 and 1508.204. The plan is effective on the written approval of the commissioner.

(b) If the board fails to submit a plan the commissioner can approve, the commissioner, after notice and hearing, shall adopt a plan by rule.

Sec. 1508.204. PLAN REQUIREMENTS. (a) The plan must:

(1) specify the date after which a person covered by a small employer health benefit plan issued by the program and effective on the date of the plan of dissolution may not submit additional claims;

(2) provide for:

(A) the filing, receipt, processing, and payment of all claims against the program, and all debts of the program, and the extinguishment of all liabilities of the program, including balances on any lines of credit that may have been established by or on behalf of the program, and including any credit for or refund of any overpayment;

(B) the collection and receipt of all outstanding amounts owed to the program;

(C) a final audit of the program by the state auditor, as provided by Section 1508.205; and

(D) the distribution of any surplus assets of the program that remain after the closing date, in a manner that shares the remaining program assets on a proportionate basis and in accordance with this section; and

(3) specify, as the closing date, the effective date of the closing of the transactions required by the plan and addressed in this section.

(b) The closing date may not be earlier than the third anniversary, or later than the seventh anniversary, of the effective date of the plan.

Sec. 1508.205. AUDIT. The transactions necessary to complete execution of the plan are subject to audit by the state auditor under Chapter 321, Government Code. The state auditor shall report the cost of the final audit conducted under this section to the board and the comptroller, and the board shall remit that amount to the comptroller for deposit to the general revenue fund.

Sec. 1508.206. OPERATION OF PROGRAM AFTER CLOSING DATE. (a) The program shall continue the program's existence until the third anniversary of the closing date established by the plan, solely for the purpose of prosecuting or defending in the program's name any action or proceeding by or against the program.

(b) During the three-year period established by Subsection (a), the board members serving at the time of dissolution shall continue to manage the affairs of the program for the sole purpose stated by that subsection, and have the powers and immunities necessary to accomplish that sole purpose, in accordance with Section 1508.102.

(c) If, during the three-year period established by Subsection (a), a board member fails to serve, the commissioner shall appoint a replacement member in accordance with Section 1508.101.

#### SUBCHAPTER F. REVENUE BOND PROGRAM AND PROCEDURES

Sec. 1508.251. LEGISLATIVE FINDING. The legislature finds that the issuance of bonds for the purpose of providing a method to raise funds to provide small employer health benefit plans through the Healthy Texas Program for employers in this state is for the benefit of the public and in furtherance of a public purpose.

Sec. 1508.252. DEFINITION. In this subchapter, "bond resolution" means the resolution or order authorizing bonds to be issued under this subchapter.

Sec. 1508.253. APPLICABILITY OF OTHER LAWS. (a) The following laws apply to bonds issued under this subchapter to the extent consistent with this subchapter:

- (1) Chapters 1201 through 1202, Government Code;
- (2) Chapters 1205 through 1207, Government Code;
- (3) Chapters 1231 through 1232, Government Code; and
- (4) Chapter 1371, Government Code.

(b) In the event of a conflict between this subchapter and a law listed in Subsection (a), this subchapter controls.

Sec. 1508.254. ISSUANCE OF BONDS AUTHORIZED. On behalf of the program, the Texas Public Finance Authority shall issue revenue bonds to:

- (1) establish the initial surplus of the program;
- (2) establish and maintain reserves;
- (3) pay initial operating costs;
- (4) pay costs related to issuance of the bonds; and
- (5) pay other costs related to the bonds as may be determined by the board.

Sec. 1508.255. BOND LIMITS. The Texas Public Finance Authority may issue, on behalf of the program, bonds in a total amount not to exceed \$200 million.

Sec. 1508.256. TERMS OF ISSUANCE; BOND CONDITIONS. (a) Bonds may be issued at public or private sale.

(b) Bonds may mature not later than the 20th anniversary of the date of issuance.

(c) Bonds must be issued in the name of the program.

Sec. 1508.257. ADDITIONAL COVENANTS. In a bond resolution, the board may make additional covenants with respect to the bonds and the designated income and receipts of the program pledged to payment of the bonds, and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 1508.258. SPECIAL ACCOUNTS. (a) A bond resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The chief financial officer of the program or the officer's designee shall administer the accounts in accordance with this code.

Sec. 1508.259. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) Bonds are payable only from:

(1) the maintenance tax surcharge established under Section 1508.260; or

(2) any other amounts the program is authorized to levy, charge, or collect in connection with paying any portion of the bonds.

(b) Bonds are obligations solely of the program. Bonds do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Each bond must include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Each bond issued under this subchapter must state on its face that the bond is payable solely from the revenues pledged for that purpose and that the bond does not and may not constitute a legal or moral obligation of the state.

Sec. 1508.260. MAINTENANCE TAX SURCHARGE. (a) A maintenance tax surcharge is assessed against:

(1) the program; and

(2) subject to Subsection (d), each group health benefit plan issuer in this state that issues a group health benefit plan to an employer to provide health insurance or health care benefits.

(b) The maintenance tax surcharge under Subsection (a)(1) shall be set in an amount sufficient to pay all debt service on the bonds. The maintenance tax surcharge shall be set by the commissioner at the same time and shall be collected by the comptroller on behalf of the program in the same manner as provided under Chapter 257 for the collection of the maintenance tax assessed under that chapter.

(c) To establish the surcharge under Subsection (b), the commissioner shall increase the maintenance tax rate to which the program is subject to a rate sufficient to pay all debt service on the bonds, subject to the maximum tax rate established by Chapter 257. If the resulting tax rate is insufficient to pay all costs for the program under this subchapter and all debt service on the bonds, the commissioner may assess an additional surcharge to the program, not to exceed one percent of the program's gross small employer group health benefit plan premiums, as necessary to cover all debt service on the bonds. In this subsection, the maintenance tax surcharge includes the additional maintenance tax assessed under this subsection and the additional surcharge assessed under this subsection to pay all debt service of the bonds.

(d) If the assessment procedure established under Subsection (c) is insufficient to cover all debt service on the bonds, and subject to the operating procedure provisions in the program plan of operation, the commissioner may assess group health benefit plan issuers described by Subsection (a)(2) a surcharge, not to exceed one percent of the gross group health benefit plan premiums, exclusive of small



employer group health benefit plan premiums, to cover all debt service on the bonds. For purposes of this subsection, the maintenance tax surcharge includes the surcharge assessed under this subsection to pay all debt service of the bonds.

(e) The program and a group health benefit plan issuer, respectively, may pass through the maintenance tax surcharge established under Subsections (c) and (d) to the policyholders of the program and those issuers.

Sec. 1508.261. EXEMPTION FROM TAXATION. The bonds issued under this subchapter, any interest from the bonds, and all assets pledged to secure the payment of the bonds are free from taxation by this state or a political subdivision of this state.

Sec. 1508.262. AUTHORIZED INVESTMENTS. Bonds issued under this subchapter constitute authorized investments under Subchapter D, Chapter 425.

Sec. 1508.263. STATE NOT TO IMPAIR BOND OBLIGATIONS; PLEDGE. (a) The state pledges to and agrees with the owners of any bonds issued in accordance with this subchapter that the state will not limit or alter the rights vested in the program to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, any premium or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged.

(b) The program may include the pledge and agreement of the state in any agreement with the owners of the bonds.

Sec. 1508.264. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the program and any other party to carry out agreements and to perform functions and duties under this subchapter, the Texas Constitution, or a bond resolution.

SECTION \_\_\_\_. (a) Not later than November 1, 2008, the commissioner of insurance shall provide an interim progress report to the lieutenant governor, the speaker of the house of representatives, and the members of the 81st Legislature regarding the operation of the Healthy Texas Program established under Chapter 1508, Insurance Code, as added by this Act. The report must include information regarding:

- (1) the potential economic impact that the program would have on the small employer insurance market in this state;
  - (2) the anticipated impact that the program would have on the quality of health care provided in this state;
  - (3) the progress of any proposed or adopted rules addressing the program;
  - (4) the progress of a draft or approved plan of operation for the program;
- and
- (5) the efficacy and feasibility of expanding the program to include application to governmental entities.

(b) A health benefit plan may not be issued by the Healthy Texas Program established under Chapter 1508, Insurance Code, as added by this Act, before January 1, 2010.

### **Floor Amendment No. 19**

Amend **CSSB 10** (House committee printing) in SECTION 5(a) of the bill by striking added Section 531.504(a)(1), Government Code (page 20, lines 11 through 18), and substituting the following:

(1) all federal money provided to this state under the disproportionate share hospitals supplemental payment program and the hospital upper payment limit supplemental payment program, other than money provided under those programs to state-owned and operated hospitals, and all other non-supplemental payment program federal money provided to this state that is included in the waiver authorized by Section 531.502; and

### **Floor Amendment No. 20**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02471 to read as follows:

Sec. 32.02471. MEDICAL ASSISTANCE FOR CERTAIN FORMER FOSTER CARE ADOLESCENTS ENROLLED IN HIGHER EDUCATION. (a) In this section, "independent foster care adolescent" has the meaning assigned by Section 32.0247.

(b) The department shall provide medical assistance to a person who:

(1) is 21 years of age or older but younger than 25 years of age;

(2) would be eligible to receive assistance as an independent foster care adolescent under Section 32.0247 if the person were younger than 21 years of age; and

(3) is enrolled in an institution of higher education, as defined by Section 61.003(8), Education Code, or a private or independent institution of higher education, as defined by Section 61.003(15), Education Code, that is located in this state and is making satisfactory academic progress as determined by the institution.

### **Floor Amendment No. 21**

Amend **CSSB 10** (House committee printing) as follows:

(1) In SECTION 15 of the bill, strike Subsection (b) of that SECTION (page 52, lines 2 through 7), and substitute:

(b) The committee on health and long-term care insurance incentives is established to study and develop recommendations regarding methods by which this state may reduce:

(1) the need for residents of this state to rely on the Medicaid program by providing incentives for employers to provide health insurance, long-term care insurance, or both, to their employees; and

(2) the number of individuals in the state who are not covered by health insurance or long-term care insurance.

(2) In SECTION 15 of the bill, following Subsection (e) of that SECTION (page 54, between lines 3 and 4), insert:

(e-1) The committee shall study and develop recommendations regarding:

(1) the cost of health care coverage under health benefit plans and how to reduce the cost of coverage through the following or other methods:

(A) changes in health benefit plan design or scope of services covered;

(B) improvements in disease management and other utilization review practices by health care providers and health benefit plans;

(C) reductions in administrative costs incurred by health care providers and health benefit plans;

(D) improvements in the use of health care information technology by health care providers and health benefit plans; and

(E) development of a reinsurance system for health care claims in excess of \$50,000; and

(2) the availability of health care coverage under health benefit plans and how to expand health care coverage through the following or other methods:

(A) the providing of premium subsidies for health benefit plan coverage by the state or local political subdivisions, including three-share or multiple-share programs;

(B) the inclusion of individuals or employees of private employers under state or local political subdivision health benefit plans, including the Texas Health Insurance Risk Pool;

(C) inclusion of family members and dependents under a group health benefit plan regardless of age; and

(D) requiring vendors of state and local political subdivisions to provide health benefit plan coverage for their employees and the employee's family and dependents.

#### **Floor Amendment No. 24**

Amend **CSSB 10** as follows:

(1) On page 7, line 22, to page 8, line 1, of SECTION 2 of the committee substitute, strike Subsection (b) of SECTION 2 and substitute Subsection (b) as follows:

(b) Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0057 to read as follows:

(b) Sec. 531.0057. MEDICAL TRANSPORTATION SERVICES. (a) The Health and Human Services Commission shall provide medical transportation services for clients of eligible health and human services programs.

(c) The commission may contract with any public or private transportation provider or with any regional transportation broker for the provision of public transportation services.

(2) On page 8, line 2, to page 9, line 7, of SECTION 2 of the committee substitute strike Subsections (c) and (d) of SECTION 2.

(3) On page 58, line 21, of the committee substitute, insert SECTION 19 as follows and renumber the subsequent sections appropriately:

SECTION 19. (a) Subject to the appropriation of funds for these purposes and subsection (c) of this section, all powers, duties, functions, activities, obligations, rights, contracts, records, assets, personal property, personnel, appropriations or other money of the Texas Department of Transportation that are essential to the administration of the medical transportation program, as specified in Section 531.0057, Government Code, are transferred by this Act are transferred to the Health and Human Services Commission.

(b) A reference in law or an administrative rule to the Texas Department of Transportation that relates to the medical transportation program means the Health and Human Services Commission.

(c) The Texas Department of Transportation shall take all action necessary to provide for the transfer of its contractual obligations to administer the medical transportation program, as specified in Section 531.0057, Government Code, to the commission as soon as possible after the effective date of this section but not later than September 1, 2008.

(d) The following sections remain in effect until September 1, 2008, for the limited purpose of effecting the transfer of the medical transportation program, as specified in Section 531.0057, Government Code. The following sections are repealed, effective September 1, 2008:

- (1) Section 531.02412(b), Government Code;
- (2) Section 461.012(a)(19), Health and Safety Code;
- (3) Section 461.012(g), Health and Safety Code;
- (4) Section 533.012(b), Health and Safety Code;
- (5) Section 22.001(e), Human Resources Code,
- (6) Section 40.002(f), Human Resources Code;
- (7) Section 91.021(g), Human Resources Code;
- (8) Section 101.0256(b), Human Resources Code;
- (9) Section 111.0525(d), Human Resources Code;
- (10) Section 301.063(f), Labor Code;
- (11) Section 455.0015, Transportation Code; and,
- (12) Section 461.003, Transportation Code.

#### **Floor Amendment No. 25**

Amend **CSSB 10** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Chapter 85, Health and Safety Code, is amended by adding Subchapter H to read as follows:

#### **SUBCHAPTER H. HIV PREVENTION MEDIA CAMPAIGN**

Sec. 85.161. GRANTS FOR MEDIA CAMPAIGN. In operating medical assistance program the Health and Human Services Commission, out of funds appropriated by the legislature, shall award at least 1 million appropriated to the Commission for acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) related programs to local contractors to implement a highly visible media campaign encouraging individuals, as part of a routine physical examination given under a medical assistance program, to undergo a medical procedure or test designed to show whether the individual has acquired immune deficiency syndrome or human immunodeficiency virus. For the purposes of this section, a highly visible media campaign includes the use of billboards, newspaper and magazine advertisements, and signs on commercial motor vehicles and motor vehicles used for public transportation.

#### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 10** on third reading (committee printing) by adding the following appropriately numbered sections:

SECTION \_\_\_\_\_. Section 533.012(c), Government Code, is amended to read as follows:

(c) The commission's office of investigations and enforcement shall review the information submitted under this section as appropriate in the investigation of fraud in the Medicaid managed care program. ~~[The comptroller may review the information in connection with the health care fraud study conducted by the comptroller.]~~

SECTION \_\_\_\_\_. Section 403.028, Government Code, is repealed.

### Floor Amendment No. 3 on Third Reading

Amend **CSSB 10** on third reading by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subsection (a), Section 1207.002, Insurance Code, is amended to read as follows:

(a) A group health benefit plan issuer shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan, without regard to any enrollment period restriction, on receipt of written notice from the Health and Human Services Commission ~~[or a designee of the commission stating]~~ that the individual is:

(1) a recipient of medical assistance under the state Medicaid program and is a participant in the health insurance premium payment reimbursement program under Section 32.0422, Human Resources Code; or

(2) a child eligible for ~~[enrolled in]~~ the state child health plan under Chapter 62, Health and Safety Code, and eligible to participate ~~[is a participant]~~ in the health insurance premium assistance program under Section 62.059, Health and Safety Code.

(b) Section 1207.003, Insurance Code, is amended to read as follows:

Sec. 1207.003. EFFECTIVE DATE OF ENROLLMENT. (a) Unless enrollment occurs during an established enrollment period, enrollment in a group health benefit plan under Section 1207.002 takes effect on:

(1) the eligibility enrollment date specified in the written notice from the Health and Human Services Commission under Section 1207.002(a); or

(2) the first day of the first calendar month that begins at least 30 days after the date written notice or a written request is received by the plan issuer under Section 1207.002(a) or (b), as applicable.

(b) Notwithstanding Subsection (a), the individual must comply with a waiting period required under the state child health plan under Chapter 62, Health and Safety Code, or under the health insurance premium assistance program under Section 62.059, Health and Safety Code, as applicable.

(c) Subsection (b), Section 1207.004, Insurance Code, is amended to read as follows:

(b) Notwithstanding any other requirement of a group health benefit plan, the plan issuer shall permit an individual who is enrolled in the plan under Section 1207.002(a)(2), and any family member of the individual enrolled under Section 1207.002(c), to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides a written request to disenroll from the plan because the individual ~~[satisfactory proof to the issuer that the child is]~~ no longer wishes to participate ~~[a participant]~~ in the health insurance premium assistance program under Section 62.059, Health and Safety Code.

**Floor Amendment No. 4 on Third Reading**

Amend **CSSB 10** on third reading as follows:

Amend second House reading amendment 11 on page 2, line 3, by striking "November 1, 2007," and inserting in its place "May 1, 2008,".

**Floor Amendment No. 5 on Third Reading**

Amend **CSSB 10** on third reading by striking the section of the bill added by Amendment No. 16 by Lucio III on second reading.

**Floor Amendment No. 6 on Third Reading**

Amend **CSSB 10** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 32.024, Human Resources Code, is amended by adding Subsection (y-1) to read as follows:

(y-1) A woman who receives a breast or cervical cancer screening service under Title XV of the Public Health Service Act (42 U.S.C. Section 300k et seq.) and who otherwise meets the eligibility requirements for medical assistance for treatment of breast or cervical cancer as provided by Subsection (y) is eligible for medical assistance under that subsection, regardless of whether federal Medicaid matching funds are available for that medical assistance. A screening service of a type that is within the scope of screening services under that title is considered to be provided under that title regardless of whether the service was provided by a provider who receives or uses funds under that title.

**Floor Amendment No. 7 on Third Reading**

Amend **CSSB 10** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_. (a) The Texas Health Care Policy Council, in coordination with the Institute for Demographic and Socioeconomic Research at The University of Texas at San Antonio, the Regional Center for Health Workforce Studies at the Center for Health Economics and Policy of The University of Texas Health Science Center at San Antonio, and the Texas Medical Board, shall conduct a study regarding increasing:

(1) the number of medical residency programs and medical residents in this state; and

(2) the number of physicians practicing medical specialties.

(b) The study must:

(1) examine the feasibility of using a percentage of physician licensing fees to increase the number of medical residency programs and medical residents in this state;

(2) put emphasis on, and recommend a plan of action for, increasing the number of:

(A) medical residency programs and medical residents in medically underserved areas of this state; and

(B) physicians practicing medical specialties that are underrepresented in this state; and

(3) determine the number of medical residents that obtain a license to practice medicine in this state on completion of a medical residency program in this state.

(c) Not later than December 1, 2008, the Texas Health Care Policy Council shall:

(1) report the results of the study to the governor, the lieutenant governor, and the speaker of the house of representatives; and

(2) make available the raw data from the study to the governor, the lieutenant governor, the speaker of the house of representatives, the House Committee on Public Health, and the Senate Committee on Health and Human Services.

(d) The Texas Health Care Policy Council may accept gifts, grants, and donations of any kind from any source for the purposes of this section.

(e) This Section expires January 1, 2009.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 10** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Deuell, Uresti, Janek, and Lucio.

### **SENATE BILL 23 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 23** 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 23** (House committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. TEXAS CHOICE PROVIDER PROGRAM

SECTION \_\_\_\_\_.01. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1465 to read as follows:

CHAPTER 1465. TEXAS CHOICE PROVIDER PROGRAM

Sec. 1465.001. DEFINITIONS. In this chapter:

(1) "Balance bill" means the practice by which a health care provider that does not have a contract with a health benefit plan issuer charges an individual covered under a health benefit plan the difference between the provider's fee for a health care service the individual received and the amount that the health benefit plan

reimbursed the provider for the health care service, excluding deductibles, copayments, coinsurance, and annual or maximum payment limits under the health benefit plan.

(2) "Choice health care provider" means a health care provider that is in the registry maintained by the department under Section 1465.003.

(3) "Health benefit plan" means an individual, group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, a group subscriber contract issued by a health insurer, or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) coverage only for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) coverage issued as a supplement to liability insurance;

(K) workers' compensation insurance coverage or similar insurance coverage;

(L) automobile medical payment insurance coverage;

(M) a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(N) hospital indemnity or other fixed indemnity insurance coverage;

(O) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(P) liability insurance coverage, including general liability insurance and automobile liability insurance coverage; or

(Q) coverage that provides other limited benefits specified by federal regulations.

(4) "Health benefit plan issuer" means a health maintenance organization operating under Chapter 843, a preferred provider organization operating under Chapter 1301, an approved nonprofit health corporation that holds a certificate of authority under Chapter 844, and any other entity that issues a health benefit plan, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;



- (C) a fraternal benefit society operating under Chapter 885; or
- (D) a stipulated premium company operating under Chapter 884.

(5) "Health care provider" means a person, corporation, facility, or institution that is:

(A) licensed by a state to provide or is otherwise lawfully providing health care services; and

(B) eligible for independent reimbursement for those health care services.

Sec. 1465.002. CONSTRUCTION WITH OTHER LAW. Notwithstanding any other law, to the extent of any conflict between a provision in this chapter and another law, the provision in this chapter prevails.

Sec. 1465.003. CREATION OF REGISTRY, LOGO, AND INFORMATION SYSTEM. The department shall:

(1) establish and maintain a registry of health care providers that have agreed to provide health care services in accordance with this chapter; and

(2) develop:

(A) a logo that health care providers that are in the registry established and maintained under Subdivision (1) may use as a designation of the provider's status as a choice health care provider; and

(B) an information system, which may include an education campaign, to inform health care service consumers of the existence of the registry and the conditions that are placed on health care providers under this chapter as a condition of being choice health care providers.

Sec. 1465.004. INCLUSION IN REGISTRY; APPLICATION AND RENEWAL; EFFECT OF INCLUSION IN REGISTRY. (a) The department by rule shall establish an application form and registration process under which a health care provider is included in the registry established and maintained under Section 1465.003.

(b) A health care provider is eligible for inclusion in the registry on application to the department and payment of the application fee under Subsection (c). The provider may renew the registration by submitting a renewal application to the department and paying the renewal fee under Subsection (c).

(c) The department shall set the application fee and renewal fee in an amount not to exceed \$25.

(d) Inclusion of a health care provider in the registry does not constitute an endorsement of the provider by the department.

Sec. 1465.005. NOTICE OF STATUS AS CHOICE HEALTH CARE PROVIDER. (a) The department by rule shall develop a notice that a choice health care provider must provide to an individual covered by a health benefit plan before provision of nonemergency health care services. The notice must describe the Texas Choice Provider Program established under this chapter and inform an individual covered by a health benefit plan of the provider's status as a choice health care provider.

(b) The department by rule shall establish when and how a provider must provide the notice described in Subsection (a).

Sec. 1465.006. BENEFITS AND CONDITIONS OF INCLUSION IN REGISTRY. A choice health care provider who does not have a contract with a health benefit plan issuer:

(1) is entitled to prompt payment of a reasonable fee from a health benefit plan issuer for a health care service that is covered by the health benefit plan under which the patient is covered if:

(a) the service was provided in connection with a medical emergency;

(b) the service was provided in connection with a surgical procedure which was not prescheduled at least 48 hours before the beginning of the procedure;

(c) no network provider was reasonably available at the time and place the service was rendered, or

(d) the service was provided upon a referral by a network provider, and the referral was reasonably necessary for the health of the enrollee;

(2) may not balance bill a patient for a health care service that is covered by the health benefit plan under which the patient is covered; and

(3) may only use the logo developed by the department under Section 1465.003 if the choice health care provider has paid the annual fee under Section 1465.004.

Sec. 1465.007. CLAIM REQUIREMENTS; CALCULATION OF PENALTY.

(a) A choice health care provider must submit a claim for health care services to the health benefit plan issuer in accordance with Subchapter J, Chapter 843, or Subchapters C and C-1, Chapter 1301, as applicable.

(b) In calculating any penalties payable to a choice health care provider by a health benefit plan issuer under Subchapter J, Chapter 843, or Subchapters C and C-1, Chapter 1301, the amount of a reasonable fee, as determined by the rules adopted by the commissioner under this chapter, shall be used in place of the contracted rate when there is not a contract in place between the choice health care provider and a health benefit plan issuer.

Sec. 1465.008. ARBITRATION OF DISPUTES. (a) The commissioner shall adopt rules that provide for the arbitration of disputes arising under this chapter that concern the payment or determination of the amount of a reasonable fee under this chapter.

(b) The department may require the payment of reasonable fees by choice health care providers and health benefit plan issuers for arbitration of disputes arising under this chapter. Fees imposed under this section may not exceed the actual cost of the arbitration, including administrative costs.

Sec. 1465.009. VIOLATION BY HEALTH CARE PROVIDER. (a) A violation of this chapter by a health care provider is grounds for disciplinary action and imposition of an administrative penalty by the appropriate regulatory agency that issued a license, certification, or registration to the health care provider.

(b) The regulatory agency shall:

(1) notify a health care provider of a finding by the regulatory agency that the health care provider is violating or has violated this chapter or a rule adopted under this chapter; and

(2) provide the health care provider with an opportunity to correct the violation in a timely manner.

(c) Complaints brought under this section do not require a determination of medical competency, and Section 154.058, Occupations Code, does not apply.

Sec. 1465.010. DATA COLLECTION; STATISTICAL AGENT. (a) The commissioner may collect data from health benefit plan issuers and other sources reasonably necessary to determine reasonable fee amounts under this chapter.

(b) The commissioner may designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes or as otherwise provided by this code.

Sec. 1465.011. RULES. The commissioner may adopt rules necessary to implement this chapter, including rules to determine what constitutes a reasonable fee for the purposes of Section 1465.006(1).

SECTION \_\_.02. (a) The Texas Department of Insurance shall implement the registry described by Chapter 1465, Insurance Code, as added by this Act, not later than June 1, 2008.

(b) The reimbursement and fee conditions described by Section 1465.006, Insurance Code, as added by this Act, apply beginning on January 1, 2009.

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

Amend **SB 23** (House committee printing) as follows:

(1) In SECTION 1.01 of the bill, between amended Section 524.051, Insurance Code, and amended Section 524.052, Insurance Code (page 2, between lines 23 and 24), insert the following:

Sec. 524.0511. INFORMATION ABOUT AVAILABILITY OF CERTAIN COVERAGE. The division shall include information in the program's materials about the availability under certain health benefit plans of coverage for tests for early detection of cardiovascular disease as provided by Chapter 1376.

(2) Insert the following appropriately numbered article and renumber existing articles accordingly:

ARTICLE \_\_. AVAILABILITY OF AND EDUCATION REGARDING  
COVERAGE FOR HEALTH SCREENING TESTS

SECTION \_\_.01. Subtitle E, Title 8, Insurance Code, is amended by adding Chapter 1376 to read as follows:

CHAPTER 1376. CERTAIN TESTS FOR EARLY DETECTION OF  
CARDIOVASCULAR DISEASE

Sec. 1376.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter

842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a Lloyd's plan operating under Chapter 941;

(v) a stipulated premium company operating under Chapter 884; or

(vi) a health maintenance organization operating under Chapter 843;

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act (29 U.S.C. Section 1002); or

(ii) another analogous benefit arrangement;

(C) a small employer health benefit plan written under Chapter 1501; or

(D) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(2) is offered by an approved nonprofit health corporation operating under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code.

(b) Notwithstanding any provision in Chapter 1601 or any other law, this chapter applies to basic coverage under Chapter 1601.

Sec. 1376.002. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or other limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy; or

(E) only for indemnity for hospital confinement;

(2) a workers' compensation insurance policy;

(3) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(4) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1376.001.

Sec. 1376.003. MINIMUM COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for screening medical procedures must provide the minimum coverage required by this section to each covered individual:

(1) who is:

(A) a male older than 45 years of age and younger than 76 years of age;

or

(B) a female older than 55 years of age and younger than 76 years of age; and

(2) who:

(A) is diabetic; or

(B) has a risk of developing coronary heart disease, based on a score derived using the Framingham Heart Study coronary prediction algorithm, that is intermediate or higher.

(b) The minimum coverage required to be provided under this section is coverage of up to \$200 for one of the following noninvasive screening tests for atherosclerosis and abnormal artery structure and function every five years, performed by a laboratory that is certified by a national organization recognized by the commissioner by rule for the purposes of this section:

(1) computed tomography (CT) scanning measuring coronary artery calcification; or

(2) ultrasonography measuring carotid intima-media thickness and plaque.

Sec. 1376.004. NOTICE AND EDUCATION. An issuer of a health benefit plan to which this chapter applies shall:

(1) notify policy or contract holders and enrollees under the plan and potential policy or contract holders and enrollees under the plan of the availability of the coverage required by this chapter; and

(2) educate enrollees under the plan of the benefits of the screening medical procedures required under this chapter.

SECTION \_\_\_\_ .02. The change in law made by this article applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2008. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2008, 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.

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

Amend **SB 23** (House committee printing) as follows:

(1) In SECTION 1.01 of the bill, in proposed Subdivision (5), Subsection (a), Section 524.003, Insurance Code, between "state" and the semicolon (page 2, line 9), insert ", including the availability of benefits under Medicaid and the state child health plan".

(2) In SECTION 1.01 of the bill, in proposed Subdivision (6), Subsection (a), Section 524.003, Insurance Code, between "plans" and the period (page 2, line 14), insert ", as well as Medicaid and the state child health plan".

(3) In SECTION 1.01 of the bill, in proposed Section 524.051, Insurance Code, strike "ISSUERS." (page 2, line 20) and substitute "ISSUERS AND BENEFITS UNDER CERTAIN GOVERNMENT PROGRAMS. (a)".

(4) In SECTION 1.01 of the bill, in proposed Section 524.051, Insurance Code, following the last sentence (page 2, between lines 23 and 24), insert:

(b) The materials produced for the program must include information about eligibility for, and enrollment in, Medicaid and the state child health plan.

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

Amend **SB 23** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Chapter 1301, Insurance Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. ANNUAL PREFERRED PROVIDER BENEFIT PLAN REPORT CARDS

Sec. 1301.301. DEFINITIONS. In this subchapter:

(1) "Direct losses incurred" means the sum of direct losses paid, plus an estimate of losses to be paid in the future, for all claims arising from the current reporting period and all prior reporting periods, minus the corresponding estimate made at the close of business for the preceding reporting period. The term does not include home office and other overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

(2) "Direct losses paid" means the sum of all payments made during the reporting period for claimants under a preferred provider benefit plan before reinsurance has been ceded or assumed. The term does not include home office and other overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

(3) "Direct premiums earned" means the amount of premium attributable to the coverage already provided in a given reporting period before reinsurance has been ceded or assumed.

(4) "Premium to direct patient care score" means direct losses incurred divided by direct premiums earned.

(5) "Network adequacy score" means the total number of claims paid as out-of-network by a preferred provider benefit plan divided by the total number of claims paid by the preferred provider benefit plan.

(6) "Claims paid score" means the total dollar amount paid by the preferred provider benefit plan as out-of-network divided by the total dollar amount of claims paid by the preferred provider benefit plan.

(7) "Allowables cap score" means the aggregate percentage margin between the amount submitted on claims by non-contracted physicians or providers and the preferred provider benefit plan's allowable amount or the usual and customary amounts the preferred provider benefit plan is willing to pay.

(8) "Expected profit score" means the percentage of the premium dollar that represents the actuarially set allowance for profit.

(9) "Justified complaint" means a complaint submitted to the department for which the department determines there exists:

(A) a violation of a policy provision, contract provision, rule, or statute;

or

(B) a valid concern that a prudent layperson would regard as customary a practice or service that is below customary business practice.

Sec. 1301.302. REPORT CARD. The commissioner shall develop and issue an annual preferred provider benefit plan report card that publicizes the scores described by Section 1301.303. The report card must be in a format that permits direct comparison of preferred provider benefit plans offered by insurers.

Sec. 1301.303. SCORES. (a) The report card must include the following:

(1) a premium to direct patient care score;

(2) a network adequacy score;

(3) a claims paid score;

(4) an allowables cap score;

(5) an expected profit score;

(6) the number of persons covered for each preferred provider benefit plan;  
(7) the total dollar amount of premiums earned by the preferred provider benefit plan; and

(8) the number of justified complaints.

(b) The report card must contain a plain-language explanation of the scores that is understandable to the average layperson.

Sec. 1301.304. RULEMAKING. The commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this subchapter, including rules governing the filing of any financial reports or other information necessary for the annual report cards.

Sec. 1301.305. PUBLICATION AND PUBLICITY. (a) The commissioner shall:

(1) ensure the annual preferred provider benefit plan report cards are accessible to the public on the department's Internet website;

(2) provide the annual preferred provider benefit plan report cards to each member of each committee of the house of representatives or the senate that has jurisdiction over issues concerning health or insurance;

(3) provide a copy of the annual preferred provider benefit plan report card to each member of the public who submits a written request; and

(4) provide copies of the annual preferred provider benefit plan report card to public libraries throughout this state that request copies.

(b) The commissioner shall issue a press release when the annual report cards are issued under this subchapter.

SECTION \_\_\_\_. Chapter 843, Insurance Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. ANNUAL HEALTH MAINTENANCE ORGANIZATION  
REPORT CARDS

Sec. 843.501. DEFINITIONS. In this subchapter:

(1) "Direct losses incurred" means the sum of direct losses paid, plus an estimate of losses to be paid in the future, for all claims arising from the current reporting period and all prior reporting periods, minus the corresponding estimate made at the close of business for the preceding reporting period. The term does not include home office and other overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

(2) "Direct losses paid" means the sum of all payments made during the reporting period for claimants before reinsurance has been ceded or assumed. The term does not include home office and other overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

(3) "Direct premiums earned" means the amount of premium attributable to the coverage already provided in a given reporting period before reinsurance has been ceded or assumed.

(4) "Premium to direct patient care score" means direct losses incurred divided by direct premiums earned.

(5) "Network adequacy score" means the sum of the total number of claims paid as out-of-network by a health maintenance organization and paid under a point-of-service rider divided by the total number of claims paid by the health maintenance organization.

(6) "Claims paid score" means the sum of the total dollar amount paid by the health maintenance organization as out-of-network and the total dollar amount paid under a point-of-service rider divided by the total dollar amount of claims paid by the health maintenance organization, including amounts paid under a point-of-service rider.

(7) "Allowables cap score" means the aggregate percentage margin between the amount submitted on claims by non-contracted physicians or providers and the health maintenance organization's allowable amount or the usual and customary amounts the health maintenance organization is willing to pay.

(8) "Expected profit score" means the percentage of the premium dollar that represents the actuarially set allowance for profit.

(9) "Justified complaint" means a complaint submitted to the department for which the department determines there exists:

(A) a violation of an evidence of coverage provision, contract provision, rule, or statute; or

(B) a valid concern that a prudent layperson would regard as customary a practice or service that is below customary business practice.

Sec. 843.502. REPORT CARD. (a) The commissioner shall develop and issue an annual health maintenance organization report card that publicizes the scores described by Section 843.503. The report card must be in a format that permits direct comparison of health maintenance organizations.

(b) The department shall develop and issue the annual health maintenance organization report card required under this subchapter in consultation with the office of public insurance counsel and in addition to any report card issued under Subchapter F, Chapter 501.

(c) In addition to any other authority granted by this code, the office of public insurance counsel is entitled to obtain the information reported by health maintenance organizations to the department under this subchapter.

Sec. 843.503. SCORES. (a) The report card must include the following:

(1) a premium to direct patient care score;

(2) a network adequacy score;

(3) a claims paid score;

(4) an allowables cap score;

(5) an expected profit score;

(6) the number of enrollees;

(7) the total dollar amount of premiums earned; and

(8) the number of justified complaints.

(b) The report card must contain a plain-language explanation of the scores that is understandable to the average layperson.



Sec. 843.504. RULEMAKING. The commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this subchapter, including rules governing the filing of any financial reports or other information necessary for the annual report cards.

Sec. 843.505. PUBLICATION AND PUBLICITY. (a) The commissioner shall:

(1) ensure the annual health maintenance organization report cards are accessible to the public on the department's Internet website;

(2) provide the annual health maintenance organization report cards to each member of each committee of the house of representatives or the senate that has jurisdiction over issues concerning health or insurance;

(3) provide a copy of the annual health maintenance organization report cards to each member of the public who submits a written request; and

(4) provide copies of the annual health maintenance organization report cards to public libraries throughout this state that request copies.

(b) The commissioner shall issue a press release when the annual report cards are issued under this subchapter.

### **Floor Amendment No. 6**

Amend **SB 23**, House committee printing, by inserting the following ARTICLE in the bill, appropriately numbered, and renumbering the ARTICLES of the bill accordingly:

#### ARTICLE \_\_\_\_ . SECONDARY MARKET IN CERTAIN PHYSICIAN AND HEALTH CARE PROVIDER DISCOUNTS

SECTION \_\_\_\_ .01. Subtitle D, Title 8, Insurance Code, is amended by adding Chapter 1302 to read as follows:

#### CHAPTER 1302. REGULATION OF SECONDARY MARKET IN CERTAIN PHYSICIAN AND HEALTH CARE PROVIDER DISCOUNTS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1302.001. DEFINITIONS. In this chapter:

(1) "Discount broker" means any entity engaged, for monetary or other consideration, in disclosing or transferring a contracted discounted fee of a physician or health care provider.

(2) "Health care provider" means a hospital, a physician-hospital organization, or an ambulatory surgical center.

(3) "Payor" means a fully self-insured health plan, a health benefit plan, an insurer, or another entity that assumes the risk for payment of claims by, or reimbursement for health care services provided by, physicians and health care providers.

(4) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, comprised entirely by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) any other person wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(5) "Transfer" means to lease, sell, aggregate, assign, or otherwise convey a contracted discounted fee of a physician or health care provider.

Sec. 1302.002. EXEMPTIONS. This chapter does not apply to:

(1) the activities of:

(A) a health maintenance organization's network that are subject to Subchapter J, Chapter 843; or

(B) an insurer's preferred provider network that are subject to Subchapters C and C-1, Chapter 1301; or

(2) any aspect of the administration or operation of:

(A) the state child health plan; or

(B) any medical assistance program using a managed care organization or managed care principal, including the state Medicaid managed care program under Chapter 533, Government Code.

Sec. 1302.003. APPLICABILITY OF OTHER LAW. (a) Except as provided by Subsection (b), with respect to payment of claims, a discount broker, and any payor for whom a discount broker acts or who contracts with a discount broker, shall comply with Subchapters C and C-1, Chapter 1301, in the same manner as an insurer.

(b) This section does not apply to a payor that is a fully self-insured health plan.

Sec. 1302.004. RETALIATION PROHIBITED. A discount broker may not engage in any retaliatory action against a physician or health care provider because the physician or provider has:

(1) filed a complaint against the discount broker; or

(2) appealed a decision of the discount broker.

[Sections 1302.005-1302.050 reserved for expansion]

#### SUBCHAPTER B. REGISTRATION; POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

Sec. 1302.051. REGISTRATION REQUIRED. Each discount broker that does not hold a certificate of authority or license otherwise issued by the department under this code must register with the department in the manner prescribed by the commissioner before engaging in business in this state.

Sec. 1302.052. RULES. The commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement and administer this chapter.

[Sections 1302.053-1302.100 reserved for expansion]  
SUBCHAPTER C. PROHIBITION OF CERTAIN TRANSFERS;  
NOTICE REQUIREMENTS

Sec. 1302.101. PROHIBITION OF CERTAIN TRANSFERS. (a) A discount broker may not transfer a physician's or health care provider's contracted discounted fee or any other contractual obligation unless the transfer is authorized by a contractual agreement that complies with this chapter.

(b) This section does not affect the authority of the commissioner of insurance or the commissioner of workers' compensation under this code or Title 5, Labor Code, to request and obtain information.

Sec. 1302.102. IDENTIFICATION OF PAYORS; TERMINATION OF CONTRACT. (a) A discount broker shall notify each physician and health care provider of the identity of the payors and discount brokers authorized to access a contracted discounted fee of the physician or provider. The notice requirement under this subsection does not apply to an employer authorized to access a discounted fee through a discount broker.

(b) The notice required under Subsection (a) must:

(1) be provided, at least every 45 days, through:

(A) electronic mail, after provision by the affected physician or health care provider of a current electronic mail address; and

(B) posting of a list on a secure Internet website; and

(2) include a separate prominent section that lists the payors that the discount broker knows will have access to a discounted fee of the physician or health care provider in the succeeding 45-day period.

(b-1) Notwithstanding Subsection (b), and on the request of the affected physician or health care provider, the notice required under Subsection (a) may be provided through United States mail. This subsection expires September 1, 2009.

(c) The identity of a payor or discount broker authorized to access a contracted discounted fee of the physician or provider that becomes known to the discount broker required to submit the notice under Subsection (a) must be included in the subsequent notice.

(d) If, after receipt of the notice required under Subsection (a), a physician or health care provider objects to the addition of a payor to access to a discounted fee, other than a payor that is an employer or a discount broker listed in the notice required under Subsection (a), the physician or health care provider may terminate its contract by providing written notice to the discount broker not later than the 30th day after the date on which the physician or health care provider receives the notice required under Subsection (a). Termination of a contract under this subsection is subject to applicable continuity of care requirements under Section 843.362 and Subchapter D, Chapter 1301.

[Sections 1302.103-1302.150 reserved for expansion]  
SUBCHAPTER D. RESTRICTIONS ON TRANSFERS

Sec. 1302.151. RESTRICTIONS ON TRANSFERS; EXCEPTION. (a) In this section, "line of business" includes noninsurance plans, fully self-insured health plans, Medicare Advantage plans, and personal injury protection under an automobile insurance policy.

(b) A contract between a discount broker and a physician or health care provider may not require the physician or health care provider to:

(1) consent to the disclosure or transfer of the physician's or health care provider's name and a contracted discounted fee for use with more than one line of business;

(2) accept all insurance products; or

(3) consent to the disclosure or transfer of the physician's or health care provider's name and access to a contracted discounted fee of the physician or provider in a chain of transfers that exceeds two transfers.

(c) Notwithstanding Subsection (b)(2), a contract between a discount broker and a physician or health care provider may require the physician or health care provider to accept all insurance products within a line of business covered by the contract.

[Sections 1302.152-1302.199 reserved for expansion]

#### SUBCHAPTER E. DISCLOSURE REQUIREMENTS

Sec. 1302.200. IMPLEMENTATION. (a) This subchapter takes effect January 1, 2008.

(b) This section expires January 2, 2008.

Sec. 1302.201. IDENTIFICATION OF DISCOUNT BROKER. An explanation of payment or remittance advice in an electronic or paper format must include the identity of the discount broker authorized to disclose or transfer the name and associated discounts of a physician or health care provider.

Sec. 1302.202. IDENTIFICATION OF ENTITY ASSUMING FINANCIAL RISK; DISCOUNT BROKER. A payor or representative of a payor that processes claims or claims payments must clearly identify in an electronic or paper format on the explanation of payment or remittance advice the identity of:

(1) the payor that assumes the risk for payment of claims or reimbursement for services; and

(2) the discount broker through which the payment rate and any discount are claimed.

Sec. 1302.203. INFORMATION ON IDENTIFICATION CARDS. If a discount broker or payor issues member or subscriber identification cards, the identification cards must identify, in a clear and legible manner, any third-party entity, including any discount broker:

(1) who is responsible for paying claims; and

(2) through whom the payment rate and any discount are claimed.

[Sections 1302.204-1302.250 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 1302.251. PENALTIES. (a) A discount broker who holds a certificate of authority or license under this code and who violates this chapter:

(1) commits an unfair settlement practice in violation of Chapter 541;

(2) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542; and

(3) is subject to administrative penalties in the manner prescribed by Chapters 82 and 84.

(b) A violation of this chapter by a discount broker who does not hold a certificate of authority or license under this code constitutes a violation of Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 1302.252. PRIVATE CAUSE OF ACTION. An affected physician or health care provider may bring a private action for damages in the manner prescribed by Subchapter D, Chapter 541, against a discount broker who violates this chapter.

SECTION \_\_\_\_ .02. Sections 1301.001(4) and (6), Insurance Code, are amended to read as follows:

(4) "Institutional provider" means a hospital, nursing home, or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy. The term includes an ambulatory surgical center.

(6) "Physician" means:

(A) an individual [a person] licensed to practice medicine in this state under the authority of Title 3, Subtitle B, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, comprised entirely by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) any other person wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

SECTION \_\_\_\_ .03. Section 1301.056, Insurance Code, is amended to read as follows:

Sec. 1301.056. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT.

(a) An insurer, ~~or~~ third-party administrator, or other entity may not reimburse a physician or other practitioner, institutional provider, or organization of physicians and health care providers on a discounted fee basis for covered services that are provided to an insured unless:

(1) the insurer, ~~or~~ third-party administrator, or other entity has contracted with either:

(A) the physician or other practitioner, institutional provider, or organization of physicians and health care providers; or

(B) a preferred provider organization that has a network of preferred providers and that has contracted with the physician or other practitioner, institutional provider, or organization of physicians and health care providers;

(2) the physician or other practitioner, institutional provider, or organization of physicians and health care providers has agreed to the contract and has agreed to provide health care services under the terms of the contract; and

(3) the insurer, ~~or~~ third-party administrator, or other entity has agreed to provide coverage for those health care services under the health insurance policy.

(b) A party to a preferred provider contract, including a contract with a preferred provider organization, may not sell, lease, assign, aggregate, disclose, or otherwise transfer the discounted fee, or any other information regarding the discount, payment, or reimbursement terms of the contract without the express authority of and ~~[prior]~~ adequate notification to the other contracting parties. This subsection does not:

(1) prohibit a payor from disclosing any information, including fees, to an insured; or

(2) affect the authority of the commissioner of insurance or the commissioner of workers' compensation under this code or Title 5, Labor Code, to request and obtain information.

(c) An insurer, third-party administrator, or other entity may not access a discounted fee, other than through a direct contract, unless notice has been provided to the contracted physicians, practitioners, institutional providers, and organizations of physicians and health care providers. For the purposes of the notice requirements of this subsection, the term "other entity" does not include an employer that contracts with an insurer or third-party administrator.

(d) The notice required under Subsection (c) must:

(1) be provided, at least every 45 days, through:

(A) electronic mail, after provision by the affected physician or health care provider of a current electronic mail address; and

(B) posting of a list on a secure Internet website; and

(2) include a separate prominent section that lists the insurers, third-party administrators, or other entities that the contracting party knows will have access to a discounted fee of the physician or health care provider in the succeeding 45-day period.

(d-1) Notwithstanding Subsection (d), and on the request of the affected physician or health care provider, the notice required under Subsection (c) may be provided through United States mail. This subsection expires September 1, 2009.

(e) The identity of an insurer, third-party administrator, or other entity authorized to access a contracted discounted fee of the physician or provider that becomes known to the contracting party required to submit the notice under Subsection (c) must be included in the subsequent notice.

(f) If, after receipt of the notice required under Subsection (c), a physician or other practitioner, institutional provider, or organization of physicians and health care providers objects to the addition of an insurer, third-party administrator, or other entity to access to a discounted fee, the physician or other practitioner, institutional provider, or organization of physicians and health care providers may terminate its contract by providing written notice to the contracting party not later than the 30th day after the date of the receipt of the notice required under Subsection (c).

(g) An insurer, third-party administrator, or other entity that processes claims or claims payments shall clearly identify in an electronic or paper format on the explanation of payment or remittance advice:

(1) the identity of the party responsible for administering the claims; and

(2) if the insurer, third-party administrator, or other entity does not have a direct contract with the physician or other practitioner, institutional provider, or organization of physicians and health care providers, the identity of the preferred provider organization or other contracting party that authorized a discounted fee.

(h) If an insurer, third-party administrator, or other entity issues member or insured identification cards, the identification cards must include, in a clear and legible format, the information required under Subsection (g).

(i) An insurer, ~~or~~ third-party administrator, or other entity that holds a certificate of authority or license under this code who violates this section:

(1) commits an unfair settlement practice in violation of Chapter 541;

(2) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542; and

(3) ~~(2)~~ is subject to administrative penalties under Chapters 82 and 84.

(j) A violation of this section by an entity described by this section who does not hold a certificate of authority or license issued under this code constitutes a violation of Subchapter E, Chapter 17, Business & Commerce Code.

(k) A physician or health care provider affected by a violation of this section may bring a private action for damages in the manner prescribed by Subchapter D, Chapter 541, against a discount broker who violates this section.

SECTION \_\_\_\_.04. The change in law made by this Article applies only to a cause of action that accrues on or after the effective date of this Article. A cause of action that accrues before that date is governed by the law as it existed immediately before the effective date of this Article, and that law is continued in effect for that purpose.

SECTION \_\_\_\_.05. The commissioner of insurance shall adopt rules as necessary to implement Chapter 1302, Insurance Code, as added by this Article, not later than December 1, 2007.

SECTION \_\_\_\_.06. This Article applies only to a contract entered into or renewed on or after January 1, 2008. A contract entered into or renewed before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Article, and that law is continued in effect for that purpose.

SECTION \_\_\_\_.07. This Article takes effect September 1, 2007.

### **Floor Amendment No. 7**

Amend **SB 23** by inserting the following new article, appropriately numbered, and renumbering subsequent articles and sections of the bill accordingly:

#### ARTICLE \_\_\_\_. REINSURANCE FOR SMALL EMPLOYER HEALTH BENEFIT PLANS

SECTION \_\_\_\_.01. Section 1501.3241, Insurance Code, is amended to read as follows:

Sec. 1501.3241. TEMPORARY LIMIT ON TOTAL ASSESSMENTS. Notwithstanding Section 1501.324, the maximum assessment amount payable for a calendar year may not exceed 10 percent of the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state. This section expires September 1, 2009 [~~2007~~].

SECTION \_\_\_\_ .02. Subsections (d-1) and (e-1), Section 1501.325, Insurance Code, are amended to read as follows:

(d-1) During the period that this subsection is effective, Subsection (d) is not effective. A reinsured health benefit plan issuer may not cede additional eligible lives to the system during a calendar year if the assessment amount payable for the preceding calendar year is at least 10 percent of the total premiums earned in that calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state. This subsection expires September 1, 2009 [~~2007~~].

(e-1) During the period that this subsection is effective, Subsection (e) is not effective. A reinsured health benefit plan issuer may not cede additional eligible lives to the system after the board determines that the expected loss from the reinsurance system for a year will exceed the total amount of assessments payable at a rate of 10 percent of the total premiums earned for the preceding calendar year. A reinsured health benefit plan issuer may not resume ceding additional eligible lives to the system until the board determines that the expected loss will be less than the maximum established by this subsection. This subsection expires September 1, 2009 [~~2007~~].

#### **Floor Amendment No. 8**

Amend **SB 23**, House committee printing, by inserting the following SECTIONS in the bill, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 91.043, Labor Code, is amended by adding Subsection (c) to read as follows:

(c) A license holder, on behalf of its client companies, may establish and sponsor a multiple employer welfare arrangement as provided by Chapter 846, Insurance Code, to provide a health benefit plan for the assigned employees of those client companies. For purposes of this subsection, "health benefit plan" has the meaning assigned by Section 846.001, Insurance Code.

SECTION \_\_\_\_ . Section 846.053, Insurance Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding Subsections (b) through (e), a license holder under Chapter 91, Labor Code, on behalf of its client companies, may establish and sponsor a multiple employer welfare arrangement under this chapter to the extent authorized by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

SECTION \_\_\_\_ . Section 91.043, Labor Code, as amended by this Act, applies only to a contract between a staff leasing services license holder and a client company that is entered into on or after the effective date of this Act. A contract entered into before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### **Floor Amendment No. 9**

Amend **SB 23** (House committee printing) by inserting the following new ARTICLE, appropriately numbered, to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill appropriately:



## ARTICLE \_\_\_\_ . CONSUMER-DIRECTED HEALTH PLAN

SECTION \_\_\_\_ .01. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.2045 to read as follows:

Sec. 1551.2045. CONSUMER-DIRECTED HEALTH PLAN. The board of trustees may create, for participants in the group program, an optional consumer-directed health plan that is composed of a high deductible health plan and a health savings account.

**Floor Amendment No. 11**

Amend **SB 23** (House committee printing) by inserting the following appropriately numbered article and renumbering articles of the bill accordingly:

ARTICLE \_\_\_\_ . PROMOTION OF AVAILABILITY OF COVERAGE FOR  
NON-NETWORK PROVIDERS

SECTION \_\_\_\_ .01. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1458 to read as follows:

CHAPTER 1458. PROMOTION OF AVAILABILITY OF COVERAGE TO  
NON-NETWORK HEALTH CARE PROVIDERS

Sec. 1458.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual who is eligible to receive health care services through a health benefit plan.

(2) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care services.

(3) "Health care practitioner" means an individual who is licensed to provide and provides health care services, including a physician.

(4) "Health care provider" means a health care facility or health care practitioner.

(5) "Participating provider" means a health care provider who has a contract with a health benefit plan to provide medical or health care services to enrollees.

(6) "Non-participating provider" means a health care provider who does not have a contract with a health benefit plan to provide medical or health care services to enrollees.

Sec. 1458.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to any health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843;

(F) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(G) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(H) a preferred provider benefit plan operating under Chapter 1301; or,

(I) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(2) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

(b) This chapter does not apply to health benefit plans that contract with the Health and Human Services Commission for the provision of:

(1) medical assistance under Chapter 32, Human Resources Code; or

(2) health benefits under the state child health plan.

Sec. 1458.003. ACCESS TO NONPARTICIPATING PROVIDERS. A health benefit plan that provides, through its health insurance policy, for the payment of a level of coverage that is different from a basic level of coverage provided by the health insurance policy if the enrollee uses a participating provider:

(1) must provide a level of coverage and reimbursement sufficient to ensure that each enrollee has reasonable access to medical and health care provided by participating and nonparticipating providers; and

(2) may not set a deductible, copayment, coinsurance, or other method of cost sharing so as to deny an enrollee reasonable access to medical and health care from nonparticipating providers.

Sec. 1458.004. HEALTH CARE PROVIDER RIGHTS. (a) A health benefit plan may not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a participating provider from discussing with or communicating with an enrollee regarding the availability of nonparticipating providers for the provision of the enrollee's medical or health care services.

(b) A health benefit plan may not terminate the contract of or otherwise penalize a participating provider because the participating provider's patients use nonparticipating providers for medical or health care services.

(c) A participating provider who is terminated by a health benefit plan is entitled, on request, to all information used by the health benefit plan as reasons for the termination, including the economic profile of the terminated participating provider, the standards by which the terminated participating provider was measured, and any statistics underlying any economic profiling and standards.

(d) Notwithstanding any other law, a health benefit plan may not use economic credentialing as a basis for refusing to contract with a health care provider or terminating the contract of a participating provider unless the economic credentialing demonstrates materially higher costs incurred for patients of the health care provider or participating provider.

(e) A health benefit plan may not enter into a contract with a participating provider on the condition that another health care provider be excluded from participating as a participating provider.

(f) Notwithstanding any other law, a health care provider may voluntarily waive a deductible, copayment, or coinsurance established by a health benefit plan.

SECTION \_\_\_\_ .02. (a) Section 1458.003, Insurance Code, as added by this article, applies only to a health benefit plan insurance policy or contract delivered, issued for delivery, or renewed on or after January 1, 2008. A health benefit plan

policy or contract issued before that date 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.

(b) Section 1458.004, Insurance Code, as added by this article, applies only to a contract entered into or renewed by a health care provider and an issuer of a health benefit plan on or after the effective date of this Act. A contract entered into or renewed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

### **Floor Amendment No. 12**

Amend **SB 23** (House committee printing) as follows:

(1) In SECTION 1.01 of the bill, in proposed Section 524.003(a), strike Subdivisions (3) and (4) (page 2, lines 3-7) and renumber subsequent subdivisions of Subsection (a) appropriately.

(2) In SECTION 1.01 of the bill, in proposed Section 524.054(a) (page 4, lines 2-3), strike "and technical assistance concerning health coverage products".

(3) In SECTION 1.01 of the bill, in proposed Section 524.054(b) (page 4, lines 6 and 8), strike "health coverage products" each place the phrase appears and substitute "health insurance coverage".

### **Floor Amendment No. 13**

Amend **SB 23** (House committee printing) by adding the following SECTIONS to the bill, appropriately numbered, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1508 to read as follows:

#### CHAPTER 1508. HEALTHY TEXAS PROGRAM SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1508.001. PURPOSE. (a) The purposes of the Healthy Texas Program established under this chapter are to:

(1) provide for access to quality small employer health benefit plans at an affordable price; and

(2) maximize reliance on strategies and procedures of managed care proven by the private sector.

(b) The program is not intended to diminish availability of traditional small employer health plan coverage to persons who are eligible for that coverage.

Sec. 1508.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the program.

(2) "Group health benefit plan issuer" means an insurance company, association, organization, group hospital service corporation, or health maintenance organization that delivers or issues for delivery a group insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage that provides health insurance or health care benefits. The term includes:

(A) a life, health, and accident insurance company operating under Chapter 841 or 982;

(B) a fraternal benefit society operating under Chapter 885; and

(C) a stipulated premium company operating under Chapter 884.

(3) "Program" means the Healthy Texas Program.

SUBCHAPTER B. CREATION OF PROGRAM; POWERS AND DUTIES OF COMMISSIONER

Sec. 1508.051. CREATION ON COMMISSIONER DETERMINATION. (a) If the commissioner by rule determines that, in all or any part of this state, small employer group health benefit plan coverage is not reasonably available to all market segments in the voluntary market, the commissioner may establish the Healthy Texas Program to deliver small employer group health benefit plans under this chapter to market segments identified as underserved.

(b) The program shall be administered by a board of directors and a management company in accordance with this chapter.

(c) The program is subject to the supervision and control of the commissioner.

Sec. 1508.052. GENERAL POWERS OF COMMISSIONER. (a) The commissioner shall provide general supervision for the program.

(b) In exercising authority under this chapter, the commissioner may:

(1) examine the operation of the program, and shall have free access to all the books, records, files, papers, and documents relating to the operation of the program as necessary to conduct an examination under this subdivision;

(2) summon, qualify, and examine as witnesses all persons having knowledge of program operations, including the members of the board, and officers and employees of the board;

(3) take any action necessary to enable this state and the program to fully participate in any federal program which may be enacted for purposes similar to the purposes of this chapter; and

(4) require the program to report to the department concerning risks insured by the program under this chapter, as considered necessary by the commissioner.

(c) The commissioner may review and approve policy forms, endorsements, and riders used by the program.

(d) The commissioner may receive and review rates and any rating methodology established for use by the program.

Sec. 1508.053. RULES. The commissioner may adopt rules as necessary to implement this chapter in the manner prescribed by Subchapter A, Chapter 36.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 1508.101. BOARD OF DIRECTORS. (a) The commissioner of insurance shall appoint the members of the board not later than the 31st day after the effective date of the commissioner rule under Section 1508.051(a) establishing the program. The board is composed of nine members appointed by the commissioner as follows:

(1) four members who are full-time employees of authorized small employer health benefit plan issuers;

(2) three public members who reside in this state; and

(3) two members who are licensed life and health insurance agents.

(b) Members serve staggered six-year terms.

(c) The commissioner or the commissioner's designated representative from the department shall serve as an ex officio member.

Sec. 1508.102. BOARD MEMBER IMMUNITY. (a) A member of the board is not liable for an act performed, or omission made, in good faith in the performance of powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Sec. 1508.103. OPEN MEETINGS; PUBLIC INFORMATION. The board is subject to:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the public information law, Chapter 552, Government Code.

#### SUBCHAPTER D. PROGRAM ADMINISTRATION

Sec. 1508.151. PROGRAM AUTHORITY. (a) The program may exercise any of the authority that a health benefit plan issuer authorized to write health benefit plans in this state may exercise under the laws of this state.

(b) The program shall operate as a health benefit plan issuer, and is subject to the maintenance tax imposed under Chapter 257 as if the program were an insurer.

Sec. 1508.152. PLAN OF OPERATION; COMMISSIONER APPROVAL. (a) The board shall submit to the commissioner a plan of operation and any amendments to that plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program.

(b) The plan of operation must be approved by the commissioner before inception of any program operations.

(c) The commissioner by rule may approve the plan of operation and any subsequent amendments if the commissioner determines the plan or the plan as amended is suitable to ensure the fair, reasonable, and equitable administration of the program.

(d) The plan of operation is effective on the written approval of the commissioner.

Sec. 1508.153. MANAGEMENT COMPANY. (a) To fully carry out the purposes of the program, the board shall contract with a management company that is qualified to administer, manage, and operate the program. The management company must hold a certificate of authority as an administrator under Chapter 4151.

(b) The management company must be approved by the commissioner.

Sec. 1508.154. FILING OF RATES. The board shall file with the commissioner the proposed rates and rate information to be used by the program in connection with the issuance of policies, riders, or endorsements. Rates must be set in amounts sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

Sec. 1508.155. AUDIT. (a) The board shall by contract secure the services of an independent auditor, who shall annually audit:

(1) the operations and transactions of the program; and

(2) the manner in which the management company is performing the company's duties.

(b) The independent auditor shall deliver to the board a report of the results of the audit conducted under this section.

Sec. 1508.156. ANNUAL REPORT. (a) The board shall compile a calendar year annual operating report regarding the program, and shall submit the report to the commissioner not later than March 31 of the following calendar year.

(b) The annual report must be accompanied by a copy of the auditor's report under Section 1508.155(b).

Sec. 1508.157. PROGRAM COVERAGE; ELIGIBILITY. (a) A small employer health benefit plan offered through the program must provide coverage consistent with that offered under a small employer health benefit plan subject to Subchapter F, Chapter 1501.

(b) An applicant for coverage from the program is eligible for the coverage if the applicant has:

(1) not been covered by a health benefit plan during the 12-month period preceding the date of the application; or

(2) has lost health benefit plan coverage due to a qualifying event.

(c) The commissioner by rule shall establish employer contribution and employee participation requirements applicable to coverage under the program, as well as other participation criteria applicable to small employer participation.

Sec. 1508.158. CONTRACTS. The board may, subject to commissioner approval, enter into contracts as necessary or proper to implement this chapter.

#### SUBCHAPTER E. PROGRAM DISSOLUTION

Sec. 1508.201. DEFINITION. In this subchapter, "plan" means the plan of dissolution and termination of the program required by this subchapter.

Sec. 1508.202. PLAN OF DISSOLUTION. (a) The board, at the direction of the commissioner and not later than the seventh anniversary of the date on which the program is established, shall develop and submit to the commissioner a plan for dissolution of the program and termination of program operations in accordance with this subchapter.

(b) The plan must:

(1) ensure the fair, reasonable, and equitable winding down and dissolution of the program and termination of program operations; and

(2) provide for the sharing of any remaining program assets on a proportionate basis in accordance with this subchapter.

Sec. 1508.203. APPROVAL OF PLAN BY COMMISSIONER; COMMISSIONER ACTION IF PLAN NOT APPROVED. (a) The commissioner may approve the plan if the commissioner determines the plan meets the requirements of Sections 1508.202 and 1508.204. The plan is effective on the written approval of the commissioner.

(b) If the board fails to submit a plan the commissioner can approve, the commissioner, after notice and hearing, shall adopt a plan by rule.

Sec. 1508.204. PLAN REQUIREMENTS. (a) The plan must:

(1) specify the date after which a person covered by a small employer health benefit plan issued by the program and effective on the date of the plan of dissolution may not submit additional claims;

(2) provide for:

(A) the filing, receipt, processing, and payment of all claims against the program, and all debts of the program, and the extinguishment of all liabilities of the program, including balances on any lines of credit that may have been established by or on behalf of the program, and including any credit for or refund of any overpayment;

(B) the collection and receipt of all outstanding amounts owed to the program;

(C) a final audit of the program by the state auditor, as provided by Section 1508.205; and

(D) the distribution of any surplus assets of the program that remain after the closing date, in a manner that shares the remaining program assets on a proportionate basis and in accordance with this section; and

(3) specify, as the closing date, the effective date of the closing of the transactions required by the plan and addressed in this section.

(b) The closing date may not be earlier than the third anniversary, or later than the seventh anniversary, of the effective date of the plan.

Sec. 1508.205. AUDIT. The transactions necessary to complete execution of the plan are subject to audit by the state auditor under Chapter 321, Government Code. The state auditor shall report the cost of the final audit conducted under this section to the board and the comptroller, and the board shall remit that amount to the comptroller for deposit to the general revenue fund.

Sec. 1508.206. OPERATION OF PROGRAM AFTER CLOSING DATE. (a) The program shall continue the program's existence until the third anniversary of the closing date established by the plan, solely for the purpose of prosecuting or defending in the program's name any action or proceeding by or against the program.

(b) During the three-year period established by Subsection (a), the board members serving at the time of dissolution shall continue to manage the affairs of the program for the sole purpose stated by that subsection, and have the powers and immunities necessary to accomplish that sole purpose, in accordance with Section 1508.102.

(c) If, during the three-year period established by Subsection (a), a board member fails to serve, the commissioner shall appoint a replacement member in accordance with Section 1508.101.

#### SUBCHAPTER F. REVENUE BOND PROGRAM AND PROCEDURES

Sec. 1508.251. LEGISLATIVE FINDING. The legislature finds that the issuance of bonds for the purpose of providing a method to raise funds to provide small employer health benefit plans through the Healthy Texas Program for employers in this state is for the benefit of the public and in furtherance of a public purpose.

Sec. 1508.252. DEFINITION. In this subchapter, "bond resolution" means the resolution or order authorizing bonds to be issued under this subchapter.

Sec. 1508.253. APPLICABILITY OF OTHER LAWS. (a) The following laws apply to bonds issued under this subchapter to the extent consistent with this subchapter:

(1) Chapters 1201 through 1202, Government Code;

(2) Chapters 1205 through 1207, Government Code;

(3) Chapters 1231 through 1232, Government Code; and

(4) Chapter 1371, Government Code.

(b) In the event of a conflict between this subchapter and a law listed in Subsection (a), this subchapter controls.

Sec. 1508.254. ISSUANCE OF BONDS AUTHORIZED. On behalf of the program, the Texas Public Finance Authority shall issue revenue bonds to:

- (1) establish the initial surplus of the program;
- (2) establish and maintain reserves;
- (3) pay initial operating costs;
- (4) pay costs related to issuance of the bonds; and
- (5) pay other costs related to the bonds as may be determined by the board.

Sec. 1508.255. BOND LIMITS. The Texas Public Finance Authority may issue, on behalf of the program, bonds in a total amount not to exceed \$200 million.

Sec. 1508.256. TERMS OF ISSUANCE; BOND CONDITIONS. (a) Bonds may be issued at public or private sale.

(b) Bonds may mature not later than the 20th anniversary of the date of issuance.

(c) Bonds must be issued in the name of the program.

Sec. 1508.257. ADDITIONAL COVENANTS. In a bond resolution, the board may make additional covenants with respect to the bonds and the designated income and receipts of the program pledged to payment of the bonds, and may provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 1508.258. SPECIAL ACCOUNTS. (a) A bond resolution may establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) The chief financial officer of the program or the officer's designee shall administer the accounts in accordance with this code.

Sec. 1508.259. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) Bonds are payable only from:

- (1) the maintenance tax surcharge established under Section 1508.260; or
- (2) any other amounts the program is authorized to levy, charge, or collect in connection with paying any portion of the bonds.

(b) Bonds are obligations solely of the program. Bonds do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Each bond must include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Each bond issued under this subchapter must state on its face that the bond is payable solely from the revenues pledged for that purpose and that the bond does not and may not constitute a legal or moral obligation of the state.

Sec. 1508.260. MAINTENANCE TAX SURCHARGE. (a) A maintenance tax surcharge is assessed against:

- (1) the program; and
- (2) subject to Subsection (d), each group health benefit plan issuer in this state that issues a group health benefit plan to an employer to provide health insurance or health care benefits.



(b) The maintenance tax surcharge under Subsection (a)(1) shall be set in an amount sufficient to pay all debt service on the bonds. The maintenance tax surcharge shall be set by the commissioner at the same time and shall be collected by the comptroller on behalf of the program in the same manner as provided under Chapter 257 for the collection of the maintenance tax assessed under that chapter.

(c) To establish the surcharge under Subsection (b), the commissioner shall increase the maintenance tax rate to which the program is subject to a rate sufficient to pay all debt service on the bonds, subject to the maximum tax rate established by Chapter 257. If the resulting tax rate is insufficient to pay all costs for the program under this subchapter and all debt service on the bonds, the commissioner may assess an additional surcharge to the program, not to exceed one percent of the program's gross small employer group health benefit plan premiums, as necessary to cover all debt service on the bonds. In this subsection, the maintenance tax surcharge includes the additional maintenance tax assessed under this subsection and the additional surcharge assessed under this subsection to pay all debt service of the bonds.

(d) If the assessment procedure established under Subsection (c) is insufficient to cover all debt service on the bonds, and subject to the operating procedure provisions in the program plan of operation, the commissioner may assess group health benefit plan issuers described by Subsection (a)(2) a surcharge, not to exceed one percent of the gross group health benefit plan premiums, exclusive of small employer group health benefit plan premiums, to cover all debt service on the bonds. For purposes of this subsection, the maintenance tax surcharge includes the surcharge assessed under this subsection to pay all debt service of the bonds.

(e) The program and a group health benefit plan issuer, respectively, may pass through the maintenance tax surcharge established under Subsections (c) and (d) to the policyholders of the program and those issuers.

Sec. 1508.261. EXEMPTION FROM TAXATION. The bonds issued under this subchapter, any interest from the bonds, and all assets pledged to secure the payment of the bonds are free from taxation by this state or a political subdivision of this state.

Sec. 1508.262. AUTHORIZED INVESTMENTS. Bonds issued under this subchapter constitute authorized investments under Subchapter D, Chapter 425.

Sec. 1508.263. STATE NOT TO IMPAIR BOND OBLIGATIONS; PLEDGE. (a) The state pledges to and agrees with the owners of any bonds issued in accordance with this subchapter that the state will not limit or alter the rights vested in the program to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, any premium or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged.

(b) The program may include the pledge and agreement of the state in any agreement with the owners of the bonds.

Sec. 1508.264. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the program and any other party to carry out agreements and to perform functions and duties under this subchapter, the Texas Constitution, or a bond resolution.

SECTION \_\_\_\_\_. (a) Not later than November 1, 2008, the commissioner of insurance shall provide an interim progress report to the lieutenant governor, the speaker of the house of representatives, and the members of the 81st Legislature regarding the operation of the Healthy Texas Program established under Chapter 1508, Insurance Code, as added by this Act. The report must include information regarding:

- (1) the potential economic impact that the program would have on the small employer insurance market in this state;
  - (2) the anticipated impact that the program would have on the quality of health care provided in this state;
  - (3) the progress of any proposed or adopted rules addressing the program;
  - (4) the progress of a draft or approved plan of operation for the program;
- and
- (5) the efficacy and feasibility of expanding the program to include application to governmental entities.

(b) A health benefit plan may not be issued by the Healthy Texas Program established under Chapter 1508, Insurance Code, as added by this Act, before January 1, 2010.

#### **Floor Amendment No. 14**

Amend **SB 23** (House committee printing) as follows:

(1) In SECTION 1.01 of the bill, between amended Section 524.051, Insurance Code, and amended Section 524.052, Insurance Code (page 2, between lines 23 and 24), insert the following:

Sec. 524.0512. INFORMATION ABOUT AVAILABILITY OF CERTAIN COVERAGE. The division shall include information in the program's materials about the availability under certain health benefit plans of maximum lifetime benefits for acute or chronic medical conditions as provided by Chapter 1377.

(2) Insert the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. LIFETIME BENEFITS FOR CERTAIN MEDICAL CONDITIONS  
SECTION \_\_\_\_\_.01. Subtitle E, Title 8, Insurance Code, is amended by adding Chapter 1377 to read as follows:

#### CHAPTER 1377. MAXIMUM LIFETIME BENEFITS FOR ACUTE OR CHRONIC MEDICAL CONDITIONS

Sec. 1377.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 842;
- (3) a fraternal benefit society operating under Chapter 885;
- (4) a stipulated premium company operating under Chapter 884;
- (5) an exchange operating under Chapter 942;
- (6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

(d) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

(e) Notwithstanding any other law, a standard health benefit plan provided under Chapter 1507 must provide the coverage required by this chapter.

(f) Notwithstanding Section 1501.251 or any other law, this chapter applies to coverage under a small employer health benefit plan subject to Chapter 1501.

Sec. 1377.002. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1377.001.

Sec. 1377.003. MAXIMUM LIFETIME BENEFIT. A health benefit plan that limits the maximum lifetime benefit applicable to an acute or chronic medical condition of an individual covered under the plan to a specified dollar amount may not limit the benefit to an amount less than \$5 million.

Sec. 1377.004. RULES. The commissioner may adopt rules in accordance with Subchapter A, Chapter 36, as necessary to implement this article. The rules may specify the types of acute or chronic medical conditions to which the restriction of Section 1377.003 applies.

SECTION \_\_\_\_ .02. Section 1506.151, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) Coverage provided by the pool is subject to Chapter 1377.

SECTION \_\_\_\_ .03. This article applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2008. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### **Floor Amendment No. 16**

Amend **SB 23** as follows:

(1) In SECTION 1.01 of the bill, between amended Section 524.051, Insurance Code, and amended Section 524.052, Insurance Code (page 2, between lines 23 and 24), insert the following:

Sec. 524.0513. INFORMATION ABOUT AVAILABILITY OF CERTAIN COVERAGE. The division shall include information in the program's materials about the availability under certain health benefit plans of coverage for prosthetic devices, orthotic devices, and related services provided by Chapter 1371.

(2) Insert the following new ARTICLE, appropriately numbered, and renumber subsequent ARTICLES and SECTIONS of the bill appropriately:

ARTICLE \_\_\_\_ . COVERAGE FOR CERTAIN PROSTHETIC DEVICES, ORTHOTIC DEVICES, AND RELATED SERVICES

SECTION \_\_\_\_ .01. Subtitle E, Title 8, Insurance Code, is amended by adding Chapter 1371 to read as follows:

CHAPTER 1371. COVERAGE FOR CERTAIN PROSTHETIC DEVICES, ORTHOTIC DEVICES, AND RELATED SERVICES

Sec. 1371.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual entitled to coverage under a health benefit plan.

(2) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms of a disease.

(3) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

Sec. 1371.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage provided by a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;  
(7) a health maintenance organization operating under Chapter 843;  
(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding Section 172.014, Local Government Code, or any other law, this chapter applies to health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

Sec. 1371.003. REQUIRED COVERAGE FOR PROSTHETIC DEVICES, ORTHOTIC DEVICES, AND RELATED SERVICES. (a) A health benefit plan must provide coverage for prosthetic devices, orthotic devices, and professional services related to the fitting and use of those devices that equals the coverage provided under federal laws for health insurance for the aged and disabled under Sections 1832, 1833, and 1834, Social Security Act (42 U.S.C. Sections 1395k, 1395l, and 1395m), and 42 C.F.R. Sections 410.100, 414.202, 414.210, and 414.228, as applicable.

(b) Covered benefits under this chapter are limited to the most appropriate model of prosthetic device or orthotic device that adequately meets the medical needs of the enrollee as determined by the enrollee's treating physician or podiatrist and prosthetist or orthotist, as applicable.

(c) Subject to applicable copayments and deductibles, the repair and replacement of a prosthetic device or orthotic device is a covered benefit under this chapter unless the repair or replacement is necessitated by misuse or loss by the enrollee.

(d) Coverage required under this section:

(1) must be provided in a manner determined to be appropriate in consultation with the treating physician or podiatrist and prosthetist or orthotist, as applicable, and the enrollee;

(2) may be subject to annual deductibles, copayments, and coinsurance that are consistent with annual deductibles, copayments, and coinsurance required for other coverage under the health benefit plan; and

(3) may not be subject to annual dollar limits.

(e) Covered benefits under this chapter may be provided by a pharmacy that has employees who are qualified under the Medicare system and applicable Medicaid regulations to service and bill for orthotic services. This chapter does not preclude a pharmacy from being reimbursed by a health benefit plan for the provision of orthotic services.

Sec. 1371.004. PREAUTHORIZATION. A health benefit plan may require prior authorization for a prosthetic device or an orthotic device in the same manner that the health benefit plan requires prior authorization for any other covered benefit.

Sec. 1371.005. MANAGED CARE PLAN. A health benefit plan provider may require that, if coverage is provided through a managed care plan, the benefits mandated under this chapter are covered benefits only if the prosthetic devices or orthotic devices are provided by a vendor or a provider, and related services are rendered by a provider, that contracts with or is designated by the health benefit plan provider. If the health benefit plan provider provides in-network and out-of-network services, the coverage for prosthetic devices or orthotic devices provided through out-of-network services must be comparable to that provided through in-network services.

SECTION \_\_\_\_ .02. Chapter 1371, Insurance Code, as added by this article, applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2008. A health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2008, is covered by the law in effect at the time the plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

### **Floor Amendment No. 18**

Amend **SB 23**, in Section 1551.2045, Insurance Code, as added by Amendment No. \_\_\_\_ by Taylor at the end of the section, following the period, by inserting "The board of trustees must permit an individual participating in the consumer-directed health plan to elect to terminate participation in that plan and resume participation in the health coverage offered through the group program."

### **Floor Amendment No. 3 on Third Reading**

Amend **SB 23** on third reading in Chapter 1465, Insurance Code, as added by Amendment No. 1 by Smithee, following added Section 1465.001, by inserting:

Sec. 1465.0015. APPLICABILITY TO CERTAIN PLANS. This chapter does not apply to health benefit plans that contract with the Health and Human Services Commission for the provision of:

- (1) medical assistance under Chapter 32, Human Resources Code; or
- (2) health benefits under the state child health plan.

### **Floor Amendment No. 4 on Third Reading**

Amend **SB 23**, on third reading, as follows:

(1) In added Subdivision (1), Section 1302.001, Insurance Code, as added by Floor Amendment No. 6, by Eiland, after "provider.", insert "The term does not include a discount health care program operator."

(2) In added Section 1302.001, Insurance Code, as added by Floor Amendment No. 6, by Eiland, following Subdivision (1) of that section, insert the following new subdivision:

(1-a) "Discount health care program operator" means a person who, in exchange for fees, dues, charges, or other consideration operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charges to members.

(3) In added Subdivision (2), Section 1302.001, Insurance Code, as added by Floor Amendment No. 6, by Eiland, between "means" and "a hospital" insert "an individual licensed in this state to engage in a health profession, other than a physician, and a health care facility, including".

(4) In Paragraph (A), Subdivision (2), of added Section 1302.002, Insurance Code, as added by Floor Amendment No. 6, by Eiland, at the end of the paragraph, strike "or".

(5) In Paragraph (B), Subdivision (2), of added Section 1302.002, Insurance Code, as added by Floor Amendment No. 6, by Eiland, at the end of the paragraph, strike the underlined period and substitute the following:

"; or

(C) a discount health care program."

(6) In added Section 1302.151, Insurance Code, as added by Floor Amendment No. 6, by Eiland, following Subsection (c) of that section, insert the following new Subsections (d) and (e):

(d) Notwithstanding Subsection (b)(1), a discount broker may offer, but may not require, a contract containing more than one line of business if each line of business is presented in a separate exhibit of the contract that includes:

(1) material contract provisions uniquely applicable to the line of business;

(2) full and complete disclosure of how the contracted fee schedule for the line of business will be computed, including the percent of billed charges and percent of Medicare;

(3) a toll-free number or electronic address through which the physician may request the fee schedule applicable to any covered services that the physician intends to provide; and

(4) a contract cover page that includes a separate signature line for each line of business for the physician to indicate assent to provide services for that line of business and permit disclosure or transfer of the physician's contracted discounted fee.

(e) For purposes of this section, "transfer" does not include a transfer to a discount health care program.

(7) Strike added Subsection (c), Section 1301.056, Insurance Code, as added by Floor Amendment No. 6, by Eiland, and substitute the following:

"(c) An insurer, third-party administrator, or other entity may not access a discounted fee, as described by Subsection (a), unless notice has been provided to the contracted physicians, practitioners, institutional providers, and organizations of physicians and health care providers. For the purposes of the notice requirements of this subsection, the term "other entity" does not include an employer that contracts with an insurer or third-party administrator. For the purposes of this section, the term "other entity" does not include a discount health care program operator as that term is defined by Section 1302.001."

### **Floor Amendment No. 6 on Third Reading**

Amend **SB 23** on third reading as follows:

(1) In Subsection (a)(1), Section 1376.001, Insurance Code, as added by Amendment No. 2 by Oliveira, at the end of Paragraph (D) of that subdivision, insert "and".

(2) In Subsection (a)(2), Section 1376.001, Insurance Code, as added by Amendment No. 2 by Oliveira, at the end of that subdivision, strike the semi-colon and substitute a period.

(3) In Subsection (a), Section 1376.001, Insurance Code, as added by Amendment No. 2 by Oliveira, strike Subdivision (3).

(4) In Subsection (a), Section 1458.002, Insurance Code, as added by Amendment No. 11 by Rose, strike:

"health benefit plan that:

(1)"

and substitute "health benefit plan that".

(5) In Subsection (a), Section 1458.002, Insurance Code, as added by Amendment No. 11 by Rose, at the end of Paragraph (I), strike "or" and substitute a period.

(6) In Subsection (a), Section 1458.002, Insurance Code, as added by Amendment No. 11 by Rose, strike Subdivision (2).

(7) In Section 1377.001, Insurance Code, as added by Amendment No. 14 by Coleman, strike Subsection (c) of that section and reletter existing subsections of Section 1377.001, Insurance Code, accordingly.

(8) In Section 1371.002, Insurance Code, as added by Amendment No. 16 by Gallego, strike Subsection (b) of that section and reletter existing subsections of Section 1371.002, Insurance Code, accordingly.

### **Floor Amendment No. 8 on Third Reading**

Amend **SB 23** on third reading (House committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . TEXAS ENTERPRISE FUND

SECTION 1. Section 481.078, Government Code, is amended by adding Subsection (k) to read as follows:

(k) A grant of money from the fund may not be made to a recipient unless the recipient, as one of the performance targets in the agreement, commits to providing a health benefit plan to the recipient's full-time employees who are employed in a facility or activity financed by the grant.

### **Floor Amendment No. 9 on Third Reading**

Amend **SB 23** on third reading as follows:

(1) In Section 524.0512, Insurance Code (as added on second reading by Amendment No. 14 by Coleman), strike "acute or chronic medical conditions" and substitute "hemophilia".

(2) In the heading to ARTICLE \_\_\_\_ of the bill (as added on second reading by Amendment No. 14 by Coleman), strike "CERTAIN MEDICAL CONDITIONS" and substitute "HEMOPHILIA".

(3) In the chapter heading for Chapter 1377, Insurance Code (as added on second reading by Amendment No. 14 by Coleman), strike "ACUTE OR CHRONIC MEDICAL CONDITIONS" and substitute "HEMOPHILIA".



(4) In Section 1377.003, Insurance Code (as added on second reading by Amendment No. 14 by Coleman), strike "applicable to an acute or chronic medical condition of an individual covered".

(5) In Section 1377.003, Insurance Code (as added on second reading by Amendment No. 14 by Coleman), between "under the plan" and "to a specified dollar amount", insert "for hemophilia".

(6) In Section 1377.004, Insurance Code (as added on second reading by Amendment No. 14 by Coleman), strike the last sentence of that section.

#### **Floor Amendment No. 10 on Third Reading**

Amend **SB 23** on third reading by striking Subsections (e) and (f), Section 1458.004, Insurance Code, as added by Amendment No. 11 by Rose.

#### **Floor Amendment No. 11 on Third Reading**

Amend **SB 23** on third reading in Chapter 1465, Insurance Code, as added by Amendment No. 1 by Smithee, following added Section 1465.001, by inserting:

Sec. 1465.0015. APPLICABILITY TO CERTAIN PLANS. This chapter does not apply to health benefit plans that contract with the Health and Human Services Commission for the provision of:

- (1) medical assistance under Chapter 32, Human Resources Code; or
- (2) health benefits under the state child health plan.

#### **Floor Amendment No. 12 on Third Reading**

Amend **SB 23** on third reading (House committee printing–amendment 5) by adding new SECTION as follows:

On page 7, line 8, add a new Subchapter O, Section 843.506, to read as follows:

SECTION 843.506 APPLICABILITY. This chapter does not apply to health benefit plans that contract with the Health and Human Service Commission for the provision of:

- (i) medical assistance under Chapter 32, Human Resources Code; or
- (ii) health benefits under the state child health plan.

#### **Floor Amendment No. 13 on Third Reading**

Amend **SB 23** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The Health and Human Services Commission shall study the cost effectiveness of contracts with pharmacy benefit managers with regard to costs, savings, and transparency. As part of the study conducted under this section, the commission shall recommend to the legislature any statutory changes that may improve this state's position when negotiating and entering contracts with pharmacy benefit managers. Not later than July 1, 2008, the commission shall report the findings of the study conducted under this section to the standing committees of the senate and the house of representatives that have primary jurisdiction over the commission, House Committee on Government Reform, and the House Committee on Insurance.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 23** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Duncan, Jackson, Williams, and Whitmire.

**(President in Chair)**

**AT EASE**

The President at 5:35 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

### **IN LEGISLATIVE SESSION**

Senator Estes at 7:58 p.m. called the Senate to order as In Legislative Session.

### **SENATE BILL 3 WITH HOUSE AMENDMENTS**

Senator Averitt called **SB 3** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 3** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to the development, management, and preservation of the water resources of the state; providing penalties.

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

#### **ARTICLE 1. ENVIRONMENTAL FLOWS**

SECTION 1.01. The heading to Section 5.506, Water Code, is amended to read as follows:

**Sec. 5.506. EMERGENCY SUSPENSION OF PERMIT CONDITION RELATING TO, AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR, BENEFICIAL INFLOWS TO AFFECTED BAYS AND ESTUARIES AND INSTREAM USES.**

SECTION 1.02. Section 5.506, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) The commission must give written notice of the proposed action ~~[suspension]~~ to the Parks and Wildlife Department before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) [this section]. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action ~~[suspension]~~ for a period of 72 hours from receipt of the notice and must consider those comments before issuing an order implementing the proposed action ~~[imposing the suspension]~~.

(c) The commission may suspend a permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) [this section] without notice except as required by Subsection (b).

SECTION 1.03. Subsection (j), Section 5.701, Water Code, is amended to read as follows:

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution. A fee is not required for a water right that is [This fee is waived for applications for instream use water rights] deposited into the Texas Water Trust.

SECTION 1.04. Section 11.002, Water Code, is amended by adding Subdivisions (15), (16), (17), (18), and (19) to read as follows:

(15) "Environmental flow analysis" means the application of a scientifically derived process for predicting the response of an ecosystem to changes in instream flows or freshwater inflows.

(16) "Environmental flow regime" means a schedule of flow quantities that reflects seasonal and yearly fluctuations that typically would vary geographically, by specific location in a watershed, and that are shown to be adequate to support a sound ecological environment and to maintain the productivity, extent, and persistence of key aquatic habitats in and along the affected water bodies.

(17) "Environmental flow standards" means those requirements adopted by the commission under Section 11.1471.

(18) "Advisory group" means the environmental flows advisory group.

(19) "Science advisory committee" means the Texas environmental flows science advisory committee.

SECTION 1.05. Subsection (a), Section 11.023, Water Code, is amended to read as follows:

(a) To the extent that state water has not been set aside by the commission under Section 11.1471(a)(2) to meet downstream instream flow needs or freshwater inflow needs, state [State] water may be appropriated, stored, or diverted for:

(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

(2) agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

(3) mining and recovery of minerals;

(4) hydroelectric power;

(5) navigation;

- (6) recreation and pleasure;
- (7) public parks; and
- (8) game preserves.

SECTION 1.06. Section 11.0235, Water Code, is amended by amending Subsections (b), (c), and (e) and adding Subsections (d-1) through (d-6) and (f) to read as follows:

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being. The legislature encourages voluntary water and land stewardship to benefit the water in the state, as defined by Section 26.001.

(c) The legislature has expressly required the commission while balancing all other public interests to consider and, to the extent practicable, provide for the freshwater inflows and instream flows necessary to maintain the viability of the state's streams, rivers, and bay and estuary systems in the commission's regular granting of permits for the use of state waters. As an essential part of the state's environmental flows policy, all permit conditions relating to freshwater inflows to affected bays and estuaries and instream flow needs must be subject to temporary suspension if necessary for water to be applied to essential beneficial uses during emergencies.

(d-1) The legislature has determined that existing water rights that are amended to authorize use for environmental purposes should be enforced in a manner consistent with the enforcement of water rights for other purposes as provided by the laws of this state governing the appropriation of state water.

(d-2) The legislature finds that to provide certainty in water management and development and to provide adequate protection of the state's streams, rivers, and bays and estuaries, the state must have a process with specific timelines for prompt action to address environmental flow issues in the state's major basin and bay systems, especially those systems in which unappropriated water is still available.

(d-3) The legislature finds that:

(1) in those basins in which water is available for appropriation, the commission should establish an environmental set-aside below which water should not be available for appropriation; and

(2) in those basins in which the unappropriated water that will be set aside for instream flow and freshwater inflow protection is not sufficient to fully satisfy the environmental flow standards established by the commission, a variety of market approaches, both public and private, for filling the gap must be explored and pursued.

(d-4) The legislature finds that while the state has pioneered tools to address freshwater inflow needs for bays and estuaries, there are limitations to those tools in light of both scientific and public policy evolution. To fully address bay and estuary environmental flow issues, the foundation of work accomplished by the state should be improved. While the state's instream flow studies program appears to encompass a comprehensive and scientific approach for establishing a process to assess instream flow needs for rivers and streams across the state, more extensive review and examination of the details of the program, which may not be fully developed until the program is under way, are needed to ensure an effective tool for evaluating riverine environmental flow conditions.

(d-5) The legislature finds that the management of water to meet instream flow and freshwater inflow needs should be evaluated on a regular basis and adapted to reflect both improvements in science related to environmental flows and future changes in projected human needs for water. In addition, the development of management strategies for addressing environmental flow needs should be an ongoing, adaptive process that considers and addresses local issues.

(d-6) The legislature finds that recommendations for state action to protect instream flows and freshwater inflows should be developed through a consensus-based, regional approach involving balanced representation of stakeholders and that such a process should be encouraged throughout the state.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to ensure [~~reexamine the process for ensuring~~] that these important priorities are effectively addressed by detailing how environmental flow standards are to be developed using the environmental studies that have been and are to be performed by the state and others and specifying in clear delegations of authority how those environmental flow standards will be integrated into the regional water planning and water permitting process [~~to the commission~~].

(f) The legislature recognizes that effective implementation of the approach provided by this chapter for protecting instream flows and freshwater inflows will require more effective water rights administration and enforcement systems than are currently available in most areas of the state.

SECTION 1.07. Subchapter B, Chapter 11, Water Code, is amended by adding Sections 11.0236, 11.02361, 11.02362, and 11.0237 to read as follows:

Sec. 11.0236. ENVIRONMENTAL FLOWS ADVISORY GROUP. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the environmental flows advisory group.

(b) The advisory group is composed of nine members as follows:

(1) three members appointed by the governor;

(2) three members of the senate appointed by the lieutenant governor; and

(3) three members of the house of representatives appointed by the speaker

of the house of representatives.

(c) Of the members appointed under Subsection (b)(1):

(1) one member must be a member of the commission;

(2) one member must be a member of the board; and

(3) one member must be a member of the Parks and Wildlife Commission.

(d) Each member of the advisory group serves at the will of the person who appointed the member.

(e) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the advisory group.

(f) A member of the advisory group is not entitled to receive compensation for service on the advisory group but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory group, as provided by the General Appropriations Act.

(g) The advisory group may accept gifts and grants from any source to be used to carry out a function of the advisory group.

(h) The commission shall provide staff support for the advisory group.

(i) The advisory group shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the advisory group determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the advisory group shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our public and private lands, streams and rivers, and bay and estuary systems and are high priorities in the water management process. The advisory group shall specifically address:

(1) ways that the ecological soundness of those systems will be ensured in the water rights administration and enforcement and water allocation processes; and

(2) appropriate methods to encourage persons voluntarily to convert reasonable amounts of existing water rights to use for environmental flow protection temporarily or permanently.

(j) The advisory group may adopt rules, procedures, and policies as needed to administer this section, to implement its responsibilities, and to exercise its authority under Sections 11.02361 and 11.02362.

(k) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory group.

(l) Not later than December 1, 2008, and every two years thereafter, the advisory group shall issue and promptly deliver to the governor, lieutenant governor, and speaker of the house of representatives copies of a report summarizing:

(1) any hearings conducted by the advisory group;

(2) any studies conducted by the advisory group;

(3) any legislation proposed by the advisory group;

(4) progress made in implementing Sections 11.02361 and 11.02362; and

(5) any other findings and recommendations of the advisory group.

(m) The advisory group is abolished on the date that the commission has adopted environmental flow standards under Section 11.1471 for all of the river basin and bay systems in this state.

Sec. 11.02361. TEXAS ENVIRONMENTAL FLOWS SCIENCE ADVISORY COMMITTEE. (a) The Texas environmental flows science advisory committee consists of at least five but not more than nine members appointed by the advisory group.

(b) The advisory group shall appoint to the science advisory committee persons who will provide an objective perspective and diverse technical expertise, including expertise in hydrology, hydraulics, water resources, aquatic and terrestrial biology, geomorphology, geology, water quality, computer modeling, and other technical areas pertinent to the evaluation of environmental flows.

(c) Members of the science advisory committee serve five-year terms expiring March 1. A vacancy on the science advisory committee is filled by appointment by the co-presiding officers of the advisory group for the unexpired term.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the science advisory committee.

(e) The science advisory committee shall:

(1) serve as an objective scientific body to advise and make recommendations to the advisory group on issues relating to the science of environmental flow protection; and

(2) develop recommendations to help provide overall direction, coordination, and consistency relating to:

(A) environmental flow methodologies for bay and estuary studies and instream flow studies;

(B) environmental flow programs at the commission, the Parks and Wildlife Department, and the board; and

(C) the work of the basin and bay expert science teams described in Section 11.02362.

(f) To assist the advisory group to assess the extent to which the recommendations of the science advisory committee are considered and implemented, the commission, the Parks and Wildlife Department, and the board shall provide written reports to the advisory group, at intervals determined by the advisory group, that describe:

(1) the actions taken by each agency in response to each recommendation; and

(2) for each recommendation not implemented, the reason it was not implemented.

(g) The science advisory committee is abolished on the date the advisory group is abolished under Section 11.0236(m).

Sec. 11.02362. DEVELOPMENT OF ENVIRONMENTAL FLOW REGIME RECOMMENDATIONS. (a) For the purposes of this section, the advisory group, not later than November 1, 2007, shall define the geographical extent of each river basin and bay system in this state for the sole purpose of developing environmental flow regime recommendations under this section and adoption of environmental flow standards under Section 11.1471.

(b) The advisory group shall give priority in descending order to the following river basin and bay systems of the state for the purpose of developing environmental flow regime recommendations and adopting environmental flow standards:

(1) the river basin and bay system consisting of the Trinity and San Jacinto Rivers and Galveston Bay and the river basin and bay system consisting of the Sabine and Neches Rivers and Sabine Lake Bay;

(2) the river basin and bay system consisting of the Colorado and Lavaca Rivers and Matagorda and Lavaca Bays and the river basin and bay system consisting of the Guadalupe, San Antonio, Mission, and Aransas Rivers and Mission, Copano, Aransas, and San Antonio Bays; and

(3) the river basin and bay system consisting of the Nueces River and Corpus Christi and Baffin Bays, the river basin and bay system consisting of the Rio Grande, the Rio Grande estuary, and the Lower Laguna Madre, and the Brazos River and its associated bay and estuary system.

(c) For the river basin and bay systems listed in Subsection (b)(1):

(1) the advisory group shall appoint the basin and bay area stakeholders committee not later than November 1, 2007;

(2) the basin and bay area stakeholders committee shall establish a basin and bay expert science team not later than March 1, 2008;

(3) the basin and bay expert science team shall finalize environmental flow regime recommendations and submit them to the basin and bay area stakeholders committee, the advisory group, and the commission not later than March 1, 2009, except that at the request of the basin and bay area stakeholders committee for good cause shown, the advisory group may extend the deadline provided by this subdivision;

(4) the basin and bay area stakeholders committee shall submit to the commission its comments on and recommendations regarding the basin and bay expert science team's recommended environmental flow regime not later than September 1, 2009; and

(5) the commission shall adopt the environmental flow standards as provided by Section 11.1471 not later than September 1, 2010.

(d) The advisory group shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(2) not later than September 1, 2008, and shall appoint the basin and bay area stakeholders committees for the river basin and bay systems listed in Subsection (b)(3) not later than September 1, 2009. The advisory group shall establish a schedule for the performance of the tasks listed in Subsections (c)(2) through (5) with regard to the river basin and bay systems listed in Subsections (b)(2) and (3) that will result in the adoption of environmental flow standards for that river basin and bay system by the commission as soon as is reasonably possible. Each basin and bay area stakeholders committee and basin and bay expert science team for a river basin and bay system listed in Subsection (b)(2) or (3) shall make recommendations to the advisory group with regard to the schedule applicable to that river basin and bay system. The advisory group shall consider the recommendations of the basin and bay area stakeholders committee and basin and bay expert science team as well as coordinate with, and give appropriate consideration to the recommendations of, the commission, the Parks and Wildlife Department, and the board in establishing the schedule.

(e) For a river basin and bay system or a river basin that does not have an associated bay system in this state not listed in Subsection (b), the advisory group shall establish a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards. The advisory group shall develop the schedule in consultation with the commission, the Parks and Wildlife Department, the board, and the pertinent basin and bay area stakeholders committee and basin and bay expert science team. The advisory group may, on its own initiative or on request, modify a schedule established under this subsection to be more responsive to particular circumstances, local desires, changing conditions, or



time-sensitive conflicts. This subsection does not prohibit, in a river basin and bay system for which the advisory group has not yet established a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards, an effort to develop information on environmental flow needs and ways in which those needs can be met by a voluntary consensus-building process.

(f) The advisory group shall appoint a basin and bay area stakeholders committee for each river basin and bay system in this state for which a schedule for the development of environmental flow regime recommendations and the adoption of environmental flow standards is specified by or established under Subsection (c), (d), or (e). Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay area stakeholders committee. Each committee must consist of at least 17 members. The membership of each committee must:

(1) reflect a fair and equitable balance of interest groups concerned with the particular river basin and bay system for which the committee is established; and

(2) be representative of appropriate stakeholders, including the following if they have a presence in the particular river basin and bay system for which the committee is established:

(A) agricultural water users, including representatives of each of the following sectors:

(i) agricultural irrigation;

(ii) free-range livestock; and

(iii) concentrated animal feeding operation;

(B) recreational water users, including coastal recreational anglers and businesses supporting water recreation;

(C) municipalities;

(D) soil and water conservation districts;

(E) industrial water users, including representatives of each of the following sectors:

(i) refining;

(ii) chemical manufacturing;

(iii) electricity generation; and

(iv) production of paper products or timber;

(F) commercial fishermen;

(G) public interest groups;

(H) regional water planning groups;

(I) groundwater conservation districts;

(J) river authorities and other conservation and reclamation districts with jurisdiction over surface water; and

(K) environmental interests.

(g) Members of a basin and bay area stakeholders committee serve five-year terms expiring March 1. If a vacancy occurs on a committee, the remaining members of the committee by majority vote shall appoint a member to serve the remainder of the unexpired term.

(h) Meetings of a basin and bay area stakeholders committee must be open to the public.

(i) Each basin and bay area stakeholders committee shall establish a basin and bay expert science team for the river basin and bay system for which the committee is established. The basin and bay expert science team must be established not later than six months after the date the basin and bay area stakeholders committee is established. Chapter 2110, Government Code, does not apply to the size, composition, or duration of a basin and bay expert science team. Each basin and bay expert science team must be composed of technical experts with special expertise regarding the river basin and bay system or regarding the development of environmental flow regimes. A person may serve as a member of more than one basin and bay expert science team at the same time.

(j) The members of a basin and bay expert science team serve five-year terms expiring April 1. A vacancy on a basin and bay expert science team is filled by appointment by the pertinent basin and bay area stakeholders committee to serve the remainder of the unexpired term.

(k) The science advisory committee shall appoint one of its members to serve as a liaison to each basin and bay expert science team to facilitate coordination and consistency in environmental flow activities throughout the state. The commission, the Parks and Wildlife Department, and the board shall provide technical assistance to each basin and bay expert science team, including information about the studies conducted under Sections 16.058 and 16.059, and may serve as nonvoting members of the basin and bay expert science team to facilitate the development of environmental flow regime recommendations.

(l) Where reasonably practicable, meetings of a basin and bay expert science team must be open to the public.

(m) Each basin and bay expert science team shall develop environmental flow analyses and a recommended environmental flow regime for the river basin and bay system for which the team is established through a collaborative process designed to achieve a consensus. In developing the analyses and recommendations, the science team must consider all reasonably available science, without regard to the need for the water for other uses, and the science team's recommendations must be based solely on the best science available. For the Rio Grande below Fort Quitman, any uses attributable to Mexican water flows must be excluded from environmental flow regime recommendations.

(n) Each basin and bay expert science team shall submit its environmental flow analyses and environmental flow regime recommendations to the pertinent basin and bay area stakeholders committee, the advisory group, and the commission in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). The basin and bay area stakeholders committee and the advisory group may not change the environmental flow analyses or environmental flow regime recommendations of the basin and bay expert science team.

(o) Each basin and bay area stakeholders committee shall review the environmental flow analyses and environmental flow regime recommendations submitted by the committee's basin and bay expert science team and shall consider them in conjunction with other factors, including the present and future needs for water for other uses related to water supply planning in the pertinent river basin and bay system. For the Rio Grande, the basin and bay area stakeholders committee shall

also consider the water accounting requirements for any international water sharing treaty, minutes, and agreement applicable to the Rio Grande and the effects on allocation of water by the Rio Grande watermaster in the middle and lower Rio Grande. The Rio Grande basin and bay expert science team may not recommend any environmental flow regime that would result in a violation of a treaty or court decision. The basin and bay area stakeholders committee shall develop recommendations regarding environmental flow standards and strategies to meet the environmental flow standards and submit those recommendations to the commission and to the advisory group in accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e). In developing its recommendations, the basin and bay area stakeholders committee shall operate on a consensus basis to the maximum extent possible.

(p) In recognition of the importance of adaptive management, after submitting its recommendations regarding environmental flow standards and strategies to meet the environmental flow standards to the commission, each basin and bay area stakeholders committee, with the assistance of the pertinent basin and bay expert science team, shall prepare and submit for approval by the advisory group a work plan. The work plan must:

(1) establish a periodic review of the basin and bay environmental flow analyses and environmental flow regime recommendations, environmental flow standards, and strategies, to occur at least once every 10 years;

(2) prescribe specific monitoring, studies, and activities; and

(3) establish a schedule for continuing the validation or refinement of the basin and bay environmental flow analyses and environmental flow regime recommendations, the environmental flow standards adopted by the commission, and the strategies to achieve those standards.

(q) In accordance with the applicable schedule specified by or established under Subsection (c), (d), or (e), the advisory group, with input from the science advisory committee, shall review the environmental flow analyses and environmental flow regime recommendations submitted by each basin and bay expert science team. If appropriate, the advisory group shall submit comments on the analyses and recommendations to the commission for use by the commission in adopting rules under Section 11.1471. Comments must be submitted not later than six months after the date of receipt of the analyses and recommendations.

(r) Notwithstanding the other provisions of this section, in the event the commission, by permit or order, has established an estuary advisory council with specific duties related to implementation of permit conditions for environmental flows, that council may continue in full force and effect and shall act as and perform the duties of the basin and bay area stakeholders committee under this section. The estuary advisory council shall add members from stakeholder groups and from appropriate science and technical groups, if necessary, to fully meet the criteria for membership established in Subsection (f) and shall operate under the provisions of this section.

(s) Each basin and bay area stakeholders committee and basin and bay expert science team is abolished on the date the advisory group is abolished under Section 11.0236(m).

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. The commission may approve an application to amend an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b) or (c), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1471, 11.1491, 11.150, 11.152, 16.058, or 16.059.

SECTION 1.08. Subsection (b), Section 11.082, Water Code, is amended to read as follows:

(b) The state may recover the penalties prescribed in Subsection (a) [of this section] by suit brought for that purpose in a court of competent jurisdiction. The state may seek those penalties regardless of whether a watermaster has been appointed for the water division, river basin, or segment of a river basin where the unlawful use is alleged to have occurred.

SECTION 1.09. Section 11.0841, Water Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, the Parks and Wildlife Department has:

(1) the rights of a holder of a water right that is held in the Texas Water Trust, including the right to file suit in a civil court to prevent the unlawful use of such a right;

(2) the right to act in the same manner that a holder of a water right may act to protect the holder's rights in seeking to prevent any person from appropriating water in violation of a set-aside established by the commission under Section 11.1471 to meet instream flow needs or freshwater inflow needs; and

(3) the right to file suit in a civil court to prevent the unlawful use of a set-aside established under Section 11.1471.

SECTION 1.10. Subsection (a), Section 11.0842, Water Code, is amended to read as follows:

(a) If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236 [of this code], or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section. The commission may assess an administrative penalty for a violation relating to a water division or a river basin or segment of a river basin regardless of whether a watermaster has been appointed for the water division or river basin or segment of the river basin.

SECTION 1.11. Subsection (a), Section 11.0843, Water Code, is amended to read as follows:

(a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, the executive director or a person designated by the executive director, including a watermaster or the watermaster's deputy, [as defined by commission rule,] may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) [~~of this section~~] and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842 [~~of this code~~].

SECTION 1.12. Subsection (b), Section 11.134, Water Code, is amended to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) is intended for a beneficial use;

(B) does not impair existing water rights or vested riparian rights;

(C) is not detrimental to the public welfare;

(D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by [~~Subdivision (8)(B),~~] Section 11.002(8)(B) [11.002].

SECTION 1.13. Section 11.147, Water Code, is amended by amending Subsections (b), (d), and (e) and adding Subsections (e-1), (e-2), and (e-3) to read as follows:

(b) In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the commission shall include in the permit any conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system, to the extent practicable when considering all public interests and the studies mandated by Section 16.058 as evaluated under Section 11.1491 [~~those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system~~].

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies. In determining what conditions to include in the permit under this subsection, the commission shall consider among other factors:

(1) the studies mandated by Section 16.059; and

(2) any water quality assessment performed under Section 11.150.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain fish and wildlife habitats. In determining what conditions to include in the permit under this subsection, the commission shall consider any assessment performed under Section 11.152.

(e-1) Any permit for a new appropriation of water or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted must include a provision allowing the commission to adjust the conditions included in the permit or amended water right to provide for protection of instream flows or freshwater inflows. With respect to an amended water right, the provision may not allow the commission to adjust a condition of the amendment other than a condition that applies only to the increase in the amount of water to be stored, taken, or diverted authorized by the amendment. This subsection does not affect an appropriation of or an authorization to store, take, or divert water under a permit or amendment to a water right issued before September 1, 2007. The commission shall adjust the conditions if the commission determines, through an expedited public comment process, that such an adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted under Section 11.1471. The adjustment:

(1) in combination with any previous adjustments made under this subsection may not increase the amount of the pass-through or release requirement for the protection of instream flows or freshwater inflows by more than 12.5 percent of the annualized total of that requirement contained in the permit as issued or of that requirement contained in the amended water right and applicable only to the increase in the amount of water authorized to be stored, taken, or diverted under the amended water right;

(2) must be based on appropriate consideration of the priority dates and diversion locations of any other water rights granted in the same river basin that are subject to adjustment under this subsection; and

(3) must be based on appropriate consideration of any voluntary contributions to the Texas Water Trust, and of any voluntary amendments to existing water rights to change the use of a specified quantity of water to or add a use of a specified quantity of water for instream flows dedicated to environmental needs or bay and estuary inflows as authorized by Section 11.0237(a), that actually contribute toward meeting the applicable environmental flow standards.

(e-2) Any water right holder who makes a contribution or amends a water right as described by Subsection (e-1)(3) is entitled to appropriate credit for the benefits of the contribution or amendment against the adjustment of the holder's water right under Subsection (e-1).

(e-3) Notwithstanding Subsections (b)-(e), for the purpose of determining the environmental flow conditions necessary to maintain freshwater inflows to an affected bay and estuary system, existing instream uses and water quality of a stream or river, or fish and aquatic wildlife habitats, the commission shall apply any applicable environmental flow standard, including any environmental flow set-aside, adopted under Section 11.1471 instead of considering the factors specified by those subsections.

SECTION 1.14. Subchapter D, Chapter 11, Water Code, is amended by adding Section 11.1471 to read as follows:

Sec. 11.1471. ENVIRONMENTAL FLOW STANDARDS AND SET-ASIDES.

(a) The commission by rule shall:

(1) adopt appropriate environmental flow standards for each river basin and bay system in this state that are adequate to support a sound ecological environment, to the maximum extent reasonable considering other public interests and other relevant factors;

(2) establish an amount of unappropriated water, if available, to be set aside to satisfy the environmental flow standards to the maximum extent reasonable when considering human water needs; and

(3) establish procedures for implementing an adjustment of the conditions included in a permit or an amended water right as provided by Sections 11.147(e-1) and (e-2).

(b) In adopting environmental flow standards for a river basin and bay system under Subsection (a)(1), the commission shall consider:

(1) the definition of the geographical extent of the river basin and bay system adopted by the advisory group under Section 11.02362(a) and the definition and designation of the river basin by the board under Section 16.051(c);

(2) the schedule established by the advisory group under Section 11.02362(d) or (e) for the adoption of environmental flow standards for the river basin and bay system, if applicable;

(3) the environmental flow analyses and the recommended environmental flow regime developed by the applicable basin and bay expert science team under Section 11.02362(m);

(4) the recommendations developed by the applicable basin and bay area stakeholders committee under Section 11.02362(o) regarding environmental flow standards and strategies to meet the flow standards;

(5) any comments submitted by the advisory group to the commission under Section 11.02362(q);

(6) the specific characteristics of the river basin and bay system;

(7) economic factors;

(8) the human and other competing water needs in the river basin and bay system;

(9) all reasonably available scientific information, including any scientific information provided by the science advisory committee; and

(10) any other appropriate information.

(c) Environmental flow standards adopted under Subsection (a)(1) must consist of a schedule of flow quantities, reflecting seasonal and yearly fluctuations that may vary geographically by specific location in a river basin and bay system.

(d) As provided by Section 11.023, the commission may not issue a permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted if the issuance of the permit or amendment would impair an environmental flow set-aside established under Subsection (a)(2). A permit for a new appropriation or an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or

diverted that is issued after the adoption of an applicable environmental flow set-aside must contain appropriate conditions to ensure protection of the environmental flow set-aside.

(e) An environmental flow set-aside established under Subsection (a)(2) for a river basin and bay system other than the middle and lower Rio Grande must be assigned a priority date corresponding to the date the commission receives environmental flow regime recommendations from the applicable basin and bay expert science team and be included in the appropriate water availability models in connection with an application for a permit for a new appropriation or for an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted.

(f) An environmental flow standard or environmental flow set-aside adopted under Subsection (a) may be altered by the commission in a rulemaking process undertaken in accordance with a schedule established by the commission. In establishing a schedule, the commission shall consider the applicable work plan approved by the advisory group under Section 11.02362(p). The commission's schedule may not provide for the rulemaking process to occur more frequently than once every 10 years unless the work plan provides for a periodic review under Section 11.02362(p) to occur more frequently than once every 10 years. In that event, the commission may provide for the rulemaking process to be undertaken in conjunction with the periodic review if the commission determines that schedule to be appropriate. A rulemaking process undertaken under this subsection must provide for the participation of stakeholders having interests in the particular river basin and bay system for which the process is undertaken.

SECTION 1.15. The heading to Section 11.148, Water Code, is amended to read as follows:

Sec. 11.148. EMERGENCY SUSPENSION OF PERMIT CONDITIONS AND EMERGENCY AUTHORITY TO MAKE AVAILABLE WATER SET ASIDE FOR ENVIRONMENTAL FLOWS.

SECTION 1.16. Section 11.148, Water Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (c) to read as follows:

(a-1) State water that is set aside by the commission to meet the needs for freshwater inflows to affected bays and estuaries and instream uses under Section 11.1471(a)(2) may be made available temporarily for other essential beneficial uses if the commission finds that an emergency exists that cannot practically be resolved in another way.

(b) Before the commission suspends a permit condition under Subsection (a) or makes water available temporarily under Subsection (a-1) [of this section], it must give written notice to the Parks and Wildlife Department of the proposed action [suspension]. The commission shall give the Parks and Wildlife Department an opportunity to submit comments on the proposed action [suspension] within 72 hours from such time and the commission shall consider those comments before issuing its order implementing the proposed action [imposing the suspension].

(c) The commission may suspend the permit condition under Subsection (a) or make water available temporarily under Subsection (a-1) without notice to any other interested party other than the Parks and Wildlife Department as provided by



Subsection (b) ~~[of this section]~~. However, all affected persons shall be notified immediately by publication, and a hearing to determine whether the suspension should be continued shall be held within 15 days of the date on which the order to suspend is issued.

SECTION 1.17. Subsection (a), Section 11.1491, Water Code, is amended to read as follows:

(a) The Parks and Wildlife Department and the commission shall have joint responsibility to review the studies prepared under Section 16.058 ~~[of this code]~~, to determine inflow conditions necessary for the bays and estuaries, and to provide information necessary for water resources management. Each agency shall designate an employee to share equally in the oversight of the program. Other responsibilities shall be divided between the Parks and Wildlife Department and the commission to maximize present in-house capabilities of personnel and to minimize costs to the state. Each agency shall have reasonable access to all information produced by the other agency. Publication of reports completed under this section shall be submitted for comment to ~~[both]~~ the commission, ~~[and]~~ the Parks and Wildlife Department, the advisory group, the science advisory committee, and any applicable basin and bay area stakeholders committee and basin and bay expert science team.

SECTION 1.18. Subsection (g), Section 11.329, Water Code, is amended to read as follows:

(g) The commission may not assess costs under this section against a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts or against a holder of a water right placed in the Texas Water Trust for a term of at least 20 years. ~~[This subsection is not intended to affect in any way the fees assessed on a water right holder by the commission under Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993. For purposes of Section 1.29(d), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts shall be assessed fees at the same rate per acre foot charged to a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of more than two megawatts.]~~

SECTION 1.19. Subsection (e), Section 11.404, Water Code, is amended to read as follows:

(e) The court may not assess costs and expenses under this section against:

(1) a holder of a non-priority hydroelectric right that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts; or

(2) a holder of a water right placed in the Texas Water Trust for a term of at least 20 years.

SECTION 1.20. Subchapter I, Chapter 11, Water Code, is amended by adding Section 11.4531 to read as follows:

Sec. 11.4531. WATERMASTER ADVISORY COMMITTEE. (a) For each river basin or segment of a river basin for which the executive director appoints a watermaster under this subchapter, the executive director shall appoint a watermaster advisory committee consisting of at least nine but not more than 15 members. A

member of the advisory committee must be a holder of a water right or a representative of a holder of a water right in the river basin or segment of the river basin for which the watermaster is appointed. In appointing members to the advisory committee, the executive director shall consider:

(1) geographic representation;

(2) amount of water rights held;

(3) different types of holders of water rights and users, including water districts, municipal suppliers, irrigators, and industrial users; and

(4) experience and knowledge of water management practices.

(b) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

(c) An advisory committee member serves a two-year term expiring August 31 of each odd-numbered year and holds office until a successor is appointed.

(d) The advisory committee shall meet within 30 days after the date the initial appointments have been made and shall select a presiding officer to serve a one-year term. The committee shall meet regularly as necessary.

(e) The advisory committee shall:

(1) make recommendations to the executive director regarding activities of benefit to the holders of water rights in the administration and distribution of water to holders of water rights in the river basin or segment of the river basin for which the watermaster is appointed;

(2) review and comment to the executive director on the annual budget of the watermaster operation; and

(3) perform other advisory duties as requested by the executive director regarding the watermaster operation or as requested by holders of water rights and considered by the committee to benefit the administration of water rights in the river basin or segment of the river basin for which the watermaster is appointed.

SECTION 1.21. Sections 11.454 and 11.455, Water Code, are amended to read as follows:

Sec. 11.454. DUTIES AND AUTHORITY OF THE WATERMASTER. Section 11.327 applies to the duties and authority of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the duties and authority of a watermaster appointed for a water division under Subchapter G ~~[A watermaster as the agent of the commission and under the executive director's supervision shall:~~

~~[(1) divide the water of the streams or other sources of supply of his segment or basin in accordance with the authorized water rights;~~

~~[(2) regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his segment or basin, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled; and~~

~~[(3) perform any other duties and exercise any authority directed by the commission].~~

Sec. 11.455. COMPENSATION AND EXPENSES OF WATERMASTER [ASSESSMENTS]. (a) Section 11.329 applies to the payment of the compensation and expenses of a watermaster appointed for a river basin or segment of a river basin under this subchapter in the same manner as that section applies to the payment of the compensation and expenses of a watermaster appointed for a water division under Subchapter G.

(b) The executive director shall deposit the assessments collected under this section to the credit of the watermaster fund.

(c) Money deposited under this section to the credit of the watermaster fund may be used only for the purposes specified by Section 11.3291 with regard to the watermaster operation under this subchapter with regard to which the assessments were collected [The commission may assess the costs of the watermaster against all persons who hold water rights in the river basin or segment of the river basin under the watermaster's jurisdiction in accordance with Section 11.329 of this code].

SECTION 1.22. Subchapter F, Chapter 15, Water Code, is amended by adding Section 15.4063 to read as follows:

Sec. 15.4063. ENVIRONMENTAL FLOWS FUNDING. The board may authorize the use of money in the research and planning fund:

(1) to compensate the members of the Texas environmental flows science advisory committee established under Section 11.02361 for attendance and participation at meetings of the committee and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act;

(2) for contracts with cooperating state and federal agencies and universities and with private entities as necessary to provide technical assistance to enable the Texas environmental flows science advisory committee and the basin and bay expert science teams established under Section 11.02362 to perform their statutory duties;

(3) to compensate the members of the basin and bay expert science teams established under Section 11.02362 for attendance and participation at meetings of the basin and bay expert science teams and for transportation, meals, lodging, or other travel expenses associated with attendance at those meetings as provided by the General Appropriations Act; and

(4) for contracts with political subdivisions designated as representatives of basin and bay area stakeholders committees established under Section 11.02362 to fund all or part of the administrative expenses incurred in conducting meetings of the basin and bay area stakeholders committees or the pertinent basin and bay expert science teams.

SECTION 1.23. Subsection (d), Section 16.059, Water Code, is amended to read as follows:

(d) The priority studies shall be completed not later than December 31, 2016 [2010]. The Parks and Wildlife Department, the commission, and the board shall establish a work plan that prioritizes the studies and that sets interim deadlines providing for publication of flow determinations for individual rivers and streams on a reasonably consistent basis throughout the prescribed study period. Before publication, completed studies shall be submitted for comment to the commission, the board, and the Parks and Wildlife Department.

SECTION 1.24. Subsection (h), Section 26.0135, Water Code, as amended by Chapters 234 and 965, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights, ~~and~~ non-priority hydroelectric rights of a water right holder that owns or operates privately owned facilities that collectively have a capacity of less than two megawatts, and water rights held in the Texas Water Trust for terms of at least 20 years will not be subject to this assessment. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, that program funds are equitably apportioned among basins, that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no municipality shall be assessed cost for any efforts that duplicate water quality management activities described in Section 26.177 ~~[of this chapter]~~. The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than \$5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.

SECTION 1.25. Subsection (b), Section 11.1491, Water Code, is repealed.

SECTION 1.26. (a) The governor, lieutenant governor, and speaker of the house of representatives shall appoint the initial members of the environmental flows advisory group as provided by Section 11.0236, Water Code, as added by this article, as soon as practicable on or after the effective date of this Act.

(b) As soon as practicable after taking office, the initial members of the environmental flows advisory group shall appoint the initial members of the Texas environmental flows science advisory committee as provided by Section 11.02361, Water Code, as added by this article. The terms of the initial members of the committee expire March 1, 2012.

(c) The environmental flows advisory group shall appoint the members of each basin and bay area stakeholders committee as provided by Section 11.02362, Water Code, as added by this article. The terms of the initial members of each committee expire March 1 of the fifth year that begins after the year in which the initial appointments are made.

(d) Each basin and bay area stakeholders committee shall appoint the members of the basin and bay expert science team for the river basin and bay system for which the committee is established as provided by Section 11.02362, Water Code, as added by this article. The terms of the initial members of each team expire April 1 of the fifth year that begins after the year in which the initial appointments are made.

(e) The executive director of the Texas Commission on Environmental Quality shall appoint the members of the watermaster advisory committee under Section 11.4531, Water Code, as added by this article, for each river basin or segment of a river basin for which the executive director appoints a watermaster under Subchapter I, Chapter 11, Water Code. The terms of the initial members of each committee expire August 31 of the first odd-numbered year that begins after the year in which the initial appointments are made.

SECTION 1.27. The changes in law made by this article relating to a permit for a new appropriation of water or to an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted apply only to:

(1) water appropriated under a permit for a new appropriation of water the application for which is pending with the Texas Commission on Environmental Quality on the effective date of this Act or is filed with the commission on or after that date; or

(2) the increase in the amount of water authorized to be stored, taken, or diverted under an amendment to an existing water right that increases the amount of water authorized to be stored, taken, or diverted and the application for which is pending with the Texas Commission on Environmental Quality on the effective date of this Act or is filed with the commission on or after that date.

## ARTICLE 2. WATER CONSERVATION AND PLANNING

SECTION 2.01. Section 1.003, Water Code, is amended to read as follows:

Sec. 1.003. PUBLIC POLICY. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters; ~~and~~

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources; and

(7) the voluntary stewardship of public and private lands to benefit waters of the state.

SECTION 2.02. Subchapter A, Chapter 1, Water Code, is amended by adding Section 1.004 to read as follows:

Sec. 1.004. FINDINGS AND POLICY REGARDING LAND STEWARDSHIP.

(a) The legislature finds that voluntary land stewardship enhances the efficiency and effectiveness of this state's watersheds by helping to increase surface water and groundwater supplies, resulting in a benefit to the natural resources of this state and to the general public. It is therefore the policy of this state to encourage voluntary land stewardship as a significant water management tool.

(b) "Land stewardship," as used in this code, is the voluntary practice of managing land to conserve or enhance suitable landscapes and the ecosystem values of the land. Land stewardship includes land and habitat management, wildlife conservation, and watershed protection. Land stewardship practices include runoff reduction, prescribed burning, managed grazing, brush management, erosion management, reseeding with native plant species, riparian management and restoration, and spring and creek-bank protection, all of which benefit the water resources of this state.

SECTION 2.03. Section 11.002, Water Code, is amended by adding Subdivision (20) to read as follows:

(20) "Best management practices" means those voluntary efficiency measures developed by the commission and the board that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specified time frame.

SECTION 2.04. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.146 to read as follows:

Sec. 13.146. WATER CONSERVATION PLAN. The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies.

SECTION 2.05. Subsection (b), Section 15.102, Water Code, is amended to read as follows:

(b) The loan fund may also be used by the board to provide:

(1) grants or loans for projects that include supplying water and wastewater services in economically distressed areas or nonborder colonias as provided by legislative appropriations, this chapter, and board rules, including projects involving retail distribution of those services; and

(2) grants for:

(A) projects for which federal grant funds are placed in the loan fund;

(B) projects, on specific legislative appropriation for those projects; or

(C) water conservation, desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION 2.06. Subchapter Q, Chapter 15, Water Code, is amended by adding Section 15.9751 to read as follows:

Sec. 15.9751. PRIORITY FOR WATER CONSERVATION. The board shall give priority to applications for funds for the implementation of water supply projects in the state water plan by entities that:

- (1) have already demonstrated significant water conservation savings; or
- (2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.07. Section 16.051, Water Code, is amended by adding Subsections (i), (j), and (k) to read as follows:

(i) A cause of action may not be brought under Subsection (h) for a violation of Subsection (g), if a political subdivision obtained fee title or an easement for the purpose of:

- (1) providing retail public utility service to property within the site; or
- (2) allowing an owner of property within the reservoir site to improve or develop the property.

(j) A person may not bring a cause of action under Subsection (h) for a violation of Subsection (g) if the political subdivision that violated that subsection acquired the fee title or easement for the purpose of:

- (1) providing retail public utility service, other than water or wastewater service, to property in the reservoir site; or
- (2) allowing an owner of property in the reservoir site to improve or develop the property.

(k) Notwithstanding Subsection (j), a political subdivision affected by an action described by Subsection (j) may bring a cause of action for a violation of Subsection (g) if the political subdivision has complied with Section 16.143(a).

SECTION 2.08. Subsection (h), Section 16.053, Water Code, is amended by adding Subdivisions (10) and (11) to read as follows:

(10) The regional water planning group may amend the regional water plan after the plan has been approved by the board. Subdivisions (1)-(9) apply to an amendment to the plan in the same manner as those subdivisions apply to the plan.

(11) This subdivision applies only to an amendment to a regional water plan approved by the board. This subdivision does not apply to the adoption of a subsequent regional water plan for submission to the board as required by Subsection (i). Notwithstanding Subdivision (10), the regional water planning group may amend the plan in the manner provided by this subdivision if the executive administrator makes a written determination that the proposed amendment qualifies for adoption in the manner provided by this subdivision before the regional water planning group votes on adoption of the amendment. A proposed amendment qualifies for adoption in the manner provided by this subdivision only if the amendment is a minor amendment, as defined by board rules, that will not result in the overallocation of any existing or planned source of water, does not relate to a new reservoir, and will not have a significant effect on instream flows or freshwater inflows to bays and estuaries. If the executive administrator determines that a proposed amendment qualifies for adoption in the manner provided by this subdivision, the regional water planning group may adopt the amendment at a public meeting held in accordance with Chapter

551, Government Code. The proposed amendment must be placed on the agenda for the meeting, and notice of the meeting must be given in the manner provided by Chapter 551, Government Code, at least two weeks before the date the meeting is held. The public must be provided an opportunity to comment on the proposed amendment at the meeting.

SECTION 2.09. Subsection (r), Section 16.053, Water Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(r) The board by rule shall provide for reasonable flexibility to allow for a timely amendment of a regional water plan, the board's approval of an amended regional water plan, and the amendment of the state water plan. If an amendment under this subsection is[7] to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Section 5.001, the[—The] rules may allow for amending a regional water plan without providing notice and without a public meeting or hearing under Subsection (h) if the amendment does not:

- (1) significantly change the regional water plan, as reasonably determined by the board; or
- (2) adversely affect other water management strategies in the regional water plan.

SECTION 2.10. Subchapter E, Chapter 16, Water Code, is amended by adding Section 16.1311 to read as follows:

Sec. 16.1311. PRIORITY FOR WATER CONSERVATION. The board shall give priority to applications for funds for implementation of water supply projects in the state water plan by entities that:

- (1) have already demonstrated significant water conservation savings; or
- (2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.11. Sections 16.315 and 16.319, Water Code, are amended to read as follows:

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than [to comply with] the requirements and criteria of the National Flood Insurance Program, including but not limited to:

- (1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;
- (2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
- (3) assisting in minimizing damage caused by floods;
- (4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;



(5) engaging in floodplain management, ~~and~~ adopting and enforcing permanent land use and control measures that are not less stringent than those [consistent with the criteria] established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the commission;

(12) satisfying criteria adopted and promulgated by the commission pursuant to the National Flood Insurance Program;

(13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than ~~[which are consistent with]~~ the criteria for land management and use adopted by the director;

(14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;

(15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and

(16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

Sec. 16.319. QUALIFICATION. Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Federal Emergency Management Agency and by:

(1) evidencing to the director a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

(2) giving to the director satisfactory assurance that measures will have been adopted for the political subdivision that ~~[which measures]~~ will be not less stringent than ~~[consistent with]~~ the comprehensive criteria for land management and use developed by the Federal Emergency Management Agency.

SECTION 2.12. Chapter 16, Water Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. WATER CONSERVATION

Sec. 16.401. STATEWIDE WATER CONSERVATION PUBLIC AWARENESS PROGRAM. (a) The executive administrator shall develop and implement a statewide water conservation public awareness program to educate residents of this state about water conservation. The program shall take into account the differences in water conservation needs of various geographic regions of the state and shall be designed to complement and support existing local and regional water conservation programs.

(b) The executive administrator is required to develop and implement the program required by Subsection (a) in a state fiscal biennium only if the legislature appropriates sufficient money in that biennium specifically for that purpose.

Sec. 16.402. WATER CONSERVATION PLAN REVIEW. (a) Each entity that is required to submit a water conservation plan to the commission under this code shall submit a copy of the plan to the executive administrator.

(b) Each entity that is required to submit a water conservation plan to the executive administrator, board, or commission under this code shall report annually to the executive administrator on the entity's progress in implementing the plan.

(c) The executive administrator shall review each water conservation plan and annual report to determine compliance with the minimum requirements established by Section 11.1271 and the submission deadlines developed under Subsection (e) of this section.

(d) The board may notify the commission if the board determines that an entity has violated this section or a rule adopted under this section. Notwithstanding Section 7.051(b), a violation of this section or of a rule adopted under this section is enforceable in the manner provided by Chapter 7 for a violation of a provision of this code within the commission's jurisdiction or of a rule adopted by the commission under a provision of this code within the commission's jurisdiction.

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); and

(2) providing for the enforcement of this section and rules adopted under this section.

SECTION 2.13. Section 17.125, Water Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) The board shall give priority to applications for funds for implementation of water supply projects in the state water plan by entities that:

(1) have already demonstrated significant water conservation savings; or

(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

SECTION 2.14. Chapter 35, Water Code, is amended by adding Section 35.020 to read as follows:

Sec. 35.020. PUBLIC PARTICIPATION IN GROUNDWATER MANAGEMENT PROCESS. It is the policy of the state to encourage public participation in the groundwater management process in areas within a groundwater management area not represented by a groundwater conservation district.

SECTION 2.15. Subsection (b), Section 212.0101, Local Government Code, is amended to read as follows:

(b) The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.

SECTION 2.16. Subsection (b), Section 232.0032, Local Government Code, is amended to read as follows:

(b) The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.

SECTION 2.17. (a) In this section, "board" means the Texas Water Development Board.

(b) The board, in coordination with the Far West Texas Regional Water Planning Group established pursuant to Section 16.053, Water Code, shall conduct a study regarding the possible impact of climate change on surface water supplies from the Rio Grande.

(c) In conducting the study, the board shall convene a conference within the Far West Texas regional water planning area designated pursuant to Section 16.053, Water Code, to review:

(1) any analysis conducted by a state located to the west of this state regarding the impact of climate change on surface water supplies in that state;

(2) any other current analysis of potential impacts of climate change on surface water resources; and

(3) recommendations for incorporation of potential impacts of climate change into the Far West Texas Regional Water Plan, including potential impacts to the Rio Grande in Texas subject to the Rio Grande Compact and identification of feasible water management strategies to offset any potential impacts.

(d) The conference should include, but not be limited to, the participation of representatives of:

(1) the Far West Texas Regional Water Planning Group;

(2) water authorities;

(3) industrial customers;

(4) agricultural interests;

(5) municipalities;

(6) fishing or recreational interests;

(7) environmental advocacy organizations; and

(8) institutions of higher education.

(e) Not later than December 31, 2008, the board shall submit to the legislature a written report regarding the study findings under this section.

SECTION 2.18. (a) Chapter 9, Water Code, is repealed.

(b) The Texas Water Advisory Council is abolished on the effective date of this article.

SECTION 2.19. Sections 15.102 and 17.125, Water Code, as amended by this article, and Sections 15.9751 and 16.1311, Water Code, as added by this article, apply only to an application for financial assistance filed with the Texas Water Development Board on or after the effective date of this article. An application for financial assistance filed before the effective date of this article is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

#### ARTICLE 2A. CONSTRUCTION AND OPERATION OF RESERVOIRS

SECTION 2A.01. Chapter 11, Water Code, is amended by adding Subchapter L to read as follows:

##### SUBCHAPTER L. SURCHARGE ON IMPOUNDED SURFACE WATER

Sec. 11.601. SURCHARGE ON SURFACE WATER IMPOUNDED IN A RESERVOIR. (a) The holder of a permit to impound surface water in a reservoir shall, on an annual basis, pay a surcharge fee to each political subdivision that assessed ad valorem taxes on property within the reservoir site. The surcharge shall be equal to the ad valorem tax revenue the political subdivision received from the property within the reservoir site at the time the property was acquired for the reservoir.

(b) The permit holder shall pay the surcharge for a period of 10 years after the date the property was acquired by fee title for the reservoir.

SECTION 2A.02. Subchapter E, Chapter 16, Water Code, is amended by adding Sections 16.143 through 16.146 to read as follows:

Sec. 16.143. INTENT TO CONSTRUCT RESERVOIR; ENCUMBRANCE PAYMENT. (a) Before bringing a cause of action under Section 16.051(h), a political subdivision must:

(1) file with the commission a letter of intent to construct a reservoir on the site affected by the violation of Section 16.051(g); and

(2) offer to pay each owner of real property in the reservoir site an encumbrance payment.

(b) An owner of real property to whom an encumbrance payment is offered may reject the offer.

(c) An encumbrance payment must be paid annually to an owner of real property in the reservoir site who has accepted the offer of the payment until:

(1) the property is acquired for the reservoir; or

(2) the property is no longer in the reservoir site.

(d) An encumbrance payment must be in an amount that is not less than 2.5 times the total amount of ad valorem taxes imposed in the tax year that precedes the year in which the payment is made on the property for which the payment is made.

Sec. 16.144. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT PROGRAMS. Property located in the site of a reservoir designated under Section 16.051 continues to be eligible for any public program for which it was eligible before the designation. A state agency or political subdivision may not consider the fact that the property is included in a site that has been designated as being of unique value for

the construction of a reservoir when determining the property's eligibility to participate in a public program whose term is not longer than the period before physical construction of the reservoir will begin.

Sec. 16.145. OPTION TO LEASE. (a) A former owner of real property utilized for agriculture purposes that was acquired, voluntarily or through the exercise of the power of eminent domain, for a reservoir whose site has been designated as unique for the construction of a reservoir pursuant to Section 16.051(g) of this chapter is entitled to lease the property from the person who acquired the property under terms that allow the former owner to continue to use the property for agricultural purposes until the person who acquired the property determines that such use must be terminated to allow for the physical construction of the reservoir. Consistent with the provisions of Subsection (b) of this section, such lease shall be the subject of terms and conditions related to the use of the property by the former owner, including but not limited to the term of the lease, the price the former owner shall be required to pay for the lease, and the uses that may be allowed on the property during the term of the lease.

(b) A former owner of real property used for agricultural purposes is entitled to lease the property for the property's agricultural rental value.

Sec. 16.146. ENVIRONMENTAL MITIGATION. (a) If a person proposing to construct a reservoir whose site has been designated as unique for the construction of a reservoir pursuant to Section 16.051(g) of this chapter is required to mitigate future adverse environmental effects arising from the construction or operation of the reservoir or its related facilities, the person shall, if authorized by the applicable regulatory authority, attempt to mitigate such effects by offering to contract with and pay an amount of money to an owner of real property located outside of the reservoir site to maintain the property through an easement instead of acquiring the fee simple title to the property for that purpose.

(b) An owner of real property may reject an offer made under Subsection (a).

### ARTICLE 3. UNIQUE RESERVOIR SITES AND SITES OF UNIQUE ECOLOGICAL VALUE

SECTION 3.01. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the development of new water supplies to meet the growing demand for water is necessary for the sound economic development of this state and is of concern and importance to this state;

(2) feasible sites for new reservoirs are identified as having unique value in the 2006 regional water plans and the 2007 state water plan;

(3) most of the proposed reservoirs are also part of recommended strategies for fulfilling identified needs in the 2007 state water plan that may occur as early as 2010 and 2020;

(4) it is necessary to preempt actions that could circumvent the state's primacy over surface water in the state; and

(5) designation of these sites as unique reservoir sites or river or stream segments of unique ecological value is necessary for the sound economic development of this state, for the protection of natural resources, and for the purpose of promoting the public health, safety, and general welfare of this state.

SECTION 3.02. DESIGNATION OF UNIQUE RESERVOIR SITES. The legislature, as authorized by Subsection (g), Section 16.051, Water Code, designates the following sites as having unique value for the construction of a dam and reservoir and further determines that the sites are necessary to meet water supply needs:

(1) Lower Bois d'Arc reservoir, to be located on Bois d'Arc Creek in Fannin County, upstream from the Caddo National Grasslands Wildlife Management Area;

(2) Lake Ralph Hall reservoir, to be located on the North Sulphur River in southeast Fannin County, north of the city of Ladonia;

(3) Tehuacana Creek reservoir, to be located on Tehuacana Creek in Freestone County, south of the Richland-Chambers reservoir, with the two lakes to be connected by a channel;

(4) Bediares reservoir, to be located on both Bediares and Caney Creeks in portions of Grimes, Madison, and Walker Counties;

(5) Brushy Creek reservoir, to be located near the city of Marlin in central Falls County;

(6) Texana Stage II reservoir, also known as Palmetto Bend, to be located on the Lavaca River in Jackson County above the confluence with the Navidad River;

(7) Goldthwaite channel dam reservoir, to be located on the Colorado River west of the city of Goldthwaite and downstream from the existing diversion structure;

(8) Wheeler Branch off-channel reservoir, to be located on the Wheeler Branch tributary of the Paluxy River and north of the city of Glen Rose in Somervell County;

(9) Cedar Ridge reservoir, to be located on the Clear Fork of the Brazos River upstream from its confluence with Paint Creek and in Throckmorton, Shackelford, and Haskell Counties;

(10) Lake 07 reservoir, to be located in southeastern Lubbock County, to impound developed water resources discharged into Yellowhouse Canyon as part of the Canyon Lakes System, also known as the Jim Bertram Lake System;

(11) Lake 08 reservoir, to be located in southeastern Lubbock County, to impound developed water resources discharged into Yellowhouse Canyon as part of the Canyon Lakes System, also known as the Jim Bertram Lake System;

(12) Nueces off-channel reservoir, to be located west of Lake Corpus Christi in south central Live Oak County, to be linked to Lake Corpus Christi by pipeline and operated as part of the Choke Canyon-Lake Corpus Christi reservoir system;

(13) Ringgold reservoir, to be located on the Little Wichita River in Clay County approximately one-half mile upstream from its confluence with the Red River;

(14) Muenster reservoir, to be located on Brushy Elm Creek in western Cooke County; and

(15) Brownsville Weir and reservoir, to be located on the lower Rio Grande in Cameron County; the proposed project consists of a weir structure across the channel of the river approximately eight miles downstream from the city of Brownsville.

SECTION 3.03. DESIGNATION OF SITES OF UNIQUE ECOLOGICAL VALUE. The legislature, as authorized by Subsection (f), Section 16.051, Water Code, designates those river or stream segment sites recommended in the 2007 state water plan as being of unique ecological value.

SECTION 3.04. RESTRICTION ON ELIGIBILITY TO HOLD WATER RIGHTS; LIABILITY FOR CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS. (a) This section applies only to a proposed reservoir listed in Subdivision (3), Section 3.02 of this Act, that is to be located in the Region D Regional Water Planning Area.

(b) The right to appropriate at least 20 percent of the quantity of water that is authorized to be appropriated from each proposed reservoir must be held by one or more entities located in the regional water planning area in which the reservoir is to be located.

(c) If one or more entities located outside the regional water planning area in which a proposed reservoir is to be located are to hold the right to appropriate a majority of the quantity of water that is authorized to be appropriated from the reservoir, that entity or those entities must pay all of the costs of constructing, operating, and maintaining the reservoir until such time as one or more entities located in the regional water planning area in which the reservoir is to be located begins diverting water. At such time, the entity or entities making a diversion shall pay a pro-rata share of the cost of operating and maintaining the reservoir.

SECTION 3.05. STUDY COMMISSION ON REGION C WATER SUPPLY.

(a) The Study Commission on Region C Water Supply is established. The study commission consists of six members as follows:

- (1) three members appointed by the Region C Regional Water Planning Group; and
- (2) three members appointed by the Region D Regional Water Planning Group.

(b) A member of the study commission may be, but is not required to be, a voting member of the regional water planning group that appointed the member.

(c) The members of the study commission shall select a presiding officer from among the members.

(d) Members of the study commission are not entitled to compensation for service on the study commission but may be reimbursed for travel expenses incurred while conducting the business of the study commission, as provided for in the General Appropriations Act.

(e) The study commission shall:

- (1) review the water supply alternatives available to the Region C Regional Water Planning Area, including obtaining additional water supply from Wright Patman Lake, Toledo Bend Reservoir, Lake Texoma, Lake o' the Pines, and other existing and proposed reservoirs;

- (2) in connection with the review under Subdivision (1) of this subsection, analyze the socioeconomic effect on the area where the water supply is located that would result from the use of the water to meet the water needs of the Region C Regional Water Planning Area, including:

- (A) the effects on landowners, agricultural and natural resources, businesses, industries, and taxing entities of different water management strategies; and

(B) in connection with the use by the Region C Regional Water Planning Area of water from Wright Patman Lake, the effect on water availability in that lake and the effect on industries relying on that water availability;

(3) determine whether water demand in the Region C Regional Water Planning Area may be reduced through additional conservation and reuse measures so as to postpone the need for additional water supplies;

(4) evaluate measures that would need to be taken to comply with the mitigation requirements of the United States Army Corps of Engineers in connection with any proposed new reservoirs, including identifying potential mitigation sites;

(5) consider whether the mitigation burden described by Subdivision (4) of this subsection may be shared by the Regions C and D Regional Water Planning Areas in proportion to the allocation to each region of water in any proposed reservoir;

(6) review innovative methods of compensation to affected property owners, including royalties for water stored on acquired properties and annual payments to landowners for properties acquired for the construction of a reservoir to satisfy future water management strategies;

(7) evaluate the minimum number of surface acres required for the construction of proposed reservoirs in order to develop adequate water supply; and

(8) identify the locations of proposed reservoir sites in the Regions C and D Regional Water Planning Areas using satellite imagery with sufficient resolution to permit land ownership to be determined.

(f) The study commission may not be assisted by any person that is a party to or is employed by a party to a contract to perform engineering work with respect to site selection, permitting, design, or construction of the proposed Marvin Nichols reservoir.

(g) The Texas Water Development Board, on request of the study commission, may provide staff support or other assistance necessary to enable the study commission to carry out its duties. The Texas Water Development Board shall provide funding for the study commission, including funding of any studies conducted by the study commission, from the regional planning budget of the board.

(h) Not later than December 1, 2010, the study commission shall deliver a report to the governor, lieutenant governor, and speaker of the house of representatives that includes:

(1) any studies completed by the study commission;

(2) any legislation proposed by the study commission;

(3) a recommendation as to whether Marvin Nichols should be a designated reservoir site; and

(4) other findings and recommendations of the study commission.

(i) The study commission is abolished and this section expires December 31, 2011.

SECTION 3.06. EFFECTIVE DATE. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2007.



## ARTICLE 4. LEGISLATIVE JOINT INTERIM COMMITTEE

SECTION 4.01. (a) In this section, "committee" means the joint interim committee on state water funding.

(b) The committee is composed of eight members as follows:

(1) the chair of the Senate Committee on Natural Resources and the chair of the House Committee on Natural Resources who shall serve as joint chairs of the committee;

(2) three members of the senate appointed by the lieutenant governor; and

(3) three members of the house of representatives appointed by the speaker of the house of representatives.

(c) An appointed member of the committee serves at the pleasure of the appointing official.

(d) The committee shall meet at least annually with the executive director of the Texas Commission on Environmental Quality and the executive administrator of the Texas Water Development Board to:

(1) receive information on water infrastructure needs as identified in the state water plan;

(2) receive information on infrastructure cost and funding options to be used by local entities to meet the needs identified in the state water plan;

(3) receive analyses of the funding gap and recommendations on how to address those funding needs;

(4) receive information on whether all water fees assessed are sufficient to support the required regulatory water-related state program functions and activities; and

(5) identify viable, sustainable, dedicated revenues and fee sources, or increases to existing revenue and fees, to support state water programs and to provide for natural resources data collection and dissemination, financial assistance programs, and water resources planning, including funding to implement water management strategies in the state water plan.

(e) The committee may hold hearings and may request reports and other information from state agencies as necessary to carry out this section.

(f) The Senate Committee on Natural Resources and the House Committee on Natural Resources shall provide staff necessary for the committee to fulfill its duties.

(g) Not later than December 1, 2008, the committee shall report to the governor, the lieutenant governor, and the speaker of the house of representatives on the committee's activities under Subsection (d) of this section. The report shall include recommendations of any legislative action necessary to address funding needs to support the state's water programs and water infrastructure needs.

## ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2007.

**Floor Amendment No. 1**

Amend **CSSB 3** (House committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2.\_\_\_\_. (a) Notwithstanding Section 16.053(i), Water Code, and except as otherwise provided by this section, the Texas Water Development Board may approve and include in the state water plan for the five-year period beginning January 5, 2007, the regional water plan that was submitted to the board by the Region L regional water planning group.

(b) The Texas Water Development Board may approve the regional water plan for Region L only if the board:

(1) strikes Sections 4C.7, 4C.8, and 4C.32 from the plan as submitted to the board; and

(2) includes Section 4C.33 in the plan as the Lower Guadalupe Water Supply Project for Upstream GBRA Needs so as to:

(A) require that the project be developed by the regional water planning group for Region L in association with the Guadalupe-Blanco River Authority;

(B) include a transmission pipeline for the diversion of up to 60,000 acre-feet per year of surface water available under the water rights held by the Guadalupe-Blanco River Authority as of December 31, 2006, from the Guadalupe River below the city of Victoria to upstream points on the river to meet needs identified by the Region L regional water planning group; provided, however, that at least 100,000 acre-feet per year of the surface water must be reserved for lower basin needs;

(C) prohibit the use of fresh groundwater for the project;

(D) require the consent of the appropriate property owner before off-channel storage or an off-channel reservoir may be developed as part of the project; and

(E) require freshwater inflows in an amount sufficient to meet the Parks and Wildlife Department, Texas Commission on Environmental Quality, and Texas Water Development Board's environmental consensus criteria for San Antonio Bay to be identified and included in the project.

(c) The Texas Water Development Board shall amend the state water plan for the five-year period beginning January 5, 2007, as necessary to conform to the requirements of this section.

(d) 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, 2007.

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

Amend **CSSB 3** (House committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2.\_\_\_\_. Subsections (a), and (e), Section 36.1071, Water Code are amended to read as follows:

Sec. 36.1071. MANAGEMENT PLAN. (a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;  
(3) controlling and preventing subsidence;  
(4) addressing conjunctive surface water management issues;  
(5) addressing natural resource issues;  
(6) addressing drought conditions;  
(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective;  
~~and~~

(8) addressing in a quantitative manner the desired future conditions of the groundwater resources [-] ; and

(9) addressing total aquifer storage.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) managed available groundwater in the district based on the desired future condition and the total aquifer storage established under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 2.\_\_\_\_. Subsection (f), Section 36.108, Water Code is amended to read as follows:

(f) A district or person with a legally defined interest in the groundwater within the management area may file a petition with the commission requesting an inquiry if a district or districts refused to join in the planning process or the process failed to result in adequate planning, ~~including~~ or the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:

(1) a district in the groundwater management area has failed to adopt rules;

(2) the rules adopted by a district are not designed to achieve the desired future condition of the groundwater resources in the groundwater management area established during the joint planning process;

(3) the groundwater in the management area is not adequately protected by the rules adopted by a district; ~~or~~

(4) the groundwater in the groundwater management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules~~[-]~~; or

(5) the process failed to result in the establishment of reasonable desired future conditions of the aquifer.

### Floor Amendment No. 3

Amend **CSSB 3** (House committee printing), in ARTICLE 2 of the bill, by adding the following appropriately numbered SECTIONS to the ARTICLE and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2.     . Subtitle A, Title 2, Water Code, is amended by adding Chapter 10 to read as follows:

#### CHAPTER 10. WATER CONSERVATION ADVISORY COUNCIL

Sec. 10.001. DEFINITIONS. In this chapter:

11.002. (1) "Best management practices" has the meaning assigned by Section

(2) "Board" means the Texas Water Development Board.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Council" means the Water Conservation Advisory Council.

Sec. 10.002. PURPOSE. The council is created to provide the governor, lieutenant governor, speaker of the house of representatives, legislature, board, commission, political subdivisions, and public with the resource of a select council with expertise in water conservation.

Sec. 10.003. CREATION AND MEMBERSHIP. (a) The council is composed of 23 members appointed by the board. The board shall appoint one member to represent each of the following entities or interest groups:

(1) Texas Commission on Environmental Quality;

(2) Department of Agriculture;

(3) Parks and Wildlife Department;

(4) State Soil and Water Conservation Board;

(5) Texas Water Development Board;

(6) regional water planning groups;

(7) federal agencies;

(8) municipalities;

(9) groundwater conservation districts;

(10) river authorities;

(11) environmental groups;

(12) irrigation districts;

(13) institutional water users;

(14) professional organizations focused on water conservation;

(15) higher education;

(16) agricultural groups;

- (17) refining and chemical manufacturing;
- (18) electric generation;
- (19) mining and recovery of minerals;
- (20) landscape irrigation and horticulture;
- (21) water control and improvement districts;
- (22) rural water users; and
- (23) municipal utility districts.

(b) Each entity or interest group described by Subsection (a) may recommend one or more persons to fill the position on the council held by the member who represents that entity or interest group. If one or more persons are recommended for a position on the council, the board shall appoint one of the persons recommended to fill the position.

Sec. 10.004. TERMS. (a) Members of the council serve staggered terms of six years, with seven or eight members' terms, as applicable, expiring August 31 of each odd-numbered year.

(b) The board shall fill a vacancy on the council for the unexpired term by appointing a person who has the same qualifications as required under Section 10.003 for the person who previously held the vacated position.

Sec. 10.005. PRESIDING OFFICER. The council members shall select one member as the presiding officer of the council to serve in that capacity until the person's term as a council member expires.

Sec. 10.006. COUNCIL STAFF. On request by the council, the board shall provide any necessary staff to assist the council in the performance of its duties.

Sec. 10.007. PUBLIC MEETINGS AND PUBLIC INFORMATION. (a) The council may hold public meetings as needed to fulfill its duties under this chapter.

(b) The council is subject to Chapters 551 and 552, Government Code.

Sec. 10.008. INAPPLICABILITY OF ADVISORY COMMITTEE LAW. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the council.

Sec. 10.009. COMPENSATION OF MEMBERS. (a) Members of the council serve without compensation but may be reimbursed by legislative appropriation for actual and necessary expenses related to the performance of council duties.

(b) Reimbursement under Subsection (a) is subject to the approval of the presiding officer of the council.

Sec. 10.010. POWERS AND DUTIES OF COUNCIL. The council shall:

- (1) monitor trends in water conservation implementation;
- (2) monitor new technologies for possible inclusion by the board as best management practices in the best management practices guide developed by the water conservation implementation task force under Chapter 109, Acts of the 78th Legislature, Regular Session, 2003;
- (3) monitor the effectiveness of the statewide water conservation public awareness program developed under Section 16.401 and associated local involvement in implementation of the program;
- (4) develop and implement a state water management resource library;
- (5) develop and implement a public recognition program for water conservation;

(6) monitor the implementation of water conservation strategies by water users included in regional water plans; and

(7) monitor target and goal guidelines for water conservation to be considered by the board and commission.

Sec. 10.011. REPORT. Not later than December 1 of each even-numbered year, the council shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report on progress made in water conservation in this state.

Sec. 10.012. DESIGNATION OF CERTIFIED WATER CONSERVATION TRAINING FACILITIES STUDY. (a) The council shall conduct a study to evaluate the desirability of requiring the board to:

(1) designate as certified water conservation training facilities entities and programs that provide assistance to retail public utilities in developing water conservation plans under Section 13.146; and

(2) give preference to certified water conservation training facilities in making loans or grants for water conservation training and education activities.

(b) Not later than December 1, 2008, the council shall submit a written report containing the findings of the study and the recommendations of the council to the governor, lieutenant governor, and speaker of the house of representatives.

(c) This section expires June 1, 2009.

SECTION 2. \_\_\_\_\_. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.969 to read as follows:

Sec. 51.969. ON-SITE RECLAIMED SYSTEM TECHNOLOGIES CURRICULUM. The Texas Higher Education Coordinating Board shall encourage each institution of higher education to develop curriculum and provide related instruction regarding on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down.

SECTION 2. \_\_\_\_\_. Section 447.004, Government Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The procedural standards adopted under this section must require that on-site reclaimed system technologies, including rainwater harvesting, condensate collection, or cooling tower blow down, or a combination of those system technologies, for nonpotable indoor use and landscape watering be incorporated into the design and construction of:

(1) each new state building with a roof measuring at least 10,000 square feet; and

(2) any other new state building for which the incorporation of such systems is feasible.

SECTION 2. \_\_\_\_\_. Section 341.042, Health and Safety Code, is amended to read as follows:

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure is connected to a public water supply system and has a rainwater harvesting system for indoor use:

(1) the structure must have appropriate cross-connection safeguards; and

(2) the rainwater harvesting system may be used only for nonpotable indoor purposes.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply to a person:

(1) who harvests rainwater for domestic use; and

(2) whose property is not connected to a public drinking water supply system.

SECTION 2.\_\_\_\_. Chapter 401, Local Government Code, is amended by adding Section 401.006 to read as follows:

Sec. 401.006. WATER CONSERVATION BY HOME-RULE MUNICIPALITY. A home-rule municipality may adopt and enforce ordinances requiring water conservation in the municipality and by customers of the municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.

SECTION 2.\_\_\_\_. Section 1903.053, Occupations Code, is amended to read as follows:

Sec. 1903.053. STANDARDS. (a) The commission shall adopt by rule and enforce standards governing:

(1) the connection of irrigation systems to any water supply;

(2) the design, installation, and operation of irrigation systems;

(3) water conservation; and

(4) the duties and responsibilities of licensed irrigators.

~~(b) [The commission may adopt standards for irrigation that include water conservation, irrigation system design and installation, and compliance with municipal codes.~~

~~[(e)] The commission may not require or prohibit the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.~~

(c) In adopting standards under this section, the commission shall consult the council.

SECTION 2.\_\_\_\_. As soon as practicable on or after the effective date of this article, the Texas Water Development Board shall appoint the initial members of the Water Conservation Advisory Council, as required by Section 10.003, Water Code, as added by this article. In making the initial appointments, the board shall designate seven members to serve terms expiring August 31, 2009, eight members to serve terms expiring August 31, 2011, and eight members to serve terms expiring August 31, 2013.

SECTION 2.\_\_\_\_. Not later than June 1, 2008, the Texas Commission on Environmental Quality shall adopt standards as required by Section 1903.053, Occupations Code, as amended by this article, to take effect January 1, 2009.

SECTION 2.\_\_\_\_. Section 2.\_\_\_\_ of this article, adding Section 447.004(c-1), Government Code, takes effect September 1, 2009.

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

Amend **CSSB 3** by adding the following appropriately numbered SECTION to Article 2 and renumbering the SECTIONS of the article accordingly:

SECTION 2.\_\_\_\_. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.2205 to read as follows:

Sec. 49.2205. USE OF RIGHT-OF-WAY EASEMENTS FOR CERTAIN ENERGY-RELATED PURPOSES. (a) To foster the generation and transmission of electricity from clean coal projects, as defined by Section 5.001, renewable energy technology projects, and the capture and storage of carbon dioxide and other greenhouse gases, a district or water supply corporation may allow others to construct, maintain, and operate transmission lines and pipelines over, under, across, on, or along rights-of-way and easements of the district or water supply corporation for transmission of electricity generated by those projects and the transportation of carbon dioxide and other greenhouse gases, unless the use:

(1) is incompatible with the public use for which the easement was acquired or condemned; or

(2) compromises public health or safety.

(b) The district or water supply corporation is not required to obtain additional consideration for the construction, maintenance, and operation of the transmission lines and pipelines under this section if the person constructing, maintaining, and operating the transmission lines and pipelines bears all costs of the construction, maintenance, and operation of the transmission lines and pipelines and restoring the property. The activities authorized by this subsection may be exercised only with the consent of and subject to the direction of the governing body of the district or water supply corporation.

(c) A person that is subject to Subsection (a) that acquires a right-of-way easement on real property for a public use may include in the notice of the acquisition a statement that to foster the generation and transmission of electricity from clean coal projects as defined by Section 5.001, Water Code, renewable energy technology projects, and the capture and storage of carbon dioxide and other greenhouse gases, water districts and water supply corporations may allow others to construct, maintain, and operate transmission lines and pipelines over, under, across, on, or along the rights-of-way and easements for the transmission of electricity that is generated by those projects and transportation of carbon dioxide and other greenhouse gases, unless the use:

(1) is incompatible with the public use for which the easement was acquired or condemned; or

(2) compromises public health or safety.

(d) This section applies only to a right-of-way or easement acquired by the district or water supply corporation on or after September 1, 2007.

(e) This section does not apply to a right-of-way or easement that is used for the transmission of electricity without the consent of a person owning the transmission lines if that use began before September 1, 2007.

### **Floor Amendment No. 6**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. GOVERNING BODY AND BOUNDARIES OF CERTAIN  
WATER DISTRICTS

SECTION \_\_\_\_\_.01. Chapter 49, Water Code, is amended by adding Subchapter O to read as follows:



SUBCHAPTER O. GOVERNING BODY AND BOUNDARIES OF CERTAIN  
DISTRICTS

Sec. 49.501. APPLICABILITY. This subchapter applies only to a district located primarily in a county with a population of more than 1.3 million and in which the most populous municipality relies on a sole source aquifer for more than 50 percent of the municipality's water.

Sec. 49.502. GOVERNING BODY. A district to which this subchapter applies is governed by the commissioners court of the county in which the district is primarily located.

Sec. 49.503. FEES OF OFFICE. A director may not receive fees of office.

Sec. 49.504. BOUNDARIES FOR CONDUCTING ELECTION. A district's boundaries for the purpose of conducting an election are coextensive with the boundaries of the county in which the district is primarily located.

Sec. 49.505. CONFLICT OF LAW. If there is a conflict between this subchapter and any local law or between this subchapter and any other section of this chapter, including Section 49.060, this subchapter controls.

**Floor Amendment No. 7**

Amend Amendment No. 6 by Puente to **CSSB 3** on page 1, line 16, between "located" and the period, by inserting ", serving ex officio as the board of directors of the district".

**Floor Amendment No. 13**

Amend **CSSB 3** (House committee printing) as follows:

(1) In the recital to SECTION 2.07 of the bill (page 43, line 20), strike "and (k)" and substitute "(k), and (l)".

(2) In SECTION 2.07 of the bill, strike proposed Section 16.051(i), Water Code (page 43, lines 21 through 27), and substitute the following:

(i) A person may not bring a cause of action under Subsection (h) for a violation of Subsection (g) if the state agency or political subdivision that violated Subsection (g) acquired the fee title or easement for the purpose of:

(1) constructing or expanding public utility infrastructure;

(2) allowing an owner of property in the reservoir site to improve or develop the property; or

(3) allowing an owner or lessee of the mineral estate in property in the reservoir site to explore for, produce, or transport the minerals.

(3) In SECTION 2.07 of the bill, following proposed Section 16.051(k), Water Code (page 44, between lines 13 and 14), insert the following:

(l) The designation under Subsection (g) of a site of unique value for the construction of a reservoir does not affect the requirements of this chapter or Chapter 11 regarding the permitting of or construction of a reservoir on the site.

**Floor Amendment No. 14**

Amend **CSSB 3** (House committee printing) by striking proposed Section 16.051(i), Water Code (page 43, lines 21 through 27), and substituting the following:

(i) The designation under Subsection (g) of a site of unique value for the construction of a reservoir does not affect:

(1) the right of a state agency or political subdivision to acquire the fee title or an easement in property in the reservoir site for the construction or expansion of public utility infrastructure;

(2) the right of an owner of property in the reservoir site to improve or develop the property; or

(3) the right of an owner or lessee of the mineral estate in property in the reservoir site to explore for, produce, or transport the minerals.

#### **Floor Amendment No. 15**

Amend **CSSB 3** (House committee printing) in SECTION 2.07 of the bill, by striking proposed Section 16.051(i), Water Code (page 43, lines 21 through 27), and substituting the following:

(i) A person may not bring a cause of action under Subsection (h) for a violation of Subsection (g) if the state agency or political subdivision that violated Subsection (g) acquired the fee title or easement for the purpose of:

(1) constructing or expanding public utility infrastructure;

(2) allowing an owner of property in the reservoir site to improve or develop the property; or

(3) allowing an owner or lessee of the mineral estate in property in the reservoir site to explore for, produce, or transport the minerals.

#### **Floor Amendment No. 16**

Amend **CSSB 3** (House committee printing) as follows:

(1) In the recital to SECTION 2.07 of the bill (page 43, line 20), strike "and (k)" and substitute "(k), and (l)".

(2) In SECTION 2.07 of the bill, following proposed Section 16.051(k), Water Code (page 44, between lines 13 and 14), insert the following:

(l) The designation under Subsection (g) of a site of unique value for the construction of a reservoir does not affect the requirements of this chapter or Chapter 11 regarding the permitting of or construction of a reservoir on the site.

#### **Floor Amendment No. 17**

Amend **CSSB 3** (House committee printing) as follows:

(1) In SECTION 2.08 of the bill, in the recital to the section (page 44, line 15), strike "Subdivisions (10)" and substitute "Subdivisions (4-a), (10),".

(2) In SECTION 2.08 of the bill, between the recital to the section and proposed Section 16.053(h)(10), Water Code (page 44, between lines 15 and 16), insert the following:

(4-a) For purposes of this subsection, an interregional conflict includes an inconsistency between the regional water plans proposed by two or more regional water planning groups regarding:

(A) the construction of a water project in a particular regional water planning area; or

(B) the use of a source of water supply in a particular regional water planning area.

**Floor Amendment No. 20**

Amend **CSSB 3** (House committee printing) as follows:

(1) In the recital to SECTION 2A.02 of the bill (page 54, line 14), strike "16.146" and substitute "16.147".

(2) In SECTION 2A.02 of the bill, following proposed Section 16.146, Water Code (page 56, between lines 22 and 23), insert the following:

Sec. 16.147. ENVIRONMENTAL MITIGATION. (a) If a person constructing a reservoir is required to mitigate the past, present, or future adverse environmental effects arising from the construction or operation of the reservoir or its related facilities, the person shall, if authorized by the applicable regulatory authority, attempt to mitigate those effects by offering to contract with and pay an amount of money to an owner of real property to maintain, control, hold, restore, enhance, develop, or redevelop the property instead of acquiring or managing property for that purpose.

(b) An owner of real property may reject an offer made under Subsection (a).

(c) Development rights purchased under this section shall be held and administered by a land trust selected by the property owner from a complete list, provided by Texas Parks and Wildlife Commission, of landtrusts, including agricultural landtrusts, operating in this state.

(d) If practicable, the mitigation of a past, present, or future adverse environmental effect arising from construction or operation of any part of the reservoir or its related facilities shall occur on property within the area of the holder of the permit to impound surface water in the reservoir.

**Floor Amendment No. 23**

Amend **CSSB 3** (House committee printing) as follows:

(1) In the recital to SECTION 2A.02 of the bill, between "Sections" and "16.143" (page 54, line 14), insert "16.1361 and".

(2) In SECTION 2A.02 of the bill, between the recital to the section and proposed Section 16.143, Water Code (page 54, between lines 15 and 16), insert the following:

Sec. 16.1361. ACQUISITION OF PROPERTY IN RESERVOIR SITE IN EXCHANGE FOR PARTICIPATION PAYMENT. (a) In this section, "participation payment" means an intangible legal right to receive a percentage of one or more identified fees related to the surface water impounded by a reservoir.

(b) In addition to paying a single fixed payment for an interest in real property or a real property right, an entity that acquires property to construct a reservoir may, with the owner's consent, pay the owner a participation payment.

**Floor Amendment No. 26**

Amend **CSSB 3** (House committee printing) as follows:

(1) In SECTION 3.02 of the bill (page 57, line 17) strike "The" and substitute "(a) Subject to Subsection (b) of this section, the".

(2) In SECTION 3.02 of the bill, immediately following Subdivision (15) of the section (page 59, between lines 13 and 14), insert the following:

(b) The designation of a unique reservoir site under Subsection (a) of this section takes effect only if the Texas Commission on Environmental Quality issues a written finding that each water user group for which that reservoir has been identified as a water management strategy in a regional water plan approved by the Texas Water Development Board under Section 16.053, Water Code:

(1) has prepared a drought contingency plan; and

(2) has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the water user group.

#### **Floor Amendment No. 27**

Amend **CSSB 3** (House committee printing) as follows:

(1) In SECTION 3.02 of the bill (page 57, line 17) strike "The" and substitute "(a) Subject to Subsection (b) of this section, the".

(2) In SECTION 3.02 of the bill, immediately following Subdivision (15) of the section (page 59, between lines 13 and 14), insert the following:

(b) If the construction of a reservoir at a site designated under Subsection (a) of this section was not recommended in the regional water plan for the regional water planning area in which the site is located, the designation of that site under Subsection (a) of this section takes effect only if the Texas Water Development Board finds through the use of empirical data that the region that recommended the construction of the reservoir has a water usage rate that is less than 200 gallons per capita per day.

#### **Floor Amendment No. 28**

Amend **CSSB 3** (House committee printing) as follows:

(1) In SECTION 3.02 of the bill (page 57, line 17) strike "The" and substitute "(a) Subject to Subsection (b) of this section, the".

(2) In SECTION 3.02 of the bill, immediately following Subdivision (15) of the section (page 59, between lines 13 and 14), insert the following:

(b) The designation of a unique reservoir site under Subsection (a)(1) or (2) of this section takes effect only if the designation is approved by the commissioners court of Fannin County.

#### **Floor Amendment No. 31**

Amend **CSSB 3** on page 58, line 24-27 by striking Sec. 3.02(f) and renumber the subsequent sections appropriately.

#### **Floor Amendment No. 32**

Amend **CSSB 3** (House committee printing) as follows:

(1) In SECTION 3.02 of the bill, at the end of Subdivision (14) of the section (page 59, line 9), strike "and".

(2) In SECTION 3.02 of the bill, in Subdivision (15) of the section (page 59, line 13), between "Brownsville" and the period, insert the following:  
; and

(16) Prairie Creek reservoir, to be located on Prairie Creek, a tributary of the Sabine River, in Gregg and Smith Counties, west of the city of Longview

**Floor Amendment No. 33**

Amend **CSSB 3** on page 58, lines 4 to 5, by striking Subdivision (4) and renumbering subsequent subdivisions accordingly.

**Floor Amendment No. 37**

Amend **CSSB 3** (House committee printing) in SECTION 3.05 of the bill, in Subsection (e)(1) of the SECTION (page 61, lines 7 and 8), by striking "and other existing and proposed reservoirs" and substituting "other existing and proposed reservoirs, and groundwater".

**Floor Amendment No. 38**

Amend **CSSB 3** (House committee printing) in SECTION 3.05 of the bill, in Subsection (e)(8) of the SECTION (page 62, lines 14 and 15), between "reservoir sites" and "in the Regions C and D", by inserting "and proposed mitigation sites, as applicable, as selected in accordance with existing state and federal law,".

**Floor Amendment No. 39**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered SECTION to ARTICLE 3 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION 3. \_\_\_\_\_. The designation of a unique reservoir site under Section 3.02 of this Act expires on August 31, 2013, unless on or before that date a proposed project sponsor of the reservoir project votes affirmatively to make expenditures necessary to file an application for a permit required to construct the reservoir under state or federal law.

**Floor Amendment No. 40**

Amend **CSSB 3** (House committee printing) in SECTION 3.04(a) of the bill (page 59, lines 22 and 23) by striking "Subdivision (3), Section 3.02 of this Act, that is to be located in the Region D Regional Water Planning Area" and substituting the following:

Section 3.02 of this Act that is to be located on the Sulphur River upstream from its confluence with White Oak Creek, the dam for which will be located in Titus and Red River Counties, and that will also impound water in Franklin County

**Floor Amendment No. 45**

Amend **CSSB 3** (House committee printing) as follows:

(1) In Article 2 of the bill, add the following appropriately numbered SECTION and renumber subsequent SECTIONS of the article accordingly:

SECTION 2. \_\_\_\_\_. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.147 to read as follows:

Sec. 13.147. CONSOLIDATED BILLING AND COLLECTION CONTRACTS. (a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both

providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the commission to issue an order requiring the water service provider to provide that service.

(b) A contract or order under this section must provide procedures and deadlines for submitting billing and customer information to the water service provider and for the delivery of collected fees and payments to the sewer service provider.

(c) A contract or order under this section may require or permit a water service provider that provides consolidated billing and collection of fees and payments to:

(1) terminate the water services of a person whose sewage services account is in arrears for nonpayment; and

(2) charge a customer a reconnection fee if the customer's water service is terminated for nonpayment of the customer's sewage services account.

(d) A water service provider that provides consolidated billing and collection of fees and payments may impose on each sewer service provider customer a reasonable fee to recover costs associated with providing consolidated billing and collection of fees and payments for sewage services.

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

#### ARTICLE \_\_\_\_ . REGULATING CERTAIN SUBDIVISIONS

SECTION \_\_\_\_ .01. Section 212.012, Local Government Code, is amended by amending Subsections (a), (c), (d), (e), (f), (h), and (i) and adding Subsections (j) and (k) to read as follows:

(a) Except as provided by Subsection (c), (d), or (j) [Subsection (e)], an entity described by Subsection (b) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115.

(c) An entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115 if:

(1) the land is covered by a development plat approved under Subchapter B or under an ordinance or rule relating to the development plat;

(2) the land was first served or connected with service by an entity described by Subsection (b)(1), (b)(2), or (b)(3) before September 1, 1987; or

(3) the land was first served or connected with service by an entity described by Subsection (b)(4), (b)(5), or (b)(6) before September 1, 1989[~~or~~

~~[(4) the municipal authority responsible for approving plats issues a certificate stating that:~~

~~[(A) the land:~~

~~[(i) was sold or conveyed to the person requesting service by any means of conveyance, including a contract for deed or executory contract, before:~~

~~[(a) September 1, 1995, in a county defined under Section 232.022(a)(1); or~~

~~[(b) September 1, 2005, in a county defined under Section 232.022(a)(2);~~

~~[(ii) is located in a subdivision in which the entity has previously provided service;~~

~~[(iii) is located outside the limits of the municipality;~~

~~[(iv) is located in a county to which Subchapter B, Chapter 232, applies; and~~

~~[(v) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before:~~

~~[(a) May 1, 1997, in a county defined under Section 232.022(a)(1); or~~

~~[(b) September 1, 2005, in a county defined under Section 232.022(a)(2); or~~

~~[(B) the land was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:~~

~~[(i) water service is available within 750 feet of the subdivided land; or~~

~~[(ii) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider].~~

(d) In a county to which Subchapter B, Chapter 232, applies, an entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service that is located in the extraterritorial jurisdiction of a municipality regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider or developer by any means of conveyance, including a contract for deed or executory contract, before:

(i) September 1, 1995, in a county defined under Section 232.022(a)(1);

(ii) September 1, 1999, in a county defined under Section 232.022(a)(1) if, on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or

(iii) September 1, 2005, in a county defined under Section 232.022(a)(2);

(B) has not been subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Paragraph (A);

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before:

(i) May 1, 2003, in a county defined under Section 232.022(a)(1);

(ii) September 1, 2005, in a county defined under Section 232.022(a)(2); and

(D) has had adequate sewer services installed to service the lot or dwelling;

(2) the subdivided land is a lot of record as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) and has adequate sewer services installed that are fully operable to service the lot or dwelling; or

(3) the land was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided

land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(e) An entity described by Subsection (b) may provide utility service to land described by Subsection (d)(1), (2), or (3) [Subsection (e)(4)(A)] only if the person requesting service:

(1) is not the land's subdivider or developer or the subdivider's or developer's agent; and

(2) provides to the entity a certificate described by Subsection (d) [(e)(4)(A)].

(f) [(e)] A person requesting service may obtain a certificate under Subsection (d)(1), (2), or (3) [Subsection (e)(4)(A)] only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats documentation containing [either]:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider or developer [to the person requesting service] before September 1, 1995, before September 1, 1999, or before September 1, 2005, as applicable under Subsection (d) [and a notarized affidavit by that person that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 1997, or on or before September 1, 2005, as applicable]; [or]

(2) for a certificate issued under Subsection (d)(1), a notarized affidavit by the person requesting service that states that [the property was sold or conveyed to that person before September 1, 1995, or before September 1, 2005, as applicable, and that] construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, in a county defined by Section 232.022(a)(1) or September 1, 2005, in a county defined by Section 232.022(a)(2), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(1)(C);

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Subsection (d); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Subsection (b) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code. [May 1, 1997, or on or before September 1, 2005, as applicable.]



~~[(f) A person requesting service may obtain a certificate under Subsection (e)(4)(B) only if the person provides to the municipal authority responsible for approving plats an affidavit that states that the property was not sold or conveyed to that person from a subdivider or the subdivider's agent after September 1, 1995, or after September 1, 2005, as applicable.]~~

(h) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider or developer for a violation of a state or local law, regardless of the date on which the violation occurred.

(i) In this section:

(1) "Developer" has the meaning assigned by Section 232.021.

(2) "Foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

(3) ~~[(2)]~~ "Subdivider" has the meaning assigned by Section 232.021.

(j) Except as provided by Subsection (k), this section does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the political subdivisions with jurisdiction over the project or the approval of plats within the project area have approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code.

(k) A utility may not serve any subdivided land with water utility connection or service under Subsection (j) unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities pursuant to Chapter 366, Health and Safety Code.

SECTION \_\_.02. Section 232.021, Local Government Code, is amended by amending Subdivision (2) and adding Subdivisions (2-a), (2-b), and (6-a) to read as follows:

(2) "Common promotional plan" means any plan or scheme of operation undertaken by a single subdivider or developer or a group of subdividers or developers acting in concert, either personally or through an agent, to offer for sale or lease lots when the land is:

(A) contiguous or part of the same area of land; or

(B) known, designated, or advertised as a common unit or by a common name.

(2-a) "Develop" means a structural improvement or man-made change to a lot intended for residential use undertaken to improve, enhance, or otherwise make suitable real property for purposes of sale, resale, or lease.

(2-b) "Developer" means a person who owns any interest in real property and directly or indirectly develops real property in the ordinary course of business or as part of a common promotional plan.

(6-a) "Lot of record" means:

(A) a lot, the boundaries of which were established by a plat recorded in the office of the county clerk before September 1, 1989, that has not been subdivided after September 1, 1989; or

(B) a lot, the boundaries of which were established by a metes and bounds description in a deed of conveyance, a contract of sale, or other executory contract to convey real property that has been legally executed and recorded in the office of the county clerk before September 1, 1989, that has not been subdivided after September 1, 1989.

SECTION \_\_\_\_.03. Section 232.024(b), Local Government Code, is amended to read as follows:

(b) If any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, the commissioners court shall not approve the plat unless:

(1) the subdivision is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code; and

(2) the plat evidences a restrictive covenant prohibiting [as required by this subsection. The restrictive covenant shall prohibit] the construction of residential housing in any area of the subdivision that is in a floodplain unless the housing is developed in compliance with the minimum requirements of [qualifies for insurance under] the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code [Act of 1968 (42 U.S.C. Sections 4001 through 4127)].

SECTION \_\_\_\_.04. Section 232.028(b), Local Government Code, is amended to read as follows:

(b) On the commissioners court's own motion or on the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides a utility service, the commissioners court shall make the following determinations regarding the land in which the entity or commissioners court is interested that is located within the jurisdiction of the county:

(1) whether a plat has been prepared and whether it has been reviewed and approved by the commissioners court;

(2) whether water service facilities have been constructed or installed to service the lot or subdivision under Section 232.023 and are fully operable;

(3) whether sewer service facilities have been constructed or installed to service the lot or subdivision under Section 232.023 and are fully operable, or if septic systems are used, whether the lot is served by a permitted on-site sewage facility or lots in the subdivision can be adequately and legally served by septic systems under Section 232.023; and

(4) whether electrical and gas facilities, if available, have been constructed or installed to service the lot or subdivision under Section 232.023.

SECTION \_\_\_\_ .05. Section 232.029, Local Government Code, is amended by amending Subsections (b), (c), (d), (e), and (i) and adding Subsections (k) and (l) to read as follows:

(b) Except as provided by Subsection (c) or Section 232.037(c), a utility may not serve or connect any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Sections 232.028(b)(2) and (3) [Section 232.028(b)(2)] that adequate water and sewer services have been installed to service the lot or subdivision.

(c) An electric, gas, water, or sewer service utility may serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a determination from the commissioners court under Section 232.028(b) if the utility is provided with a certificate issued by the commissioners court that states that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider or developer [to the person requesting service] by any means of conveyance, including a contract for deed or executory contract:

(i) before September 1, 1995; or

(ii) before September 1, 1999, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42;

(B) has not been subdivided after September 1, 1995, or September 1, 1999, as applicable under Paragraph (A); [is located in a subdivision in which the utility has previously provided service; and]

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun[=

~~(i) on or before May 1, 1997; or~~

~~(ii) on or before May 1, 2003; and~~

(D) has had adequate sewer services installed to service the lot or dwelling;

(2) the subdivided land is a lot of record and has adequate sewer services installed that are fully operable to service the lot or dwelling[; if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42]; or

(3) [2] the land was not subdivided after September 1, 1995, and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(d) A utility may provide utility service to subdivided land described by Subsection (c)(1), (2), or (3) only if the person requesting service:

(1) is not the land's subdivider or developer or the subdivider's or developer's agent; and

(2) provides to the utility a certificate described by Subsection (c) ~~[(e)(1)]~~.

(e) A person requesting service may obtain a certificate under Subsection (c)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the commissioners court documentation containing [either]:

(1) ~~documentation containing:~~

~~[(A)] a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider or developer before September 1, 1995, or before September 1, 1999, as applicable under Subsection (c);~~

~~(2) [to the person requesting service:~~

~~[(i) before September 1, 1995; or~~

~~[(ii) before September 1, 1999, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; and~~

~~[(B)] a notarized affidavit by that person requesting service under Subsection (c)(1) that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun[=~~

~~[(i) on or before May 1, 1997; or~~

~~[(ii) on or before May 1, 2003, and the request for utility connection or service is to connect or serve a residence described by Subsection (c)(1)(C);~~

~~(3) [; if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or~~

~~[(2)] a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after[=~~

~~[(A) the property was sold or conveyed to that person:~~

~~[(i) before] September 1, 1995, [;] or~~

~~[(ii) before] September 1, 1999, as applicable under Subsection (c);~~

and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Section 232.021(14) or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code [if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; and

[(B) construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun:

[(i) on or before May 1, 1997; or

~~[(ii) on or before May 1, 2003, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42].~~

(i) The prohibition established by this section shall not prohibit a water, sewer, [an] electric, or gas utility from providing water, sewer, electric, or gas utility connection or service to a lot [being] sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider or developer prior to July 1, 1995, or September 1, 1999, if on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality that has adequate sewer services installed that are fully operable to service the lot [which is located within a subdivision where the utility has previously established service] and was subdivided by a plat approved prior to September 1, 1989.

(k) Except as provided by Subsection (l), this section does not prohibit a water or sewer utility from providing water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the political subdivisions with jurisdiction over the project or the approval of plats within the project area have approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code, if applicable.

(l) A utility may not serve any subdivided land with water utility connection or service under Subsection (k) unless the entity receives a determination from the county commissioners court under Section 232.028(b)(3) that adequate sewer services have been installed to service the lot or dwelling.

SECTION \_\_\_\_.06. Sections 232.031(a) and (b), Local Government Code, are amended to read as follows:

(a) Except as provided by Subsection (d), a subdivider or developer may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

(b) Not later than the 30th day after the date a lot is sold, a subdivider or developer shall record with the county clerk all sales contracts, including the attached disclosure statement required by Section 232.033, leases, and any other documents that convey an interest in the subdivided land.

SECTION \_\_\_\_.07. Sections 232.035(a) and (b), Local Government Code, are amended to read as follows:

(a) A subdivider or developer or an agent of a subdivider or developer may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

(b) Notwithstanding any other remedy at law or equity, a subdivider or developer or an agent of a subdivider or developer may not cause, suffer, allow, or permit any part of a subdivision over which the subdivider or developer or an agent of the subdivider or developer has control, or a right of ingress and egress, to become a public health nuisance as defined by Section 341.011, Health and Safety Code.

SECTION \_\_\_\_\_.08. Section 232.036(a), Local Government Code, is amended to read as follows:

(a) A subdivider or developer commits an offense if the subdivider or developer knowingly fails to file a plat or replat required by this subchapter. An offense under this subsection is a Class A misdemeanor.

SECTION \_\_\_\_\_.09. Section 232.038(a), Local Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a person who has purchased or is purchasing a lot after July 1, 1995, in a subdivision for residential purposes that does not have water and sewer services as required by this subchapter and is located in an economically distressed area, as defined by Section 17.921, Water Code, from a subdivider or developer, may bring suit in the district court in which the property is located or in a district court in Travis County to:

(1) declare the sale of the property void and require the subdivider or developer to return the purchase price of the property; and

(2) recover from the subdivider or developer:

(A) the market value of any permanent improvements the person placed on the property;

(B) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(C) court costs; and

(D) reasonable attorney's fees.

SECTION \_\_\_\_\_.10. Sections 232.040(a), (b), and (c), Local Government Code, are amended to read as follows:

(a) A subdivision plat must accurately reflect the subdivision as it develops. If there is any change, either by the intentional act of the subdivider or developer or by the forces of nature, including changes in the size or dimension of lots or the direction or condition of the roads, a plat must be revised in accordance with Section 232.041.

(b) Except as provided by Subsection (c), a lot in a subdivision may not be sold if the lot lacks water and sewer services as required by this subchapter unless the lot is platted or replatted as required by this subchapter. A subdivider or developer or agent of a subdivider or developer may not transfer a lot through an executory contract or other similar conveyance to evade the requirements of this subchapter. The prohibition in this subsection includes the sale of a lot:

(1) by a subdivider or developer who regains possession of a lot previously exempt under Subsection (c) through the exercise of a remedy described in Section 5.061, Property Code; or

(2) for which it is shown at a proceeding brought in the district court in which the property is located that the sale of a lot otherwise exempt under Subsection (c) was made for the purpose of evading the requirements of this subchapter.

(c) Subsection (b) does not apply to ~~the~~ a seller other than a subdivider, developer, or agent of a subdivider or developer ~~[resides on the lot]~~.

SECTION \_\_\_\_ .11. Section 232.029(f), Local Government Code, is repealed.

ARTICLE \_\_\_\_ . ZONING AROUND FALCON LAKE

SECTION \_\_\_\_ .01. Chapter 231, Local Government Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. ZONING AROUND FALCON LAKE

Sec. 231.251. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the area that surrounds Falcon Lake in Zapata County is frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state;

and

(3) buildings in the area that are frequented for resort or recreational purposes tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county land.

Sec. 231.252. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated area of Zapata County located within 25,000 feet of:

(1) the project boundary line for Falcon Lake; and

(2) the Rio Grande.

Sec. 231.253. FALCON LAKE PLANNING COMMISSION. (a) A lake planning commission is established for the area subject to this subchapter. The commission is composed of:

(1) four residents of Zapata County, with one resident from each of the county commissioners precincts, appointed by that precinct's commissioner; and

(2) a person, who shall serve as the commission's presiding officer, appointed by the county judge of Zapata County.

(b) Except as provided by Subsection (c), the members of the commission shall be appointed for two-year terms that expire February 1 of each odd-numbered year.

(c) The terms of the initial members of the commission expire on February 1 of the first February in an odd-numbered year following their appointment.

(d) The commissioners court of Zapata County may employ staff for the commission to use in performing the commission's functions.

Sec. 231.254. COMMISSION STUDY AND REPORT; HEARING. (a) At the request of the commissioners court of Zapata County, the commission shall, or on the lake planning commission's own initiative, the commission may, conduct studies of the area subject to this subchapter and prepare reports to advise the commissioners court about matters affecting that area, including any need for zoning regulations in that area.

(b) Before the commission may prepare a report, the commission must hold a public hearing in which members of the public may offer testimony regarding any subject to be included in the commission's report. The commission shall provide notice of the hearing as required by the commissioners court.

Sec. 231.255. ZONING REGULATIONS. After receiving a report from the lake planning commission under Section 231.254, the commissioners court of Zapata County may adopt zoning regulations for the area subject to this subchapter and in accordance with the report that regulate:

- (1) the height, number of stories, and size of buildings and other structures;
- (2) the percentage of a lot that may be occupied;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- (6) the placement of water and sewage facilities, parks, and other public requirements.

Sec. 231.256. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the area.

Sec. 231.257. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) A person commits an offense if the person violates this subchapter, an order adopted under this subchapter, or a zoning regulation. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the commissioners court. The commissioners court may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate the violation;
- (3) prevent the occupancy of the building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use on or about the premises.



ARTICLE \_\_\_\_ . DUVAL COUNTY GROUNDWATER CONSERVATION  
DISTRICT

SECTION \_\_\_\_ .01. Section 8808.003, Special District Local Laws Code, is amended to read as follows:

Sec. 8808.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held before September 1, 2009 [~~2007~~]:

- (1) the district is dissolved on September 1, 2009 [~~2007~~], except that:
  - (A) any debts incurred shall be paid;
  - (B) any assets that remain after the payment of debts shall be transferred to Duval County; and
  - (C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and
- (2) this chapter expires on September 1, 2012 [~~2010~~].

SECTION \_\_\_\_ .02. Section 8808.023, Special District Local Laws Code, is amended by adding Subsection (d) to read as follows:

(d) Duval County may pay for any portion of the costs incident to the district's confirmation election.

SECTION \_\_\_\_ .03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2007.

ARTICLE \_\_\_\_ . STARR COUNTY GROUNDWATER CONSERVATION  
DISTRICT

SECTION \_\_\_\_ .01. Subchapter A, Chapter 8803, Special District Local Laws Code, is amended by adding Section 8803.004 to read as follows:

Sec. 8803.004. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held before September 1, 2009:

- (1) the district is dissolved on September 1, 2009, except that:
  - (A) any debts incurred shall be paid;
  - (B) any assets that remain after the payment of debts shall be transferred to Starr County; and
  - (C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and
- (2) this chapter expires September 1, 2012.

SECTION \_\_\_\_ .02. Chapter 8803, Special District Local Laws Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8803.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not later than the 45th day after the effective date of this subchapter, five temporary directors shall be appointed as follows:

- (1) the Starr County Commissioners Court shall appoint four temporary directors, with one of the temporary directors appointed from each of the four commissioners precincts in the county to represent the precinct in which the temporary director resides; and

(2) the county judge of Starr County shall appoint one temporary director who resides in the district to represent the district at large.

(b) If there is a vacancy on the temporary board of directors of the district, the remaining temporary directors shall appoint a person to fill the vacancy in a manner that meets the representational requirements of this section.

(c) Temporary directors serve until the earlier of:

(1) the time the temporary directors become initial directors as provided by Section 8803.024; or

(2) the date this chapter expires under Section 8803.004.

Sec. 8803.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Starr County Courthouse.

Sec. 8803.023. CONFIRMATION ELECTION. (a) The temporary directors shall hold an election to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b)-(i), Water Code, and the Election Code. The provision of Section 36.017(d), Water Code, relating to the election of permanent directors does not apply to a confirmation election under this section.

(d) Starr County may pay for any portion of the costs incident to the district's confirmation election.

Sec. 8803.024. INITIAL DIRECTORS. (a) If creation of the district is confirmed at an election held under Section 8803.023, the temporary directors of the district become the initial directors of the district and serve on the board of directors until permanent directors are elected under Section 8803.025.

(b) The initial directors for county precincts 2 and 3 serve a term expiring June 1 following the first regularly scheduled election of directors under Section 8803.025, and the initial directors for county precincts 1 and 4 serve a term expiring June 1 following the second regularly scheduled election of directors. The at-large director shall serve a term expiring June 1 following the second regularly scheduled election of directors.

Sec. 8803.025. INITIAL ELECTION OF PERMANENT DIRECTORS. On the uniform election date prescribed by Section 41.001, Election Code, in May of the first even-numbered year after the year in which the district is authorized to be created at a confirmation election, an election shall be held in the district for the election of two directors to replace the initial directors who, under Section 8803.024(b), serve a term expiring June 1 following that election.

Sec. 8803.026. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

SECTION \_\_\_\_ .03. Sections 5, 6, 7, 8, 9, and 11, Chapter 451, Acts of the 79th Legislature, Regular Session, 2005, are repealed.

SECTION \_\_\_\_\_.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2007.

ARTICLE \_\_\_\_\_. WATER DEVELOPMENT BOARD

SECTION \_\_\_\_\_.01. Section 16.344, Water Code, is amended by adding Subsections (d), (e), (f), (g), (h), and (i) to read as follows:

(d) Notwithstanding Section 16.343(g) or Section 16.350(a), a political subdivision may temporarily continue to receive funds under Subchapter K, Chapter 17, if the political subdivision submits a request for temporary continuation of funding and the board determines that:

(1) the political subdivision's initial funding application and any amendments for a designated area were reviewed and approved by the board before January 1, 2007;

(2) withholding funds would result in an undue hardship for occupants of the property to be served by unreasonably delaying the provision of adequate water or wastewater services;

(3) withholding funds would result in inefficient use of local, state, or federal funds under the program;

(4) the political subdivision has committed to take the necessary and appropriate actions to correct any deficiencies in adoption or enforcement of the model rules within the time designated by the board, but not later than the 90th day after the date the board makes the determinations under this subsection;

(5) the political subdivision has sufficient safeguards in place to prevent the proliferation of colonias; and

(6) during the 30 days after the date the board receives a request under this subsection, the board, after consulting with the attorney general, secretary of state, and commission, has not received an objection from any of those entities to the request for temporary continuation of funding.

(e) In applying Subsection (d) to applications for increased financial assistance, the board shall only consider areas that were included in the initial application, except that the board may reconsider the eligibility of areas that were the subject of a facility plan in the initial application and that may be determined to be eligible based on criteria in effect September 1, 2005.

(f) The political subdivision shall take necessary and appropriate actions to correct any deficiencies in its adoption and enforcement of the model rules within the time period required by the board, not to exceed the 90-day period described by Subsection (d)(4), and provide evidence of compliance to the board. The board shall discontinue funding unless the board makes a determination based on the evidence provided that the political subdivision has demonstrated sufficient compliance to continue funding.

(g) Except as provided by Subsections (d)-(f), if the board determines that a county or city that is required to adopt and enforce the model rules is not enforcing the model rules, the board shall discontinue funding for all projects within the county or city that are funded under Subchapter K, Chapter 17.

(h) The board may not accept or grant applications for temporary funding under Subsection (d) after June 1, 2009.

(i) Subsections (d), (e), (f), (g), and (h) and this subsection expire September 1, 2009.

#### **Floor Amendment No. 46**

Amend Amendment No. 45 by Guillen to **CSSB 3** (prefiled amendments packet, page 149) by striking the proposed Article titled "ZONING AROUND FALCON LAKE" that adds Subchapter L to Chapter 231, Local Government Code.

#### **Floor Amendment No. 47**

Amend Amendment No. 45 by Guillen to **CSSB 3** (House committee printing) by adding the following:

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered section to the bill and renumbering subsequent sections accordingly:

Section \_\_\_\_\_. Subchapter F, Chapter 13, Water Code, is amended by adding Section 13.188 to read as follows:

Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS.

(a) Notwithstanding any other provision in this chapter, the commission by rule shall adopt a procedure allowing a utility to file with the commission an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. The commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the Commission determines a special circumstance applies.

(b) Notwithstanding any other provision to the contrary, this adjustment is an uncontested matter not subject to a contested case hearing. However, the Executive Director shall hold a non-contested public meeting if:

(1) on the request of a member of the legislature who represents the area served by the water and sewer utility;

(2) if the Executive Director determines that there is substantial public interest in the matter.

(c) A proceeding under this section is not a rate case and Section 13.187 does not apply.

(d) An adjustment for energy costs that results in an increase in rate charges by a water and sewer utility may not take affect if the utility is served by an electric cooperative that is affiliated with the water and sewer utility.

#### **Floor Amendment No. 48**

Amend Floor Amendment No. 45 to **CSSB 3** (House committee printing) as follows:

1. Add the following appropriately numbered Article to the Amendment and renumber subsequent Articles of the bill accordingly.

ARTICLE \_\_\_\_\_. RATE CLASSES FOR BILLING

SECTION \_\_\_\_\_.01. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.2122 to read as follows:

Sec. 49.2122. ESTABLISHMENT OF CUSTOMER CLASSES. (a) Notwithstanding any other law, a district may establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate, including:

(1) the similarity of the type of customer to other customers in the class, including:

(A) residential;

(B) commercial;

(C) industrial;

(D) apartment;

(E) rental housing;

(F) irrigation;

(G) homeowner associations;

(H) builder;

(I) out-of-district;

(J) nonprofit organization; and

(K) any other type of customer as determined by the district;

(2) the type of services provided to the customer class;

(3) the cost of facilities, operations, and administrative services to provide service to a particular class of customer, including additional costs to the district for security, recreational facilities, or fire protection paid from other revenues; and

(4) the total revenues, including ad valorem tax revenues and connection fees, received by the district from a class of customers relative to the cost of service to the class of customers.

(b) A district is presumed to have weighed and considered appropriate factors and to have properly established charges, fees, rentals, and deposits absent a showing that the district acted arbitrarily and capriciously.

#### **Amendment No. 49**

Amend Amendment No. 45 by Guillen to **CSSB 3** on page 25 of the amendment, between lines 4 and 5, by inserting the following:

ARTICLE \_\_. **TABLEROCK GROUNDWATER CONSERVATION DISTRICT**

SECTION \_\_.01. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8823 to read as follows:

**CHAPTER 8823. TABLEROCK GROUNDWATER  
CONSERVATION DISTRICT  
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 8823.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Tablerock Groundwater Conservation District.

Sec. 8823.002. NATURE OF DISTRICT. The district is a groundwater conservation district in Coryell County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8823.003. CONFIRMATION ELECTION REQUIRED. (a) If the creation of the district is not confirmed at a confirmation election held before September 1, 2012:

(1) the district is dissolved on September 1, 2012, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Coryell County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

(b) This section expires September 1, 2012.

Sec. 8823.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of Coryell County, Texas.

Sec. 8823.005. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed to achieve the legislative intent and purposes of Chapter 36, Water Code. A power granted by Chapter 36, Water Code, or this chapter shall be broadly interpreted to achieve that intent and those purposes.

Sec. 8823.006. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

[Sections 8823.007-8823.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8823.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not later than the 45th day after the effective date of this chapter, five temporary directors shall be appointed as follows:

(1) the Coryell County Commissioners Court shall appoint one temporary director from each of the four commissioners precincts in the county to represent the precincts in which the temporary directors reside; and

(2) the county judge of Coryell County shall appoint one temporary director who resides in the district to represent the district at large.

(b) If there is a vacancy on the temporary board, the authority who appointed the temporary director whose position is vacant shall appoint a person to fill the vacancy.

(c) Temporary directors serve until the earlier of:

(1) the time the temporary directors become initial directors as provided by Section 8823.024; or

(2) the date this chapter expires under Section 8823.003.

Sec. 8823.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Coryell County Courthouse.

Sec. 8823.023. CONFIRMATION ELECTION. (a) The temporary directors shall hold an election to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b), (c), and (e)-(i), Water Code, and the Election Code. Section 36.017(d), Water Code, does not apply to the confirmation election.

(d) The ballot for the election must be printed in accordance with the Election Code and provide for voting for or against the proposition: "The creation of the Tablerock Groundwater Conservation District and the imposition of a maintenance tax at a rate not to exceed two cents on each \$100 of assessed valuation of taxable property in the district."

(e) If a majority of the votes cast at the election are not in favor of the creation of the district, the temporary directors may hold a subsequent confirmation election. The subsequent election may not be held before the first anniversary of the date on which the previous election was held.

(f) The district may not impose a maintenance tax unless a majority of the votes cast at the election are in favor of the imposition of the maintenance tax.

Sec. 8823.024. INITIAL DIRECTORS. (a) If creation of the district is confirmed at an election held under Section 8823.023, the temporary directors become the initial directors and serve for the terms provided by Subsection (b).

(b) The initial directors representing commissioners precincts 2 and 4 serve until the election of directors under Section 8823.025, and the initial directors representing commissioners precincts 1 and 3 and the at-large director serve until the next regularly scheduled election of directors under Section 8823.053.

Sec. 8823.025. INITIAL ELECTION OF DIRECTORS. On the uniform election date in November of the first even-numbered year after the year in which the creation of the district is confirmed at an election held under Section 8823.023, the district shall hold an election of two directors to replace the initial directors who, under Section 8823.024(b), serve until that election.

Sec. 8823.026. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 8823.027-8823.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8823.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 8823.052. METHOD OF ELECTING DIRECTORS. One director is elected from each county commissioners precinct in Coryell County and one director is elected at large.

Sec. 8823.053. ELECTION DATE. The district shall hold an election in the district to elect directors on the uniform election date in November of each even-numbered year.

Sec. 8823.054. QUALIFICATIONS FOR ELECTION. (a) To be qualified for election as a director, a person must reside in the district.

(b) To be qualified for election as a director from a precinct, a person must reside in that precinct.

[Sections 8823.055-8823.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8823.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Except as provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Sec. 8823.102. PERMIT CONSIDERATION. Before granting or denying a permit under Section 36.113, Water Code, the district must consider whether the proposed use of water unreasonably affects surrounding landowners.

Sec. 8823.103. PERMITS FOR CERTAIN ACTIVITIES; APPLICABLE RULES. (a) The district may require a permit for any activity that extracts groundwater or allows more than 25,000 gallons of groundwater a day to escape.

(b) If a permit is required under Subsection (a), the permit holder is subject to rules adopted by the district to:

(1) conserve, preserve, protect, and recharge the groundwater or a groundwater reservoir or its subdivisions to control subsidence, prevent degradation of groundwater quality, and prevent waste of groundwater; and

(2) carry out any other power or duty under Chapter 36, Water Code.

Sec. 8823.104. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. The district may adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, if the well is not exempt under Section 36.117(b)(1), Water Code, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8823.105. WELL SPACING RULES; EXEMPTIONS. (a) Except as provided by Subsection (b), the district shall exempt from the well spacing requirements adopted by the district any well that is completed on or before the effective date of those requirements.

(b) The district may provide by rule that a well may lose its exemption under this section if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district.

(c) Except as provided by this section, the district may require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements adopted by the district. The district shall apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8823.106. IMPACT OF TRANSFER. (a) If the district finds that a transfer of groundwater out of the district negatively impacts any of the factors described by Section 36.122(f), Water Code, the district may impose additional requirements or limitations on the permit that are designed to minimize those impacts.

(b) Sections 36.122(c), (e), (i), and (j), Water Code, do not apply to a requirement or limitation imposed under this section.



Sec. 8823.107. ADOPTION OF RULES AND ISSUANCE OF PERMITS. Before the district adopts a management plan, the district may adopt rules and issue permits.

Sec. 8823.108. CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES. (a) The district and another governmental entity, including a river authority located in the district, may contract for the performance by that entity of a district function.

(b) The district may accept a loan from Coryell County to pay for any initial costs of the district, including costs related to a confirmation election.

Sec. 8823.109. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 8823.110. DISTRICT TERRITORY REQUIREMENTS; DISSOLUTION OF DISTRICT. (a) On September 1, 2011, the district boundaries must include at least one county adjacent to Coryell County.

(b) As soon as practicable after September 1, 2011, the Texas Commission on Environmental Quality shall determine whether the district complies with Subsection (a).

(c) If the Texas Commission on Environmental Quality determines that the district does not comply with Subsection (a), the commission shall dissolve the district in accordance with Sections 36.304, 36.305, 36.307, 36.308, 36.309, and 36.310, Water Code, regardless of whether the district meets the criteria for dissolution under Section 36.304(a), Water Code.

(d) This section expires September 1, 2013.

[Sections 8823.111-8823.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8823.151. REVENUE. To pay the maintenance and operating costs of the district and to pay any bonds or notes issued by the district, the district may:

(1) impose an ad valorem tax at a rate that:

(A) is approved by a majority of district voters voting at an election held for that purpose; and

(B) does not exceed two cents on each \$100 of assessed valuation of taxable property in the district;

(2) assess fees for services or for water withdrawn from nonexempt wells;

or

(3) solicit and accept grants from any private or public source.

[Sections 8823.152-8823.200 reserved for expansion]

#### SUBCHAPTER E. DISSOLUTION

Sec. 8823.201. ELECTION FOR DISSOLUTION. (a) If the district has no outstanding bond or other long-term indebtedness, the district may be dissolved by a favorable vote of a majority of the registered voters of the district at an election held for that purpose.

(b) The board shall hold a dissolution election if the board receives a petition for dissolution signed by at least 50 percent of the registered voters in the district as computed by using the list of registered voters for Coryell County.

(c) If the district is dissolved under this section, the board shall:

(1) notify the Texas Commission on Environmental Quality and the secretary of state of the dissolution; and

(2) transfer title to any assets of the district to Coryell County.

SECTION \_\_.02. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

**Floor Amendment No. 50**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 13.246(a-1), Water Code, is amended to read as follows:

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the commission shall require notice to be mailed to each owner of a tract of land that is at least 25 [~~50~~] acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

- (1) Section 13.248 or 13.255; or
- (2) Chapter 65.

**Floor Amendment No. 51**

Amend **CSSB 3** (House committee printing), in ARTICLE 2 of the bill, by adding the following appropriately numbered SECTIONS to the ARTICLE and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2. \_\_\_\_\_. Section 16.017, Water Code, is amended to read as follows:

Sec. 16.017. TOPOGRAPHIC AND GEOLOGIC MAPPING. (a) The executive administrator shall carry out the program for topographic and geologic mapping of the state.

(b) The executive administrator shall operate as part of the Texas Natural Resources Information System a strategic mapping program to acquire, store, and distribute digital, geospatial information.

SECTION 2. \_\_\_\_\_. Subchapter B, Chapter 16, Water Code, is amended by adding Sections 16.023 and 16.024 to read as follows:

Sec. 16.023. STRATEGIC MAPPING ACCOUNT. (a) The strategic mapping account is an account in the general revenue fund. The account consists of:

- (1) money directly appropriated to the board;
- (2) money transferred by the board from other funds available to the board;
- (3) money from gifts or grants from the United States government, state, regional, or local governments, educational institutions, private sources, or other sources;
- (4) proceeds from the sale of maps, data, publications, and other items; and
- (5) interest earned on the investment of money in the account and depository interest allocable to the account.

(b) The account may be appropriated only to the board to:

- (1) develop, administer, and implement the strategic mapping program;
- (2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and
- (3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021 (e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator or a state agency that is a member of the Texas Geographic Information Council.

(c) The board may invest, reinvest, and direct the investment of any available money in the fund as provided by law for the investment of money under Section 404.024, Government Code.

Sec. 16.024. FINANCIAL ASSISTANCE FOR DIGITAL, GEOSPATIAL INFORMATION PROJECTS. (a) A political subdivision seeking a grant under Section 16.023 must file an application with the board.

(b) An application must be filed in the manner and form required by board rules.

(c) In reviewing an application by a political subdivision for a grant, the board shall consider:

(1) the degree to which the political subdivision has used other available resources to finance the development, use, and dissemination of digital, geospatial information;

(2) the willingness and ability of the political subdivision to develop, use, and disseminate digital, geospatial information; and

(3) the benefits that will be gained by making the grant.

(d) The board may approve a grant to a political subdivision only if the board finds that:

(1) the grant will supplement rather than replace money of the political subdivision;

(2) the public interest is served by providing the grant; and

(3) the grant will further the state's ability to gather, develop, use, and disseminate digital, geospatial information.

**Floor Amendment No. 54**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered SECTIONS to ARTICLE 2 of the bill and renumbering subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2. \_\_\_\_\_. Section 36.113(d), Water Code, is amended to read as follows:

(d) Before granting or denying a permit or permit amendment, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;

(3) the proposed use of water is dedicated to any beneficial use;

(4) the proposed use of water is consistent with the district's certified water management plan;

(5) if the well will be located in the Hill Country Priority Groundwater Management Area, the proposed use of water from the well is wholly or partly to provide water to a pond, lake, or reservoir to enhance the appearance of the landscape;

(6) the applicant has agreed to avoid waste and achieve water conservation;  
and

(7) [(6)] the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

SECTION 2. \_\_\_\_\_. Section 36.117(d), Water Code, is amended to read as follows:

(d) Notwithstanding Subsection (b), a district may require a well to be permitted by the district and to comply with all district rules if:

(1) the withdrawals from a well in the Hill Country Priority Groundwater Management Area and exempted under Subsection (b)(1) are no longer used solely for domestic use or to provide water for livestock or poultry;

(2) the purpose of a well exempted under Subsection (b)(2) is no longer solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or

(3) [(2)] the withdrawals from a well exempted under Subsection (b)(3) are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code.

**Floor Amendment No. 55**

Amend Amendment No. 54 by Hilderbran to **CSSB 3** (pages 92 and 93, prefiled amendments packet) as follows:

(1) On page 92, line 18, between "located in" and "the", insert "a priority groundwater management area, including".

(2) On page 92, line 19, between "Management Area" and the comma, insert ", or in a county contiguous to the priority groundwater management area".

(3) On page 93, immediately following line 16, insert the following appropriately numbered sections:

SECTION 2. \_\_\_\_\_. Sections 36.122(d) and (i), Water Code, are amended to read as follows:

(d) The district may impose a reasonable fee for processing an application under this section. ~~[The fee may not exceed fees that the district imposes for processing other applications under Section 36.113.]~~ An application filed to comply with this section shall be considered and processed under the same procedures as other applications for permits under Section 36.113 and shall be combined with applications filed to obtain a permit for in-district water use under Section 36.113 from the same applicant.

(i) The period specified by Subsection (h)(2) shall be[+]

~~(1) at least three years [if construction of a conveyance system has not been initiated prior to the issuance of the permit; or~~

~~(2) at least 30 years if construction of a conveyance system has been initiated prior to the issuance of the permit].~~

SECTION 2. \_\_\_\_\_. Section 36.122(c), Water Code, is repealed.

#### **Floor Amendment No. 56**

Amend **CSSB 3** (House committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered section and renumbering the sections of the article accordingly:

SECTION 2. \_\_\_\_\_. Section 36.117, Water Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The exemption under Subsection (b)(2) does not apply to a water well located in a county having any area in the Barnett Shale field of the Fort Worth Basin.

#### **Floor Amendment No. 57**

Amend Amendment No. 56 by Orr to **CSSB 3** (prefiled amendment packet page 94) by striking page 1, lines 6-8 and substituting:

(b-1) A water well exempt from permitting under Subsection (b)(2) is not exempt from other district rules.

#### **Floor Amendment No. 58**

Amend **CSSB 3** by adding the following appropriately numbered section to Article 2 of the bill and renumbering subsequent sections of the article accordingly:

SECTION 2. \_\_\_\_\_. Section 36.117(e), Water Code, is amended to read as follows:

(e) An entity actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas, or an entity holding a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, that authorizes the drilling of a water well shall report monthly to the district:

- (1) the total amount of water withdrawn during the month;
- (2) the quantity of water necessary for mining activities; and
- (3) the quantity of water withdrawn for other purposes.

**Floor Amendment No. 59**

Amend Floor Amendment No. 58 by Orr to **CSSB 3** (Floor Amendment Packet, page 95) by striking lines 4 through 17 of the amendment and substituting the following:

SECTION 2.\_\_\_\_. Section 36.111, Water Code, is amended to read as follows:

Sec. 36.111. RECORDS AND REPORTS. (a) The district ~~may~~ ~~[shall]~~ require that records be kept and reports be made of the drilling, equipping, and completing of water wells and of the production and use of groundwater.

(b) In implementing Subsection (a), a district may adopt rules that require an owner or operator of a water well that is required to be registered with or permitted by the district, except for the owner or operator of a well that is exempt from permit requirements under Section 36.117(b)(1), to report groundwater withdrawals using reasonable and appropriate reporting methods and frequency.

**Floor Amendment No. 60**

Amend **CSSB 3** by adding the following appropriately numbered section to ARTICLE 2 of the bill and renumbering the sections of the article accordingly:

SECTION 2.\_\_\_\_. (a) Chapter 49, Water Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. EFFECT OF SUBDIVISION OF NONAGRICULTURAL LAND  
ON WATER RIGHTS

Sec. 49.501. DEFINITION. In this subchapter, "municipal water supplier" means a municipality or a water supply corporation.

Sec. 49.502. APPLICABILITY. This subchapter applies only to a district, other than a drainage district, located wholly or partly in a county:

- (1) that borders the Gulf of Mexico and the United Mexican States; or
- (2) that is adjacent to a county described by Subdivision (1).

Sec. 49.503. PETITION BY MUNICIPAL WATER SUPPLIER TO CONVERT WATER USE AFTER SUBDIVISION. (a) This section applies only to land:

(1) that is:

(A) subdivided into town lots or blocks or small parcels of the same general nature as town lots or blocks;

(B) designed, intended, or suitable for residential or other nonagricultural purposes, including streets, alleys, parkways, parks, detention or retention ponds, and railroad property and rights-of-way; or

(C) in a subdivision created to meet the requirements of a governmental entity authorized to require a recorded plat of subdivided lands;

(2) that is in a subdivision for which a plat or map has been filed and recorded in the office of the county clerk of each county in which the subdivision is wholly or partly located; and

(3) that is or was assessed as flat rate irrigable property in the municipal water supplier's certificated service area or its corporate area.

(b) A municipal water supplier that serves land described by Subsection (a) may petition the district in accordance with this section to convert the proportionate irrigation water right to the Rio Grande from irrigation use to municipal use with municipal priority of allocation under commission rules, for the use and benefit of the municipal supplier.

(c) The municipal water supplier must file the petition with the district not later than January 1 after the expiration of two years after the date the plat or map was recorded under Subsection (a). The district shall consider the petition not later than January 31 of the year following the year in which the petition was filed.

(d) The petition must identify by subdivision name or other sufficient description the land that the municipal water supplier supplies or has the right to supply potable water.

(e) This section applies only to one subdivision of the land recorded under Subsection (a). This section does not apply to any further subdivision of the same property.

Sec. 49.504. EFFECT OF MUNICIPAL WATER SUPPLIER'S FAILURE TO FILE A PETITION. (a) If a municipal water supplier does not file a petition under Section 49.503, the district may retain the water rights for use by the district or may declare the water as excess and contract for the sale or use of the water as determined by the district.

(b) Before a district may contract for the sale or use of water for more than one year with a purchaser located outside of a county described by Section 49.502, the district must, for 90 days:

(1) make the water available under the same terms to all municipal water suppliers located in those counties; and

(2) advertise the offer to sell or contract for the use of the water by posting notice on:

(A) any website of the Rio Grande Watermaster's Office;

(B) any website of the Rio Grande Regional Water Authority; and

(C) the official posting place for the district's board meetings at the district's office.

(c) If, after the 90th day after the last date on which the district posted notice, a municipal water supplier in a county described by Section 49.502 has not contracted with the district for the sale or use of the water, the district may contract with any other person for the sale or use of the water under the terms of the offer advertised under Subsection (b).

Sec. 49.505. CALCULATION OF PROPORTIONATE WATER RIGHTS. A district that receives a petition under Section 49.503 shall compute the proportionate amount of water rights to the Rio Grande. The proportionate amount of water rights is equal to the amount of irrigable acres of land in the subdivision multiplied by the lesser of:

(1) 1.25 acre-feet per irrigable acre; or

(2) the sum of all irrigation water rights owned by the district on September 1, 2007, as if the water rights had been converted to municipal use under applicable commission rules, divided by the total amount of irrigable acres of land in the district on September 1, 2007.

Sec. 49.506. PROVISION OR CONVERSION OF PROPORTIONATE WATER RIGHTS BY DISTRICT. (a) Not later than the second anniversary of the date the municipal water supplier files a petition under Section 49.503:

(1) a district shall provide the municipal water supplier with the proportionate water rights described by Section 49.505 from the district's existing water rights; or

(2) a district shall, if the district does not have sufficient existing water rights:

(A) apply for appropriate amendments to the district's water rights under commission rules to convert the proportionate water rights from irrigation use to municipal use with municipal priority of allocation; and

(B) provide to the municipal water supplier the converted rights described by Section 49.505.

(b) The district may continue to use the irrigation use water for district purposes until:

(1) the commission approves the amendment to the district's water rights; or

(2) the water is otherwise provided to the municipal water supplier.

(c) A district that applies for appropriate amendments under Subsection (a)(2) shall provide the municipal water supplier with an estimate of the district's reasonable costs for the administrative proceedings. The district is not required to begin the proceedings until the municipal water supplier deposits the amount of the estimate with the district. The municipal water supplier shall pay the district any reasonable costs that exceed the estimate. The district shall refund the balance of the deposit if the actual cost is less than the estimate.

Sec. 49.507. CONTRACT TO PURCHASE PROPORTIONATE WATER RIGHTS; WATER RIGHTS SALE CONTRACT. (a) A municipal water supplier may contract to purchase the proportionate water rights described by Section 49.505.

(b) The purchase price may not exceed 68 percent of the current market value, as determined under Section 49.509, for the year that the municipal water supplier petitions the district.

(c) The contract must be in writing in a document entitled "Water Rights Sales Contract."

(d) The contract must include the purchase price for the water rights or, if the consideration for the sale is not monetary, the terms of the sale.

(e) The municipal water supplier shall file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.

(f) The municipal water supplier shall pay the purchase price when the proportionate amount of water rights is made available to the municipal water supplier.

Sec. 49.508. CONTRACT TO USE PROPORTIONATE WATER RIGHTS; WATER SUPPLY CONTRACT. (a) A municipal water supplier may contract to use water associated with the proportionate water rights described by Section 49.505.

(b) The contract must be for at least 40 years.

(c) The price for the contractual right to use the municipal use water is based on an amount for one acre-foot of municipal use water with a municipal use priority of allocation and may not exceed the sum of:



(1) an amount equal to the district's annual flat rate charge per assessed acre; and

(2) the equivalent of the charge for four irrigations per flat rate acre of irrigable property in the district.

(d) The parties to the contract shall agree on the terms of payment of the contract price.

(e) The board periodically shall determine the flat rate charge and irrigation per acre charge described by Subsection (c).

(f) The contract must be in writing in a document entitled "Water Supply Contract." The contract may contain any terms to which the parties agree.

(g) The municipal water supplier shall file the contract with the Rio Grande watermaster not later than the 10th day after the date the contract is executed.

Sec. 49.509. DUTY OF RIO GRANDE REGIONAL WATER AUTHORITY TO CALCULATE CURRENT MARKET VALUE. (a) The Rio Grand Regional Water Authority annually at its January meeting shall calculate the current market value by using the average price per acre-foot of municipal use water after conversion from irrigation use water to municipal use water with a municipal priority of allocation under commission rules of the last three purchases involving:

(1) a municipal water supplier;

(2) a party other than a municipal water supplier; and

(3) at least 100 acre-feet of municipal use water, with municipal priority of allocation.

(b) The Rio Grande Regional Water Authority shall use information from the water rights sales contracts reported to the Rio Grande Watermaster's Office to calculate the current market value.

(c) The Rio Grande Regional Water Authority shall make the calculation:

(1) without charging any of the parties involved; and

(2) using 100 percent of the value of monetary exchanges, not in-kind exchanges.

Sec. 49.510. ACCOUNTING FOR SALE OF WATER RIGHTS. A district shall maintain an accounting of money received from the sale of water rights under this subchapter.

Sec. 49.511. CAPITAL IMPROVEMENTS. A district shall designate at least 75 percent of the proceeds from the sale of water rights for capital improvements in the district.

Sec. 49.512. MAP OF SERVICE AREA. (a) In this section, "outer boundaries of a district" means district boundaries without considering any exclusion of land from inside the district.

(b) Each municipal water supplier that has a certificate of convenience and necessity service area in the outer boundaries of a district shall file a map of the service area with the district.

(c) The municipal water supplier shall update the map and forward the map to the district when changes are made.

(d) A district periodically shall provide to a municipal water supplier that serves territory in the district a copy of the district's map showing the outer boundaries of the district.

(e) A district may request from a municipal water supplier a map of the municipal suppliers's service area, and a municipal water supplier may request from the district a map of the district's outer boundaries. On request, the district and a municipal water supplier shall provide the map free of charge to each other at least one time each year. If the district or municipal water supplier receives more than one request a year for a map, the district or municipal water supplier may charge a reasonable fee for the map.

(b) The change in law made by this section applies only to a subdivision for which a plat or map has been recorded in the office of the county clerk of a county on or after the effective date of this Act. A subdivision for which a plat or map was recorded before the effective date of this Act is covered by the law in effect on the date the plat or map was recorded, and the former law is continued in effect for that purpose.

### **Floor Amendment No. 61**

Amend Amendment No. 60 by Gonzales of Hildalgo to **CSSB 3** (page 99 of Prefiled Amendments packet) as follows:

(1) In the recital to the amendment (page 1, line 2) strike "section" and substitute "sections".

(2) At the end of the amendment (page 8, after line 14) add the following:

SECTION 2.\_\_\_\_. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0741 to read as follows:

Sec. 43.0741. ABOLITION OF CERTAIN WATER CONTROL AND IMPROVEMENT, WATER IMPROVEMENT, AND IRRIGATION DISTRICTS THAT DELIVER RAW WATER TO MUNICIPALITIES. (a) This section applies only to:

(1) a water control and improvement, water improvement, or irrigation district:

(A) at least 60 percent of the territory of which is located in a single municipality as a result of annexation or incorporation;

(B) that diverts raw water from the Rio Grande and in a 12-month period delivers at least 80 percent of that raw water to the municipality for municipal use; and

(C) that has no outstanding bonded indebtedness; and

(2) a municipality that receives raw water from a district described by Subdivision (1).

(b) A municipality may adopt an ordinance abolishing a district by a vote of at least two-thirds of the membership of the municipality's governing body if the governing body determines that:

(1) at least 80 percent of the raw water diverted by the district in any 12-month period was for municipal use by the municipality;

(2) the district has no outstanding bonded indebtedness;

(3) the services furnished and functions performed by the district can be furnished and performed by the municipality; and

(4) the abolition of the district is in the best interests of the residents and property of the municipality and the district.

(c) The voters of the municipality may protest the enactment or enforcement of the ordinance by filing a petition with the secretary of the municipality. The petition must be signed by a number of qualified voters of the municipality that is equal to at least 10 percent of the number of voters who voted in the most recent election for municipal officers. The petition must be filed not later than the 30th day after the later of:

(1) the date the municipality finally approves the ordinance; or

(2) the date of publication of the ordinance, if the ordinance is published before it is scheduled to take effect.

(d) The secretary shall verify the signatures on a petition filed in accordance with Subsection (c) and present the verified petition to the governing body of the municipality at its next scheduled meeting.

(e) On receipt of a verified petition, the governing body of the municipality shall suspend the ordinance, and the municipality may not take an action under the ordinance.

(f) The governing body of the municipality shall reconsider the suspended ordinance at its next meeting. If the governing body does not repeal the ordinance, the governing body shall submit a proposition for or against the ordinance to the voters at the next municipal election or at a special election the governing body may order for that purpose. The ordinance does not take effect unless a majority of the voters voting in the election vote for the ordinance.

(g) The ordinance takes effect on:

(1) the expiration of the period for filing a petition under Subsection (c) if the voters of the municipality do not file a petition that meets the requirements of that subsection before the expiration of that period; or

(2) the approval of the ordinance at an election under Subsection (f).

(h) If the ordinance takes effect:

(1) the district is abolished;

(2) the property and other assets of the district vest in the municipality;

(3) the municipality becomes responsible for operating the district's facilities for the benefit of the district's existing customers and performing the services and functions that were performed by the district; and

(4) the municipality assumes all the debts, liabilities, and obligations of the district.

(i) A district that is abolished under this section shall provide its management and operational records to the municipality to ensure the orderly transfer of management and operational responsibility to the municipality.

### **Floor Amendment No. 62**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. Chapter 64, Water Code, is repealed.

### **Floor Amendment No. 63**

Amend **CSSB 3** as follows:

(1) ADD a new SECTION to read as follows:

SECTION \_\_\_\_\_. Chapter 221, Water Code, is amended by adding Section 221.020 to read as follows:

Sec. 221.020. SALE OF LOTS SUBJECT TO RESIDENTIAL AND COMMERCIAL LEASES. (a) The legislature finds that to insure the authority has sufficient capital to manage and preserve its water resources, the authority should sell certain lands that are not used to develop and manage the water resources of the authority. In this section:

(1) "1980 FERC Order Amending License" means the modifying order issued by the Federal Energy Regulatory Commission in 1980 that removed from the project land the lots that were leased by the authority to residential and commercial leaseholders.

(2) "Buffer zone" means the strip of land abutting the lake as identified and defined in the FERC order.

(3) "Commercial leaseholder" means a person who, on or before the effective date of the Act enacting this section, leases a lot in the immediate vicinity of the lake from the authority to sublet for predominantly residential purposes, including a lot:

(A) subject to a lease that commenced on or before January 1, 1983;

(B) located on an island surrounded by water; and

(C) on which residential and other improvements have been constructed.

(4) "FERC order" means the order of the Federal Energy Regulatory Commission issuing a license to the authority for project number 1490-003-Texas.

(5) "Lake" means Possum Kingdom Lake.

(6) "Project land" means the land identified and defined by the FERC order.

Except as provided by this section, project land does not include the lots offered for sale under this section to residential and commercial leaseholders.

(7) "Residential leaseholder" means a person who, on or before the effective date of the Act enacting this section, leases a lot in the immediate vicinity of the lake from the authority for residential purposes. The term does not include a person who temporarily leases project land.

(b) A leaseholder may purchase the leased lot as provided by this section.

(c) Not later than the 90th day after the effective date of the Act enacting this section, the authority shall provide to residential and commercial leaseholders a form for an application of intent to purchase the lot subject to the leaseholder's lease. A leaseholder who desires to purchase a lot must submit to the authority a completed application that includes the appraisal required under Subsection (d) and the survey required under Subsection (e). Until February 1, 2008, the authority shall give preference in processing applications to any applicant who receives an ad valorem tax exemption under Section 11.13, Tax Code, for a structure on the applicant's lot. The authority shall accept and process applications in the order in which they are received.

(d) Before September 1, 2017, a lot sold under this section must be sold for not less than the fair market value of the unencumbered fee simple estate with an offset of 10 percent for the value of the leasehold interest. On or after September 1, 2017, a lot sold under this section must be sold for not less than the fair market value of the unencumbered fee simple estate. The purchaser shall select a disinterested appraiser certified under Chapter 1103, Occupations Code, to determine the fair market value as

of January 1 of the year in which the application of intent to purchase is submitted to the authority. The appraiser shall complete the appraisal and send the completed appraisal to the prospective purchaser not later than the 60th day after the date of the appraiser's selection. If an appraisal is disputed, the General Land Office shall review the appraisal for compliance with the most recently published Uniform Standards of Professional Appraisal Practice and for mathematical accuracy. If the authority disputes the fair market value determined by the appraisal, the authority may employ another disinterested appraiser who satisfies the requirements of this subsection to conduct a second appraisal. The second appraisal must be completed and sent to the authority and to the prospective purchaser not later than the 60th day after the date the authority rejects the initial appraisal. If the purchaser rejects the value determined by the second appraiser, the two appraisers shall meet and attempt to reach an agreement on the fair market value not later than the 30th day after the date the purchaser receives the authority's appraisal. If the two appraisers fail to reach agreement on or before the 10th day after the date of the meeting, not later than the 20th day after the date of the meeting the authority shall request that the comptroller appoint a disinterested third appraiser who satisfies the requirements of this subsection to reconcile the two previous appraisals. The third appraiser's report must be completed on or before the 30th day after the date of the third appraiser's appointment, and the fair market value determined by the third appraiser is final and binding on all parties. The appraisal costs must be paid by the person who requests the appraisal, except that the purchaser and the authority shall each pay one-half of the cost of the third appraisal if a third appraisal is necessary. An appraisal may not include consideration of a freeze or other suspension of lease rate increases for the homestead of a person who is 65 years of age or older and may not take into account the value of any improvements constructed on the lot or over the water that are the property of the prospective purchaser. If the closing of the sale of the lot does not occur on or before the 60th day after the date on which the fair market value is agreed to or is determined by the third appraiser, the application of intent to purchase is terminated.

(e) A prospective purchaser of a lot is responsible for:

(1) a survey of the lot that:

(A) is prepared by a licensed state land surveyor or a registered professional land surveyor;

(B) is dated not earlier than the date one year before the effective date of the Act enacting this section, except that a survey dated before that date is considered acceptable if accompanied by an affidavit signed by the leaseholder stating facts that indicate that:

(i) improvements have not been made to the property that would change the submitted survey; and

(ii) the survey would be acceptable to a title company for purposes of issuing a policy of title insurance; and

(C) includes a depiction of the lot that shows the 1,000-foot contour line, project land as it crosses the property, property boundaries, structures on the property, and any roads that cross the property;

(2) all reasonable, normal, customary, and documented closing costs associated with the sale of the lot; and

(3) if applicable, reasonable and necessary costs incurred and documented by the authority for Federal Energy Regulatory Commission approval of the sale of the lot to be purchased under this section.

(f) A lease in effect on the date an application of intent to purchase a lot is submitted under Subsection (c) remains in effect until the sale of the lot is completed or terminated. A lease of the lot expires on the date the sale of the lot is completed.

(g) If a leaseholder decides not to purchase the lot, the leaseholder shall submit a purchase application form waiver and indicate on the form that the leaseholder wishes to continue leasing the lot and to affirm the understanding that the right of a prospective purchaser, transferee, heir, or devisee to purchase the lot must be exercised on transfer of the property to any party not subject to the lease existing on the date of the purchase application form waiver. If the leaseholder of record is a partnership, family trust, or other legal entity other than an individual, the right to purchase a lot must be exercised on a change in the majority ownership of the entity. The waiver shall be memorialized in a written affirmation signed by all parties to the existing lease, or any subsequent lease, and appended as an amendment to the lease. If a leaseholder submits a waiver under this subsection, on the sale of the lot, the fair market value of the lot must be determined as of January 1 of the year in which the property is sold or transferred.

(h) A lot sold under this section is subject to all existing restrictions, including any applicable easements, placed on the lot by the Federal Energy Regulatory Commission under the FERC order, if any, but does not include the terms of the existing lease except as provided by this section.

(i) A residential lot sold under this section may be used only for a single-family residential structure and related facilities and only for normal residential, noncommercial, recreational use and enjoyment.

(j) If applicable, a commercial leaseholder that purchases a lot and sublets the lot for residential use shall comply with Section 94.204, Property Code. A lot subject to a commercial lease that is purchased under this section must continue to be used for the purpose in effect at the time of the purchase unless the lot is subdivided for single-family residential use.

(k) The sale of a lot under this section does not include any buffer zone that abuts the lot and is part of the project land. Subject to approval by the Federal Energy Regulatory Commission, the authority shall grant a person who purchases a lot an easement for use of the buffer zone that abuts the lot. The authority shall retain ownership of the buffer zone and exercise control over the buffer zone consistent with the FERC order. An easement granted to a purchaser must be limited to uses permitted under the terms of the FERC order and the authority's shoreline management plan and must be consistent with the use allowed since the implementation of the buffer zone.

(l) Except as provided by this subsection, the owner of a lot sold under this section shall pay the authority any reasonable fees set by the authority for any services the authority provides. The board shall set the fees annually when it adopts the operating budget for the authority. The owner of a lot is not obligated to accept or pay for services from the authority that are provided by another public or private entity.

(m) If an existing road on land owned by the authority connects a county road to a lot sold under this section, the authority may not deny a person access to that road. The authority does not have a duty to maintain any road.

(n) A purchaser of a lot under this section shall comply with:

(1) the authority's "Shoreline Management Plan and Customer Guide," and any amendments to that document to the extent the plan applies to the buffer zone and any other land retained by the authority;

(2) the applicable rules, regulations, and orders of the Federal Energy Regulatory Commission;

(3) the authority's "Regulations for Governance for Brazos River Authority Lakes and Associated Lands," as published on the authority's Internet website; and

(4) other rules and regulations adopted by the authority regarding conduct on and use of the lake or land owned by the authority.

(o) To maintain the quality of the lake's water and of the environment in the lake's vicinity, a person who purchases a lot under this section agrees to:

(1) obtain the written consent of the authority before altering the natural drainage of the terrain within the project land or buffer zone;

(2) comply with any local, state, or federal laws related to water quality or the environment, including laws governing toxic wastes and hazardous substances;

(3) pay the cost of obtaining any Federal Energy Regulatory Commission approvals required for improvements not present on the lot on the date sold that are the property of the purchaser and on project land; and

(4) connect to and use, at the lot owner's expense, any wastewater treatment system that becomes available to lot owners and lessees, not later than 24 months after the system becomes available.

(p) A leaseholder who purchases a lot under this section may not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifact, relic, remains, or object of antiquity. If such an item is discovered on the lot, the lot owner shall immediately notify the authority and protect the site and the item from further disturbance until the authority gives written clearance to proceed.

(q) A leaseholder who purchases a lot under this section agrees that the water level in the lake varies and that the authority is not responsible for keeping the lake full.

(r) The authority reserves the right to modify Morris Sheppard (Possum Kingdom) Dam so that the water surface elevation of the lake is raised from 1,000 feet above mean sea level to 1,015 feet above mean sea level. The authority is not responsible or liable for any personal injury or damage to a lot or improvements on the lot caused by the resultant increase in the water level or caused by natural flooding.

(s) The authority reserves the right of ingress and egress for a person authorized by the authority, including an authority agent or employee, over and across a lot purchased under this section for all reasonable purposes of the authority, including the construction of any roads, drainage facilities, and power, water, gas, and other utility

mains and lines that the authority considers necessary. The authority agrees to repair, or compensate the lot owner for, any damage it causes under this subsection and to compensate the lot owner for any property it takes under this subsection.

(t) The authority reserves its interest in all oil, gas, and other minerals in and under the real property sold under this section.

(u) The authority shall use a portion of the proceeds from the sale of a lot under this section to bring to fruition plans for the development and operation of a public use campground, including sites to accommodate large recreational vehicles, within a park in close proximity to the east side of the lake. The park must preserve the area's natural landscape, be named in honor of John Graves, and serve as a gateway to the John Graves Scenic Riverway section of the Brazos River downstream from the lake. The remainder of the proceeds may be used for any authority purpose.

(v) If the owner of a lot sold under this section does not comply with this section, the authority may seek any available legal remedy.

(w) The following laws do not apply to the sale of a lot under this section:

(1) Chapters 232 and 272, Local Government Code;

(2) Section 49.226, Water Code; and

(3) Section 221.013, Water Code.

(x) In the event of a dispute arising under this section between the authority and a person who purchases a lot under this section, the prevailing party is entitled to recover court costs and any reasonable attorney's fees.

(y) A provision that applies to the purchaser of a lot under this section applies to any subsequent owner of the lot.

SECTION \_\_\_\_ . Section 221.020, Water Code, as added by this Act, prevails to the extent that it conflicts with any other state law.

#### **Floor Amendment No. 64**

Amend Floor Amendment No. 63 by Branch as follows:

(1) On page 5, amend proposed Subsection (g) as follows:

Between "purchaser" and "transferee", strike the comma and insert "or".

Between "transferee" and "to purchase", strike "heir or devisee".

(2) On page 6, amend proposed Subsection (g) as follows:

Between "form waiver" and ":", insert "unless the transferee is an heir or devisee".

After "property is sold or transferred.", insert "If a lien holder acquires a leasehold estate through foreclosure, deed in lieu of foreclosure, voluntary surrender through bankruptcy, involuntary surrender through bankruptcy, or any other transfer that relates to a lien holder's rights, the lien holder is exempt from this subsection for five years after the date of acquisition of the leasehold estate. Any subsequent transfer of the leasehold estate by the lien holder to another party is exempt from this subsection, and the transferred lease continues in effect for the remainder of its term."

(3) On page 9, strike proposed Subsection (u), and replace with new proposed Subsection (u) as follows:

(u) The authority may use the proceeds from the sale of lots under this section for any authority purpose.

(4) Add the following appropriately ordered Subsection:



( ) The prospective purchaser at closing shall pay any indebtedness secured by a lien on the property or execute a document provided by the lien holder that grants the lien holder a lien on the fee simple estate in the lot that has the same priority as the lien in the leasehold estate. The prospective purchaser may not grant a purchase money lien on the fee simple estate in the lot without the express written consent of the holder of the lien on the leasehold estate in the lot.

(4) Add a new SECTION \_\_\_\_ as follows:

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of this section, Section 221.020, Water Code, as added by this Act, takes effect September 1, 2007.

(b) Section 221.020(g), Water Code, as added by this Act, takes effect September 1, 2011.

### **Floor Amendment No. 65**

Amend **CSSB 3** (House committee printing) in Article 2 of the bill by adding the following appropriately numbered SECTION to that article and renumbering the other SECTIONS of that article accordingly:

SECTION 2.\_\_\_\_. Chapter 68, Education Code, is amended by adding Subchapter B to read as follows:

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 68.21. SUSTAINABLE WATER SUPPLY RESEARCH CENTER. (a) In this section, "center" means the Sustainable Water Supply Research Center.

(b) The board may establish and operate the Sustainable Water Supply Research Center as part of The University of Texas at Arlington.

(c) If established, the center shall:

(1) conduct, sponsor, or direct multidisciplinary research directed toward:

(A) promoting water conservation through development of a sustainable water supply for this state; and

(B) mitigating the effect of diminishing water supplies on the economy and people of this state; and

(2) conduct a comprehensive, interdisciplinary instructional program in water conservation with emphasis on development of a sustainable water supply at the graduate level and offer undergraduate courses for students interested in water conservation and sustainable water supply development.

(d) The organization, control, and management of the center are vested in the board.

(e) The center may enter into an agreement or may cooperate with a public or private entity to perform the research functions of the center.

(f) The board may solicit, accept, and administer gifts and grants from any public or private source for the use and benefit of the center.

### **Floor Amendment No. 66**

Amend **CSSB 3** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 365, Health and Safety Code, is amended by adding Section 365.035 to read as follows:

Sec. 365.035. PROHIBITION ON POSSESSING GLASS CONTAINERS WITHIN BOUNDARY OF STATE-OWNED RIVERBED; PENALTIES. (a) A person commits an offense if the person possesses a glass container within the boundaries of a state-owned riverbed. An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which case the offense is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person who possessed the glass container:

(1) did not transport the glass container into the boundaries of the riverbed;

or

(2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle.

(c) It is an exception to the application of Subsection (a) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research as authorized by:

(1) a governmental entity;

(2) a utility as defined by Section 11.004, Utilities Code; or

(3) a retail public utility as defined by Section 13.002, Water Code.

#### **Floor Amendment No. 67**

Amend Amendment No. 66 by Gallego to **CSSB 3**, (page 122, lines 21 through 29 of the prefiled amendments packet) by striking added Subsection (c), Section 365.035, Health and Safety Code, and substituting the following:

(c) It is an exception to the application of Subsection (a) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research:

(1) as authorized by:

(A) a governmental entity;

(B) a utility as defined by Section 11.004, Utilities Code; or

(C) a retail public utility as defined by Section 13.002, Water Code; or

(2) as necessary to comply with state or federal requirements.

#### **Floor Amendment No. 68**

Amend **CSSB 3** (House committee printing) as follows:

(1) In ARTICLE 2 of the bill, add the following appropriately numbered SECTION and renumber subsequent SECTIONS of that ARTICLE accordingly:

SECTION 2. \_\_\_\_\_. The change in law made by this article to Section 16.315, Water Code, takes effect September 1, 2007, but only if Article 4 of this Act does not take effect.

(2) Between ARTICLES 3 and 4 of the bill (page 63, between lines 17 and 18), insert the following new ARTICLE and renumber the subsequent ARTICLES of the bill accordingly:

ARTICLE 4. TRANSFER OF RESPONSIBILITY FOR THE NATIONAL FLOOD INSURANCE PROGRAM FROM THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY TO THE TEXAS WATER DEVELOPMENT BOARD AND ADMINISTRATION AND FUNDING OF THE PROGRAM  
SECTION 4.01. Section 251.004, Insurance Code, is amended to read as follows:

Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES. (a) Except as provided by Subsection (b), maintenance  ~~[Maintenance]~~ taxes collected under this subtitle shall be deposited in the general revenue fund and reallocated to the Texas Department of Insurance operating account.

(b) Each state fiscal year, the comptroller shall reallocate to the floodplain management account established under Section 16.3161, Water Code, the first \$3.05 million of the maintenance taxes collected under Chapter 252 and deposited in the general revenue fund.

SECTION 4.02. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code;

(12)  ~~[the administration of the national flood insurance program;~~

~~[(13)]~~ administration of the state's water rate program under Chapter 13 of this code; and

(13)  ~~[(14)]~~ any other areas assigned to the commission by this code and other laws of this state.

SECTION 4.03. Subsection (a), Section 6.012, Water Code, is amended to read as follows:

(a) The board has general jurisdiction over:

(1) the development of a statewide water plan;

(2) the administration of the state's various water assistance and financing programs including those created by the constitution; ~~and~~

(3) the administration of the National Flood Insurance Program; and

(4) other areas specifically assigned to the board by this code or other law.

SECTION 4.04. Section 16.314, Water Code, is amended to read as follows:

Sec. 16.314. COOPERATION OF BOARD ~~[COMMISSION]~~. In recognition of the necessity for a coordinated effort at all levels of government, the board ~~[commission]~~ shall cooperate with the Federal Emergency Management Agency in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

SECTION 4.05. Section 16.315, Water Code, is amended to read as follows:

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than ~~[to comply with]~~ the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management, ~~[and]~~ adopting and enforcing permanent land use and control measures that are not less stringent than those ~~[consistent with the criteria]~~ established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board [~~commission~~];

(12) satisfying criteria adopted and promulgated by the board [~~commission~~] pursuant to the National Flood Insurance Program;

(13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than [~~which are consistent with~~] the criteria for land management and use adopted by the director;

(14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;

(15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and

(16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

SECTION 4.06. Section 16.316, Water Code, is amended to read as follows:

Sec. 16.316. COORDINATION OF LOCAL, STATE, AND FEDERAL PROGRAMS BY BOARD [~~COMMISSION~~]. (a) The board [~~commission~~] shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the board [~~commission~~] shall aid, advise, and cooperate with political subdivisions, the Texas Department of Insurance, and the Federal Emergency Management Agency when aid, advice, and cooperation are requested or deemed advisable by the board [~~commission~~].

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; [~~and~~]

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones;

(6) encouraging the Federal Emergency Management Agency to evaluate flood-prone areas by river basin and river system;

(7) coordinating the use of federal, state, and local grant money;

(8) making floodplain maps and floodplain information accessible to the public, including in an electronic format through the board's Internet website; and

(9) maintaining at least one staff member in each of the board's field offices to encourage participation in the National Flood Insurance Program by performing education and outreach and coordinating the efforts of political subdivisions.

(d) On the basis of such studies and evaluations, the board [commission], to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

SECTION 4.07. Subchapter I, Chapter 16, Water Code, is amended by adding Section 16.3161 to read as follows:

Sec. 16.3161. FLOODPLAIN MANAGEMENT ACCOUNT. (a) The floodplain management account is a special fund in the state treasury outside the general revenue fund. The fund is composed of:

(1) money deposited to the credit of the account under Section 251.004, Insurance Code;

(2) money directly appropriated to the board; and

(3) money from gifts or grants from the United States government, local or regional governments, private sources, or other sources.

(b) The account shall be administered by the board in accordance with this section.

(c) The board may use the account to fund the performance of the board's functions under Section 16.316.

(d) The board may invest, reinvest, and direct the investment of any available money in the account as provided by law for the investment of money under Section 404.024, Government Code.

SECTION 4.08. Section 16.317, Water Code, is amended to read as follows:

Sec. 16.317. COOPERATION OF TEXAS DEPARTMENT OF INSURANCE.

Pursuant to the National Flood Insurance Program, the Texas Department of Insurance shall aid, advise, and cooperate with political subdivisions, the board [commission], and the Federal Emergency Management Agency when such aid, advice, and cooperation are requested or deemed advisable by the Texas Department of Insurance.

SECTION 4.09. Section 16.318, Water Code, is amended to read as follows:

Sec. 16.318. RULES. Political subdivisions which qualify for the National Flood Insurance Program, the Texas Department of Insurance, and the board [commission] may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

SECTION 4.10. (a) Not later than January 1, 2008:

(1) all powers, duties, obligations, rights, contracts, leases, records, assets, property, funds, and appropriations of the Texas Commission on Environmental Quality that relate primarily to the administration of the National Flood Insurance Program are transferred to the Texas Water Development Board;

(2) all rules, policies, forms, procedures, and decisions of the Texas Commission on Environmental Quality that relate primarily to the administration of the National Flood Insurance Program are continued in effect as rules, policies, forms, procedures, and decisions of the Texas Water Development Board, until superseded by a rule or other appropriate action of the Texas Water Development Board; and

(3) any investigation, complaint, action, contested case, or other proceeding involving the Texas Commission on Environmental Quality that relates primarily to the administration of the National Flood Insurance Program is transferred without change in status to the Texas Water Development Board, and the Texas Water Development Board assumes, without a change in status, the position of the Texas Commission on Environmental Quality in any investigation, complaint, action, contested case, or other proceeding that relates primarily to the administration of the National Flood Insurance Program involving the Texas Commission on Environmental Quality.

(b) The transfer of the powers and duties of the Texas Commission on Environmental Quality that relate primarily to the administration of the National Flood Insurance Program to the Texas Water Development Board does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, a penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the Texas Commission on Environmental Quality.

SECTION 4.11. This article takes effect September 1, 2007, but only if before that date the 80th Legislature appropriates at least \$6.1 million to the Texas Water Development Board for the state fiscal biennium beginning September 1, 2007, specifically for the purpose of administering the National Flood Insurance Program. If before that date the 80th Legislature does not appropriate at least that amount to the Texas Water Development Board for that state fiscal biennium specifically for that purpose, this article has no effect.

### **Floor Amendment No. 72**

Amend **CSSB 3** (House committee printing) by adding the following appropriately numbered SECTIONS to ARTICLE 2 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION 2.\_\_\_\_. Subchapter A, Chapter 46, Parks and Wildlife Code, is amended by adding Section 46.0046 to read as follows:

Sec. 46.0046. OPTIONAL FEE FOR BENEFIT OF TEXAS WATER TRUST. (a) A person to whom a license or tag is issued under this chapter may pay an optional fee for the benefit of the Texas Water Trust established by Section 15.7031, Water Code, at the time the person pays the fees required before the license or tag is issued.

(b) The minimum amount for the optional fee is \$5. A person may pay more than the minimum amount.

(c) The department shall adopt a form for the fee that provides:

(1) spaces for a person to indicate the amount of the optional fee the person desires to pay, with spaces for the amounts of \$5, \$10, or "other amount"; and

(2) a short explanation of the purpose of the optional fee.

(d) The optional fee shall be deposited in the general revenue fund to the credit of the water bank account.

SECTION 2.\_\_\_\_. Section 15.703(a), Water Code, is amended to read as follows:

(a) The board may take all actions necessary to operate the water bank and to facilitate the transfer of water rights from the water bank for future beneficial use including but not limited to:

(1) negotiating a sale price and terms acceptable to the depositor and purchaser;

(2) maintaining a registry of water bank deposits and those water users in need of additional supplies;

(3) informing water users in need of additional supply of water rights available in the bank;

(4) encouraging water right holders to implement water conservation practices and deposit the right to use the conserved water into the bank;

(5) establishing requirements for deposit of a water right into the water bank including minimum terms for deposit;

(6) purchasing, holding, and transferring water or water rights in its own name;

(7) establishing regional water banks;

(8) acting as a clearinghouse for water marketing information including water availability, pricing of water transactions, environmental considerations, and potential buyers and sellers of water rights;

(9) preparing and publishing a manual on structuring water transactions;

(10) accepting, acquiring, and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs;

(11) entering into contracts with persons to pay for feasibility studies or the preparation of plans and specifications relating to water conservation efforts or to estimate the amount of water that would be saved through conservation efforts; and

(12) other actions to facilitate water transactions.

SECTION 2.\_\_\_\_. Section 15.707, Water Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The water bank account is created as a special account in the water assistance fund and is composed of:

(1) money appropriated to the board for the program;

(2) fees collected by the board under this subchapter;

(3) money transferred to the account from the water assistance fund in Section 15.011(c) of this code;

(4) grants, contracts, gifts, or other such funds that the board may receive relating to this subchapter;

(5) money received from the transfer of water or water rights held in the board's name in the bank;

(6) optional fishing license and tag fees donated under Section 46.0046, Parks and Wildlife Code; and

(7) [~~6~~] interest earned on the investment of money in the account.



(c) The optional fishing license and tag fees donated to the account may be used only to acquire water rights from willing sellers to be held by the Texas Water Trust. In the event of a conflict between this section and an appropriations act, this section prevails.

(d) Section 403.095, Government Code, does not apply to the water bank account.

### **Floor Amendment No. 75**

Amend **CSSB 3** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . MCLENNAN COUNTY GROUNDWATER CONSERVATION DISTRICT

SECTION \_\_\_\_ .01. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8821 to read as follows:

CHAPTER 8821. MCLENNAN COUNTY GROUNDWATER CONSERVATION DISTRICT  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8821.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "Director" means a board member.
- (3) "District" means the McLennan County Groundwater Conservation

District.

Sec. 8821.002. NATURE OF DISTRICT. The district is a groundwater conservation district in McLennan County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8821.003. CONFIRMATION ELECTION REQUIRED. (a) If the creation of the district is not confirmed at a confirmation election held before September 1, 2012:

(1) the district is dissolved on September 1, 2012, except that the district shall:

- (A) pay any debts incurred;
- (B) transfer to McLennan County any assets that remain after the payment of debts; and
- (C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires on September 1, 2012.

(b) This section expires on September 1, 2012.

Sec. 8821.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of McLennan County, Texas.

Sec. 8821.005. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed to achieve the legislative intent and purposes of Chapter 36, Water Code. A power granted by Chapter 36, Water Code, or this chapter shall be broadly interpreted to achieve that intent and those purposes.

Sec. 8821.006. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

[Sections 8821.007-8821.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8821.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) Not later than the 45th day after the effective date of this chapter, five temporary directors shall be appointed as follows:

(1) the McLennan County Commissioners Court shall appoint one temporary director from each of the four commissioners precincts in the county to represent the precincts in which the temporary directors reside; and

(2) the county judge of McLennan County shall appoint one temporary director who resides in the district to represent the district at large.

(b) If there is a vacancy on the temporary board, the authority who appointed the temporary director whose position is vacant shall appoint a person to fill the vacancy.

(c) Temporary directors serve until the earlier of:

(1) the time the temporary directors become initial directors as provided by Section 8821.024; or

(2) the date this chapter expires under Section 8821.003.

Sec. 8821.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location within the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the McLennan County Courthouse.

Sec. 8821.023. CONFIRMATION ELECTION. (a) The temporary directors shall hold an election to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b), (c), and (e)-(i), Water Code, and the Election Code. Section 36.017(d), Water Code, does not apply to the confirmation election.

(d) The ballot for the election must be printed in accordance with the Election Code and provide for voting for or against the proposition: "The creation of the McLennan County Groundwater Conservation District."

(e) If a majority of the votes cast at the election are not in favor of the creation of the district, the temporary directors may call and hold a subsequent confirmation election. The subsequent election may not be held before the first anniversary of the date on which the previous election was held.

(f) The district may contract with the elections administrator of McLennan County to conduct an election under this section.

Sec. 8821.024. INITIAL DIRECTORS. (a) If creation of the district is confirmed at an election held under Section 8821.023, the temporary directors become the initial directors and serve for the terms provided by Subsection (b).

(b) The initial directors representing commissioners precincts 2 and 4 serve a term expiring on December 31 following the expiration of two years after the date of the confirmation election, and the initial directors representing commissioners precincts 1 and 3 and the at-large director serve a term expiring on December 31 following the expiration of four years after the date of the confirmation election.

Sec. 8821.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 8821.026-8821.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8821.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms, with two or three directors' terms expiring December 31 of each even-numbered year.

(c) A director may not serve more than three consecutive terms.

Sec. 8821.052. APPOINTMENT OF DIRECTORS. (a) The McLennan County Commissioners Court shall appoint one director from each of the four commissioners precincts and one director to represent the district at large.

(b) Except as provided by Subsection (c), to be eligible to serve as director at large, a person must be a registered voter in the district. To serve as director from a county commissioners precinct, a person must be a registered voter of that precinct.

(c) When the boundaries of the county commissioners precincts are redrawn after each federal decennial census to reflect population changes, a director in office on the effective date of the change, or a director appointed before the effective date of the change whose term of office begins on or after the effective date of the change, shall serve in the precinct to which appointed even though the change in boundaries places the person's residence outside the precinct for which the person was appointed.

[Sections 8821.053-8821.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8821.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Except as provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Sec. 8821.102. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. The district may adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, if the well is not exempt under Section 36.117(b)(1), Water Code, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8821.103. WELL SPACING RULES; EXEMPTIONS. (a) Except as provided by Subsection (b), the district shall exempt from the well spacing requirements adopted by the district any well that is completed on or before the effective date of those requirements.

(b) The district may provide by rule that a well may lose its exemption under this section if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district.

(c) Except as provided by this section, the district may require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements adopted by the district. The district shall apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8821.104. ADOPTION OF RULES AND ISSUANCE OF PERMITS. Before the district adopts a management plan, the district may adopt rules and issue permits.

Sec. 8821.105. CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES. The district and another governmental entity, including a river authority located in the district, may contract for the performance by that entity of a district function.

Sec. 8821.106. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 8821.107. DISTRICT TERRITORY REQUIREMENTS; DISSOLUTION OF DISTRICT. (a) On September 1, 2011, the district boundaries must include at least one county adjacent to McLennan County.

(b) As soon as practicable after September 1, 2011, the Texas Commission on Environmental Quality shall determine whether the district complies with Subsection (a).

(c) If the Texas Commission on Environmental Quality determines that the district does not comply with Subsection (a), the commission shall dissolve the district in accordance with Sections 36.304, 36.305, 36.307, 36.308, 36.309, and 36.310, Water Code, regardless of whether the district meets the criteria for dissolution under Section 36.304(a), Water Code.

(d) This section expires September 1, 2013.

[Sections 8821.108-8821.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8821.151. REVENUE. To pay the maintenance and operating costs of the district and to pay any bonds or notes issued by the district, the district may:

(1) assess fees for services or for water withdrawn from nonexempt wells;

or

(2) solicit and accept grants from any private or public source.

Sec. 8821.152. FEES. The district may impose a user fee to pay for the creation and operation of the district, including permit hearings. The district may not impose a fee for agricultural use that is more than 20 percent of the rate for municipal use.

[Sections 8821.153-8821.200 reserved for expansion]

#### SUBCHAPTER E. DISSOLUTION

Sec. 8821.201. ELECTION FOR DISSOLUTION. (a) If the district has no outstanding bond or other long-term indebtedness, the district may be dissolved by a favorable vote of a majority of the registered voters of the district at an election held for that purpose.

(b) The board shall hold a dissolution election if the board receives a petition for dissolution signed by at least 50 percent of the registered voters in the district as computed by using the list of registered voters for McLennan County.

(c) If the district is dissolved under this section, the board shall:

(1) notify the Texas Commission on Environmental Quality and the secretary of state of the dissolution; and

(2) transfer title to any assets of the district to McLennan County.

SECTION \_\_\_\_\_.02. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

#### **Floor Amendment No. 76**

Amend Floor Amendment No. 75 by Dunnam to **CSSB 3** (page 164 of the prefiled amendments packet) by striking proposed Subsection (b), Section 8821.023, Special District Local Laws Code (page 3, lines 13 and 14, of the amendment) and renumbering subsequent subsections of that section accordingly.

#### **Floor Amendment No. 77**

Amend Floor Amendment No. 75 to **CSSB 3** as follows:

Insert the following Article and renumber the following Article and Sections:

ARTICLE \_\_\_\_\_. ACTON MUNICIPAL UTILITY DISTRICT

SECTION 1. DEFINITION. In this Article, "district" means the Acton Municipal Utility District.

SECTION 2. VALIDATION. The following actions and annexations of the district are validated and confirmed as if the actions and annexations had been done as authorized by law:

(1) any resolution, order, or other act or attempted act of the board of directors of the district relating to an annexation by the district taken before the effective date of this Act; and

(2) any annexation by the district since its creation.

SECTION 3. VALIDATION OF BOUNDARIES. The following expanded boundaries of the district are validated and included within the legal boundaries of the district:

GARDENS OF DECORDOVA PARCEL ONE LEGAL DESCRIPTION:

All that certain land in Hood County, Texas known as the Gardens of DeCordova Parcel 1 and more particularly described as follows:

Parts of the WILLIAM BLAIR SURVEY, Abstract No. 45 and the W. H. CATHEY SURVEY, Abstract No. 98 situated in Hood County, Texas; embracing a portion of Tract One the 3-98811000 acres tract, and a portion of Tract Two the 7 acres tract, and all of Tract Three the 7-511100 acres described in the deed to Michael J. Brown and Jean Loydene Brown recorded in volume 1642, page 1 14 of the Real Records of Hood County, Texas and described by metes and bounds as follows:

Beginning at a 518" capped iron recovered for the northwest corner of said 3-98811000 acres tract in the south line of the 3-681100 acres tract described in the deed to Michael J. Brown and Jeane L. Brown recorded in volume 1648, page 585 of the said Real Records.

Thence south 75 degrees- 09 minutes- 10 seconds east 262-611100 feet to a 518" capped iron set at the beginning of a curve to the right having a radius of 238-001100 feet.

Thence northeasterly, along said curve to the right an arc length of 271-601100 feet, to a 518" capped iron set at its end and the beginning of a curve to the right having a radius of 305-001100 feet, the long chord of the said 271-601100 feet arc is north 41 degrees- 39 minutes- 08 seconds east 257-101100 feet.

Thence southeasterly, along said curve to the right an arc length of 466-851100 feet, to a 518" capped iron set at its end and the beginning of a curve to the left, having a radius of 113-001100 feet, the long chord of the said 466-851100 feet arc is south 61 degrees- 48 minutes- 58 seconds east 422-591100 feet.

Thence southeasterly, along said curve to the left an arc length of 140-571100 feet to a 518" capped iron set at its end, the long chord of the said 140-571100 feet arc bears south 53 degrees- 36 minutes- 23 seconds east 131-681100 feet.

Thence south 89 degrees 14 minutes- 23 seconds east 65-371100 feet to the east line of said Tract Two, and the west line of North Gate Road.

Thence south 00 degree- 45 minutes- 37 seconds west, along the said east line of Tract Two, and along the said west line of North Gate Road, 71-651100 feet to a 518" capped iron recovered for a common corner of the said Tract Two and Tract Three.

Thence south 00 degree- 05 minutes- 18 seconds west, along the east line of said Tract Three, and the said west line of North Gate Road, 391-241100 feet to a 518" capped iron recovered.

Thence south 00 degrees- 09 minutes- 45 seconds east, continuing along the east line of said Tract Three, and the said west line of North Gate Road, 168-501100 feet to a 518" capped iron recovered for the southeast corner of the said Tract Three, and the most easterly, northeast corner of Lot 1 of CHAMPION SUBDIVISION, a subdivision in Hood County, Texas according to the plat thereof recorded in Slide A- 364-A of the Plat Records of Hood County, Texas.

GARDENS OF DECORDOVA PARCEL TWO LEGAL DESCRIPTION:

All that certain land in Hood County, Texas known as the Gardens of DeCordova Parcel 2 and more particularly described as follows:

Parts of the WILLIAM BLAIR SURVEY, Abstract No. 45 and the W. H. CATHEY SURVEY, Abstract No. 98 situated in Hood County, Texas; embracing a part of Tract One the 3-98811000 acres tract, Tract Two the 7 acres tract described in the deed to Michael J. Brown and Jean Loydene Brown recorded in volume 1642, page 114 of the

Real Records of Hood County, Texas and all of the 3-681100 acres tract described in the deed to Michael J. Brown and Jeane L. Brown recorded in volume 1648, page 585 of the said Real Records and described by metes and bounds as follows:

Beginning at a 5/8" capped iron recovered for the northwest corner of said Tract One the 3-98811000 acres tract in the south line of said 3-681100 acres tract.

Thence south 60 degrees-01 minute-30 seconds west, along the south line of said 3-681100 acres tract, 550-321100 feet to a 1/4" iron found for the southwest corner of said 3-681100 acres tract in the east line of Acton School Road.

Thence north 31 degrees-30 minutes-41 seconds west, along the west line of said 3-681100 acres tract for the east line of said Acton School Road, 30-35 1100 feet to a 1/2" capped iron found for the most westerly northwest corner of said 3-681100 acres tract and the southwest corner of the 5-791100 acres tract described in the deed to Daly R. Bales, Jr. recorded in volume 1602, page 691 of the said Real Records.

Thence north 60 degrees-09 minutes-58 seconds east, along the north line of said 3-681100 acres tract and the south line of said 5-791100 acres tract, 140-791100 feet to a 3/8" iron found for the southeast corner of said 5-791100 acres tract and the southwest corner of the 25 acres tract described in the deed to Sunnye Lee Keeley recorded in volume 1588, page 827 of the said Real Records.

Thence north 59 degrees-56 minutes-56 seconds east, continuing along the north line of said 3-681100 acres tract and the south line of said 25 acres tract, 790-61100 feet to a 3/4" smooth iron found for a re-entrant corner of said 3-681100 acres tract and the southeast corner of said 25 acres tract.

Thence north 33 degrees-19 minutes-20 seconds west, along the most northerly west line of said 3-6811 00 acres tract, 17-19 1100 feet to a 3/8" iron found for the most northerly northwest corner of said 3-681100 acres tract and being by deed call the northwest corner of the said W. H. CATHEY SURVEY and the southwest corner of the J. MINNETT SURVEY, Abstract No. 353 and being the southwest corner of the 20 acres tract described in the deed to Charles L. James recorded in volume 1021, page 86 of the said Real Records.

Thence north 58 degrees-45 minutes-04 seconds east, along the north line of said 3-681100 acres tract for the north line of said CATHEY SURVEY and the south line of said MINNETT SURVEY, 917-031100 feet to a 5/8" capped iron recovered.

Thence northeasterly and southeasterly, along the north line of said 3-681100 acres tract, the following:

north 84 degrees-50 minutes-34 seconds east 41-03 1100 feet to a 5/8" capped iron recovered; south 69 degrees-23 minutes-41 seconds east 21-02 1100 feet to a 5/8" capped iron recovered for the most easterly northeast corner of said 3-681100 acres tract for the west line of North Gate Road.

Thence southwesterly and southeasterly, along the east line of said 3-681100 acres tract to and along the east line of said Tract Two for the west line of said North Gate Road, the following:

south 15 degrees-52 minutes-04 seconds west 155-321100 feet to a 3/8" iron found; south 14 degrees-12 minutes-07 seconds west 552-991100 feet to a 3/8" iron found; south 00 degree- 45 minutes- 37 seconds west 171-551100 feet to a 5/8" capped iron set.

Thence north 89 degrees 14 minutes- 23 seconds west 65-37/100 feet to the beginning of a curve to the right having a radius of 113-001100 feet.

Thence northwesterly, along said curve to the right an arc length of 140-571100 feet to a 5/8" capped iron set at its end and the beginning of a curve to the left having a radius of 305-001100 feet, the long chord of the said 140-571100 feet arc is north 53 degrees- 36 minutes- 23 seconds west 131 -681100 feet.

Thence northwesterly, along said curve to the left an arc length of 466-851100 feet to a 5/8" capped iron set at its end and the beginning of a curve to the left having a radius of 238-001100 feet, the long chord of the said 466-851100 feet arc is north 61 degrees- 48 minutes- 58 seconds west 422-591100 feet.

Thence southwesterly, along said curve to the left an arc length of 271-601100 to a 5/8" capped iron set at its end, the long chord of said 271-601100 feet arc is south 41 degrees- 39 minutes- 08 seconds west 257-101100 feet.

Thence north 75 degrees- 09 minutes- 10 seconds west 262-611100 feet to the place of beginning and containing 8-87811000 acres.

SECTION 4. FINDINGS RELATIVE TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district, the right of the district to levy and collect taxes, or the legality or operation of the district or its governing body.

SECTION 5. EFFECT ON LITIGATION. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(2) has been held invalid by a final judgment of a court.

#### **Floor Amendment No. 78**

Amend **CSSB 3** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

#### ARTICLE \_\_\_\_ . REGULATION OF WATER WELLS BY CERTAIN GROUNDWATER CONSERVATION DISTRICTS

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

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

SECTION \_\_\_\_ .02. Chapter 1075, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Section 5A to read as follows:

Sec. 5A. APPLICABILITY OF OTHER LAW ON RULEMAKING. Section 36.121, Water Code, does not apply to the district.

SECTION \_\_\_\_ .03. Section 5, Chapter 1291, Acts of the 77th Legislature, Regular Session, 2001, is amended by adding Subsection (d) to read as follows:

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

#### **Floor Amendment No. 79**

Amend **CSSB 3** by adding the following as a new Article and numbering it and all sections appropriately:



## ARTICLE \_\_\_\_ . EDWARDS AQUIFER AUTHORITY.

SECTION \_\_\_\_ . Subsection (f), Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(f) The authority may own, finance, design, [contract with a person who uses water from the aquifer for the authority or that person to] construct, operate, or [own, finance, and] maintain recharge [water supply] facilities except in the Uvalde Pool. [Management fees or special fees may not be used for purchasing or operating these facilities.] For the purpose of this subsection, "recharge [water supply] facility" means [includes] a dam, reservoir, [treatment facility, transmission facility,] or other method of recharge project and associated facilities, structures, or works but does not include a facility to recirculate water at Comal or San Marcos Springs

SECTION \_\_\_\_ . Subsections (a), (c), (e), (f), and (h), Section 1.14, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act shall be limited in accordance with this section to:

- (1) protect the water quality of the aquifer;
- (2) protect the water quality of the surface streams to which the aquifer provides surface flow;
- (3) achieve water conservation;
- (4) maximize the beneficial use of water available for withdrawal from the aquifer;
- (5) recognize the extent of the hydro-geologic connection and interaction between surface water and groundwater;
- (6) protect aquatic and wildlife habitat;
- (7) ~~(6)~~ protect species that are designated as threatened or endangered under applicable federal or state law; and
- (8) ~~(7)~~ provide for instream uses, bays, and estuaries.

(c) Except as provided by Subsections ~~(d)~~, (f) and (h) of this section and Section 1.26 of this article, for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed or be less than 572,000 [400,000] acre-feet of water for each calendar year, which is the sum of all regular permits issued or for which an application was filed and issuance was pending action by the authority as of January 1, 2005.

(e) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except for replacement, test, or exempt wells or to the extent that the authority approves an amendment to an initial regular permit to authorize a change in the point of withdrawal under that permit [additional water as provided by Subsection (d) and then on an interruptible basis].

(f) If the level of the aquifer is equal to or greater than 660 [650] feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may

authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts. ~~[The authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.]~~

(h) To accomplish the purposes of this article, ~~[by June 1, 1994,]~~ the authority, through a program, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law and to achieve other purposes provided by Subsection (a) of this section and Section 1.26 of this article. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority shall require:

(1) phased adjustments to ~~[reductions in]~~ the amount of water that may be used or withdrawn by existing users or categories of other users, including adjustments in accordance with the authority's critical period management plan established under Section 1.26 of this article; or

(2) implementation of alternative management practices, procedures, and methods.

SECTION \_\_\_\_\_. Subsection (g), Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(g) The authority shall issue an initial regular permit without a term, and an initial regular permit remains in effect until the permit is abandoned or~~[s]~~ cancelled~~[or retired]~~.

SECTION \_\_\_\_\_. Subsection (b), Section 1.19, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) Withdrawal of water under a term permit must be consistent with the authority's critical period management plan established under Section 1.26 of this article. A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless:

(1) the level of the aquifer is higher than 675 ~~[665]~~ feet above sea level, as measured at Well J-17;

(2) the flow at Comal Springs as determined by Section 1.26(c) of this article is greater than 350 cubic feet per second; and

(3) the flow at San Marcos Springs as determined by Section 1.26(c) of this article is greater than 200 cubic feet per second.

SECTION \_\_\_\_\_. Subsection (a), Section 1.22, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The authority may acquire permitted rights to use water from the aquifer for the purposes of:

(1) holding those rights in trust for sale or transfer of the water or the rights to persons within the authority's jurisdiction who may use water from the aquifer;

(2) holding those rights in trust as a means of managing overall demand on the aquifer; or

(3) holding those rights for resale ~~[or retirement as a means of complying with pumping reduction requirements under this article; or~~

~~[(4) retiring those rights, including those rights already permitted].~~

SECTION \_\_\_\_\_. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Section 1.26 and adding Section 1.26A to read as follows:

Sec. 1.26. CRITICAL PERIOD MANAGEMENT PLAN. (a) After review of the recommendations received in the program document, as prescribed by Section 1.26A of this article, the [The] authority by rule shall adopt [prepare and coordinate implementation of] a [plan for] critical period management plan consistent with Sections 1.14(a), (f), and (h) of this article [on or before September 1, 1995]. The critical period management plan shall be adopted by the authority no later than six months after the authority's receipt of the program document. On adoption of the critical period management plan, the authority shall provide a written report to the governor, lieutenant governor, and speaker of the house of representatives describing the actions taken in response to each recommendation and, for each recommendation not implemented, the reason it was not implemented. The plan [mechanisms] must:

- (1) distinguish between discretionary use and nondiscretionary use;
- (2) require reductions of all discretionary use to the maximum extent feasible;
- (3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities; ~~and~~
- (4) require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preferences:
  - (A) municipal, domestic, and livestock;
  - (B) industrial and crop irrigation;
  - (C) residential landscape irrigation;
  - (D) recreational and pleasure; and
  - (E) other uses that are authorized by law; and
- (5) allow irrigation use to continue in order to permit the user to complete the irrigation of a crop in progress.

(b) In this section, "MSL" means the elevation above mean sea level, measured in feet, of the surface of the water in a well, and "CFS" means cubic feet per second. Not later than January 1, 2008, the authority shall, by rule, adopt and enforce a critical period management plan with withdrawal reduction percentages in the amounts indicated in Tables 1 and 2 whether according to the index well levels or the Comal or San Marcos Springs flow as applicable, for a total in critical period Stage IV of 40 percent of the permitted withdrawals under Table 1 and 35 percent under Table 2:

TABLE 1  
CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES  
FOR THE SAN ANTONIO POOL

<u>Comal Springs Flow CFS</u>	<u>San Marcos Springs Flow CFS</u>	<u>Index Well J-17 Level MSL</u>	<u>Critical Period Stage</u>	<u>Withdrawal Reduction- San Antonio Pool</u>
<u>&lt;225</u>	<u>&lt;96</u>	<u>&lt;660</u>	<u>I</u>	<u>20%</u>
<u>&lt;200</u>	<u>&lt;80</u>	<u>&lt;650</u>	<u>II</u>	<u>30%</u>
<u>&lt;150</u>	<u>N/A</u>	<u>&lt;640</u>	<u>III</u>	<u>35%</u>
<u>&lt;100</u>	<u>N/A</u>	<u>&lt;630</u>	<u>IV</u>	<u>40%</u>

TABLE 2  
CRITICAL PERIOD WITHDRAWAL REDUCTION STAGES  
FOR THE UVALDE POOL

<u>Withdrawal</u> <u>Reduction-Uvalde Pool</u>	<u>Index Well J-27 Level</u> <u>MSL</u>	<u>Critical Period Stage</u>
<u>N/A</u>	<u>—</u>	<u>I</u>
<u>5%</u>	<u>&lt;850</u>	<u>II</u>
<u>20%</u>	<u>&lt;845</u>	<u>III</u>
<u>35%</u>	<u>&lt;842</u>	<u>IV</u>

(c) A change to a critical period stage with higher withdrawal reduction percentages is triggered if the 10-day average of daily springflows at the Comal Springs or the San Marcos Springs or the 10-day average of daily aquifer levels at the J-17 Index Well drops below the lowest number of any of the trigger levels indicated in Table 1. A change to a critical period stage with lower withdrawal reduction percentages is triggered only when the 10-day average of daily springflows at the Comal Springs and the San Marcos Springs and the 10-day average of daily aquifer levels at the J-17 Index Well are all above the same stage trigger level. The authority may adjust the withdrawal percentages for Stage IV in Tables 1 and 2 if necessary in order to comply with Subsection (d) or (e) of this section.

(d) Beginning September 1, 2007, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 340,000 acre-feet, under critical period Stage IV.

(e) After January 1, 2013, the authority may not require the volume of permitted withdrawals to be less than an annualized rate of 320,000 acre-feet, under critical period Stage IV unless, after review and consideration of the recommendations provided under Section 1.26A of this article, the authority determines that a different volume of withdrawals is consistent with Sections 1.14(a), (f), and (h) of this article in maintaining protection for listed, protected and endangered species associated with the aquifer to the extent required by federal law.

(f) Notwithstanding Subsections (d) and (e) of this section, the authority may require further withdrawal reductions before reviewing and considering the recommendations provided under Section 1.26A of this article if the discharge of Comal Springs or San Marcos Springs declines an additional 15 percent after Stage IV withdrawal reductions are imposed under Subsection (b) of this section. This subsection expires on the date that critical period management plan rules adopted by the authority based on the recommendations provided under Section 1.26A of this article take effect.

(g) Notwithstanding the existence of any stage of an interim or final critical period adopted by the authority under this section, a person authorized to withdraw groundwater from the aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed for that stage, be allowed to finish a crop already planted in the calendar year during which the critical period is in effect.

Sec. 1.26A. DEVELOPMENT OF WITHDRAWAL REDUCTION LEVELS AND STAGES FOR CRITICAL PERIOD MANAGEMENT THROUGH RECOVERY IMPLEMENTATION PROGRAM. (a) The authority, with the assistance of Texas A&M University, shall cooperatively develop a recovery implementation program through a facilitated, consensus-based process that involves

input from the United States Fish and Wildlife Service, other appropriate federal agencies, and all interested stakeholders, including those listed under Subsection (e)(1) of this section. The recovery implementation program shall be developed for the species that are:

- (1) listed as threatened or endangered species under federal law; and
- (2) associated with the aquifer.

(b) The authority shall enter into a memorandum of agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders in order to develop, not later than December 31, 2007, a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section.

(c) The authority shall enter into an implementing agreement with the United States Fish and Wildlife Service, other appropriate federal agencies, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders to develop a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit as outlined in Subsection (d) of this section not later than December 31, 2009.

(d) The authority, the Texas Commission on Environmental Quality, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board, and other stakeholders shall jointly prepare a program document that may be in the form of a habitat conservation plan used in issuance of an incidental take permit with the United States secretary of the interior, through the United States Fish and Wildlife Service and other appropriate federal agencies, under Section 4 or Section 6, Endangered Species Act of 1973 (16 U.S.C. Section 1533 or 1535), as applicable, based on the program developed under Subsection (a) of this section. The program document shall:

(1) provide recommendations for withdrawal adjustments based on a combination of spring discharge rates of the San Marcos and Comal Springs and levels at the J-17 and J-27 wells during critical periods to ensure that federally listed, threatened, and endangered species associated with the Edwards Aquifer will be protected at all times, including throughout a repeat of the drought of record;

(2) include provisions to pursue cooperative and grant funding to the extent available from all state, federal, and other sources for eligible programs included in the cooperative agreement under Subsection (c) of this section, including funding for a program director; and

(3) be approved and executed by each agency not later than September 1, 2012, and the agreement shall take effect December 31, 2012.

(e) Texas A&M University shall assist in the creation of a steering committee to oversee and assist in the development of the cooperative agreement under Subsection (c) of this section. The steering committee must be created not later than September 30, 2007. The initial steering committee shall be composed of:

(1) a representative of each of the following entities, as appointed by the governing body of that entity:

- (A) the Edwards Aquifer Authority;
- (B) the Texas Commission on Environmental Quality;
- (C) the Parks and Wildlife Department;
- (D) the Department of Agriculture;
- (E) the Texas Water Development Board;
- (F) the San Antonio Water System;
- (G) the Guadalupe-Blanco River Authority;
- (H) the San Antonio River Authority;
- (I) the South Central Texas Water Advisory Committee; and
- (J) Bexar County; and

(2) nine other persons who respectively must be:

(A) a representative of a holder of an initial regular permit issued to a retail public utility other than the San Antonio Water System, to be appointed by the authority;

(B) a representative of a holder of an initial regular permit issued by the authority for industrial purposes, to be appointed by the authority;

(C) a representative of a holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(D) a representative of a holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(E) a representative of a retail public utility in whose service area the Comal Springs or San Marcos Springs is located;

(F) a representative of a holder of an initial regular permit issued by the authority for irrigation, to be appointed by the commissioner of agriculture;

(G) a representative of an agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

(H) a representative of environmental interests from the Texas Living Waters Project, to be appointed by the governing body of that project; and

(I) a representative of recreational interests in the Guadalupe River Basin, to be appointed by the Parks and Wildlife Commission.

(f) The steering committee shall work with Texas A&M University to:

(1) establish a regular meeting schedule and publish that schedule to encourage public participation; and

(2) not later than October 31, 2007, hire a program director to be housed at Texas A&M University.

(g) Texas A&M University may accept outside funding to pay the salary and expenses of the program director hired under this section and any expenses associated with the university's participation in the creation of the steering committee or subcommittees established by the steering committee.

(h) Where reasonably practicable or as required by law, any meeting of the steering committee, the Edwards Aquifer area expert science subcommittee, or another subcommittee established by the steering committee must be open to the public.

(i) The steering committee appointed under this section shall appoint an Edwards Aquifer area expert science subcommittee not later than December 31, 2007. The expert science subcommittee must be composed of an odd number of not fewer than seven or more than 15 members who have technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations. The Bureau of Economic Geology of The University of Texas at Austin and the River Systems Institute at Texas State University shall assist the expert science subcommittee. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the expert science subcommittee.

(j) The Edwards Aquifer area expert science subcommittee shall, among other things, analyze species requirements in relation to spring discharge rates and aquifer levels as a function of recharge and withdrawal levels. Based on that analysis and the elements required to be considered by the authority under Section 1.14 of this article, the expert science subcommittee shall, through a collaborative process designed to achieve consensus, develop recommendations for withdrawal reduction levels and stages for critical period management including, if appropriate, establishing separate and possibly different withdrawal reduction levels and stages for critical period management for different pools of the aquifer needed to maintain target spring discharge and aquifer levels. The expert science subcommittee shall submit its recommendations to the steering committee and all other stakeholders involved in the recovery implementation program under this section.

(k) The initial recommendations of the Edwards Aquifer area expert science subcommittee must be completed and submitted to the steering committee and other stakeholders not later than December 31, 2008, and should include an evaluation:

(1) of the option of designating a separate San Marcos pool, of how such a designation would affect existing pools, and of the need for an additional well to measure the San Marcos pool, if designated;

(2) of the necessity to maintain minimum springflows, including a specific review of the necessity to maintain a flow to protect the federally threatened and endangered species; and

(3) as to whether adjustments in the trigger levels for the San Marcos Springs flow for the San Antonio pool should be made.

(l) In developing its recommendations, the Edwards Aquifer area expert science subcommittee shall:

(1) consider all reasonably available science, including any Edwards Aquifer-specific studies, and base its recommendations solely on the best science available; and

(2) operate on a consensus basis to the maximum extent possible.

(m) After development of the cooperative agreement, the steering committee, with the assistance of the Edwards Aquifer area expert science subcommittee and with input from the other recovery implementation program stakeholders, shall prepare and submit recommendations to the authority. The recommendations must:

(1) include a review of the critical period management plan, to occur at least once every five years;

(2) include specific monitoring, studies, and activities that take into account changed conditions and information that more accurately reflects the importance of critical period management; and

(3) establish a schedule for continuing the validation or refinement of the critical period management plan adopted by the authority and the strategies to achieve the program and cooperative agreement described by this section.

(n) In this subsection, "recharge facility" means a dam, reservoir, or other method of recharge project and associated facilities, structures, or works but does not include facilities designed to recirculate water at Comal or San Marcos Springs. The steering committee shall establish a recharge facility feasibility subcommittee to:

(1) assess the need for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(2) formulate plans to allow the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities;

(3) make recommendations to the steering committee as to how to calculate the amount of additional water that is made available for use from a recharge project including during times of critical period reductions;

(4) maximize available federal funding for the authority or any other entity to own, finance, design, construct, operate, or maintain recharge facilities; and

(5) evaluate the financing of recharge facilities, including the use of management fees or special fees to be used for purchasing or operating the facilities.

(o) The steering committee may establish other subcommittees as necessary, including a hydrology subcommittee, a community outreach and education subcommittee, and a water supply subcommittee.

(p) On execution of the memorandum of agreement described by Subsection (b) of this section, the steering committee described by Subsection (e) of this section may, by majority vote of its members, vote to add members to the steering committee, change the makeup of the committee, or dissolve the committee. If the steering committee is dissolved, the program director hired under Subsection (f) of this section shall assume the duties of the steering committee.

(q) The authority shall provide an annual report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 of each year that details:

(1) the status of the recovery implementation program development process;

(2) the likelihood of completion of the recovery implementation program and the cooperative agreement described by Subsection (c) of this section;

(3) the extent to which the recommendations of the Edwards Aquifer area expert science subcommittee are being considered and implemented by the authority;

(4) any other actions that need to be taken in response to each recommendation;

(5) reasons explaining why any recommendation received has not been implemented; and

(6) any other issues the authority considers of value for the efficient and effective completion of the program and the cooperative agreement under this section.

SECTION \_\_\_\_\_. Subsections (b), (h), and (i), Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:



(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 36 ~~[52]~~, Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

(h) Fees assessed by the authority may not be used to fund the cost of reducing withdrawals or retiring permits or of judgments or claims related to withdrawals or permit retirements ~~[Special fees collected under Subsection (e) or (d) of this section may not be used to finance a surface water supply reservoir project].~~

(i) The authority and other stakeholders, including state agencies, listed under Section 1.26A of this article shall provide money as necessary ~~[but not to exceed five percent of the money collected under Subsection (d) of this section,]~~ to finance the activities of the steering committee and any subcommittees appointed by the steering committee and the program director of the recovery implementation program under Section 1.26A of this article. The authority shall provide, as necessary, up to \$75,000 annually, adjusted for changes in the consumer price index, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

SECTION \_\_\_\_\_. Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(c) Subject to the limitations provided by Subsections (d), (e), (f), and (g) of this section, a ~~A~~ permit holder may lease, sell, or otherwise transfer ownership of permitted water rights.

(d) The ~~[-but a]~~ holder of an initial regular ~~[a]~~ permit for irrigation use may ~~[not]~~ lease, sell, or otherwise transfer ownership of not more than 50 percent of the irrigation rights initially permitted. Except as provided by Subsections (e), (f), and (g) of this section, the permit holder's ~~[The user's]~~ remaining irrigation water rights must be used in accordance with the original initial regular permit and must pass with transfer of the irrigated land. Irrigation rights initially permitted based on land irrigated from the applicant's well that were not owned by the applicant are appurtenant to land owned by the applicant and irrigated by the applicant's well.

(e) The place of use of the remaining irrigation water rights under Subsection (d) of this section may be temporarily transferred for irrigation purposes to another place of use owned or leased by the permit holder. If the irrigated land to which the water rights are appurtenant is sold or the ownership of the land is otherwise transferred, the transfer of the irrigation water rights is immediately voided by operation of law and the rights revert back by operation of law to the irrigated land.

(f) The place of use of the remaining irrigation water rights under Subsection (d) of this section may be temporarily transferred for irrigation purposes for a term not to exceed 10 years to another place of use owned or leased by a third party. If the

irrigated land to which the water rights are appurtenant is sold or the ownership of the land is otherwise transferred, the person to whom the ownership of the land is transferred takes the land subject to that temporary transfer of irrigation water rights.

(g) If the irrigated land identified as the place of use in the initial regular permit originally issued for irrigation purposes is developed as evidenced by actual physical alteration of the land such that it is no longer reasonably capable of being irrigated, the permit holder may apply to the authority to convert the remaining irrigation water rights for any purpose or use under Subsection (c) of this section so as to be transferable.

SECTION \_\_\_\_\_. Subsection (a), Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(a) The authority may own, finance, design, construct, ~~build or~~ operate, and maintain recharge dams and associated facilities, structures, or works in the contributing or recharge area of the aquifer if the recharge is made to increase the yield of the aquifer, ~~and~~ the recharge project does not impair senior water rights or vested riparian rights, and the recharge project is not designed to recirculate water at Comal or San Marcos Springs.

SECTION \_\_\_\_\_. Subsections (b) and (d), Section 1.14, Section 1.21, and Subsections (a), (c), and (d), Section 1.29, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, are repealed.

SECTION \_\_\_\_\_. (a) Before January 1, 2012, a suit may not be instituted in a state court contesting:

(1) the validity or implementation of this Act; or

(2) the groundwater withdrawal amounts recognized in Section 3 of this

Act.

(b) If applicable, a party that files a suit in any court shall be automatically removed from the steering committee established under Section 1.26A, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as added by this Act.

(c) A suit against the Edwards Aquifer Authority may not be instituted or maintained by a person who owns, holds, or uses a surface water right and claims injury or potential injury to that right for any reason, including any actions taken by the Edwards Aquifer Authority to implement or enforce Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, as amended. This section does not apply to suits brought pursuant to Section 1.45, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION \_\_\_\_\_. The change in law made by this Act applies only to a cause of action filed on or after the effective date of this Act. A cause of action that is filed before the effective date of this Act 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.

SECTION \_\_\_\_\_. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

### **Floor Amendment No. 80**

Amend Amendment No. 79 to **CSSB 3** as follows:

On page 9, by striking Sec. 1.26A(e) and replacing it with the following:

(e) Texas A&M University shall assist in the creation of a steering committee to oversee and assist in the development of the cooperative agreement under Subsection

(c) of this section. The steering committee must be created not later than September 30, 2007. The initial steering committee shall be composed of:

(1) a representative of each of the following entities, as appointed by the governing body of that entity:

(A) the Edwards Aquifer Authority;

(B) the Texas Commission on Environmental Quality;

(C) the Parks and Wildlife Department;

(D) the Department of Agriculture;

(E) the Texas Water Development Board;

(F) the San Antonio Water System;

(G) the Guadalupe-Blanco River Authority;

(H) the San Antonio River Authority;

(I) the South Central Texas Water Advisory Committee; and

(J) Bexar County;

(K) CPS Energy; and

(L) Bexar Metropolitan Water District or its successor; and

(2) nine other persons who respectively must be:

(A) a representative of a holder of an initial regular permit issued to a retail public utility located west of Bexar County, to be appointed by the authority;

(B) a representative of a holder of an initial regular permit issued by the authority for industrial purposes, to be appointed by the authority;

(C) a representative of a holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(D) a representative of a holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;

(E) a representative of a retail public utility in whose service area the Comal Springs or San Marcos Springs is located;

(F) a representative of a holder of an initial regular permit issued by the authority for irrigation, to be appointed by the commissioner of agriculture;

(G) a representative of an agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

(H) a representative of environmental interests from the Texas Living Waters Project, to be appointed by the governing body of that project; and

(I) a representative of recreational interests in the Guadalupe River Basin, to be appointed by the Parks and Wildlife Commission.

### **Floor Amendment No. 82**

Amend Amendment No. 79 to **CSSB 3** as follows:

On page 9, by striking Subsection (d)(3) in its entirety and substituting in lieu thereof the following:

(3) be approved and executed by the authority, the Commission, the Parks and Wildlife Department, the Department of Agriculture, the Texas Water Development Board and the United States Fish and Wildlife Service not later than September 1, 2012, and the agreement shall take effect December 31, 2012.

**Floor Amendment No. 83**

Amend Floor Amendment No. 79 by Morrison to **CSSB 3** (page 202, prefiled amendment packet), as follows:

(1) In the instructions, strike "by adding the following as a new Article and numbering it" and substituting "by adding the following new Articles and numbering them".

(2) Add the following to the amendment:

ARTICLE \_\_\_\_ . TEXAS-LOUISIANA BORDER REGION

SECTION \_\_\_\_ . The legislature finds that the use of water resources in and orderly economic development of the area of this state near the Texas-Louisiana border is of concern to the entire state.

SECTION \_\_\_\_ . Chapter 2056, Government Code, is amended by adding Section 2056.012 to read as follows:

Sec. 2056.012. STRATEGIC PLAN FOR TEXAS-LOUISIANA BORDER REGION. (a) In this section:

(1) "Committee" means the Texas-Louisiana border region economic development steering committee.

(2) "Fund" means the Texas-Louisiana border region economic development steering committee fund.

(3) "Texas-Louisiana border region" has the meaning assigned by Section 2056.002.

(b) The committee consists of:

(1) the county judges of the five most populous counties in the Texas-Louisiana border region;

(2) the county judge of any other county in the Texas-Louisiana border region, if the commissioner's court elects to join the committee; and

(3) any representatives from economic development councils serving the Texas-Louisiana border region, as selected by the committee.

(c) The committee shall develop a strategic plan for the economic development of the Texas-Louisiana border region, including the use of the area's water resources, in the same manner as a state agency is required by this chapter to make a strategic plan for its operations, and may take action to implement the strategic plan.

(d) The members of the committee shall elect one member as presiding officer. The presiding officer may select another member to preside in the absence of the presiding officer. The presiding officer shall call at least one meeting of the committee each year and may call other meetings as the presiding officer determines are appropriate. A member of the committee is not entitled to compensation for serving as a member but is entitled to reimbursement for reasonable expenses incurred while serving as a member. The committee shall adopt rules for its proceedings and appoint an executive committee. The committee may employ and compensate persons to carry out the powers and duties of the committee. Chapter 171, Local Government Code, applies to a member of the committee in the same manner as that chapter applies to a local public official.

(e) The committee is a public body and a political subdivision of the state exercising public and essential governmental functions and has all the powers necessary or convenient to carry out the purposes of this section. The committee, in

the exercise of powers under this section, is performing only governmental functions and is a governmental unit within the meaning of Chapter 101, Civil Practice and Remedies Code. The committee is subject every 12th year to review under Chapter 325.

(f) The committee may sue and be sued in all courts, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving a supersedeas or cost bond. An action at law or in equity against the committee may be brought in any county in the Texas-Louisiana border region.

(g) The committee may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of its powers.

(h) The committee may enter into a joint ownership agreement with any person.

(i) The committee may make contracts, leases, and agreements with, and accept grants and loans from, the United States, this state, agencies and political subdivisions of this state or another state of the United States, the United Mexican States, or a state of the United Mexican States, and other persons and entities and may perform any act necessary for the full exercise of the powers vested in it.

(j) Notwithstanding Chapter 551, the committee may hold an open or closed meeting by telephone conference call. The meeting is subject to the notice requirements applicable to other meetings. The notice of the meeting must specify as the location of the meeting the location where meetings of the committee are usually held. Each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

#### **Floor Amendment No. 84**

Amend the Morrison Amendment No. 79 on page 202 of the Prefiled Amendment Packet to **CSSB 3** by adding Subsection (h) to Sec. 1.26 on page 208 to read as follows:

(h) Notwithstanding the existence of stage I or II of an interim or final critical period adopted by the authority under this section, a person authorized to withdraw groundwater from the aquifer for irrigation purposes shall, without regard to the withdrawal reductions prescribed for that stage, be allowed to continue withdrawals for irrigation purposes.

#### **Floor Amendment No. 88**

Amend Floor Amendment No. 79 by Morrison to **CSSB 3** (Prefiled Amendment Packet page 202) as follows:

(1) Add the following appropriately numbered SECTIONS to the amendment and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 1.03(10), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(10) "Existing user" means a person who has withdrawn and beneficially used underground water from the aquifer on or before June 28, 1996 [~~4, 1993~~]

SECTION \_\_\_\_\_. Article 1, Section 1.18(b), Chapter 626, Acts of 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) The authority may not consider or take action on an application relating to a proposed or existing well of which there is no evidence of actual beneficial use before June 28, 1996 [~~1, 1993~~], until a final determination has been made on all initial regular permit applications submitted on or before the initial application date of February 28, 1997 [~~March 1, 1994~~].

(2) In SECTION \_\_\_\_\_ of the Amendment, in amended Section 1.14(e), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 (page 2), strike the text beginning with "through wells" through the period at the end of the subsection and substitute "through wells drilled after June 28, 1996 [~~1, 1993, except additional water as provided by Subsection (d) and then on an interruptible basis~~]."

(3) In SECTION \_\_\_\_\_ of the Amendment, strike the recital to the section (page 3), and substitute:

Section 1.16, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (a-1) and amending Subsection (g) to read as follows:

(a-1) An existing user who drilled an aquifer well after June 1, 1993, and who filed an application for historical use of groundwater from the aquifer during the historical period of June 1, 1993, through June 28, 1996, and has initiated an appeal or filed litigation against the authority before March 1, 2007, is qualified for an initial regular permit.

#### **Floor Amendment No. 91**

Amend Morrison Amendment No. 79 on page 202 of **CSSB 3** Amendment Packet by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTION accordingly:

SECTION \_\_\_\_\_. Article 1, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 1.081 to read as follows:

Sec. 1.081. FIRE CONTROL. To protect the water quality of the aquifer, the board shall adopt rules regarding the control of fires in the aquifer's recharge zone. In adopting rules under this section, the board shall consult with fire departments and fire marshals with jurisdiction over the recharge zone.

#### **Floor Amendment No. 93**

Amend the Morrison Amendment No. 79 to **CSSB 3** in SECTION 1 of the amendment as follows:

(1) In the recital to SECTION 1 of the amendment (page 1, lines 5-6), strike "Subsection (f), Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended" and substitute "Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, is amended by amending Subsection (f) and adding Subsection (f-1)".

(2) In amended Section 1.11(f), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 (page 1, lines 11-14), strike "facilities except in the Uvalde Pool, where the authority may only contract with an entity based in Uvalde County for the authority or that entity to own, finance, design, construct, operate, or maintain recharge facilities." and substitute the following:

facilities. For a recharge facility in Uvalde or Medina County, the authority shall partner with a political subdivision of this state in whose territory the facility is or will be located to own, finance, design, construct, operate, or maintain the facility.

(3) In amended Section 1.11, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, immediately following amended Subsection (f) of that section (page 1, between lines 19 and 20), insert the following:

(f-1) If the authority issues bonds to finance a recharge facility project under Subsection (f) of this section to be located outside Medina and Uvalde Counties, the authority shall exempt the holders of permits for wells located in Medina and Uvalde Counties from any fee increase or assessment imposed by the authority to pay the principal of or interest on the bonds.

#### **Floor Amendment No. 94**

Amend Floor Amendment No. 79 by Morrison to **CSSB 3** (beginning on page 202 of the pre-filed amendments packet) by striking the SECTION proposed by the amendment amending Section 1.34, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993 (pages 15 and 16 of the amendment).

#### **Floor Amendment No. 95**

Amend **CSSB 3** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . TERRITORY OF CULBERSON COUNTY GROUNDWATER  
CONSERVATION DISTRICT

SECTION \_\_\_\_ .01. Chapter 1075, Acts of the 75th Legislature, Regular Session, 1997, is amended by adding Section 3A to read as follows:

Sec. 3A. In addition to the portions of Culberson County included in the boundaries of the district on August 31, 2007, the boundaries of the district include all of the remaining territory in Culberson County.

SECTION \_\_\_\_ .02. (a) The annexation under Section 3A, Chapter 1075, Acts of the 75th Legislature, Regular Session, 1997, as added by this article, of the additional territory in Culberson County that was not included in the boundaries of the Culberson County Groundwater Conservation District on August 31, 2007, is subject to ratification at an election held under Section 36.328, Water Code, and this section in which only the voters residing in the territory to be annexed are eligible to vote.

(b) The board of directors of the Culberson County Groundwater Conservation District shall hold the ratification election on the first uniform election date that occurs after the effective date of this article that allows for compliance with the time requirements of the Election Code.

(c) If a majority of the voters voting at the ratification election vote in favor of the annexation, the Culberson County Groundwater Conservation District boundaries include all of Culberson County.

(d) If a majority of the voters voting at the ratification election do not vote in favor of the annexation, the Culberson County Groundwater Conservation District boundaries are unchanged and this article expires.

**Floor Amendment No. 97**

Amend **CSSB 3** (House committee printing) by striking sections SECTION 3.04 and SECTION 3.05 and substituting the following:

"SECTION 3.04. RESTRICTION ON ELIGIBILITY TO HOLD WATER RIGHTS; LIABILITY FOR CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS. (a) This section applies to;

(1) a proposed reservoir to be located on the Neches River in Anderson and Cherokee Counties, downstream from Lake Palestine; that is to be located in the Region I Regional Water Planning Area; and

(2) a proposed reservoir to be located on the Sulphur River upstream from its confluence with White Oak Creek; with a dam that will be located in Titus and Red River Counties and the reservoir would also impound water in Franklin County; that is to be located in the Region D Regional Water Planning Area.

(b) The right to appropriate at least 20 percent of the quantity of water that is authorized to be appropriated from each proposed reservoir must be held by one or more entities located in the regional water planning area in which the reservoir is to be located.

(c) If one or more entities located outside the regional water planning area in which a proposed reservoir is to be located are to hold the right to appropriate a majority of the quantity of water that is authorized to be appropriated from the reservoir, that entity or those entities must pay all of the costs of constructing, operating, and maintaining the reservoir until such time as one or more entities located in the regional water planning area in which the reservoir is to be located begins diverting water. At such time, the entity or entities making a diversion shall pay a pro-rata share of the cost of operating and maintaining the reservoir.

SECTION 3.05. STUDY COMMISSION ON REGION C WATER SUPPLY. (a) The Study Commission on Region C Water Supply is established. The study commission consists of six members as follows:

(1) two members appointed by the Region C Regional Water Planning Group; and

(2) two members appointed by the Region D Regional Water Planning Group.

(3) two members appointed by the Region I Regional Water Planning Group.

(b) A member of the study commission may be, but is not required to be, a voting member of the regional water planning group that appointed the member.

(c) The members of the study commission shall select a presiding officer from among the members.

(d) Members of the study commission are not entitled to compensation for service on the study commission but may be reimbursed for travel expenses incurred while conducting the business of the study commission, as provided for in the General Appropriations Act.

(e) The study commission shall:

(1) review the water supply alternatives available to the Region C Regional Water Planning Area, including obtaining additional water supply from Wright Patman Lake, Toledo Bend Reservoir, Lake Texoma, Lake o' the Pines, other existing and proposed reservoirs, and groundwater resources;



(2) in connection with the review under Subdivision (1) of this subsection, analyze the socioeconomic effect on the area where the water supply is located that would result from the use of the water to meet the water needs of the Region C Regional Water Planning Area, including:

(A) the effects on landowners, agricultural and natural resources, businesses, industries, and taxing entities of different water management strategies; and

(B) in connection with the use by the Region C Regional Water Planning Area of water from Wright Patman Lake, the effect on water availability in that lake and the effect on industries relying on that water availability;

(3) determine whether water demand in the Region C Regional Water Planning Area may be reduced through additional conservation and reuse measures so as to postpone the need for additional water supplies;

(4) evaluate measures that would need to be taken to comply with the mitigation requirements of the United States Army Corps of Engineers in connection with any proposed new reservoirs, including identifying potential mitigation sites;

(5) consider whether the mitigation burden described by Subdivision (4) of this subsection may be shared by the Regions C, D, and I Regional Water Planning Areas in proportion to the allocation to each region of water in any proposed reservoir;

(6) review innovative methods of compensation to affected property owners, including royalties for water stored on acquired properties and annual payments to landowners for properties acquired for the construction of a reservoir to satisfy future water management strategies;

(7) evaluate the minimum number of surface acres required for the construction of proposed reservoirs in order to develop adequate water supply; and

(8) identify the locations of proposed reservoir sites, and proposed mitigation as applicable as selected in accordance with existing state and federal law in the Regions C, D, and I Regional Water Planning Areas using satellite imagery with sufficient resolution to permit land ownership to be determined.

(f) The study commission may not be assisted by any person that is a party to or is employed by a party to a contract to perform engineering work with respect to site selection, permitting, design, or construction of a proposed reservoir in Regions D or I.

(g) The Texas Water Development Board, on request of the study commission, may provide staff support or other assistance necessary to enable the study commission to carry out its duties. The Texas Water Development Board shall provide funding for the study commission, including funding of any studies conducted by the study commission, from the regional planning budget of the board.

(h) Not later than December 1, 2010, the study commission shall deliver a report to the governor, lieutenant governor, and speaker of the house of representatives that includes any:

(1) studies completed by the study commission;

(2) legislation proposed by the study commission;

(3) a recommendation as to whether Marvin Nichols should remain a designated reservoir site;

(4) a recommendation as to whether any reservoir to be located on the Neches River in Anderson and Cherokee Counties, downstream from Lake Palestine should remain a designated reservoir site; and

(5) other findings and recommendations of the study commission.

(i) The study commission is abolished and this section expires December 31, 2011.

### **Floor Amendment No. 98**

Amend Floor Amendment No. 97 by Hopson to **CSSB 3** (Floor Amendment Packet page 51) on page 52 of the amendment by striking lines 3 through 5 and substituting the following:

water. At such time, the entity or entities making a diversion shall pay a pro-rata share of the cost of operating and maintaining the reservoir. In addition, the entities that are to hold the right to appropriate a majority of the quantity of water that is to be appropriated from the reservoir shall pay all of the costs associated with realignment, relocation, and elevation of the Texas State Railroad in order to maintain its operations.

### **Floor Amendment No. 99**

Amend Floor Amendment No. 65 by Alonzo to **CSSB 3** as follows:

(1) Strike page 1, lines 1 through 4, of the amendment and substitute the following:

Amend C.S.S.B. No. 3 (House committee printing) as follows:

(1) In ARTICLE 2 of the bill, add the following appropriately numbered SECTION and renumber the other SECTIONS of that ARTICLE accordingly:

(2) On page 2 of the amendment, following line 4, add the following:

(2) Add the following appropriately numbered ARTICLE to the bill and renumber the other ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . STUDY OF ROLE OF LAKE SOMERVILLE IN ECONOMIC  
DEVELOPMENT

SECTION \_\_\_\_ .01. The legislature finds that:

(1) in 1954, the United States Congress authorized the construction of Lake Somerville to provide flood control, water conservation, and other beneficial uses for nearby areas; subsequently, the United States Army Corps of Engineers began reservoir construction in 1962 and began to impound water in 1967;

(2) straddling the borders of Burleson, Washington, and Lee Counties, on Yegua Creek 20 river miles upstream from that creek's confluence with the Brazos River, the lake has a storage capacity of 337,700 acre-feet;

(3) operation of the lake is supervised by the Fort Worth District of the United States Army Corps of Engineers; the lake is one of nine federal reservoirs that are integrated into the Brazos River Authority's basin-wide system and associated water resource development master plan;

(4) the Brazos River Authority owns the stored water, a source from which it furnishes supplies to the City of Brenham according to a contract that was last renewed for a 10-year period in 2003;

(5) also significantly involved in the region is the Lower Colorado River Authority, which, from its diverse mix of power plants, provides wholesale electricity to various communities as well as offering them its economic research and expertise;

(6) although Lake Somerville has long been a tourist destination for fishing and other water recreation, the facility has not fully effectuated the three-county economic impact that originally was expected at the time that it was built; and

(7) a study of Lake Somerville's role in economic development would assist in explaining why the lake has not yet had that impact, beyond the tourism industry, and would help to identify impediments that currently restrict its contribution as well as strategies that would better maximize its economic potential.

SECTION \_\_\_\_ .02. The Brazos River Authority and the Lower Colorado River Authority shall:

(1) conduct, with appropriate input from the public and private sectors, a joint baseline study of the role of Lake Somerville in the economic development of the surrounding vicinity; and

(2) jointly submit a full report of their findings and recommendations to the 81st Legislature when that legislature convenes in January 2009.

### **Floor Amendment No. 100**

Amend Amendment No. 6 by Puente to **CSSB 3** on page 98 of the prefiled amendments packet by striking lines 6-26 and substituting the following:

#### ARTICLE 5A

SECTION 5A.01. Section 3, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 3. In addition to the powers vested by the Constitution and general laws in such public agency for the greatest practicable measure of the conservation, preservation, and beneficial utilization of its public waters, the power to control and utilize its public waters and to regulate the disposal and the disposal of sewage, waste, and refuse, the District shall have the following general powers:

(a) Through every practical and legal means to develop, transport, deliver, distribute, store, and treat water for use within the District, including the storm and flood waters within the District, including the power to cooperate with the United States Government or any agency thereof, or any municipality, public, quasi-public or private agency and to contract, negotiate, and enter into agreements with any one or more of such agencies in effecting such purposes;

~~(b) [to store, control, and conserve storm and flood waters of its rivers and streams and to prevent the escape of any such waters without first obtaining therefrom a maximum of public service; to prevent devastation of property from overflow and to protect life and property from uncontrolled flood and storm waters;~~

~~(c) [to conserve and distribute waters essential for domestic and other uses by the inhabitants of the District, including necessary water supply for cities and towns situated within the District;~~

~~(d) [to provide for the development of drainage systems to control, regulate, and dispose of all storm and flood waters of the District so as to protect effectively lives and property, and to utilize such waters for each and every purpose for which flood and storm waters when controlled, conserved, or regulated may be utilized as contemplated by the Constitution and the public policy therein declared;~~

~~(e)~~ to provide by purchase, construction, lease, gift, or in any other manner and to operate any and all facilities deemed by the District essential for preserving the purity of all the surface and underground waters of the District for the protection of the health of its inhabitants, and to formulate plans to make and enforce rules and regulations for the effective disposal of any and all sewage wastes, refuse, or residuum, however accumulated; which otherwise would contaminate, pollute, or render unsafe and insanitary the surface and underground waters of the District and which might threaten or impair the health of its inhabitants or which might adversely affect the health of the inhabitants downstream below the District;

(d) ~~(f)~~ to acquire by purchase, construction, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein within or without the boundaries of the District deemed by its Board of Directors necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this Act;

(e) ~~(g)~~ to acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein, within the boundaries of the county of Bexar [or outside of the boundaries of the District], necessary to the exercise of the powers, rights, privileges, and functions conferred by this Act, in the manner provided by General Law relative to condemnation, or at the option of the District, in the manner provided by law with respect to condemnation by agencies organized pursuant to Section 59, Article 16 of the Constitution of the State of Texas; provided that the District shall not have the right or power to so condemn any such property that may be owned by any other political subdivision, city, or town located within the District;

(f) ~~(h)~~ to cooperate, contract, and enter into agreements with towns, cities, districts, or political subdivisions located in or outside of the District and with Bexar County, in the construction, purchase, lease, maintenance, improvement, use, and operation of any and all facilities, works, and plants necessary or convenient to the accomplishment of the purposes for which the District was created;

(g) ~~(i)~~ to make contracts with any person, private corporation, municipal corporation, political subdivision, or the Board of Trustees thereof, operating water distribution facilities for the benefit of a city or town within the District, under which the District may perform services for such parties or such parties may perform services for the District, or under which either may operate all or any part of the facilities of the other, having due regard for the duties and obligations of such parties in the instrument prescribing their or its duties;

(h) ~~(j)~~ to construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, or reconstructed and to use and operate any and all facilities of any kind necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred by this Act;

(i) ~~(k)~~ to sue and be sued in its corporate name;

(j) ~~(l)~~ to make by-laws for the management and regulation of its affairs conformably to the powers and purposes herein conferred and consistent with the Constitution of this State;

(k) [~~(m)~~] to make rules and regulations and to prescribe penalties for the breach of any rule or regulation of the District, which penalties shall not exceed fines of more than Two Hundred Dollars (\$200), or imprisonment for more than thirty (30) days, or may provide both such fine and such imprisonment. The penalties hereby authorized shall be in addition to any other penalties provided by the laws of Texas and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five days next after the district may have caused a substantive statement of the particular rule or regulation and the penalty for the violation thereof to be published, once a week for two consecutive weeks, in one or more newspapers affording general circulation in the area in which the property of the district is situated; and, the substantive statement so to be published shall be as condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of regulations; there must be embraced in the notice advice that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty and there also shall be included in the notice advice that the full text of the regulation sought to be enforced is on file in the principal office of the District, where the same may be read by any interested person. Five (5) days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State;

(l) [~~(n)~~] to adopt, use, and alter a corporate seal;

(m) [~~(o)~~] to appoint agents and employees; prescribe their duties and fix their compensation;

(n) [~~(p)~~] to make contracts and execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions herein conferred;

(o) [~~(q)~~] to borrow money for its authorized purposes, to accept grants or loans or allotments from the United States Government or any of its agencies, or others, and in connection with any such grants, loans, or allotments to enter into such agreements as may be required to make them effective, and for the purpose of obtaining funds to issue its negotiable tax bonds and its negotiable revenue bonds in the manner and to the extent hereinafter provided;

(p) [~~(r)~~] to operate and maintain with consent of the governing body of any city, town, or political subdivision located in the District any works, plants, or facilities deemed necessary or convenient to the accomplishment of the purposes for which the District is created;

(q) [~~(s)~~] to enter into planning agreements with the Texas Water Development Board under Subchapter C, Chapter 16, Water Code, for the purpose of conducting studies necessary to maintain retail water supply services to customers within the boundaries of the District; and

(r) ~~(t)~~ to cooperate with and support local fire departments and economic development activities sponsored by local entities within the District that use water and water resources provided, or to be provided, by the District.

SECTION 5A.02. Section 5A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Subsection (c) to read as follows:

(c) The District's boundaries for the purpose of conducting an election are coextensive with the boundaries of Bexar County.

SECTION 5A.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 7A to read as follows:

Sec. 7A. The District is governed by a board of nine directors, composed of:

- (1) the members of the Commissioners Court of Bexar County;
- (2) the county judge of Atascosa County, if the District provides services to customers in Atascosa County;
- (3) the county judge of Comal County, if the District provides services to customers in Comal County;
- (4) the county judge of Medina County, if the District provides services to customers in Medina County; and
- (5) the mayor of San Antonio.

SECTION 5A.04. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 8A to read as follows:

Sec. 8A. (a) The board of directors is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that chapter. The review shall be conducted as if the board of directors were scheduled to be abolished September 1, 2010.

(b) If the legislature does not continue the members of the board of directors in office:

- (1) the Commissioners Court of Bexar County shall hold an election to elect new board members, in accordance with Section 5A, on the uniform election date in November of 2010; and
- (2) the terms of the board members expire on the date the election returns are canvassed.

SECTION 5A.05. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by amending Section 9 to read as follows:

Sec. 9. The Board of Directors from time to time shall be authorized to make or cause to be made surveys and engineering investigations for the information of the District to facilitate the accomplishment of the purposes for which the District is created, as expressed in the provisions of this Act; and may employ engineers, attorneys and all other technical and non-technical employees or assistants and fix and provide the amount and manner of their compensation, and may provide for payment of expenditures deemed essential to the proper maintenance and administration of the District. Notwithstanding Section 49.060, Water Code, a member ~~[The members]~~ of the Board of Directors is not entitled to receive fees of office ~~[shall receive a per diem of not more than Ten Dollars (\$10) per day, for the time actually expended on business of the District, together with traveling and other necessary expenses; provided that such per diem fee shall not be paid to a Director for more than one hundred (100) days in any one year].~~

SECTION 5A.06. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 23A and 23B to read as follows:

Sec. 23A. The District may not provide a service to a customer located outside Bexar County unless:

(1) the customer received services from the District on or before April 4, 2007; or

(2) the District is the only service provider in the service area in which the customer is located.

Sec. 23B. (a) The District may not charge a customer who receives water services from the District on and after September 1, 2007, a residential or commercial water rate that is greater than the rate charged by the District on September 1, 2007. This subsection expires September 1, 2012.

(b) If, on or after September 1, 2007, the District contracts with a person to provide water services to District customers and the person with whom the District contracts has water rates lower than the District's, a customer who receives water services from the District on September 1, 2007, and when the contract is in effect is entitled to the water rate charged by the person with whom the District contracts.

SECTION 5A.07. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27A to read as follows:

Sec. 27A. (a) The District may not terminate without cause an employee who, on June 1, 2007:

(1) is vested in the District's retirement plan; and

(2) earns an annual salary of \$50,000 or less.

(b) An employee described by Subsection (a) of this section who is terminated by the District for cause is entitled to the grievance process available to an employee of Bexar County who is not classified as a civil service employee.

SECTION 5A.08. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27C to read as follows:

Sec. 27C. (a) The District may not employ fewer than 90 percent of the number of employees employed by the District on June 1, 2007, who earned an annual salary of \$50,000 or less.

(b) The District may reduce the number of employees employed by the District who earn an annual salary of \$50,000 or less only through:

(1) retirement;

(2) voluntary resignation; or

(3) termination for cause.

(c) An employee terminated by the District for cause is entitled to the grievance process available to an employee of Bexar County who is not classified as a civil service employee.

(d) This section expires September 1, 2012.

SECTION 5A.09. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27D to read as follows:

Sec 27D. (a) Not later than 120 days after the first meeting of the Board of Directors of the District composed of the persons described by Section 7A, the District shall:

(1) produce a report of an assessment of the operations and maintenance condition of the District;

(2) produce a status report of infrastructure improvements under construction;

(3) produce a report certifying any rate structure changes approved by the District and documenting a schedule for future changes to rate structure anticipated by the District; and

(4) deliver these reports to the Bexar Metropolitan Water District Legislative Oversight Committee.

(b) Not later than 180 days after the first meeting of the Board of Directors of the District composed of the persons described by Section 7A, the District shall produce an assessment of the District's financial condition and present it to the legislative oversight committee.

(c) Not later than 240 days after the first meeting of the Board of Directors of the District composed of the persons described by Section 7A, the District shall:

(1) produce a report of necessary improvements to the system and a schedule for the implementation of those improvements;

(2) produce a report on the sustainability and adequacy of the water resources of the District and a plan for obtaining additional water resources if deficiencies exist; and

(3) deliver these reports to the legislative oversight committee.

(d) Not later than one year after the first meeting of the Board of Directors of the District composed of the persons described by Section 7A, the District shall:

(1) produce a report on service delivery improvements that have been completed and that are in progress;

(2) produce a report identifying all service improvements necessary for the system and a schedule for the completion of those improvements; and

(3) deliver these reports to the legislative oversight committee.

(e) Not later than three years after the first meeting of the Board of Directors of the District composed of the persons described by Section 7A, the District shall have a uniform rate structure that contains rates that are equal to or lower than the rates of other large retail water providers in the region, except that the District's rates must be sufficient to meet debt service obligations and debt coverage requirements.

(f) This section expires September 1, 2012.

SECTION 5A.10. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27E to read as follows:

Sec. 27E. (a) Bexar County may not transfer, sell, or lease to a public utility the management or assets, including certificates of convenience and necessity and water rights, of the District.

(b) This section does not apply to a certificate of convenience and necessity or an asset of the District outside of Bexar County.

SECTION 5A.11. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 32 to read as follows:

Sec. 32. (a) The District shall permit a customer to pay a bill at one or more retail locations in the District.



(b) The District may not close a customer service branch that is in operation on May 1, 2007 unless a comparable customer service branch is opened. This subsection expires May 1, 2012.

SECTION 5A.12. For purposes of service on the Canyon Regional Water Authority Board of Directors, a representative from the district shall be selected from the Board of Directors of the District.

SECTION 5A.13. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is repealed.

#### ARTICLE 5B

SECTION 5B.01. Section 3, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 3. In addition to the powers vested by the Constitution and general laws in such public agency for the greatest practicable measure of the conservation, preservation, and beneficial utilization of its public waters, the power to control and utilize its public waters and to regulate the disposal and the disposal of sewage, waste, and refuse, the District shall have the following general powers:

(a) Through every practical and legal means to develop, transport, deliver, distribute, store, and treat water for use within the District, including the storm and flood waters within the District, including the power to cooperate with the United States Government or any agency thereof, or any municipality, public, quasi-public or private agency and to contract, negotiate, and enter into agreements with any one or more of such agencies in effecting such purposes;

~~(b) [to store, control, and conserve storm and flood waters of its rivers and streams and to prevent the escape of any such waters without first obtaining therefrom a maximum of public service; to prevent devastation of property from overflow and to protect life and property from uncontrolled flood and storm waters;~~

~~(c)~~ to conserve and distribute waters essential for domestic and other uses by the inhabitants of the District, including necessary water supply for cities and towns situated within the District;

~~(c) [(d) to provide for the development of drainage systems to control, regulate, and dispose of all storm and flood waters of the District so as to protect effectively lives and property, and to utilize such waters for each and every purpose for which flood and storm waters when controlled, conserved, or regulated may be utilized as contemplated by the Constitution and the public policy therein declared;~~

~~(e)~~ to provide by purchase, construction, lease, gift, or in any other manner and to operate any and all facilities deemed by the District essential for preserving the purity of all the surface and underground waters of the District for the protection of the health of its inhabitants, and to formulate plans to make and enforce rules and regulations for the effective disposal of any and all sewage wastes, refuse, or residuum, however accumulated; which otherwise would contaminate, pollute, or render unsafe and insanitary the surface and underground waters of the District and which might threaten or impair the health of its inhabitants or which might adversely affect the health of the inhabitants downstream below the District;

~~(d) [(f)]~~ to acquire by purchase, construction, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein within or without

the boundaries of the District deemed by its Board of Directors necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this Act;

(e) [~~(g)~~] to acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein, within the boundaries of the county of Bexar [or outside of the boundaries of the District], necessary to the exercise of the powers, rights, privileges, and functions conferred by this Act, in the manner provided by General Law relative to condemnation, or at the option of the District, in the manner provided by law with respect to condemnation by agencies organized pursuant to Section 59, Article 16 of the Constitution of the State of Texas; provided that the District shall not have the right or power to so condemn any such property that may be owned by any other political subdivision, city, or town located within the District;

(f) [~~(h)~~] to cooperate, contract, and enter into agreements with towns, cities, districts, or political subdivisions located in or outside of the District and with Bexar County, in the construction, purchase, lease, maintenance, improvement, use, and operation of any and all facilities, works, and plants necessary or convenient to the accomplishment of the purposes for which the District was created;

(g) [~~(i)~~] to make contracts with any person, private corporation, municipal corporation, political subdivision, or the Board of Trustees thereof, operating water distribution facilities for the benefit of a city or town within the District, under which the District may perform services for such parties or such parties may perform services for the District, or under which either may operate all or any part of the facilities of the other, having due regard for the duties and obligations of such parties in the instrument prescribing their or its duties;

(h) [~~(j)~~] to construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, or reconstructed and to use and operate any and all facilities of any kind necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred by this Act;

(i) [~~(k)~~] to sue and be sued in its corporate name;

(j) [~~(l)~~] to make by-laws for the management and regulation of its affairs conformably to the powers and purposes herein conferred and consistent with the Constitution of this State;

(k) [~~(m)~~] to make rules and regulations and to prescribe penalties for the breach of any rule or regulation of the District, which penalties shall not exceed fines of more than Two Hundred Dollars (\$200), or imprisonment for more than thirty (30) days, or may provide both such fine and such imprisonment. The penalties hereby authorized shall be in addition to any other penalties provided by the laws of Texas and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located; provided, however, that no rule or regulation which provides a penalty for the violation thereof shall be in effect, as to enforcement of the penalty, until five days next after the district may have caused a substantive statement of the particular rule or regulation and the penalty for the violation thereof to be published, once a week for two consecutive weeks, in one or more newspapers affording general circulation in the area in which the property of the district is situated; and, the substantive statement so to be published shall be as

condensed as is possible to afford an intelligent direction of the mind to the object sought to be accomplished or the act forbidden by the rule or regulation; one notice may embrace any number of regulations; there must be embraced in the notice advice that breach of the particular regulation, or regulations, will subject the violator to the infliction of a penalty and there also shall be included in the notice advice that the full text of the regulation sought to be enforced is on file in the principal office of the District, where the same may be read by any interested person. Five (5) days after the second publication of the notice hereby required, the advertised regulation shall be in effect, and ignorance of any such regulation shall not constitute a defense to a prosecution for the enforcement of a penalty; and, the rules and regulations authorized hereby, after the required publication, shall judicially be known to the courts and shall be considered of a nature like unto that of valid penal ordinances of a city of the State;

(l) [~~(n)~~] to adopt, use, and alter a corporate seal;

(m) [~~(o)~~] to appoint agents and employees; prescribe their duties and fix their compensation;

(n) [~~(p)~~] to make contracts and execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions herein conferred;

(o) [~~(q)~~] to borrow money for its authorized purposes, to accept grants or loans or allotments from the United States Government or any of its agencies, or others, and in connection with any such grants, loans, or allotments to enter into such agreements as may be required to make them effective, and for the purpose of obtaining funds to issue its negotiable tax bonds and its negotiable revenue bonds in the manner and to the extent hereinafter provided;

(p) [~~(r)~~] to operate and maintain with consent of the governing body of any city, town, or political subdivision located in the District any works, plants, or facilities deemed necessary or convenient to the accomplishment of the purposes for which the District is created;

(q) [~~(s)~~] to enter into planning agreements with the Texas Water Development Board under Subchapter C, Chapter 16, Water Code, for the purpose of conducting studies necessary to maintain retail water supply services to customers within the boundaries of the District; and

(r) [~~(t)~~] to cooperate with and support local fire departments and economic development activities sponsored by local entities within the District that use water and water resources provided, or to be provided, by the District.

SECTION 5B.02. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 23A and 23B to read as follows:

Sec. 23A. The District may not provide a service to a customer located outside Bexar County unless the customer received services from the District on or before April 4, 2007.

Sec. 23B. (a) The District may not charge a customer who receives water services from the District on and after September 1, 2007, a residential or commercial water rate that is greater than the rate charged by the District on September 1, 2007. This subsection expires September 1, 2012.

(b) If, on or after September 1, 2007, the District contracts with a person to provide water services to District customers and the person with whom the District contracts has water rates lower than the District's, a customer who receives water services from the District on September 1, 2007, and when the contract is in effect is entitled to the water rate charged by the person with whom the District contracts.

SECTION 5B.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27D to read as follows:

Sec 27D. (a) Not later than 120 days after the effective date of the Act enacting this article, the District shall:

(1) produce a report of an assessment of the operations and maintenance condition of the District;

(2) produce a status report of infrastructure improvements under construction;

(3) produce a report certifying any rate structure changes approved by the District and documenting a schedule for future changes to rate structure anticipated by the District; and

(4) deliver these reports to the legislative oversight committee.

(b) Not later than 180 days after the effective date of the Act enacting this article, the District shall produce an assessment of the District's financial condition and present it to the Bexar Metropolitan Water District Legislative Oversight Committee.

(c) Not later than 240 days after the effective date of the Act enacting this article, the District shall:

(1) produce a report of necessary improvements to the system and a schedule for the implementation of those improvements;

(2) produce a report on the sustainability and adequacy of the water resources of the District and a plan for obtaining additional water resources if deficiencies exist; and

(3) deliver these reports to the legislative oversight committee.

(d) Not later than one year after the effective date of the Act enacting this article, the District shall:

(1) produce a report on service delivery improvements that have been completed and that are in progress;

(2) produce a report identifying all service improvements necessary for the system and a schedule for the completion of those improvements; and

(3) deliver these reports to the legislative oversight committee.

(e) Not later than eighteen months after the effective date of the Act enacting this article, the District must have a uniform rate structure that contains rates that are equal to or lower than the rates of other large retail water providers in the region.

(f) This section expires September 1, 2012.

SECTION 5B.04. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 32 to read as follows:

Sec. 32. (a) The District shall permit a customer to pay a bill at one or more retail locations in the District.

(b) The District may not close a customer service branch that is in operation on June 1, 2007, unless a comparable customer service branch is opened. This subsection expires September 1, 2012.

SECTION 5B.05. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27A to read as follows:

Sec. 27A. The District shall submit to the Bexar Metropolitan Water District Legislative Oversight Committee the following:

(1) a schedule for achieving the objectives set out in Section 27D within six months of the effective date of this section;

(2) evidence that the District, within one and one half years from the effective date of this section, has completed its three-year plan of improvements as adopted by the board of directors of the District before the effective date of this Act;

(3) audited annual financial statements indicating the financial condition of the district within six months of the effective date of this section;

(4) a written projection of all rate and fee increases for three years following the effective date of this Act within six months of the effective date of this section;

(5) any documentation or materials used in conducting a standard managerial and financial audit; and

(6) any other information the legislative oversight committee requests.

SECTION 5B.06. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27C to read as follows:

Sec. 27C. The District shall implement a rate structure that promotes and encourages conservation of water and provides for lower rates for customers using lower quantities of water.

SECTION 5B.07. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 27E to read as follows:

Sec. 27E. The District shall implement an appeal and grievance process for employees of the District.

#### ARTICLE 5C

SECTION 5C.01. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 33A as follows:

Sec. 33A. LEGISLATIVE OVERSIGHT COMMITTEE. (a) In recognition of the important goal of the state in providing safe and efficient water supply services to the customers of the District and the necessity for state oversight and regulation of the District to ensure the achievement of this goal there is created the Bexar Metropolitan Water District Legislative Oversight Committee.

(b) The legislative oversight committee shall:

(1) monitor the progress of the district in implementing a rate structure that conserves water, provides adequate service to low-income customers, and assists in creating uniform rates among water utility providers in the region;

(2) monitor the quality of service provided by the district;

(3) monitor the plans by the district to provide for sustainability of water resources and plan for infrastructure needs;

(4) identify regulatory and statutory barriers to achievement of the district's goals, and make recommendations to the Legislature, if necessary; and

(5) perform any other oversight function considered appropriate by the legislative oversight committee.

(c) The legislative oversight committee is composed of three members appointed to represent the following members:

(1) the senator sponsor of the Act enacting this section, or, if the senator cannot serve, a senator appointed by the lieutenant governor;

(2) the house author of the Act enacting this section, or, if the representative cannot serve, a representative appointed by the speaker of the house of representatives; and

(3) one member with special expertise in the operation of public water utilities appointed by the governor.

(d) A member of the legislative oversight committee is not entitled to receive compensation for service on the legislative oversight committee but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the legislative oversight committee, as provided by the General Appropriations Act.

(e) The District shall provide staff support for the legislative oversight committee.

(f) If Article 5A of this Act becomes effective, this section expires on September 1, 2012, and the legislative oversight committee is abolished.

SECTION 5C.02. STATE AUDIT. Subject to approval by the Legislative Audit Committee for inclusion in the annual audit plan, the State Auditor shall conduct a financial and managerial audit of the District upon passage of this Act and submit the findings from the audit in a written report to the members of the Legislative Oversight Committee, the Board of Directors of the District, the Texas Legislature, and the Bexar County Commissioners. The District shall cooperate and provide assistance and access to all necessary records, even if they are confidential, to the state auditor in conducting the audit pursuant to this Section. The District shall reimburse the state auditor for the cost of performing the audit.

SECTION 5C.03. TRANSITION PERIOD. (a) The period on or after the effective date of the Act and before the implementation of Article 5A or Article 5B of this Act is the transition period.

(b) During the term of the transition period, the district may not:

(1) destroy or falsify any record of the District, including, but not limited to, written correspondence, electronic mail, and tape recordings;

(2) modify in any manner the compensation, benefits, bonus plan, or any matter related to compensation of all employees, including management, of the district;

(3) enter into any contract or agreement that cannot be terminated with 45 days notice and no penalty for termination;

(4) enter into any contract or agreement to privatize operation of any part of the district system; or

(5) sell, lease, transfer, or convert any assets of the District.

SECTION 5C.04. (a) The legal notice of the intention to introduce Articles 5A, 5B, and 5C, setting forth the general substance of articles 5A, 5B, and 5C, has been published as provided by law, and the notice and a copy of article 5A, 5B, and 5C

have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice of articles 5A and 5B to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to articles 5A and 5B with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of articles 5A and 5B are fulfilled and accomplished.

SECTION 5C.05. (a) Articles 5A and 5C take effect January 1, 2008.

(b) If the United States Department of Justice issues a letter under Section 5 of the Voting Rights Act interposing an objection to the implementation of any portion of Article 5A, 5B, or 5C, the Texas Secretary of State shall publish notice of the objection in the Texas Register. The notice shall contain a copy of the letter referenced in this section. On publication of the notice, Article 5B takes effect and Article 5A is no longer effective.

### **Floor Amendment No. 101**

Amend **CSSB 3** (House committee printing) as follows:

(1) Add the following section to the bill, numbered appropriately:

SECTION \_\_\_\_\_. Section XXXXXX, is amended by adding Section (a) and (b):

(a) The creation of a Fresh Water Supply District by a county between June 1, 2005 and December 31, 2006 is validated and confirmed in all respects as of the dates the creation occurred. The creation may not be held invalid because it was not performed in compliance with Chapter 53, *Water Code*.

(b) This Section does not apply to an act or proceeding which is the subject of litigation that is pending on the effective date of this Act or an act or proceeding that, under a statute of this state or the United States was a misdemeanor or felony at the time the act or proceeding occurred.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 3**, on third reading, by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Sections 13.002(1-a), (5), and (8), Water Code, are amended to read as follows:

(1-a) "Landowner," "owner of a tract of land," and "owners of each tract of land" include multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(5) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(8) "Executive director" means the executive director of the commission [~~Texas Natural Resource Conservation Commission~~].

SECTION \_\_\_\_\_. Section 13.2451, Water Code, is amended to read as follows:

Sec. 13.2451. EXTENSION BEYOND EXTRATERRITORIAL JURISDICTION. (a) If ~~[Except as provided by Subsection (b), if]~~ a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.

(c) The commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

- (1) that was transferred to a municipality on approval of the commission; and
- (2) in relation to which the municipality has spent public funds.

(d) To the extent of a conflict between this section and Section 13.245, Section 13.245 prevails. [The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction without the written consent of the landowner who owns the property in which the certificate is to be extended. The portion of any certificate of public convenience and necessity that extends beyond the extraterritorial jurisdiction of the municipality without the consent of the landowner is void.]

SECTION \_\_\_\_\_. The changes to Water Code Sec. 13.2451 apply only to:

- (1) an application for a certificate of public convenience and necessity or for an amendment to a certificate of public convenience and necessity submitted to the Texas Commission on Environmental Quality on or after the effective date of this Act;
- (2) a proceeding to amend or revoke a certificate of public convenience and necessity initiated on or after the effective date of this Act;
- (3) a certificate of public convenience and necessity issued to a municipality, regardless of the date the certificate was issued;
- (4) an application by a municipality or by a utility owned by a municipality for a certificate of public convenience and necessity or for an amendment to a certificate, regardless of the date the application was filed; and
- (5) a proceeding to amend or revoke a certificate of public convenience and necessity held by a municipality or by a utility owned by a municipality, regardless of the date the proceeding was initiated.

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

Amend **CSSB 3** on third reading, by removing Floor Amendment No. 2 by Puentes, adopted on second reading (on page 34-35 of the pre-filed amendments package).



**Floor Amendment No. 5 on Third Reading**

Amend **CSSB 3** on third reading in the SECTION adding Section 43.0741, Local Government Code (added by Amendment No. 61 to Amendment No. 60), by adding a new Subsection (j) to Section 43.0741 as follows:

(j) This section does not apply to a district located in a county that:

(1) has a population of 600,000 or more;

(2) borders the United Mexican States; and

(3) has a municipality with a population of 500,000 or more.

**Floor Amendment No. 6 on Third Reading**

Amend **CSSB 3** on third reading by adding the following appropriately numbered article and sections to the bill and renumbering subsequent articles and sections accordingly:

ARTICLE \_\_\_\_ . LA JOYA SPECIAL UTILITY DISTRICT

SECTION \_\_\_\_ .01. Section 7201.001, Special District Local Laws Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Director" means a member of the board.

SECTION \_\_\_\_ .02. Section 7201.002(c), Special District Local Laws Code, is amended to read as follows:

(c) The ~~[On the effective date of the Act enacting this chapter, the]~~ corporation shall be dissolved and succeeded without interruption by the district as provided by Subchapter A1.

SECTION \_\_\_\_ .03. Section 7201.021, Special District Local Laws Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (f) to read as follows:

(a) After the temporary directors listed under Section 7201.051 have qualified for office under Section 49.055, Water Code, the receiver for the corporation ~~[On the effective date of the Act enacting this chapter, the corporation]~~ shall transfer the assets, debts, and contractual rights and obligations of the corporation to the district and provide notices and make recordings of the transfer required by the Water Code and general law.

(b) In accordance with the orders of the receivership court and not ~~[Not]~~ later than the 30th day after the date of the transfer under Subsection (a), the receiver for ~~[board of directors of]~~ the corporation shall commence dissolution proceedings of the corporation.

(d) The receiver for ~~[board of directors of]~~ the corporation shall notify the Texas Commission on Environmental Quality of the dissolution of the corporation and its succession in interest by ~~[the creation of]~~ the district in order ~~[to replace it]~~ to effect the transfer of Certificates of Convenience and Necessity Nos. 10559 and 20785 to the district.

(f) After the Texas Commission on Environmental Quality takes the action required by Subsection (e), the court shall terminate the receivership.

SECTION \_\_\_\_ .04. Section 7201.022, Special District Local Laws Code, is amended to read as follows:

Sec. 7201.022. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2010 ~~[2008]~~.

SECTION \_\_\_\_\_.05. Sections 7201.051(a) and (b), Special District Local Laws Code, are amended to read as follows:

(a) The temporary board consists of seven [The directors of the corporation who hold office on the effective date of the Act enacting this chapter shall serve as the temporary] directors who shall serve [of the district] until successor directors are elected and qualify for office.

(b) The temporary directors of the district consist of the following persons, who are assigned position numbers as follows:

- (1) Position 1, Janie G. Ramirez [Jose Luis Trigo];
- (2) Position 2, Ricardo Perez [Jose Guadalupe Reyna];
- (3) Position 3, Efren Garza [George Barreiro];
- (4) Position 4, Jerry Bell [Froilan Ramirez];
- (5) Position 5, Alton Moore [Russell Wicker];
- (6) Position 6, Marilou Prudencio [Benito Salinas]; and
- (7) Position 7, Everado Torres [Manuel Ricardo Garcia];
- ~~(8) Position 8, Valente Alaniz, Jr.; and~~
- ~~(9) Position 9, Juan Lino Garza].~~

SECTION \_\_\_\_\_.06. Subchapter B, Chapter 7201, Special District Local Laws Code, is amended by adding Sections 7201.0512 and 7201.0513 to read as follows:

Sec. 7201.0512. TEMPORARY BOARD TRAINING. (a) Before December 31, 2007, each temporary director shall complete at least 12 hours of training on district management and compliance with laws applicable to the district as determined by the receiver for the corporation.

(b) The district shall reimburse a temporary director for the reasonable expenses incurred by the director in attending the training.

Sec. 7201.0513. EDUCATION PROGRAM. (a) Before the first election of directors, the temporary board shall establish a program of education for directors that includes information on:

(1) the history of the district;  
(2) the district's enabling legislation;  
(3) Chapters 49 and 65, Water Code, and other laws that apply to the district, including the requirements of the:

(A) open meetings law, Chapter 551, Government Code; and  
(B) public information law, Chapter 552, Government Code;  
(4) relevant legal developments related to water district governance;  
(5) the legal duties and responsibilities of the board;  
(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any applicable ethics policies adopted by the Texas Commission on Environmental Quality or the Texas Ethics Commission.

(b) The district shall pay any costs associated with the development of the education program from district revenue.

(c) The education program may include training provided by an organization offering courses that have been approved by the Texas Commission on Environmental Quality.

(d) The board may adopt bylaws modifying the education program as necessary to meet district needs.

SECTION \_\_\_\_ .07. Section 7201.052, Special District Local Laws Code, is amended by amending Subsections (a), (f), (g), and (h) and adding Subsections (i), (j), and (k) to read as follows:

(a) The district shall be governed by a board of seven [~~not fewer than nine and not more than 11~~] directors[~~, elected in accordance with Section 49.103, Water Code, notwithstanding Subsection (f)(2) of that section~~].

(f) On the uniform election date in May 2008, or in May 2009, if the election is postponed under Subsection (i) [2006], and on that uniform election date every third year after that date, the district shall hold an election to elect two [~~three~~] directors to serve in positions 1[~~, 4~~] and 2 [7].

(g) On the uniform election date in May 2009, or in May 2010, if the election is postponed under Subsection (i) [2007], and on that uniform election date every third year after that date, the district shall hold an election to elect two [~~three~~] directors to serve in positions [~~2~~] 3[~~7~~] and 4 [5].

(h) On the uniform election date in May 2010, or in May 2011, if the election is postponed under Subsection (i) [2008], and on that uniform election date every third year after that date, the district shall hold an election to elect three directors to serve in positions 5, 6, [~~8~~] and 7 [9].

(i) The temporary board by order may postpone until the uniform election date in May of the following year the first election for directors under each of Subsections (f), (g), and (h) if the temporary board determines that there is not sufficient time to comply with the requirements of law and to order the first election of directors to be held on the first uniform date specified by Subsection (f).

(j) A director may not serve consecutive terms.

(k) A person who has served as a member of the board of directors of the corporation is not eligible to serve as a district director.

SECTION \_\_\_\_ .08. Subchapter B, Chapter 7201, Special District Local Laws Code, is amended by adding Sections 7201.053 and 7201.054 to read as follows:

Sec. 7201.053. DISTRICT TREASURER. (a) The board shall elect from among its members one director to serve as district treasurer.

(b) The district treasurer shall comply with the training requirements provided by Section 49.1571, Water Code, for an investment officer of a district.

Sec. 7201.054. EDUCATION FOR DIRECTORS. (a) Each elected director shall complete the education program established under Section 7201.0513 before the first anniversary of the date on which the director was elected.

(b) The district shall reimburse a director for the reasonable expenses incurred by the director in attending the education program.

(c) A director who is elected to serve a subsequent term shall fulfill the education requirements specified by district bylaws.

SECTION \_\_\_\_ .09. (a) Except as otherwise provided by Chapter 7201, Special District Local Laws Code, as amended by this article, the La Joya Special Utility District is subject to:

(1) any judicial or administrative order imposing an injunction against the La Joya Water Supply Corporation that is in effect on the date of the transfer under Section 7201.021, Special District Local Laws Code, as amended by this article; or

(2) any judicial or administrative order imposing liability for monetary damages or a civil or administrative penalty against the La Joya Water Supply Corporation that is unsatisfied on the date of the transfer under Section 7201.021, Special District Local Laws Code, as amended by this article.

(b) This section does not relieve a person who served on the board of directors of the La Joya Water Supply Corporation of any individual or joint and several liability imposed by a court of this state for actions taken by that person on behalf of the corporation or prevent the La Joya Special Utility District from filing a claim for damages against that person.

(c) If the La Joya Special Utility District pays a claim of a person against the La Joya Water Supply Corporation, the district is subrogated to any rights of that person against the corporation to the extent of the amount paid to that person.

SECTION 10. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

SECTION 11. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2007.

### **Floor Amendment No. 7 on Third Reading**

Amend **CSSB 3** on third reading by adding the following appropriately numbered ARTICLE and renumbering the subsequent ARTICLES of the bill accordingly:

#### ARTICLE \_\_\_\_ . DISPOSAL WELL PERMITS

SECTION \_\_\_\_ .01. Section 27.034, Water Code, is amended by adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a-1) In connection with an application for a permit to dispose of oil and gas waste in a commercial disposal well, as defined by the railroad commission, the rules adopted under Subsection (a) must, at a minimum:

(1) require the applicant to give notice of the application to:

(A) each owner of record of each surface tract that adjoins the tract on which the well is proposed to be located;

(B) the commissioners court of the county in which the well is proposed to be located; and

(C) any groundwater conservation district in which the well is proposed to be located;

(2) require each owner of record of a surface tract who receives notice of the application under Subdivision (1)(A) to give notice of the application to each surface lessee or purchaser under a contract for deed, executory contract, or other executory conveyance of the tract who occupies a residence located on the tract;

(3) require the applicant to publish notice of the application in:

(A) a newspaper of general circulation in the county in which the well is proposed to be located; and

(B) the newspaper that is published in closest proximity to the proposed site of the well; and

(4) provide each person who receives notice of the application under Subdivision (1) an opportunity to request a public hearing on the application.

(a-2) The failure of a person who receives notice of an application under Subsection (a-1)(1)(A) to give notice of the application to any person to whom the person is required to give notice under Subsection (a-1)(2) does not invalidate any permit issued by the railroad commission.

(a-3) The railroad commission is not required to hold more than one public hearing on an application regardless of the number of persons who request a hearing.

SECTION \_\_\_\_ .02. Section 27.105(a), Water Code, is amended to read as follows:

(a) A person who knowingly or intentionally violates a provision of this chapter under the jurisdiction of the railroad commission, a rule of the railroad commission other than a rule adopted under Section 27.034(a-1)(2), or a term, condition, or provision of a permit issued by the railroad commission under this chapter is subject to a fine of not more than \$5,000 for each violation and for each day of violation. A violation under the jurisdiction of the commission is enforceable under Section 7.157.

### **Floor Amendment No. 8 on Third Reading**

Amend **CSSB 3** on third reading in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of that article accordingly:

SECTION 2. \_\_\_\_ . Subchapter C, Chapter 11, Water Code, is amended by adding Section 11.098 to read as follows:

Sec. 11.098. USE OF WATER BY CERTAIN FACILITIES. (a) This section applies only to a facility described by Section 26.551(7):

(1) for which:

(A) an application for a permit under Section 382.0518, Health and Safety Code, was received by the commission on or before July 1, 2003; and

(B) a permit under Section 382.0518, Health and Safety Code, was not issued before September 1, 2005; and

(2) that is located:

(A) over an aquifer designated as a sole source aquifer under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); and

(B) in a priority groundwater management area designated by the Texas Commission on Environmental Quality.

(b) An operator of a facility described by Subsection (a) may not use appropriated surface water in connection with the operation of the facility.

### **Floor Amendment No. 9 on Third Reading**

Amend **CSSB 3** on third reading as follows:

Subchapter Z, Chapter 402, Local Government Code, is amended by adding Section 402.911 to read as follows:

Sec. 402.911. DUTIES OF WATER SERVICE PROVIDER TO AN AREA SERVED BY SEWER SERVICE OF CERTAIN POLITICAL SUBDIVISIONS. (a)

This section applies only to an area:

(1) that is located in a county that has a population of more than 1.3 million;  
and

(2) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.

(b) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

(c) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.

(d) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by mail or hand-delivered to the location at which the sewer service is provided.

(e) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under Subsection (b). The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On the receipt of the notice, the water service provider shall discontinue water service to the person.

(f) This section does not apply to a nonprofit water supply or sewer service corporation created under Chapter 67, Water Code, or a district created under Chapter 65, Water Code.

### **Floor Amendment No. 11 on Third Reading**

Amend **CSSB 3** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 430.003, Local Government Code, is amended to read as follows:

Sec. 430.003. EXEMPTIONS OF CERTAIN [STATE] PROPERTY FROM INFRASTRUCTURE FEES. No county, municipality, or utility district may collect from a state agency or a public or private institution of higher education any fee charged for the development or maintenance of programs or or [~~of~~] facilities for the control of excess water or storm water.

### **Floor Amendment No. 13 on Third Reading**

Amend **CSSB 3** on third reading as amended by Amendment No. 31 by Isett by striking the subdivision of SECTION 3.02 of the bill that designates Lake 08 reservoir as a unique reservoir site and renumbering subsequent subdivisions of the SECTION accordingly.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 3** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Hegar, Eltife, Shapiro, and Hinojosa.

### **SENATE BILL 9 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 9** from the President's table for consideration of the House amendments to the bill.

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

### **Amendment**

Amend **SB 9** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the dissemination of criminal history record information and child abuse investigation reports for certain purposes, including the certification and employment of educators and other public school employees who engage in certain misconduct.

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

SECTION 1. Subchapter B, Chapter 8, Education Code, is amended by adding Section 8.057 to read as follows:

Sec. 8.057. ASSISTANCE WITH CRIMINAL HISTORY RECORD INFORMATION. The agency may require a regional education service center to assist in collecting information needed for a criminal history record information review under Subchapter C, Chapter 22.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1059 to read as follows:

Sec. 12.1059. AGENCY APPROVAL REQUIRED FOR CERTAIN EMPLOYEES. A person may not be employed by or serve as a teacher, librarian, educational aide, administrator, or counselor for an open-enrollment charter school unless the person has been approved by the agency following a review of the person's national criminal history record information as provided by Section 22.0832.

SECTION 3. Subchapter A, Chapter 21, Education Code, is amended by adding Section 21.007 to read as follows:

Sec. 21.007. NOTICE ON CERTIFICATION RECORD OF ALLEGED MISCONDUCT. (a) In this section, "board" means the State Board for Educator Certification.

(b) The board shall adopt a procedure for placing a notice of alleged misconduct on an educator's public certification records. The procedure adopted by the board must provide for immediate placement of a notice of alleged misconduct on an educator's public certification records if the alleged misconduct presents a risk to the health, safety, or welfare of a student or minor as determined by the board.

(c) The board must notify an educator in writing when placing a notice of an alleged incident of misconduct on the public certification records of the educator.

(d) The board must provide an opportunity for an educator to show cause why the notice should not be placed on the educator's public certification records. The board shall propose rules establishing the length of time that a notice may remain on the educator's public certification records before the board must:

(1) initiate a proceeding to impose a sanction on the educator on the basis of the alleged misconduct; or

(2) remove the notice from the educator's public certification records.

(e) If it is determined that the educator has not engaged in the alleged incident of misconduct, the board shall immediately remove the notice from the educator's public certification records.

(f) The board shall propose rules necessary to administer this section.

SECTION 4. Subchapter B, Chapter 21, Education Code, is amended by adding Section 21.060 to read as follows:

Sec. 21.060. ELIGIBILITY OF PERSONS CONVICTED OF CERTAIN OFFENSES. The board may suspend or revoke the certificate or permit held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate or permit to a person under this subchapter if the person has been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including:

(1) an offense involving moral turpitude;



(2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;

(3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or

(5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter.

SECTION 5. Sections 22.081 and 22.082, Education Code, are amended to read as follows:

Sec. 22.081. DEFINITIONS ~~[DEFINITION]~~. In this subchapter:

(1) "Department" means the Department of Public Safety.

(2) "National criminal history record information" means criminal history record information obtained from the department under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(3) "Private[, "private] school" means a school that:

(A) ~~(1)~~ offers a course of instruction for students in one or more grades from prekindergarten through grade 12; and

(B) ~~(2)~~ is not operated by a governmental entity.

Sec. 22.082. ACCESS TO CRIMINAL HISTORY RECORDS BY STATE BOARD FOR EDUCATOR CERTIFICATION. The State Board for Educator Certification shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate ~~relates~~ to a specific ~~an~~ applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

SECTION 6. The heading to Section 22.083, Education Code, is amended to read as follows:

Sec. 22.083. ACCESS TO CRIMINAL HISTORY RECORDS OF EMPLOYEES BY LOCAL AND REGIONAL EDUCATION AUTHORITIES.

SECTION 7. Section 22.083, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A school district, open-enrollment charter school, ~~[private school, regional education service center,~~ or shared services arrangement shall ~~[may]~~ obtain ~~[from any law enforcement or criminal justice agency all]~~ criminal history record information that relates to a person who is not subject to a national criminal history record information review under this subchapter and who is an employee of:

(1) ~~[whom]~~ the district or~~;~~ school~~[, service center, or shared services arrangement intends to employ in any capacity]~~; or

(2) a shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present ~~[who has indicated, in writing, an intention to serve as a volunteer with the district, school, service center, or shared services arrangement]~~.

(a-1) A school district, open-enrollment charter school, or shared services arrangement may obtain the criminal history record information from:

- (1) the department;
- (2) a law enforcement or criminal justice agency; or
- (3) a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.).

(a-2) A shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person who is not subject to Subsection (a) and whom the shared services arrangement intends to employ in any capacity.

(b) A private school or regional education service center may ~~an open enrollment charter school shall~~ obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:

- (1) a person whom the school or service center intends to employ in any capacity; or
- (2) an employee of or applicant for employment by a person that contracts with the school or service center to provide services, if:

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

(B) the employee or applicant has or will have direct contact with students ~~[a person who has indicated, in writing, an intention to serve as a volunteer with the school].~~

SECTION 8. Subchapter C, Chapter 22, Education Code, is amended by adding Sections 22.0831 through 22.0836 to read as follows:

Sec. 22.0831. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF CERTIFIED EDUCATORS. (a) In this section, "board" means the State Board for Educator Certification.

(b) This section applies to a person who is an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who is employed by or is an applicant for employment by a school district, open-enrollment charter school, or shared services arrangement.

(c) The board shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review.

(d) The board shall place an educator's certificate on inactive status for failure to comply with a deadline for submitting information required under this section.

(e) The board may allow a person who is applying for a certificate under Subchapter B, Chapter 21, and who currently resides in another state to submit the person's fingerprints and other required information in a manner that does not impose an undue hardship on the person.

(f) The board may propose rules to implement this section, including rules establishing:

- (1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and

(2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

(g) The board by rule shall establish a schedule for obtaining and reviewing the information a certified educator must provide the board under this section. Not later than September 1, 2011, the board must obtain all national criminal history record information on all certified educators. This subsection expires October 1, 2011.

Sec. 22.0832. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF CERTAIN OPEN-ENROLLMENT CHARTER SCHOOL EMPLOYEES. (a) The agency shall review the national criminal history record information of an employee of an open-enrollment charter school to whom Section 12.1059 applies in the same manner as the State Board for Educator Certification reviews certified educators under Section 22.0831. If the agency determines that, based on information contained in an employee's criminal history record information, the employee would not be eligible for educator certification under Subchapter B, Chapter 21, the agency shall notify the open-enrollment charter school in writing that the person may not be employed by the school or serve in a capacity described by Section 12.1059.

(b) An open-enrollment charter school must provide the agency with any information requested by the agency to enable the agency to complete a review under Subsection (a). Failure of an open-enrollment charter school to provide information under this subsection is a material violation of the school's charter.

Sec. 22.0833. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF NONCERTIFIED EMPLOYEES. (a) This section applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by:

(1) a school district or open-enrollment charter school; or

(2) a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present.

(b) A person to whom this section applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described by Subsection (a).

(c) Before or immediately after employing or securing the services of a person to whom this section applies, a school district, open-enrollment charter school, or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs.

(d) The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(e) Each school district, open-enrollment charter school, and shared services arrangement shall obtain all criminal history record information that relates to a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code, and shall subscribe to the criminal history record information of the person.

(f) The school district, open-enrollment charter school, or shared services arrangement may require a person to pay any fees related to obtaining criminal history record information under this section.

(g) A school district, open-enrollment charter school, or shared services arrangement shall provide the agency with the name of a person to whom this section applies. The agency shall obtain all criminal history record information of the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The agency shall examine the criminal history record information of the person and notify the district, school, or shared services arrangement if the person may not be hired or must be discharged as provided by Section 22.085.

(h) The agency, the State Board for Educator Certification, school districts, open-enrollment charter schools, and shared services arrangements may coordinate as necessary to ensure that criminal history reviews authorized or required under this subchapter are not unnecessarily duplicated.

(i) The department in coordination with the commissioner may adopt rules necessary to implement this section.

Sec. 22.0834. CRIMINAL HISTORY RECORD INFORMATION REVIEW OF CERTAIN CONTRACT EMPLOYEES. (a) This subsection applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who on or after January 1, 2008, is offered employment by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services, if:

(1) the employee or applicant has or will have continuing duties related to the contracted services; and

(2) the employee or applicant has or will have direct contact with students.

(b) A person to whom Subsection (a) applies must submit to a national criminal history record information review under this section before being employed or serving in a capacity described by that subsection.

(c) Before or immediately after employing or securing the services of a person to whom Subsection (a) applies, the entity contracting with a school district, open-enrollment charter school, or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(d) An entity contracting with a school district, open-enrollment charter school, or shared services arrangement shall obtain all criminal history record information that relates to a person to whom Subsection (a) applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The entity shall certify to the school district that the entity has received all criminal history record information relating to a person to whom Subsection (a) applies.

(e) A school district, open-enrollment charter school, or shared services arrangement may obtain the criminal history record information of a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(f) In the event of an emergency, a school district may allow a person to whom Subsection (a) or (g) applies to enter school district property if the person is accompanied by a district employee. A school district may adopt rules regarding an emergency situation under this subsection.

(g) An entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services shall obtain from any law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to an employee of the entity who is employed before January 1, 2008, and who is not subject to a national criminal history record information review under Subsection (b) if:

(1) the employee has continuing duties related to the contracted services;  
and

(2) the employee has direct contact with students.

(h) A school district, open-enrollment charter school, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (g) applies.

(i) An entity shall certify to a school district that it has received all criminal history record information required by Subsection (g).

(j) The commissioner may adopt rules as necessary to implement this section.

Sec. 22.0835. ACCESS TO CRIMINAL HISTORY RECORDS OF STUDENT TEACHERS AND VOLUNTEERS BY LOCAL AND REGIONAL EDUCATION AUTHORITIES. (a) A school district, open-enrollment charter school, or shared services arrangement shall obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to:

(1) a person participating in an internship consisting of student teaching to receive a teaching certificate; or

(2) a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement.

(b) A private school or regional education service center may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person who volunteers or has indicated, in writing, an intention to serve as a volunteer with the school or service center.

(c) A person to whom Subsection (a) or (b) applies must provide to the school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government.

(d) A person to whom Subsection (a) applies may not perform any student teaching or volunteer duties until all requirements under Subsections (a) and (c) have been satisfied.

(e) Subsections (a) and (c) do not apply to a person who volunteers or is applying to volunteer with a school district, open-enrollment charter school, or shared services arrangement if the person:

(1) is the parent, guardian, or grandparent of a child who is enrolled in the district or school for which the person volunteers or is applying to volunteer;

(2) will be accompanied by a school district employee while on a school campus; or

(3) is volunteering for a single event on the school campus.

(f) A school district, open-enrollment charter school, or shared services arrangement may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (e) applies.

(g) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may require a student teacher, volunteer, or volunteer applicant to pay any costs related to obtaining criminal history record information under this section.

Sec. 22.0836. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF SUBSTITUTE TEACHERS. (a) This section applies to a person who is a substitute teacher for a school district, open-enrollment charter school, or shared services arrangement.

(b) A person to whom this section applies must submit to a national criminal history record information review under this section.

(c) A school district, open-enrollment charter school, or shared services arrangement shall send or ensure that a person to whom this section applies sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs.

(d) The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(e) Each school district, open-enrollment charter school, and shared services arrangement shall obtain all criminal history record information that relates to a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(f) The school district, open-enrollment charter school, or shared services arrangement may require a person to pay any fees related to obtaining criminal history record information under this section.

(g) A school district, open-enrollment charter school, or shared services arrangement shall provide the agency with the name of a person to whom this section applies. The agency shall obtain all criminal history record information of the person through the criminal history clearinghouse as provided by Section 411.0845, Government Code. The agency shall examine the criminal history record information and certification records of the person and notify the district, school, or shared services arrangement if the person:

(1) may not be hired or must be discharged as provided by Section 22.085;

or

(2) may not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

(h) The commissioner may adopt rules to implement this section, including rules establishing deadlines for a school district, open-enrollment charter school, or shared services arrangement to require a person to whom this section applies to submit fingerprints and photographs in compliance with this section and the circumstances under which a person may not continue to be employed as a substitute teacher.

(i) The agency shall establish a schedule for obtaining and reviewing the information a school district, open-enrollment charter school, or shared services arrangement and a substitute teacher must provide under this section. Not later than September 1, 2011, the agency must obtain all national criminal history record information on all substitute teachers. This subsection expires October 1, 2011.

(j) The department in coordination with the commissioner may adopt rules necessary to implement this section.

SECTION 9. Section 22.085, Education Code, is amended to read as follows:

Sec. 22.085. [~~DISCHARGE OF~~] EMPLOYEES AND APPLICANTS CONVICTED OF CERTAIN OFFENSES. (a) A school district, open-enrollment charter school, or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district, school, or shared services arrangement obtains information through a criminal history record information review that:

(1) the employee or applicant has been convicted of:

(A) a felony offense under Title 5, Penal Code;

(B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(C) an offense under the laws of another state or federal law that is equivalent to an offense under Paragraph (A) or (B); and

(2) at the time the offense occurred, the victim of the offense described by Subdivision (1) was under 18 years of age or was enrolled in a public school.

(b) Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code and:

(1) the date of the offense is more than 30 years before:

(A) the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or

(B) the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and

(2) the employee or applicant for employment satisfied all terms of the court order entered on conviction.

(c) A school district, open-enrollment charter school, or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement to serve at the district or school or for the shared services arrangement if the district, school, or shared services arrangement obtains information described by

Subsection (a) through a criminal history record information review concerning the employee or applicant. A school district, open-enrollment charter school, or shared services arrangement must ensure that an entity that the district, school, or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834.

(d) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.

(e) The State Board for Educator Certification may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described by Subsection (a).

(f) Each school year, the superintendent of a school district or chief operating officer of an open-enrollment charter school shall certify to the commissioner that the district or school has complied with this section.

SECTION 10. Subchapter C, Chapter 22, Education Code, is amended by adding Section 22.087 to read as follows:

Sec. 22.087. NOTIFICATION TO STATE BOARD FOR EDUCATOR CERTIFICATION. The superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

SECTION 11. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.022 to read as follows:

Sec. 38.022. SCHOOL VISITORS. (a) A school district may require a person who enters a district campus to display the person's driver's license or another form of identification containing the person's photograph issued by a governmental entity.

(b) A school district may establish an electronic database for the purpose of storing information concerning visitors to district campuses. Information stored in the electronic database may be used only for the purpose of school district security and may not be sold or otherwise disseminated to a third party for any purpose.

(c) A school district may verify whether a visitor to a district campus is a sex offender registered with the computerized central database maintained by the Department of Public Safety as provided by Article 62.005, Code of Criminal Procedure, or any other database accessible by the district.

(d) The board of trustees of a school district shall adopt a policy regarding the action to be taken by the administration of a school campus when a visitor is identified as a sex offender.



SECTION 12. Section 261.308, Family Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The department shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, or the school principal or director if the department determines that:

(1) the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and

(2) the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect.

(e) On request, the department shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

SECTION 13. Subsection (b), Section 261.406, Family Code, is amended to read as follows:

(b) The department shall send a copy of the completed ~~[written]~~ report of the department's investigation ~~[, as appropriate,]~~ to the Texas Education Agency, the State Board for Educator Certification ~~[agency responsible for teacher certification]~~, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Other than the persons authorized by the section to receive a copy of the report, Section 261.201(b) applies to the release of the report ~~[confidential information]~~ relating to the investigation of ~~[a report of]~~ abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

SECTION 14. Section 411.042, Government Code, is amended by amending Subsections (b) and (g) and adding Subsection (h) to read as follows:

(b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including a statistical breakdown of those offenses in which family violence was involved;

(3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense; ~~and~~

(6) collect information concerning the number and nature of protective orders and all other pertinent information about all persons on active protective orders. Information in the law enforcement information system relating to an active protective order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Section 85.007, Family Code;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Section 85.007, Family Code;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed; and

(G) the date the order expires; and

(7) grant access to criminal history record information in the manner authorized under Subchapter F.

(g) The department may adopt reasonable rules under this section relating to:

(1) law enforcement information systems maintained by the department;

(2) the collection, maintenance, and correction of records;

(3) reports of criminal history information submitted to the department;

~~and~~

(4) active protective orders issued under Chapter 71, Family Code, and reporting procedures that ensure that information relating to the issuance of an active protective order and to the dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered by the local law enforcement agency in the state's law enforcement information system; and

(5) a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845.

(h) The department may contract with private vendors as necessary in implementing this section.

SECTION 15. Subsection (i), Section 411.081, Government Code, is amended to read as follows:

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Youth Commission;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Board of Nurse Examiners;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) the Texas Juvenile Probation Commission;
- (19) the securities commissioner, the banking commissioner, the savings and loan commissioner, or the credit union commissioner;
- (20) the Texas State Board of Public Accountancy;
- (21) the Texas Department of Licensing and Regulation;
- (22) the Health and Human Services Commission; ~~[and]~~
- (23) the Department of Aging and Disability Services; and
- (24) the Texas Education Agency.

SECTION 16. Subsections (b) and (c), Section 411.083, Government Code, are amended to read as follows:

- (b) The department shall grant access to criminal history record information to:
- (1) criminal justice agencies;
  - (2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;
  - (3) the person who is the subject of the criminal history record information;
  - (4) a person working on a research or statistical project that:
    - (A) is funded in whole or in part by state funds; or
    - (B) meets the requirements of Part 22, Title 28, Code of Federal Regulations, and is approved by the department;

(5) an individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice under that agreement, if the agreement:

- (A) specifically authorizes access to information;
- (B) limits the use of information to the purposes for which it is given;
- (C) ensures the security and confidentiality of the information; and
- (D) provides for sanctions if a requirement imposed under Paragraph

(A), (B), or (C) is violated;

(6) an individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of criminal history record information disseminated under this subchapter, if the agreement:

- (A) specifically authorizes access to information;
- (B) limits the use of information to the purposes for which it is given;
- (C) ensures the security and confidentiality of the information; and
- (D) provides for sanctions if a requirement imposed under Paragraph

(A), (B), or (C) is violated;

(7) a county or district clerk's office; and

(8) [(7)] the Office of Court Administration of the Texas Judicial System.

(c) The department may disseminate criminal history record information under Subsection (b)(1) only for a criminal justice purpose. The department may disseminate criminal history record information under Subsection (b)(2) only for a purpose specified in the statute or order. The department may disseminate criminal history record information under Subsection (b)(4), (5), or (6) ~~or (b)(5)~~ only for a purpose approved by the department and only under rules adopted by the department. The department may disseminate criminal history record information under Subsection (b)(7) ~~[(b)(6)]~~ only to the extent necessary for a county or district clerk to perform a duty imposed by law to collect and report criminal court disposition information. Criminal history record information disseminated to a clerk under Subsection (b)(7) ~~[(b)(6)]~~ may be used by the clerk only to ensure that information reported by the clerk to the department is accurate and complete. The dissemination of information to a clerk under Subsection (b)(7) ~~[(b)(6)]~~ does not affect the authority of the clerk to disclose or use information submitted by the clerk to the department. The department may disseminate criminal history record information under Subsection (b)(8) ~~[(b)(7)]~~ only to the extent necessary for the office of court administration to perform a duty imposed by law to compile court statistics or prepare reports. The office of court administration may disclose criminal history record information obtained from the department under Subsection (b)(8) ~~[(b)(7)]~~ in a statistic compiled by the office or a report prepared by the office, but only in a manner that does not identify the person who is the subject of the information.

SECTION 17. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.0845 to read as follows:

Sec. 411.0845. CRIMINAL HISTORY CLEARINGHOUSE. (a) The department shall establish an electronic clearinghouse and subscription service to provide criminal history record information to a particular person entitled to receive criminal history record information and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for criminal history record information from a person entitled to such information under this subchapter, the department shall provide through the electronic clearinghouse:

(1) the criminal history record information reported to the department or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any criminal history record information reported to the department or the Federal Bureau of Investigation.

(c) If the department provides information received from the Federal Bureau of Investigation, the department must include with the information the date the department received information from the Federal Bureau of Investigation.

(d) The department shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain criminal history record information under this subchapter. Information collected under this section is confidential and is not subject to disclosure under Chapter 552.

(e) A person entitled to receive criminal history record information under this section must provide the department with the following information regarding the person who is the subject of the criminal history record information requested:

(1) the person's full name, date of birth, sex, Texas driver's license number or personal identification certificate number, and social security number;

(2) a recent electronic digital image photograph of the person and a complete set of the person's fingerprints as required by the department; and

(3) any other information required by the department.

(f) The department shall maintain an Internet website for the administration of the clearinghouse and an electronic subscription service to provide notice of updates to a particular criminal history record to each person entitled under this subchapter to receive criminal history record information updates to that particular record. The department shall update clearinghouse records as a result of any change in information discovered by the department. Within 48 hours after the department becomes aware that a person's criminal history record information in a clearinghouse record has changed, the department shall provide notice of the updated information only to each subscriber to that specific record.

(g) As soon as practicable, a subscriber who is no longer entitled to receive criminal history record information relating to a particular person shall notify the department. The department shall cancel the person's subscription to that record and may not notify the former subscriber of any updated information to that record.

(h) A person who is the subject of the criminal history record information requested under this section must consent to the release of the information.

(i) The release under this section of any criminal history record information maintained by the Federal Bureau of Investigation is subject to federal law and regulations, federal executive orders, and federal policy.

(j) The department may charge a fee for subscription services to cover the costs of administering this section.

(k) A governmental agency may coordinate with the department regarding the collection of a fee for the criminal history record information through the fingerprinting fee collection process.

SECTION 18. Section 411.087, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The department may provide access to state and national criminal history record information to nongovernmental entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

SECTION 19. Section 411.090, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall notify the State Board for Educator Certification of the arrest of any educator, as defined by Section 5.001, Education Code, who has fingerprints on file with the department.

SECTION 20. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.0901 to read as follows:

Sec. 411.0901. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS EDUCATION AGENCY. The Texas Education Agency is entitled to obtain criminal history record information maintained by the department about a person who:

(1) is employed or is an applicant for employment by a school district or open-enrollment charter school;

(2) is employed or is an applicant for employment by a shared services arrangement, if the employee's or applicant's duties are or will be performed on school property or at another location where students are regularly present; or

(3) is employed or is an applicant for employment by an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement if:

(A) the employee or applicant has or will have continuing duties relating to the contracted services; and

(B) the employee or applicant has or will have direct contact with students.

SECTION 21. The heading to Section 411.097, Government Code, is amended to read as follows:

Sec. 411.097. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: LOCAL AND REGIONAL EDUCATIONAL ENTITIES [SCHOOL DISTRICT, CHARTER SCHOOL, PRIVATE SCHOOL, REGIONAL EDUCATION SERVICE CENTER, COMMERCIAL TRANSPORTATION COMPANY, OR EDUCATION SHARED SERVICES ARRANGEMENT].

SECTION 22. Subsections (a) and (b), Section 411.097, Government Code, are amended to read as follows:

(a) A school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement, or an entity that contracts to provide services to a school district, charter school, or shared services arrangement, is entitled to obtain from the department criminal history

record information maintained by the department that the district, school, service center, ~~or~~ shared services arrangement, or entity is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is:

(1) an applicant for employment by the district, school, service center, or shared services arrangement; ~~or~~

(2) an employee of or an applicant for employment with a public or commercial transportation company that contracts with the district, school, service center, or shared services arrangement to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported; or

(3) an employee of or applicant for employment by an entity that contracts to provide services to a school district, charter school, or shared services arrangement as provided by Section 22.0834, Education Code.

(b) A school district, charter school, private school, regional education service center, or education shared services arrangement is entitled to obtain from the department~~[- no more than twice each year,]~~ criminal history record information maintained by the department that the district, school, service center, or shared services arrangement is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a person who is a volunteer, student teacher, or employee of the district, school, service center, or shared services arrangement.

SECTION 23. Section 730.007, Transportation Code, is amended by adding Subsection (f) to read as follows:

(f) Personal information obtained by an agency under Section 411.0845, Government Code, in connection with a motor vehicle record may be disclosed as provided by that section.

SECTION 24. Subsections (c) and (d), Section 22.083, Education Code, are repealed.

SECTION 25. Section 21.007, Education Code, as added by this Act, applies only to a report for misconduct filed with the State Board for Educator Certification on or after September 1, 2007, regardless of whether the conduct or act that is the subject of the report occurred or was committed before, on, or after that date.

SECTION 26. As soon as practicable after the effective date of this Act, the State Board for Educator Certification, the Texas Education Agency, a school district, an open-enrollment charter school, or a shared services arrangement shall, in the manner prescribed by Sections 22.0831, 22.0832, 22.0833, and 22.0836, Education Code, as added by this Act, begin obtaining national criminal history record information for employees and applicants for employment who are subject to a national criminal history record information review under those sections.

SECTION 27. As soon as practicable after the effective date of this Act, an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement shall, in the manner prescribed by Section 22.0834, Education Code, as added by this Act, begin obtaining national criminal history record information for employees and applicants for employment who are subject to a national criminal history record information review under that section.

SECTION 28. Beginning September 1, 2007, a school district, open-enrollment charter school, or shared services arrangement shall obtain, in compliance with Section 22.0835, Education Code, as added by this Act, criminal history record information relating to each person who is a student teacher or volunteer or has indicated in writing an intention to serve as a volunteer with the district, school, or shared services arrangement in any capacity.

SECTION 29. As soon as practicable after the effective date of this Act, the Department of Public Safety of the State of Texas shall establish a criminal history clearinghouse as required by Section 411.0845, Government Code, as added by this Act.

SECTION 30. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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

Amend **CSSB 9** (House committee printing) as follows:

(1) In the recital to SECTION 8 of the bill (page 6, line 17), strike "22.0836" and substitute "22.0837".

(2) In SECTION 8 of the bill, after added Section 22.0836, Education Code (page 16, between lines 19 and 20), insert the following:

Sec. 22.0837. FEE FOR NATIONAL CRIMINAL HISTORY RECORD INFORMATION. The agency by rule shall require a person submitting to a national criminal history record information review under Section 22.0832, 22.0833, or 22.0836 to pay a fee for the review in an amount not to exceed the amount of any fee imposed on an applicant for certification under Subchapter B, Chapter 21, for a national criminal history record information review under Section 22.0831. The agency or the department may require an entity authorized to collect information for a national criminal history record information review to collect the fee required under this section and to remit the funds collected to the agency.

### **Amendment No. 2**

Amend **CSSB 9** by inserting a new SECTION 3 on page 1, line 21, renumbering current SECTION 3 and subsequent SECTIONS accordingly.

SECTION 3. Amend Sec. 21.048, Education Code, by adding a new subsection (d) to read as follows:

(d) Except as provided by 21.057, the results of an examination are not public information under Chapter 552, Government Code.

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

Amend **CSSB 9**, Section 3, Sec. 21.007(d) to read as follows:

(d) The board must provide an opportunity for an educator to show cause why the notice should not be placed on the educator's public certification records. The board shall propose rules establishing the length of time, not to exceed 180 days, that a notice may remain on the educator's public certification records before the board must:



- (1) initiate a proceeding to impose a sanction on the educator on the basis of the alleged misconduct; or
- (2) remove the notice from the educator's public certification records.

**Floor Amendment No. 4**

Amend **CSSB 9** (House committee printing) in SECTION 19 of the bill, adding Section 411.090(c), Government Code (page 31, line 26), between "department" and the period by inserting "and who is arrested for an offense listed under Section 21.060, Education Code".

**Floor Amendment No. 5**

Amend **CSSB 9** (House committee printing) in SECTION 17 of the bill, in added Section 411.0845, Government Code (page 31, between lines 12 and 13), by adding the following new Subsection (l):

(l) Not later than January 1 of each odd-numbered year, the department shall purge all information contained in the clearinghouse relating to a person as to whom the department has obtained information as provided by Subchapter C, Chapter 22, Education Code, and who is no longer employed in a capacity for which national criminal history record information is required to be obtained under that subchapter. The department shall work with the commissioner of education to update the files of the clearinghouse.

**Floor Amendment No. 6**

Amend **CSSB 9** by inserting the following:

"The cost required by this Act shall be paid for by funds appropriated by the state for that purpose. If the state does not have sufficient funds available, a school district is not required to comply with this Act."

**Floor Amendment No. 7**

Amend **CSSB 9** by adding a new Section 22.0837, Education Code, to read as follows:

Section 22.0837. EXEMPTION FROM APPLICATION. Sections 22.083 through 22.0836 do not apply to school districts, charter schools and shared services arrangements that are contracted with consumer reporting agencies governed by the Fair Credit Reporting Act (15 U.S.C. 1681 et. Seq.) to provide in-state and out-of-state background checks in every county, nationwide, identifiable, as a county of current or prior residence.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 9** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION \_\_\_\_\_. (a) In this section, "task force" means the task force established under this section to establish a strategy for reducing child abuse and neglect and improving child welfare.

- (b) The task force consists of 15 members appointed as follows:
  - (1) five members appointed by the governor;
  - (2) five members appointed by the lieutenant governor; and

(3) five members appointed by the speaker of the house of representatives.

(c) Members of the task force must be individuals who are actively involved in the fields of the prevention of child abuse and neglect and child welfare. The appointment of members must reflect the geographic diversity of the state.

(d) A member of the task force may not be appointed to, or be an employee of, a state agency.

(e) A member of the task force is not entitled to compensation for service on the task force but is entitled to reimbursement for travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

(f) The task force shall elect a presiding officer by a majority vote of the membership of the task force.

(h) The task force shall meet at the call of the presiding officer.

(i) Chapter 2110, Government Code, does not apply to the task force.

(j) The task force shall establish a strategy for reducing child abuse and neglect and for improving child welfare in this state. In establishing that strategy, the task force shall:

(1) gather information concerning child safety, child abuse and neglect, and child welfare throughout the state;

(2) review the exemptions from criminal liability provided under the Penal Code to a mother who injures her unborn child by using a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, during her pregnancy and examine the effect that repealing the exemptions will have on reducing the number of babies who are born addicted to a controlled substance;

(3) receive reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(4) create goals for state policy that would improve child safety, prevent child abuse and neglect, and improve child welfare; and

(5) submit a strategic plan to accomplish those goals.

(k) The strategic plan submitted under Subsection (j) of this section may include proposals for specific statutory changes, the creation of new programs, and methods to foster cooperation among state agencies and between the state and local government.

(l) The task force shall consult with employees of the Department of Family and Protective Services, the Department of State Health Services, and the Texas Department of Criminal Justice as necessary to accomplish the task force's responsibilities under this section.

(m) The task force may cooperate as necessary with any other appropriate state agency.

(n) The governor, lieutenant governor, and speaker of the house of representatives shall appoint the members of the task force not later than October 1, 2007.

(o) Not later than August 1, 2009, the task force shall submit the strategic plan required by Subsection (j) of this section to the governor, lieutenant governor, and speaker of the house of representatives.

(p) The task force is abolished and this section expires September 1, 2009.

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

Amend Amendment No. 1 by Rose to **CSSB 9** on third reading as follows:

(1) In Subsection (a) of the SECTION of the bill proposed by the amendment (page 1, lines 5 and 6), strike "establish a strategy" and substitute "develop recommendations".

(2) In Subsection (j) of the SECTION of the bill proposed by the amendment (page 2, line 2), strike "establish a strategy" and substitute "develop recommendations".

(3) In Subsection (j) of the SECTION of the bill proposed by the amendment (page 2, line 4), strike "establishing that strategy" and substitute "developing the recommendations".

(4) Strike Subdivision (5), Subsection (j) of the SECTION of the bill proposed by the amendment (page 2, lines 21 and 22), and substitute "(5) review the strategic plan submitted by the Interagency Coordinating Council for Building Healthy Families."

(5) In Subsection (k) of the SECTION of the bill proposed by the amendment (page 2, line 23), strike "strategic plan" and substitute "recommendations".

(6) In Subsection (l) of the SECTION of the bill proposed by the amendment (page 2, lines 30 and 31), strike "and the Texas Department of Criminal Justice" and substitute "the Texas Department of Criminal Justice, and the Interagency Coordinating Council for Building Healthy Families".

(7) In Subsection (o) of the SECTION of the bill proposed by the amendment (page 3, line 8), strike "strategic plan" and substitute "recommendations".

**Floor Amendment No. 3 on Third Reading**

Amend **CSSB 9** on third reading by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 552.116(a), Government Code, is amended to read as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

SECTION \_\_\_\_\_. Section 552.116(b)(1), Government Code, is amended to read as follows:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 552.116, Government Code, applies to an audit working paper created before, on, or after the effective date of this Act.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 9** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Janek, Hinojosa, Ogden, and Van de Putte.

### SENATE BILL 406 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 406** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 406** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to a motion for recusal or disqualification of a statutory probate court judge.

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

SECTION 1. Section 25.00255, Government Code, is amended by amending Subsections (f), (g), (i), and (k) and adding Subsections (i-1) and (i-2) to read as follows:

(f) Before further proceedings in a case in which a motion for the recusal or disqualification of a judge has been filed, the judge shall:

(1) recuse himself or herself; or

(2) request that the presiding judge of the statutory probate courts assign a judge to hear the motion, subject to Subsection (i)(1)(B) or (i-1).

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and request that the presiding judge of the statutory probate courts assign a judge to hear the motion for recusal or disqualification, subject to Subsection (i)(1)(B) or (i-1); and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(i) After receiving a request under Subsection (f) or (g) [~~or (h)~~], the presiding judge of the statutory probate courts shall:

(1) except as provided by Subsection (i-1), immediately;

(A) set a hearing on the motion for recusal or disqualification before himself or herself or a judge designated by the presiding judge; or

(B) at the presiding judge's discretion, request the chief justice of the supreme court or the presiding judge of the administrative judicial region in which the statutory probate court in which the motion was filed is located to appoint a judge to hear the motion;

(2) cause notice of the hearing to be given to all parties or their counsel to the case; and

(3) make other orders, including orders for interim or ancillary relief, in the pending case.

(i-1) If the party filing the motion for recusal or disqualification against a judge specifies in the motion that the party desires the presiding judge of the administrative judicial region in which the statutory probate court in which the motion was filed is located to assign another judge to hear the motion, the judge against whom the motion was filed shall forward that request to the presiding judge of the statutory probate courts. Immediately on receiving the request, the presiding judge of the statutory probate courts shall request the presiding judge of the administrative judicial region to assign a judge to hear the motion.

(i-2) A judge designated by the presiding judge of the statutory probate courts to hear a motion for recusal or disqualification under Subsection (i)(1)(A) must be from a county other than the county in which the statutory probate court in which the motion was filed is located.

(k) A party may file a motion for sanctions alleging that another party in the case filed a motion for the recusal or disqualification of a judge solely to delay the case and without sufficient cause. The presiding judge or the judge assigned [~~by the presiding judge~~] to hear the motion for recusal may approve a motion for sanctions authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

SECTION 2. Subchapter B, Chapter 25, Government Code, is amended by adding Section 25.00256 to read as follows:

Sec. 25.00256. TERTIARY RECUSAL MOTION AGAINST JUDGE. (a) In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed in a case against any statutory probate court judge by the same party. The term includes any third or subsequent motion filed in the case by the same party, regardless of whether that motion is filed against a different judge than the judge or judges against whom the previous motions for recusal or disqualification were filed.

(b) A judge who declines recusal after a tertiary recusal motion is filed shall comply with applicable rules of procedure for recusal and disqualification except that the judge shall continue to:

(1) preside over the case;

(2) sign orders in the case; and

(3) move the case to final disposition as though a tertiary recusal motion had not been filed.

(c) A judge hearing a tertiary recusal motion against another judge who denies the motion shall award reasonable and necessary attorney's fees and costs to the party opposing the motion. The party making the motion and the attorney for the party are

jointly and severally liable for the award of fees and costs. The fees and costs must be paid before the 31st day after the date the order denying the tertiary recusal motion is rendered unless the order is properly superseded.

(d) The denial of a tertiary recusal motion is only reviewable on appeal from final judgment.

(e) If a tertiary recusal motion is finally sustained, the new judge for the case shall vacate all orders signed by the sitting judge during the pendency of the tertiary recusal motion.

SECTION 3. Section 30.016(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) In this section, "tertiary recusal motion" means a third or subsequent motion for recusal or disqualification filed against a district court~~[-statutory probate court,]~~ or statutory county court judge by the same party in a case.

SECTION 4. The changes in law made by this Act apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2007.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 406** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Hinojosa, Carona, Duncan, and Watson.

### **SENATE BILL 718 WITH HOUSE AMENDMENT**

Senator Ogden called **SB 718** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 718** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the route selection for the Trans-Texas Corridor.

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

SECTION 1. Section 227.012, Transportation Code, is amended to read as follows:

Sec. 227.012. ROUTE SELECTION. (a) The commission shall consider the following criteria when selecting a route for a segment of the Trans-Texas Corridor:

- (1) current and projected traffic patterns;
- (2) the safety of motorists;
- (3) potential risks to persons from spills or accidents of any kind;
- (4) environmental effects, including the effect on air quality;
- (5) current and projected economic development;
- (6) the current and projected need for additional transportation options;

[and]

- (7) system connectivity; and
- (8) existing segments of the Texas Highway Trunk System.

(b) Before the 11th day after making a determination that it is not possible to select a route for a segment of the Trans-Texas Corridor that lies on the Texas Highway Trunk System, the commission shall file a written report of that determination and the reasons supporting the determination with each member of the legislature.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 718** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Nichols, Eltife, Duncan, and Shapleigh.

### **SENATE BILL 964 WITH HOUSE AMENDMENT**

Senator Shapiro called **SB 964** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 964** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in the introductory language (page 1, line 5), strike "Subsection (d-1)" and substitute "Subsections (c-1) and (d-1)".

(2) In SECTION 1 of the bill, immediately following amended Subsection (c), Section 366.251, Transportation Code (page 2, between lines 4 and 5), insert the following:

(c-1) The commissioners court of a county eligible to appoint an additional director under Subsection (c) shall ensure that each director appointed by that commissioners court resides in a different geographic region in that county. To the extent possible, appointments to the board must reflect the diversity of the population of the various county.

(3) Add the following appropriately numbered SECTION to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 366.251(f), Transportation Code, is repealed.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 964** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Carona, Nelson, Williams, and Fraser.

#### **SENATE BILL 1058 WITH HOUSE AMENDMENT**

Senator West called **SB 1058** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1058** (House committee printing) by adding the following appropriately numbered SECTION of the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION \_\_\_\_\_. Subchapter B, Chapter 431, Government Code, is amended by adding Section 431.0221 to read as follows:

Sec. 431.0221. TEXAS VETERANS POLICY ADVISORY COMMITTEE. (a) The Texas Veterans Policy Advisory Committee shall advise the adjutant general on quality of life issues for veterans from the state.

(b) The Texas Veterans Policy Advisory Committee consists of the following 10 members appointed by the governor:

(1) one member who is a veteran who served during World War II;

(2) one member who is a veteran who served during the Korean conflict;

(3) one member who is a veteran who served during the Vietnam War;

(4) one member who is a veteran who served during the Persian Gulf War or during operation Iraqi freedom;

(5) one member who is a veteran who served during any other military conflict from 1980 through 2007; and



(6) five members who are a military veteran, a person on active duty in the military, or a civilian.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1058** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Shapleigh, Van de Putte, Estes, and Ogden.

### **SENATE BILL 1604 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 1604** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1604** on page 23 by striking lines 13-21 and substitute the following:

(d) Notwithstanding Sections 5.551, 5.556, 27.011, and 28.018, an application for an authorization submitted after September 1, 2007, is an uncontested matter not subject to a contested case hearing or the hearing requirements of Chapter 2001, Government Code, unless the authorization seeks any of the following:

(1) the initial establishment or amendment to the restoration table or levels that would apply to any area covered by the authorization; or,

(2) the initial establishment or amendment to the establishment of monitoring wells for any area covered by the authorization, including the location, number, depth, spacing, and design of the monitoring wells or clusters of monitoring wells use for the detection of excursions or releases of contaminants from the mine area; or,

(3) the initial establishment or amendment to the type or amount or restoration bond required for the area covered by the authorization to assure that there are sufficient funds available to the state for restoration of the groundwater in the area by a third-party restorer, should the permittee seek bankruptcy protection or otherwise not be available to restore the groundwater.

(e) An application seeking approval under (d)(1)-(d)(3) is subject to the public notice and contested hearing requirements provided in Section 27.018, Water Code.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1604** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Seliger, Averitt, Hegar, and Jackson.

### **SENATE BILL 1846 WITH HOUSE AMENDMENTS**

Senator Duncan called **SB 1846** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 1846** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to funding for, and benefits provided under, the Teacher Retirement System of Texas.

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

SECTION 1. Section 825.308, Government Code, is amended to read as follows:

Sec. 825.308. STATE CONTRIBUTION ACCOUNT. The retirement system shall deposit in the state contribution account:

(1) all state contributions to the retirement system required by Section 825.404;

(2) amounts from the interest account as provided by Section 825.313(b)(2);

(3) retirement annuities waived or forfeited in accordance with Section 824.601 or 824.004;

(4) fees collected under Section 825.403(h);

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section 823.501;

(6) the portion of a deposit required by Section 823.302 to establish military service credit that represents a fee; ~~and~~

(7) contributions collected by employers from federal or private sources under Section 825.406;

(8) contributions collected by a general academic teaching institution or a medical and dental unit under Section 825.407; and

(9) employer contributions required under Section 825.4092.

SECTION 2. Section 825.402, Government Code, is amended to read as follows:

Sec. 825.402. RATE OF MEMBER CONTRIBUTIONS. The rate of contributions for each member of the retirement system is:

(1) five percent of the member's annual compensation or \$180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;

(2) six percent of the first \$8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;

(3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977-78 school year;

(4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) and before September 1, 1985; and

(5) 6.58 [~~6.4~~] percent of the member's annual compensation for service rendered after August 31, 1985.

SECTION 3. 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 percent of the aggregate annual compensation of all members of the retirement system during that fiscal year. The amount of the state contribution made under this section may not be less than the amount contributed by members during that fiscal year in accordance with Section 825.402.

SECTION 4. Subsection (b), Section 825.406, Government Code, is amended to read as follows:

(b) When an employer receives money for state contributions from an application made in accordance with Subsection (a), the employer shall immediately send the money to the retirement system for deposit in the state contribution account [~~general revenue fund of the state treasury~~].

SECTION 5. Subsection (g), Section 825.407, Government Code, is amended to read as follows:

(g) The retirement system shall deposit [~~submit~~] all money it receives under this section in the state contribution account [~~to the comptroller of public accounts for deposit in the general revenue fund~~].

SECTION 6. Subsection (e), Section 825.4092, Government Code, is amended to read as follows:

(e) The amounts required to be paid under Subsections (b) and (c) are not required to be paid by a reporting employer for a retiree who retired from [~~was reported under~~] the retirement system [~~rules in effect for the report month of January 2005 by:~~

~~[(1) that reporting employer; or~~

~~[(2) another employer, if both employers are school districts that consolidated into a consolidated school district on or~~ before September 1, 2005.

SECTION 7. Subsection (b), Section 1575.204, Insurance Code, is amended to read as follows:

(b) Each state fiscal year, each employer who reports to the retirement system under Section 824.6022, Government Code, the employment of a retiree who is enrolled in the group program shall contribute to the fund the difference, if any, between the contribution amount that the reported retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as determined by the trustee. The amounts required to be paid under this subsection are

not required to be paid by a reporting employer for a retiree who ~~retired from the [was reported by that employer under]~~ retirement system before September 1, [rules in effect for the report month of January] 2005.

SECTION 8. Section 1575.252, Insurance Code, is amended to read as follows:

Sec. 1575.252. APPLICATION BY EMPLOYER FOR MONEY TO PAY STATE CONTRIBUTIONS. An employer who applies for money provided by the United States or a privately sponsored source shall:

(1) if any of the money will pay part or all of an active employee's salary, also apply for any legally available money to pay state contributions required by Subchapter E; and

(2) immediately send any money received for state contributions as a result of the application to the trustee for deposit in the ~~[general revenue]~~ fund.

SECTION 9. (a) The Teacher Retirement System of Texas shall make a one-time supplemental payment of a retirement or death benefit, as provided by this section.

(b) The supplemental payment is payable not later than September of 2007 and, to the extent practicable, on a date or dates that coincide with the regular annuity payment payable to each eligible annuitant.

(c) The amount of the supplemental payment is equal to the lesser of:

(1) the gross amount of the regular annuity payment to which the eligible annuitant is otherwise entitled for the month of August 2007; or

(2) \$2,400.

(d) The supplemental payment is payable without regard to any forfeiture of benefits under Section 824.601, Government Code. The Teacher Retirement System of Texas shall make applicable tax withholding and other legally required deductions before disbursing the supplemental payment. A supplemental payment under this section is in addition to and not in lieu of the regular monthly annuity payment to which the eligible annuitant is otherwise entitled.

(e) Subject to Subsection (f) of this section, to be eligible for the supplemental payment, a person must be, for the month of August 2007, and disregarding any forfeiture of benefits under Section 824.601, Government Code, an annuitant eligible to receive:

(1) a standard retirement annuity payment;

(2) an optional retirement annuity payment as either a retiree or beneficiary;

(3) a life annuity payment under Section 824.402(a)(4), Government Code;

(4) an annuity for a guaranteed period of 60 months under Section 824.402(a)(3), Government Code; or

(5) an alternate payee annuity payment under Section 804.005, Government Code.

(f) If the annuitant is a retiree or a beneficiary under an optional retirement payment plan, to be eligible for the supplemental payment, the effective date of the retirement of the member of the Teacher Retirement System of Texas must have been on or before December 31, 2006. If the annuitant is a beneficiary under Section 824.402(a)(3) or (4), Government Code, to be eligible for the supplemental payment, the date of death of the member of the retirement system must have been on or before December 31, 2006. The supplemental payment shall be made to an alternate payee

who is an annuitant under Section 804.005, Government Code, only if the annuity payment to the alternate payee commenced on or before December 31, 2006. The supplemental payment is in addition to the guaranteed number of payments under Section 824.402(a)(3), 824.204(c)(3) or (4), or Section 824.308(c)(3) or (4), Government Code, and may not be counted as one of the guaranteed monthly payments.

(g) The supplemental payment does not apply to payments under:

(1) Section 824.304(a), Government Code, relating to disability retirees with less than 10 years of service credit;

(2) Section 824.804(b), Government Code, relating to participants in the deferred retirement option plan with regard to payments from their deferred retirement option plan accounts;

(3) Section 824.501(a), Government Code, relating to retiree survivor beneficiaries who receive a survivor annuity in an amount fixed by statute; or

(4) Section 824.404(a), Government Code, relating to active member survivor beneficiaries who receive a survivor annuity in an amount fixed by statute.

(h) Except as provided by this section, the board of trustees of the Teacher Retirement System of Texas shall determine the eligibility for and the amount and timing of a supplemental payment and the manner in which the payment is made.

SECTION 10. Section 825.404(a), Government Code, as amended by this Act, applies beginning with the fiscal year that begins September 1, 2007.

SECTION 11. Section 825.4092, Government Code, as amended by this Act, applies only to an employer contribution required to be made under that section on or after September 1, 2007. An employer contribution required to be made before September 1, 2007, is governed by the law as it existed at the time the contribution was required to be made, and that law is continued in effect for that purpose.

SECTION 12. This Act takes effect September 1, 2007.

### Floor Amendment No. 1

Amend **CSSB 1846** (House committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. 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 6.7 ~~[six]~~ and not more than 10 percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

SECTION 2. Subsection (e), Section 825.4092, Government Code, is amended to read as follows:

(e) The amounts required to be paid under Subsections (b) and (c) are not required to be paid by a reporting employer for a retiree who retired from ~~[was reported under]~~ the retirement system ~~[rules in effect for the report month of January 2005 by:~~

~~[(1) that reporting employer; or~~

~~[(2) another employer, if both employers are school districts that consolidated into a consolidated school district on or]~~ before September 1, 2005.

SECTION 3. Subsection (b), Section 1575.204, Insurance Code, is amended to read as follows:

(b) Each state fiscal year, each employer who reports to the retirement system under Section 824.6022, Government Code, the employment of a retiree who is enrolled in the group program shall contribute to the fund the difference, if any, between the contribution amount that the reported retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as determined by the trustee. The amounts required to be paid under this subsection are not required to be paid by a reporting employer for a retiree who retired from the [was reported by that employer under] retirement system before September 1, [rules in effect for the report month of January] 2005.

SECTION 4. (a) The Teacher Retirement System of Texas shall make a one-time supplemental payment of a retirement or death benefit, as provided by this section.

(b) The supplemental payment is payable not later than September of 2007 and, to the extent practicable, on a date or dates that coincide with the regular annuity payment payable to each eligible annuitant.

(c) The amount of the supplemental payment is equal to the gross amount of the regular annuity payment to which the eligible annuitant is otherwise entitled for the month of August 2007.

(d) The supplemental payment is payable without regard to any forfeiture of benefits under Section 824.601, Government Code. The Teacher Retirement System of Texas shall make applicable tax withholding and other legally required deductions before disbursing the supplemental payment. A supplemental payment under this section is in addition to and not in lieu of the regular monthly annuity payment to which the eligible annuitant is otherwise entitled.

(e) Subject to Subsection (f) of this section, to be eligible for the supplemental payment, a person must be, for the month of August 2007, and disregarding any forfeiture of benefits under Section 824.601, Government Code, an annuitant eligible to receive:

- (1) a standard retirement annuity payment;
- (2) an optional retirement annuity payment as either a retiree or beneficiary;
- (3) a life annuity payment under Section 824.402(a)(4), Government Code;
- (4) an annuity for a guaranteed period of 60 months under Section 824.402(a)(3), Government Code; or
- (5) an alternate payee annuity payment under Section 804.005, Government Code.

(f) If the annuitant is a retiree or a beneficiary under an optional retirement payment plan, to be eligible for the supplemental payment, the effective date of the retirement of the member of the Teacher Retirement System of Texas must have been on or before December 31, 2006. If the annuitant is a beneficiary under Section 824.402(a)(3) or (4), Government Code, to be eligible for the supplemental payment, the date of death of the member of the retirement system must have been on or before December 31, 2006. The supplemental payment shall be made to an alternate payee who is an annuitant under Section 804.005, Government Code, only if the annuity payment to the alternate payee commenced on or before December 31, 2006. The

supplemental payment is in addition to the guaranteed number of payments under Section 824.402(a)(3) or 824.204(c)(3) or (4), Government Code, and may not be counted as one of the guaranteed monthly payments.

(g) The supplemental payment does not apply to payments under:

(1) Section 824.304(a), Government Code, relating to disability retirees with less than 10 years of service credit;

(2) Section 824.804(b), Government Code, relating to participants in the deferred retirement option plan with regard to payments from their deferred retirement option plan accounts;

(3) Section 824.501(a), Government Code, relating to retiree survivor beneficiaries who receive a survivor annuity in an amount fixed by statute; or

(4) Section 824.404(a), Government Code, relating to active member survivor beneficiaries who receive a survivor annuity in an amount fixed by statute.

(h) Except as provided by this section, the board of trustees of the Teacher Retirement System of Texas shall determine the eligibility for and the amount and timing of a supplemental payment and the manner in which the payment is made.

SECTION 5. Section 825.404(a), Government Code, as amended by this Act, applies beginning with the fiscal year that begins September 1, 2007.

SECTION 6. Section 825.4092, Government Code, as amended by this Act, applies only to an employer contribution required to be made under that section on or after September 1, 2007. An employer contribution required to be made before September 1, 2007, is governed by the law as it existed at the time the contribution was required to be made, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2007.

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

Amend **CSSB 1846** (House committee printing) by inserting the following new SECTIONS to the bill, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 825.4092, Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (f) to read as follows:

(b) Except as provided by Subsections ~~[Subsection]~~ (e) and (f), during each payroll period for which a retiree is reported, the employer shall contribute to the retirement system for each retiree reported an amount based on the retiree's salary equal to the sum of:

(1) the current contribution amount that would be contributed by the retiree if the retiree were an active, contributing member; and

(2) the current contribution amount authorized by the General Appropriations Act that the state would contribute for that retiree if the retiree were an active, contributing member.

(c) Except as provided by Subsections ~~[Subsection]~~ (e) and (f), each payroll period, for each retiree who is enrolled in the Texas Public School Employees Group Insurance Program under Chapter 1575, Insurance Code, the employer who reports the employment of a retiree shall contribute to the trust fund established under that chapter any difference between the amount the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as

determined by the retirement system. If more than one employer reports the retiree to the retirement system during a month, the amount of the required payment shall be prorated among the employers.

(f) The amounts required to be paid under Subsections (b) and (c) are not required to be paid by a school district that has been required to expand classroom facilities to accommodate an increased number of students resulting from the United States Department of Defense base realignment and closure process. The total number of employed retirees subject to the exemption established by this subsection may not exceed 500 and, if necessary, the board of trustees shall by rule establish a method to equitably allocate that number to each school district described by this subsection. This subsection expires December 31, 2011.

SECTION \_\_\_\_\_. Section 1575.204, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The amounts required to be paid under Subsection (b) are not required to be paid by a school district that has been required to expand classroom facilities to accommodate an increased number of students resulting from the United States Department of Defense base realignment and closure process. The total number of employed retirees subject to the exemption established by this subsection may not exceed 500 and, if necessary, the board of trustees shall by rule establish a method to equitably allocate that number to each school district described by this subsection. This subsection expires December 31, 2011.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1846** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Ogden, Williams, Lucio, and Fraser.

### **SENATE BILL 1871 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 1871** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1871** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the compilation and reporting by the Texas Education Agency of certain student data disaggregated by the instruction method used.



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

SECTION 1. Subchapter B, Chapter 29, Education Code, is amended by adding Section 29.066 to read as follows:

Sec. 29.066. PEIMS REPORTING REQUIREMENTS. (a) A school district that is required to offer bilingual education or special language programs shall include the following information in the district's Public Education Information Management System (PEIMS) report:

(1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs;

(2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and

(3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction.

(b) For purposes of this section, the commissioner shall adopt rules to classify programs under this section as follows:

(1) if the program is a bilingual education program, the program must be classified under the Public Education Information Management System (PEIMS) report as:

(A) transitional bilingual/early exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than two or later than five years after the student enrolls in school;

(B) transitional bilingual/late exit: a bilingual program that serves students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school;

(C) dual language immersion/two-way: a biliteracy program that integrates students proficient in English and students identified as students of limited English proficiency in both English and Spanish and transfers a student identified as a student of limited English proficiency to English-only instruction not earlier than six or later than seven years after the student enrolls in school; or

(D) dual language immersion/one-way: a biliteracy program that serves only students identified as students of limited English proficiency in both English and Spanish and transfers a student to English-only instruction not earlier than six or later than seven years after the student enrolls in school; and

(2) if the program is a special language program, the program must be classified under the Public Education Information Management System (PEIMS) report as:

(A) English as a second language/content-based: an English program that serves students identified as students of limited English proficiency in English only by providing a full-time teacher certified under Section 29.061(c) to provide supplementary instruction for all content area instruction; or

(B) English as a second language/pull-out: an English program that serves students identified as students of limited English proficiency in English only by providing a part-time teacher certified under Section 29.061(c) to provide English language arts instruction exclusively, while the student remains in a mainstream instructional arrangement in the remaining content areas.

(c) If the school district has received a waiver and is not required to offer a bilingual education or special language program in a student's native language or if the student's parents have refused to approve the student's entry into a program as provided by Section 29.056, the program must be classified under the Public Education Information Management System (PEIMS) report as: no bilingual education or special language services provided.

SECTION 2. Section 39.027(e), Education Code, is amended to read as follows:

(e) The commissioner shall develop an assessment system that shall be used for evaluating the academic progress, including reading proficiency in English, of all students of limited English proficiency, as defined by Section 29.052. A student who is exempt from the administration of an assessment instrument under Subsection (a)(3) or (4) who achieves reading proficiency in English as determined by the assessment system developed under this subsection shall be administered the assessment instruments described by Sections 39.023(a) and (c). The performance under the assessment system developed under this subsection of students to whom Subsection (a)(3) or (4) applies shall be included in the academic excellence indicator system under Section 39.051, the performance report under Section 39.053, and the comprehensive annual report under Section 39.182. This information shall be provided in a manner that is disaggregated by the bilingual education or special language program, if any, in which the student is enrolled.

SECTION 3. Section 39.051, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Performance on the indicators described by Subsections (b)(1), (2), (3), (8), (9), and (14) must be based on longitudinal student data that is disaggregated by the bilingual education or special language program, if any, in which students of limited English proficiency, as defined by Section 29.052, are or former students of limited English proficiency were enrolled. If a student described by this subsection is not or was not enrolled in specialized language instruction, the number and percentage of those students shall be provided.

SECTION 4. Section 39.182, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) Not later than December 1 of each year, the agency shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, each member of the legislature, the Legislative Budget Board, and the clerks of the standing committees of the senate and house of representatives with primary jurisdiction over the public school system a comprehensive report covering the preceding school year and containing:

(1) an evaluation of the achievements of the state educational program in relation to the statutory goals for the public education system under Section 4.002;

(2) an evaluation of the status of education in the state as reflected by the academic excellence indicators adopted under Section 39.051;

(3) a summary compilation of overall student performance on academic skills assessment instruments required by Section 39.023 with the number and percentage of students exempted from the administration of those instruments and the basis of the exemptions, aggregated by grade level, subject area, campus, and district, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(4) a summary compilation of overall performance of students placed in a disciplinary alternative education program established under Section 37.008 on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(5) a summary compilation of overall performance of students at risk of dropping out of school, as defined by Section 29.081(d), on academic skills assessment instruments required by Section 39.023 with the number of those students exempted from the administration of those instruments and the basis of the exemptions, aggregated by district, grade level, and subject area, with appropriate interpretations and analysis, and disaggregated by race, ethnicity, gender, and socioeconomic status;

(6) an evaluation of the correlation between student grades and student performance on academic skills assessment instruments required by Section 39.023;

(7) a statement of the dropout rate of students in grade levels 7 through 12, expressed in the aggregate and by grade level, and a statement of the completion rates of students for grade levels 9 through 12;

(8) a statement of:

(A) the completion rate of students who enter grade level 9 and graduate not more than four years later;

(B) the completion rate of students who enter grade level 9 and graduate, including students who require more than four years to graduate;

(C) the completion rate of students who enter grade level 9 and not more than four years later receive a high school equivalency certificate;

(D) the completion rate of students who enter grade level 9 and receive a high school equivalency certificate, including students who require more than four years to receive a certificate; and

(E) the number and percentage of all students who have not been accounted for under Paragraph (A), (B), (C), or (D);

(9) a statement of the projected cross-sectional and longitudinal dropout rates for grade levels 9 through 12 for the next five years, assuming no state action is taken to reduce the dropout rate;

(10) a description of a systematic, measurable plan for reducing the projected cross-sectional and longitudinal dropout rates to five percent or less for the 1997-1998 school year;

(11) a summary of the information required by Section 29.083 regarding grade level retention of students and information concerning:

(A) the number and percentage of students retained; and

(B) the performance of retained students on assessment instruments required under Section 39.023(a);

(12) information, aggregated by district type and disaggregated by race, ethnicity, gender, and socioeconomic status, on:

(A) the number of students placed in a disciplinary alternative education program established under Section 37.008;

(B) the average length of a student's placement in a disciplinary alternative education program established under Section 37.008;

(C) the academic performance of students on assessment instruments required under Section 39.023(a) during the year preceding and during the year following placement in a disciplinary alternative education program; and

(D) the dropout rates of students who have been placed in a disciplinary alternative education program established under Section 37.008;

(13) a list of each school district or campus that does not satisfy performance standards, with an explanation of the actions taken by the commissioner to improve student performance in the district or campus and an evaluation of the results of those actions;

(14) an evaluation of the status of the curriculum taught in public schools, with recommendations for legislative changes necessary to improve or modify the curriculum required by Section 28.002;

(15) a description of all funds received by and each activity and expenditure of the agency;

(16) a summary and analysis of the instructional expenditures ratios and instructional employees ratios of school districts computed under Section 44.0071;

(17) a summary of the effect of deregulation, including exemptions and waivers granted under Section 7.056 or 39.112;

(18) a statement of the total number and length of reports that school districts and school district employees must submit to the agency, identifying which reports are required by federal statute or rule, state statute, or agency rule, and a summary of the agency's efforts to reduce overall reporting requirements;

(19) a list of each school district that is not in compliance with state special education requirements, including:

(A) the period for which the district has not been in compliance;

(B) the manner in which the agency considered the district's failure to comply in determining the district's accreditation status; and

(C) an explanation of the actions taken by the commissioner to ensure compliance and an evaluation of the results of those actions;

(20) a comparison of the performance of open-enrollment charter schools and school districts on the academic excellence indicators specified in Section 39.051(b) and accountability measures adopted under Section 39.051(g), with a separately aggregated comparison of the performance of open-enrollment charter schools predominantly serving students at risk of dropping out of school, as defined by Section 29.081(d), with the performance of school districts;

(21) a summary of the information required by Section 38.0141 regarding student health and physical activity from each school district;

(22) a summary compilation of overall student performance under the assessment system developed to evaluate the longitudinal academic progress as required by Section 39.027(e), disaggregated by bilingual education or special language program instructional model, if any; and

(23) [(22)] any additional information considered important by the commissioner or the State Board of Education.

(b) In reporting the information required by Subsection (a)(3) or (4), the agency may separately aggregate the performance data of students enrolled in a special education program under Subchapter A, Chapter 29~~], or a bilingual education or special language program under Subchapter B, Chapter 29].~~

(b-1) In reporting the information required by Subsections (a)(3), (5), and (7), the agency shall separately aggregate the longitudinal performance data of all students identified as students of limited English proficiency, as defined by Section 29.052, or former students of limited English proficiency, disaggregated by bilingual education or special language program instructional model, if any, in which the students are or were enrolled.

SECTION 5. Section 42.006(c), Education Code, is amended to read as follows:

(c) Annually, the commissioner shall review the Public Education Information Management System and shall repeal or amend rules that require school districts to provide information through the Public Education Information Management System that is not necessary. In reviewing and revising the Public Education Information Management System, the commissioner shall develop rules to ensure that the system:

(1) provides useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances;

(2) contains only the data necessary for the legislature and the agency to perform their legally authorized functions in overseeing the public education system; and

(3) does not contain any information related to instructional methods, except as provided by Section 29.066 or required by federal law.

SECTION 6. The changes in law made by this Act apply beginning with the 2008-2009 school year.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1871** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Van de Putte, Carona, Janek, and Seliger.

### SENATE BILL 1879 WITH HOUSE AMENDMENTS

Senator Williams called **SB 1879** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 1879** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation of controlled substances.

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

SECTION 1. Subsection (a), Section 481.064, Health and Safety Code, is amended to read as follows:

(a) The director may charge a nonrefundable fee of not more than \$25 before processing an application for annual registration and may charge a late fee of not more than \$50 for each application for renewal the department receives after the date the registration expires. The director by rule shall set the amounts ~~[amount]~~ of the fees ~~[fee]~~ at the amounts ~~[amount]~~ that are ~~[is]~~ necessary to cover the cost of administering and enforcing this subchapter. Except as provided by Subsection (b), registrants shall pay the fees to the director. Not later than 60 days before the date the registration expires, the director shall send a renewal notice to the registrant at the last known address of the registrant according to department records.

SECTION 2. Section 481.074, Health and Safety Code, is amended by amending Subsections (b), (d), and (k) and adding Subsection (q) to read as follows:

(b) Except in an emergency as defined by rule of the director or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without the written prescription of a practitioner on an official prescription form that meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, department registration number, and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(d) Except as specified in Subsections (e) and (f) ~~[of this section]~~, the director, by rule and in consultation with the Texas Medical Board and the Texas State Board of Pharmacy, shall establish the period after the date on which the prescription is issued that a person may ~~[not]~~ fill a prescription for a controlled substance listed in Schedule II ~~[after the end of the seventh day after the date on which the prescription is issued]~~. A person may not refill a prescription for a substance listed in Schedule II.

(k) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) numerically, followed by the number written as a word, if the prescription is written; or

(B) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(3) the name, ~~[and]~~ address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient; ~~[and]~~

(7) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business;

(8) if the prescription is handwritten, the signature of the prescribing practitioner; and

(9) if the prescribing practitioner is licensed in this state, the practitioner's department registration number.

(q) Each dispensing pharmacist shall send all information required by the director, including any information required to complete the Schedule III through V prescription forms, to the director by electronic transfer or another form approved by the director not later than the 15th day after the last day of the month in which the prescription is completely filled.

SECTION 3. Subsections (a) and (c), Section 481.076, Health and Safety Code, are amended to read as follows:

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

(3) if the director finds that proper need has been shown to the director:

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or practitioner who is a physician, dentist, veterinarian, ~~or~~ podiatrist, or advanced practice nurse or physician assistant described by Section 481.002(39)(D) and is inquiring about a ~~the~~ recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(c) The director by rule shall design and implement a system for submission of information to the director by electronic or other means and for retrieval of information submitted to the director under this section and Sections 481.074 and ~~Section~~ 481.075. The director shall use automated information security techniques and devices to preclude improper access to the information. The director shall submit the system design to the Texas State Board of Pharmacy and the Texas ~~State Board of~~ Medical Board ~~Examiners~~ for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

SECTION 4. Subsections (a), (b), (c), and (e), Section 481.0761, Health and Safety Code, are amended to read as follows:

(a) The director shall consult with the Texas State Board of Pharmacy and by rule establish and revise as necessary a standardized database format that may be used by a pharmacy to transmit the information required by Sections 481.074(q) and ~~Section~~ 481.075(i) to the director electronically or to deliver the information on storage media, including disks, tapes, and cassettes.

(b) The director shall consult with the ~~Texas~~ Department of State Health Services, the Texas State Board of Pharmacy, and the Texas ~~State Board of~~ Medical Board ~~Examiners~~ and by rule may:

(1) remove a controlled substance listed in Schedules ~~Schedule~~ II through V from the official prescription program, if the director determines that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or

(2) return a substance previously removed from Schedules ~~Schedule~~ II through V to the official prescription program, if the director determines that the risk of diversion substantially outweighs the burden imposed by the program on the particular controlled substance.

(c) The director by rule may:

(1) permit more than one prescription to be administered or dispensed and recorded on one ~~official~~ prescription form for a Schedule III through V controlled substance;

(2) remove from or return to the official prescription program any aspect of a practitioner's or pharmacist's hospital practice, including administering or dispensing;

(3) waive or delay any requirement relating to the time or manner of reporting;



(4) establish compatibility protocols for electronic data transfer hardware, software, or format;

(5) establish a procedure to control the release of information under Sections 481.074, 481.075, and 481.076; and

(6) establish a minimum level of prescription activity below which a reporting activity may be modified or deleted.

(e) In adopting a rule relating to the electronic transfer of information under this subchapter, the director shall consider the economic impact of the rule on practitioners and pharmacists and, to the extent permitted by law, act to minimize any negative economic impact, including the imposition of costs related to computer hardware or software or to the transfer of information. The director may not adopt a rule relating to the electronic transfer of information under this subchapter that imposes a fee in addition to the fees [fee] authorized by Section 481.064.

SECTION 5. Chapter 481, Health and Safety Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 481.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates Section 481.061, 481.066, 481.067, 481.069, 481.073, 481.074, 481.075, 481.077, 481.0771, 481.078, 481.080, or 481.081 or a rule or order adopted under any of those sections.

Sec. 481.302. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 481.303. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person by certified mail, registered mail, personal delivery, or another manner of delivery that records the person's receipt of the notice.

(b) The notice must:

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

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 481.304. PENALTY TO BE PAID OR INFORMAL HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 481.303, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for an informal hearing held by the department on the occurrence of the violation, the amount of the penalty, or both.

(b) At the conclusion of an informal hearing requested under Subsection (a), the department may modify the amount of the recommended penalty.

(c) If the person accepts the determination and recommended penalty, including any modification of the amount, or if the person fails to timely respond to the notice, the director by order shall approve the determination and impose the recommended penalty.

Sec. 481.305. FORMAL HEARING. (a) The person may request a formal hearing only after participating in an informal hearing.

(b) The request must be submitted in writing and received by the department before the 21st day after the date the person is notified of the decision from the informal hearing.

(c) If a timely request for a formal hearing is not received, the director by order shall approve the determination from the informal hearing and impose the recommended penalty.

(d) If the person timely requests a formal hearing, the director shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the director and to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(e) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision about the occurrence of the violation and the amount of any proposed penalty.

(f) If a penalty is proposed under Subsection (e), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and impose the costs, fees, and expenses on the person as part of the final order entered in the proceeding.

Sec. 481.306. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the director's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Sec. 481.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 481.306 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 481.308. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 481.307, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account;

or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the director may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 481.309. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 481.310. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 481.311. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 481.312. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 481.313. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 6. (a) An advisory committee is created to advise the Department of Public Safety on the implementation of this Act.

(b) The advisory committee is composed of:

- (1) the public safety director of the Department of Public Safety;
- (2) a physician appointed by the governor;
- (3) a pharmacist appointed by the governor;
- (4) a physician appointed by the lieutenant governor;
- (5) a pharmacist appointed by the lieutenant governor;
- (6) a physician appointed by the governor from a list of names submitted by the speaker of the house;
- (7) a pharmacist appointed by the governor from a list of names submitted by the speaker of the house; and
- (8) one member from each of the following boards:
  - (A) Texas Medical Board;
  - (B) Texas State Board of Pharmacy;
  - (C) State Board of Dental Examiners; and
  - (D) Board of Nurse Examiners.

(c) The public safety director is the presiding officer of the advisory committee. The committee shall meet at the call of the presiding officer or at the request of any three members other than the director.

(d) The advisory committee shall:

- (1) develop recommendations regarding the improvement of the official prescription program established by Section 481.075, Health and Safety Code;
- (2) develop recommendations regarding the implementation of an electronic controlled substance monitoring system that would be used for prescriptions of controlled substances listed in Schedules II through V as established under Subchapter B, Chapter 481, Health and Safety Code;
- (3) develop recommendations as to which data should be provided to the Department of Public Safety to support a controlled substance monitoring system recommended under Subdivision (2) of this subsection, including provider identification information;
- (4) monitor and develop recommendations regarding the implementation and enforcement of a controlled substance monitoring system recommended under Subdivision (2) of this subsection;
- (5) develop recommended procedures necessary for real-time point-of-service access for a practitioner authorized to prescribe or dispense controlled substances listed in Schedules II through V so that the practitioner may obtain:
  - (A) the prescription history for a particular patient; or
  - (B) the practitioner's own dispensing or prescribing activity; and
- (6) develop recommended procedures that should be followed by the Department of Public Safety and the applicable licensing authority of this state, another state, or the United States when:
  - (A) the department shares information related to diversion of controlled substances with a licensing authority for the purpose of licensing enforcement; or
  - (B) a licensing authority shares information related to diversion of controlled substances with the department for the purpose of criminal enforcement.

(e) The director shall report the recommendations developed under Subsection (d) of this section to the governor, lieutenant governor, speaker of the house, and appropriate committees of the senate and the house not later than July 1, 2008.

(f) This section expires and the advisory committee is abolished on September 1, 2009.

SECTION 7. (a) The Department of Public Safety, Texas Medical Board, Texas State Board of Pharmacy, State Board of Dental Examiners, and Board of Nurse Examiners shall submit to the presiding officers of the Senate Committee on Health and Human Services and the House Committee on Public Health a report that details the number and type of actions relating to the prosecution of violations of Chapter 481, Health and Safety Code, as amended by this Act.

(b) Each agency shall submit its initial report under Subsection (a) of this section not later than November 1, 2007. Each agency shall submit an update of its initial report not later than May 1 and November 1 of each year.

(c) This section expires November 1, 2011.

SECTION 8. The public safety director of the Department of Public Safety shall adopt any rules necessary to administer and enforce Subchapter H, Chapter 481, Health and Safety Code, as added by this Act, not later than September 1, 2007, except that if this section does not take effect before that date, the public safety director shall adopt the rules as soon as practicable after that date.

SECTION 9. (a) Except as provided by Subsections (b), (c), and (d) of this section, this Act takes effect September 1, 2007.

(b) Section 8 of this Act 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, Section 8 of this Act takes effect September 1, 2007.

(c) Except as otherwise provided by Subsection (d) of this section, the changes in law made by this Act in amending Subsection (k), Section 481.074, and Section 481.076, Health and Safety Code, and in adding Subsection (q), Section 481.074 of that code, take effect September 1, 2008. The public safety director of the Department of Public Safety shall adopt any rules necessary to administer and enforce the changes in law made by those provisions not later than September 1, 2008.

(d) The change in law made by this Act in amending Subsections (b) and (k), Section 481.074, Health and Safety Code, to require the use of registration numbers issued by the Department of Public Safety takes effect only after the department establishes a means by which pharmacies are able to electronically access and verify the accuracy of the registration numbers.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1879** on third reading (House committee printing) as follows:

(1) In SECTION 6 of the bill, in Subdivision (1), Subsection (b), between "Safety" and the semicolon (page 13, line 5), insert "or the director's designee".

(2) In SECTION 6 of the bill, in Subsection (c), between "director" and "is" (page 13, line 19), insert "or the director's designee".

(3) In SECTION 6 of the bill, in Subsection (c) (page 13, line 22), strike "director" and substitute "presiding officer".

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

Amend **CSSB 1879** on third reading in SECTION 5 of the bill, in new Section 481.301, Health and Safety Code (page 7, line 14), by striking "481.067," "481.073," "481.074," and "481.075,".

**Floor Amendment No. 3 on Third Reading**

Amend **CSSB 1879** on third reading in SECTION 5 of the bill, in proposed Subchapter H, Chapter 481, Health and Safety Code (between page 12, line 27, and page 13, line 1), by inserting a new Section 481.314 to read as follows:

Sec. 481.314. DISPOSITION OF PENALTY. The department shall send any amount collected as a penalty under this subchapter to the comptroller for deposit to the credit of the general revenue fund.

**Floor Amendment No. 4 on Third Reading**

Amend **CSSB 1879** on third reading, in SECTION 2 of the bill, by striking amended Section 481.074(k)(3), Health and Safety Code, and substituting the following:

(3) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

**Floor Amendment No. 8 on Third Reading**

Amend **CSSB 1879**, in third reading, by adding the following SECTIONS to the bill, and renumbering the sections of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 107, Occupations Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. PAIN TREATMENT REVIEW COMMITTEE

Sec. 107.201. PAIN TREATMENT REVIEW COMMITTEE. (a) The following individuals shall be appointed as a review committee on pain treatment:

- (1) the attorney general or the attorney general's designee;
- (2) a physician who practices at a public hospital in this state;
- (3) a physician who practices at a private hospital in this state;
- (4) a physician who practices in this state as a psychiatrist specializing in the treatment of addictive diseases;
- (5) a probate court judge licensed to practice law in this state;
- (6) a member of the governing board of the American Cancer Society, Texas Division, or the member's designee;
- (7) a member of the governing board of the Texas Medical Association or the member's designee;
- (8) a member of the governing board of the Texas Nurses Association or the member's designee;
- (9) an officer of a public hospital in this state who is a member of the governing board of the Texas Hospital Association or the member's designee;
- (10) an officer of a private hospital in this state who is a member of the governing board of the Texas Hospital Association or the member's designee; and
- (11) a public member who is a resident of this state.

(b) The lieutenant governor and the speaker of the house of representatives shall each appoint five of the members described by Subsections (a)(2) through (11).

(c) The following individuals serve on the committee as nonvoting resource members and are appointed by the executive director of the agency the member represents:

(1) a pharmacist member of the Texas State Board of Pharmacy;

(2) a physician member of the Texas Medical Board;

(3) a nurse member of the Board of Nurse Examiners;

(4) a representative of the Department of Aging and Disability Services; and

(5) a representative of the narcotics regulatory programs of the Department

of Public Safety.

(d) The committee shall study the relevant provisions in the laws of this state that relate to the administration of prescription medication, controlled substances, and the needs of patients for effective pain control and management. The committee shall examine how the following statutes affect public health needs, the professional medical community, and persons affected by acute, chronic, or end-of-life pain:

(1) this chapter;

(2) Subtitles B, E, I, and J of this title; and

(3) Chapter 481, Health and Safety Code.

(e) The committee shall meet at least once every three months.

(f) Not later than September 1, 2008, the committee shall report any changes recommended to the statutes examined under Subsection (d) to the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees in the senate and the house of representatives that have jurisdiction over the issues studied by the committee.

(g) This section expires July 1, 2009.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1879** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Nelson, Deuell, Van de Putte, and West.

### CONFERENCE COMMITTEE ON HOUSE BILL 109

Senator Averitt called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 109** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer, Senator Estes in Chair, asked if there were any motions to instruct the conference committee on **HB 109** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Ogden, Hinojosa, Deuell, and Nelson.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 892**

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 892** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 892** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Wentworth, Nichols, Patrick, and West.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1111**

Senator Uresti called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1111** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1111** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Hinojosa, Hegar, Seliger, and Deuell.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1251**

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1251** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1251** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Nichols, Seliger, Shapleigh, and Patrick.



**CONFERENCE COMMITTEE ON HOUSE BILL 1457**

Senator Nichols called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1457** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1457** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nichols, Chair; Hegar, Eltife, Estes, and Averitt.

**CONFERENCE COMMITTEE ON HOUSE BILL 3849**

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3849** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3849** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Wentworth, Watson, Hegar, and Deuell.

**SENATE BILL 101 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 101** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 101** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the automatic admission of undergraduate students to general academic teaching institutions.

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

SECTION 1. Section 51.803, Education Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Subject to Subsections (c) and (d), each ~~Each~~ general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated with a grade point average in the top 10 percent of the student's high school graduating class in one of the two school years preceding the academic year for which the applicant is applying for admission and the applicant

graduated from a public or private high school in this state accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. To qualify for admission under this section, an applicant must submit an application before the expiration of any application filing deadline established by the institution and, if the applicant graduated from a high school operated by the United States Department of Defense, must be a Texas resident under Section 54.052 or be entitled to pay tuition fees at the rate provided for Texas residents under Section 54.058(d) for the term or semester to which admitted.

(c) A general academic teaching institution is not required to admit under Subsection (a) more than 50 percent of the institution's first-time resident undergraduate students in an academic year. If the number of applicants who qualify for automatic admission to a general academic teaching institution under Subsection (a) exceeds that percentage of the institution's enrollment capacity designated for first-time resident undergraduate students, the institution shall, except as provided by Subsection (d):

(1) offer admission to those applicants beginning with those who completed the curriculum requirements established under Section 28.025 for the recommended or advanced high school program or an equivalent curriculum at a high school to which that section does not apply;

(2) after offering admission to applicants under Subdivision (1), offer admission to the remaining applicants by percentile rank according to graduating class standing based on grade point average, beginning with the top percentile rank, until a sufficient number of applicants have accepted admission offers to fill that percentage of the institution's enrollment capacity designated for first-time resident undergraduate students, except that the institution must offer admission to all applicants with the same percentile rank; and

(3) after offering admission to applicants under Subdivisions (1) and (2), consider any remaining applicants qualified for automatic admission under Subsection (a) in the same manner as other applicants for admission as first-time freshmen students in accordance with Section 51.805.

(d) If the number of applicants qualified for admission under Subsection (c)(1) exceeds the percentage of the institution's enrollment capacity designated for first-time resident undergraduate students specified by Subsection (c), the institution shall offer admission to those applicants by percentile rank according to graduating class standing based on grade point average, beginning with the top percentile rank, until a sufficient number of applicants have accepted admission offers to fill that percentage, except that the institution must offer admission to all applicants with the same percentile rank. The institution shall consider any remaining applicants qualified for automatic admission under Subsection (a), including remaining applicants qualified for admission under Subsection (c)(1), in the same manner as other applicants for admission as first-time freshmen students in accordance with Section 51.805.

SECTION 2. Section 51.807, Education Code, is amended to read as follows:

Sec. 51.807. RULEMAKING. (a) The Texas Higher Education Coordinating Board may adopt rules relating to the operation of admissions programs under this subchapter, including rules relating to the identification of eligible students ~~and the reporting requirements of Section 51.806~~.

(b) The Texas Higher Education Coordinating Board after consulting with the Texas Education Agency by rule shall establish standards for determining for purposes of this subchapter whether a person completed a high school curriculum that is equivalent to the curriculum established under Section 28.025 for the recommended or advanced high school program.

SECTION 3. The change in law made by this Act applies beginning with admissions to institutions of higher education for the 2008-2009 academic year. Admissions to an institution of higher education before that academic year are covered by the law in effect before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 4. The Texas Higher Education Coordinating Board shall adopt rules as required by Section 51.807(b), Education Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2007.

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

Amend **CSSB 101** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in the recital (page 1, line 6), strike "adding Subsections (c) and (d)" and substitute "adding Subsections (c), (d), and (e)".

(2) In SECTION 1 of the bill, in amended Section 51.803, Education Code (page 3, between lines 17 and 18), following added Subsection (d), insert a new Subsection (e) to read as follows:

(e) A general academic teaching institution that offers admission to applicants under Subsection (c) or (d) shall demonstrate by direct action a commitment to:

(1) providing opportunities for postsecondary education for members of all groups, including underrepresented groups such as racial or ethnic minority groups; and

(2) ensuring racial and ethnic diversity in the institution's faculty and administrative staff.

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

Amend **CSSB 101** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in the recital (page 1, line 6), strike "adding Subsections (c) and (d)" and substitute "adding Subsections (c), (d), and (e)".

(2) In SECTION 1 of the bill, in amended Section 51.803, Education Code (page 3, between lines 17 and 18), following added Subsection (d), insert a new Subsection (e) to read as follows:

(e) This subsection applies only to an applicant who qualifies for automatic admission to a general academic teaching institution under Subsection (a) and who has earned a score of at least 1500 out of 1600 or the equivalent on the SAT assessment, disregarding the writing section, or 33 out of 36 or the equivalent on the ACT assessment. Notwithstanding Subsection (c), a general academic teaching institution shall offer admission to each applicant described by this subsection, and the

applicant may not be counted in determining whether the number of applicants who qualify for admission under Subsection (a) and who accept admission offers under Subsection (c) exceeds the percentage limitation prescribed by Subsection (c) for the admission of first-time resident undergraduate students by the institution.

#### **Floor Amendment No. 6**

Amend **CSSB 101** (House committee printing) in SECTION 1 of the bill, in added Subsection (c), Section 51.803, Education Code (page 2, line 3), by striking "50 percent" and substituting "66.67 percent".

#### **Floor Amendment No. 7**

Amend **CSSB 101** (House committee printing) as follows:

(1) In added Subsection (c), Section 51.803, Education Code (page 2, line 2), between "(c)" and "general academic teaching institution", strike "A" and substitute "Beginning with admissions for the 2009-2010 academic year, a".

(2) Strike SECTION 3 of the bill (page 4, lines 4 through 9) and renumber subsequent SECTIONS of the bill appropriately.

#### **Floor Amendment No. 8**

Amend **CSSB 101** (House committee printing) as follows:

(1) In SECTION 1 of the bill, immediately following added Subsection (d), Section 51.803, Education Code (page 3, between lines 17 and 18), insert the following:

(e) This section expires August 31, 2015.

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

SECTION \_\_\_. Effective September 1, 2015, Subchapter U, Chapter 51, Education Code, is amended by adding Section 51.8035 to read as follows:

Sec. 51.8035. AUTOMATIC ADMISSION: ALL INSTITUTIONS. (a) Each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated with a grade point average in the top 10 percent of the student's high school graduating class in one of the two school years preceding the academic year for which the applicant is applying for admission and the applicant graduated from a public or private high school in this state accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. To qualify for admission under this section, an applicant must submit an application before the expiration of any application filing deadline established by the institution and, if the applicant graduated from a high school operated by the United States Department of Defense, must be a Texas resident under Section 54.052 or be entitled to pay tuition fees at the rate provided for Texas residents under Section 54.058(d) for the term or semester to which admitted.

(b) After admitting an applicant under this section, the institution shall review the applicant's record and any other factor the institution considers appropriate to determine whether the applicant may require additional preparation for college-level work or would benefit from inclusion in a retention program. The institution may require a student so identified to enroll during the summer immediately after the

student is admitted under this section to participate in appropriate enrichment courses and orientation programs. This section does not prohibit a student who is not determined to need additional preparation for college-level work from enrolling, if the student chooses, during the summer immediately after the student is admitted under this section.

(c) A reference in law to former Section 51.803, Education Code, is a reference to this section unless the context clearly indicates otherwise.

### **Floor Amendment No. 9**

Amend **CSSB 101** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter U, Chapter 51, Education Code, is amended by adding Section 51.8035 to read as follows:

Sec. 51.8035. AUTOMATIC ADMISSION OF APPLICANTS COMPLETING CORE CURRICULUM AT ANOTHER INSTITUTION. (a) In this section:

(1) "Core curriculum" means the core curriculum adopted by an institution of higher education under Section 61.822.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

(b) A general academic teaching institution shall admit an applicant for admission to the institution as a transfer undergraduate student who:

(1) graduated from high school not earlier than the fourth school year before the academic year for which the applicant seeks admission and who qualified to be offered admission to the general academic teaching institution under Section 51.803 at the time of graduation;

(2) first enrolled in an institution of higher education not earlier than the second academic year before the academic year for which the applicant seeks admission;

(3) completed the core curriculum at an institution of higher education, other than the institution to which the applicant seeks admission, with a cumulative grade point average of at least 3.25 on a four-point scale or the equivalent; and

(4) submits an application for admission as a transfer student before the expiration of any application filing deadline established by the institution.

(c) For purposes of this section, transfer semester credit hours from a different institution of higher education and semester credit hours earned by examination shall be included in determining whether the person completed the core curriculum at an institution of higher education.

### **Floor Amendment No. 10**

Amend **CSSB 101** (House committee printing) in SECTION 1 of the bill as follows:

(1) In added Subsection (c), Section 51.803, Education Code (page 2, line 20), strike "accepted admission offers" and substitute "been offered admission".

(2) In added Subsection (d), Section 51.803, Education Code (page 3, line 10), strike "accepted admission offers" and substitute "been offered admission".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 101** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Nelson, Zaffirini, Janek, and Ellis.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3105**

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3105** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3105** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Shapiro, Hinojosa, Ellis, and Fraser.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2096**

Senator Uresti called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2096** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2096** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Hinojosa, Lucio, Patrick, and Estes.

#### **SENATE BILL 2003 WITH HOUSE AMENDMENT**

Senator Duncan, on behalf of Senator Estes, called **SB 2003** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 2003** (House committee printing) as follows:

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

ARTICLE 1. KING'S CROSSING MUNICIPAL UTILITY DISTRICT OF  
GRAYSON COUNTY

(2) Redesignate SECTIONS 1-3 of the bill as SECTIONS 1.01-1.03.

(3) In SECTION 1 of the bill, in added Subsection (a), Section 8251.005, Special District Local Laws Code (page 2, line 10), strike "Section 2 of the Act" and substitute "Section 1.02 of the Act".

(4) In SECTION 1 of the bill, in added Subsection (b), Section 8251.005, Special District Local Laws Code (page 2, lines 11 and 12), strike "Section 2 of the Act" and substitute "Section 1.02 of the Act".

(5) In SECTION 3 of the bill (page 12, lines 10-27), strike "Act" each time the word appears and substitute "article".

(6) Strike SECTION 4 of the bill (page 13, lines 1-5), substitute the following appropriately numbered articles and sections, and renumber subsequent articles and sections accordingly:

ARTICLE \_\_\_\_ . DOUBLE PLATINUM RANCH WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 1 OF GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle I, Title 6, Special District Local Laws Code, is amended by adding Chapter 9206 to read as follows:

CHAPTER 9206. DOUBLE PLATINUM RANCH WATER CONTROL AND  
IMPROVEMENT DISTRICT NO. 1 OF GRAYSON COUNTY  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9206.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Double Platinum Ranch Water Control and Improvement District No. 1 of Grayson County.

Sec. 9206.002. NATURE OF DISTRICT. The district is a water control and improvement district in Grayson County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 9206.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 9206.064 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred to Grayson County; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 9206.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

- (2) the right of the district to impose taxes;
- (3) the validity of the district's bonds, notes, or other indebtedness; or
- (4) the legality or operation of the district or the board.

Sec. 9206.005. ANNEXATION BY CITY OF GUNTER. (a) Notwithstanding any other law, if all of the territory of the district is annexed by the City of Gunter into the corporate limits of that municipality before the date of the election held to confirm the creation of the district, the district may not be dissolved and shall continue until the district is dissolved under Section 43.074, Local Government Code.

(b) Any future annexation or inclusion of additional territory into a district governed by this chapter may not occur unless the City of Gunter is allowed to voluntarily annex the same territory into its corporate limits.

[Sections 9206.006-9206.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9206.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Except as provided by Section 9206.061 of this code and Section 49.102, Water Code, directors serve staggered four-year terms, with the terms of two or three directors expiring June 1 of each even-numbered year.

Sec. 9206.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 9206.053-9206.060 reserved for expansion]

#### SUBCHAPTER B-1. TEMPORARY PROVISIONS

Sec. 9206.061. INITIAL DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as initial directors the five persons named in the petition.

(b) The commission shall appoint as initial directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If an initial director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Initial directors serve until the earlier of:

(1) the date the first directors are elected at the confirmation election under Section 9206.064; or

(2) the date this subchapter expires under Section 9206.066.

Sec. 9206.062. ORGANIZATIONAL MEETING OF INITIAL DIRECTORS. As soon as practicable after all the initial directors have qualified under Section 49.055, Water Code, the initial directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the initial directors shall elect officers from among the initial directors and conduct any other district business.

Sec. 9206.063. CONSENT OF MUNICIPALITY REQUIRED. The initial directors may not hold an election under Section 9206.064 until all of the territory of the district is included in the corporate limits of the City of Gunter.

Sec. 9206.064. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The initial directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.



Sec. 9206.065. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 9206.064 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 9206.066. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 9206.067-9206.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 9206.101. WATER CONTROL AND IMPROVEMENT DISTRICT POWERS AND DUTIES. (a) The district has the powers and duties provided by the general law of this state, including Chapters 49 and 51, Water Code, applicable to water control and improvement districts created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding Subsection (a), the district may not act as a retail provider of water or wastewater services.

(c) The district shall make its water and wastewater facilities available to an entity holding the applicable certificate of convenience and necessity.

Sec. 9206.102. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet or exceed all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of the municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

(c) If a portion of the territory of the district is excluded from the corporate limits of the City of Gunter, the district shall:

(1) improve, maintain, repair, and operate the roads located in that portion of territory in accordance with the ordinances and rules of the political subdivision possessing jurisdiction over the roads in that portion of territory; and

(2) pay the entire cost of performing the district's duties under Subdivision (1).

Sec. 9206.103. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if:

(1) the district has no outstanding bonded debt;

(2) the district is not imposing ad valorem taxes; and

(3) each new district is within the corporate limits of the City of Gunter.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code. Sections 51.748 through 51.753, Water Code, do not apply to the district.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) At the time of creation, any new district created by the division of the district may not contain any land outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter.

[Sections 9206.104-9206.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9206.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 9206.201.

[Sections 9206.152-9206.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 9206.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 51, Water Code, to finance the construction, maintenance, or operation of a project under Section 9206.101 or 9206.102.

(b) The district may not issue bonds to finance projects authorized by Section 9206.102 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 9206.102 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Double Platinum Ranch Water Control and Improvement District No. 1 of Grayson County includes all the territory contained in the following area:

TRACT ONE:

All that certain tract or parcel of land situated in the John Palms Survey, Abstract Number 926, County of Grayson, State of Texas, said tract being part of a called 197.3 acre tract as described in Deed to Dryden Dorchester Ltd., filed 27 December 2000, and Recorded in Volume 3014, Page 743 of the Deed Records of the County of Grayson, State of Texas, and being more fully described as follows:

BEGINNING for the northeast corner of the tract being herein at a Wood Fence corner Post, said post being the northeast corner of said Dryden tract, and the southeast corner of a tract as described in Deed to Gordon W. Doodier et ux, Delores Goodier, filed 14 January 1971, and Recorded in Volume 1179, Page 63 of said Deed Records, said post also being on a west line of a called 1022 acre tract as described in Tract 7 in Deed to Jeribeth Sharp, filed 30 June 1998, and Recorded in Volume 2668 Page 09 of said Deed Records;

THENCE South 00 degrees 20 minutes 01 seconds East, with the east line of said Dryden tract, and west line of said Sharp tract, a distance of 3318.06 feet to a set ½ inch Steel Square Tubing for the southeast corner of said Dryden tract, and an ell corner of said Sharp tract;

THENCE South 88 degrees 45 minutes 58 8 seconds West, with the south line at said Dryden tract, a distance of 2576.18 feet to a set 1/2 inch Steel Square Tubing for the southwest corner of said Dryden tract, and an ell corner of said Sharp tract, Thence: North 00 degrees 23 minutes 33 seconds West, with the west line of said Dryden tract, a distance of 3325.00 feet to a found ½ inch Steel Rebar at the base of a wood fence corner post, being an ell corner of said Dryden tract and Sharp tract and the Palms Survey, and being the northeast corner of the John D. Nelson Survey, Abstract Number 902;

THENCE South 89 degrees 45 minutes 03 seconds West, with a wire fence line, and a south line of said Dryden tract, and a line of said Sharp tract, a distance of 790.04 feet to a Wood Fence post for the southwest corner of said Dryden tract, an ell corner of said Palms Survey, and the southeast corner of the Antonia Hernandez Survey, Abstract Number 489;

THENCE North, a distance of 26.12 feet to a set ½ inch Steel Square Tubing Ike the northwest corner of said Dryden tract, and the southwest corner of a tract described in Deed to Marjoriet Limited, filed 24 March 1999, and Recorded in Volume 2769 Page 624 of said Deed Records;

THENCE North 89 degrees 45 minutes 03 seconds East, with the north line of said Dryden tract, and the south line of said Marjoriet tract, a distance of 789.43 feet to a Wood Fence corner Post for a corner;

THENCE North 89 degrees 30 minuses 06 seconds East, with the north line of said Dryden tract, and passing the southeast corner of said Marjoriet tract, and the southwest corner of said Goodier tract, and continuing on said course for a total distance of 2579.75 feet to the POINT OF BEGINNING and containing 197.783 acres of land.

TRACT TWO:

Being a 1,022.20 acre tract of land situated in the John Palms Survey, Abstract No. 926, and the John D. Nelson Survey, Abstract No. 902, and being that certain tract of land conveyed to as Tract I, to Marita Wiseman Sharp, Marita Wiseman Sharp Grantor Trust, and Billy Jack Sharp Grantor Trust, by deed recorded in Volume 2427, Page 448, and also conveyed as Tract 7, to Billy Jack Sharp Grantor Trust, by deed recorded in Volume 2668, Page 00009, all of the Deed Records of Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod set for corner, said point being the southeast corner of said Billy Jack Sharp Grantor Trust tract, and being at the centerline intersection more or less, of McDonald Road, and Kimberlin Road;

THENCE North 86°52'06" West, along the common line of said Billy Jack Sharp Grantor Trust tract, and the centerline more or less of said Kimberlin Road, and along the south line of said Palms Survey, passing the southwest corner of said Palms Survey, same being the southeast corner of said Nelson Survey, and continuing along the south line of said Nelson Survey, a distance of 6400.79 feet to a 1/2 inch iron rod set for corner, said point being in the centerline of Kimberlin Road more or less, said point being the southwest corner of said Billy Jack Sharp Grantor Trust tract, and being the southeast corner of a called 1073.77 acre tract of land conveyed to Davidson Land and Cattle Company, by deed recorded in Volume 2235, Page 583, of the Deed Records of Grayson County, Texas;

THENCE North 02°35'02" East, along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 1073.77 acre tract, a distance of 3806.58 feet to a 1/2 inch iron rod found for corner;

THENCE North 85°53'34" West, continuing along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 1073.77 acre tract, a distance of 150.50 feet to a 1/2 inch iron rod found for corner;

THENCE North 02°33'45" East, continuing along the common line of said Billy Sank Grantor Trust tract, and said called 1073.77 acre tract, a distance of 1112.85 feet to a 1/2 inch iron rod found for corner;

THENCE South 87°09'16" East, continuing along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 1073.77 acre tract, a distance of 149.97 feet to a 1/2 inch iron rod found for corner;

THENCE North 02°38'21" East, continuing along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 1073.77 acre tract, a distance of 2500.00 feet to a 1/2 inch iron rod found for corner, said point being in the north line of said Nelson Survey, and the south line of Antonio Hernandez Survey, Abstract No. 489, and being in the south line of a called 300 acre tract of land conveyed to Lucian Touchtone, et ux, by deed recorded in Volume 1013, Page 677, of the Deed Records of Grayson County, Texas, and being the northeast corner of said called 1073.77 acre tract, and being the northwest corner of said Billy Jack Sharp Grantor Trust tract;

THENCE South 87°07'47" East, along the common line of said Palms Survey, and the said Antonio Survey, and the common line of said Billy Jack Sharp Grantor Trust tract, and said called 300 acre tract, and passing the southeast corner of said called 300 acre tract, same being the southeast corner of said Antonio Survey, same being the southwest corner of said Palms Survey, and being the southwest corner of a called 108.84 acre tract of land conveyed to Lucian Touchtone, by deed recorded in Volume 1219, Page 360, of the Deed Records of Grayson County, Texas, and continuing a total distance of 2698.53 feet to a 1/2 inch iron rod found for corner, said point being the northeast corner of said Nelson Survey, and an ell corner of a called 197.3 acre tract of land conveyed to S.A. Schott by deed recorded in Volume 359, Page 369, of the Deed Records of Grayson County, Texas;

THENCE South 02°52'48" West, along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 197.3 acre tract, a distance of 3325.00 feet to a 1/2 inch iron rod set for corner, said point being the southwest corner of said called 197.3 acre tract;

THENCE South 87°56'40" East, along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 197.3 acre tract, a distance of 2577.31 feet to a 1/2 inch iron rod set for corner, said point being the southeast corner of said called 197.3 acre tract;

THENCE North 02°54'54" East, along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 197.3 acre tract, a distance of 3318.06 feet to a 1/2 inch iron rod set for corner, said point being the northwest corner of said called 197.3 acre tract, same being the southeast corner of a called 245.67 acre tract of land conveyed to Gordon W. Goodier, et ux, by deed recorded in Volume 1179, Page 63, of the Deed Records of Grayson County, Texas;

THENCE North 03°09'39" East, along the common line of said Billy Jack Sharp Grantor Trust tract, and said called 245.67 acre tract, a distance of 4542.15 feet to a 1/2 inch iron rod found for corner, said point being the northwest corner of said Billy Jack Sharp Grantor Trust tract, same being the northeast corner of said called 245.67 acre tract, and being in the south right-of-way line of F.M. Highway 902;

THENCE South 86°51'00" East, along the north line of said Billy Jack Sharp Grantor Trust tract, with the south right-of-way line of F.M. Highway 902, a distance of 1119.25 feet to a railroad spike found for corner, said point being in the centerline intersection more or less of the south right-of-way line of F.M. Highway 902, and McDonald Road, and being in the east line of said Palms Survey;

THENCE South 02°47'31" West, with the east line of said Palms Survey, and the east line of said Billy Jack Sharp Grantor Trust tract, and along the centerline of McDonald Road more or less, a distance of 12,018.20 feet to the POINT OF BEGINNING and containing 44,527,033 square feet or 1,022.20 acres of computed land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. FOUR SEASONS RANCH MUNICIPAL UTILITY DISTRICT  
NO. 1 OF DENTON COUNTY

SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8208 to read as follows:

CHAPTER 8208. FOUR SEASONS RANCH MUNICIPAL UTILITY DISTRICT  
NO. 1 OF DENTON COUNTY  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8208.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Four Seasons Ranch Municipal Utility District No.

1 of Denton County.

Sec. 8208.002. NATURE OF DISTRICT. The district is a municipal utility district in Denton County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8208.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8208.024 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Denton County any assets that remain after the payment

of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8208.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or other indebtedness; or

(4) the legality or operation of the board.

[Sections 8208.005-8208.020 reserved for expansion]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8208.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8208.024; or

(2) the date this subchapter expires under Section 8208.026.

Sec. 8208.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8208.023. CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8208.024 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located, if any, has adopted a resolution consenting to the creation of the district.

Sec. 8208.024. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

Sec. 8208.025. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8208.024 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8208.026. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8208.027-8208.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8208.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

Sec. 8208.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

[Sections 8208.053-8208.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8208.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8208.102. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads, or improvements in aid of those roads, inside the district.

(b) A road project must meet or exceed all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

(c) The district may not undertake a road project unless each municipality in whose corporate limits or extraterritorial jurisdiction the district is located consents by ordinance or resolution.

(d) The district shall, at its sole cost and expense, maintain, improve, operate, and repair all roads constructed or acquired by the district unless the municipality or county in which a road is located voluntarily assumes the obligation. An assumption of an obligation under this subsection is not valid or binding unless the assumption is in writing, executed by the necessary parties, and filed in the land records of the county in which the road is located.

Sec. 8208.103. COMPLIANCE WITH MUNICIPAL ORDINANCES OR RESOLUTIONS. The district shall comply with all applicable requirements of any ordinance or resolution adopted by the governing body of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8208.104. ANNEXATION OF LAND IN GRAYSON COUNTY. The district may not annex land located in Grayson County without the prior consent of the Commissioners Court of Grayson County.

Sec. 8208.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) A new district, at the time it is created by the division of the district, may not contain land outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter.

[Sections 8208.106-8208.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8208.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of and interest on bonds issued under Section 8208.201.

[Sections 8208.152-8208.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 8208.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, and to finance the construction, maintenance, or operation of projects under Sections 8208.101 and 8208.102.

(b) The district may not issue bonds to finance projects authorized by Section 8208.102 unless the issuance is approved by a vote of a two-thirds majority of district voters voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8208.102 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Four Seasons Ranch Municipal Utility District No. 1 of Denton County initially includes all the territory contained in the following area:

All that certain tract or parcel of land situated in the Juana Curbello Survey, Abstract Number 213, and the A. H. Gee Survey, Abstract Number 1522, County of Denton, State of Texas, said tract being all of a Tract, as described in deed to Sadot Venture, LTD , filed 03 December 2003, and recorded in clerk number 2003-195563, and being all of a tract as described in deed to McKinney 17 Venture L.T.D., filed 28 May 2002, and recorded in volume 3257 page 22 of the Deed Records of the County of Grayson, State of Texas, and recorded in volume 5094 page 2020 of the Deed Records of the County of Denton, State of Texas, said tract being all of a Tract, as described in deed to Sadot Venture, LTD , filed 17 December 2003, and recorded in clerk number 2003-203006, and being all of a tract as described in deed to Netzer Environmental Consulting,, filed 28 May 2002, and recorded in volume 5094 page 2014 of the Deed Records of the County of Denton, State of Texas and being more fully described as follows:

Beginning for the southwest corner of the tract being described herein at a found 1/2 inch rebar at the intersection of Garell Road and Fritcher Road, said rebar being the southwest corner of said Brock South tract;

Thence: North 00 degrees 32 minutes 08 seconds West, with the west line of said Brock South tract, and with the center of said Garell Road, a distance of 2487.12 feet to a found 1/2 inch rebar for an angle point in the west line of said Brock South tract, same being an angle point in said road;

Thence: North 00 degrees 01 minutes 19 seconds West, with the west line of said Brock South tract, and with the center of said road, a distance of 1439.64 feet to a found 1/2 inch rebar for the northwest corner of said Brock South tract, same being a turn in said road;



Thence: North 86 degrees 29 minutes 35 seconds East, with the north line of said Brock South tract, and with the center of said road, a distance of 256.11 feet to a found 1/2 inch rebar for an ell corner of this tract, and said rebar being the southwest corner of said Street tract, same being a turn in said road, said rebar also being an angle point in the north line of said Brock South tract;

Thence: North 02 degrees 34 seconds 12 seconds East, with the west line of said Netzer tract, and with the center of said road, a distance of 2019.60 feet to a point for an ell corner of this tract;

Thence: North 89 degrees 56 minutes 50 seconds East, a distance of 27.25 feet to a found 1/2 inch steel rebar for a corner of this tract;

Thence: North 02 degrees 25 seconds 53 seconds East, with the west line of said Venture tract, and with the east side of said road, a distance of 1028.83 feet to a point for an ell corner of this tract;

Thence: North 89 degrees 53 minutes 08 seconds East, a distance of 521.59 feet to a found 1/2 inch rebar;

Thence: North 00 degrees 00 minutes 32 seconds East, with the west line of said venture tract, a distance of 4225.1 feet to a found 1/2 inch steel square tubing for the northwest corner of said Venture tract;

Thence: North 89 degrees 31 minutes 51 seconds East, with the north line of said Venture tract, a distance of 866.39 feet to a set 1/2 inch steel square tubing for an ell corner of this tract;

Thence: South 00 degrees 06 minutes 09 seconds East, a distance of 18.01 feet to a set 1/2 inch steel square tubing for an ell corner of this tract;

Thence: North 89 degrees 45 minutes 28 seconds East, with the north line of said Brock North tract, and with the center of said road, a distance of 1130.35 feet for a corner of this tract;

Thence: South 00 degrees 07 minutes 51 seconds East, with the approximate location of the county line, a distance of 2818.67 feet for a corner of this tract;

Thence: North 89 degrees 45 minutes 28 seconds East, with the approximate location of the county line a distance of 2100.00 feet for a corner of this tract;

Thence: South 89 degrees 59 minutes 54 seconds East, a distance of 244.55 feet to a found 1/2 inch steel square tubing, said tubing being in the intersection of Merilee Road and County Road Number 10;

Thence: South 00 degrees 17 minutes 37 seconds East, with the center of said road, a distance of 1409.82 feet to a found 1/2 inch rebar;

Thence: South 00 degrees 18 minutes 38 seconds East, with the east line of said Street tract, and with the center of said road, and passing at 3031.32 feet the southeast corner of said Street tract, same being the northeast corner of said Brock South tract, and continuing on said course a total distance of 3071.37 feet to a found 1/2 inch rebar for an angle point in said road;

Thence: South 00 degrees 23 minutes 56 seconds East, with the east line of said Brock South tract, and with the center of said road, a distance of 1104.84 feet to a found 1/2 inch rebar for the most easterly southeast corner of said Brock South tract;

Thence: North 89 degrees 30 minutes 05 seconds West, a distance of 27.25 feet to a old wood fence corner post;

Thence: South 00 degrees 19 minutes 28 seconds East, with the east line of said road, a distance of 1292.99 feet to a pipe fence corner post for an ell corner of this tract;

Thence: North 89 degrees 31 minutes 21 seconds West, with the south line of said Venture tract, a distance of 3326.78 feet to a pipe fence corner post for an ell corner of said Venture South tract;

Thence: South 00 degrees 41 minutes 02 seconds East, a distance of 1534.63 feet to a found nail for the southeast corner of said Venture tract, said nail being in the center of Fritcher Road;

Thence: North 89 degrees 30 minutes 14 seconds West, with the south line of said Venture tract, and with the center of said road, a distance of 527.38 feet to a found 1\2 inch rebar for an ell corner of said Venture tract;

Thence: South 89 degrees 34 minutes 19 seconds West, with the south line of said Venture tract, and with the center of said road, a distance of 1437.85 feet to the POINT OF BEGINNING and containing 979.408 acres of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. GUNTER MUNICIPAL UTILITY DISTRICT NO. 1

SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8238 to read as follows:

CHAPTER 8238. GUNTER MUNICIPAL UTILITY DISTRICT NO. 1

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8238.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Gunter Municipal Utility District No. 1.

Sec. 8238.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8238.003. CONFIRMATION ELECTION REQUIRED. The board shall hold an election to confirm the creation of the district as provided by Section 49.102, Water Code.

Sec. 8238.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) All land and other property included in the district will benefit from the improvements and services to be provided by the district.

(b) The district is created to accomplish:

(1) the purposes of a municipal utility district as provided by general law;

and

(2) to the extent authorized by Section 52, Article III, Texas Constitution, the construction, acquisition, improvement, maintenance, or operation of macadamized, graveled, or paved roads or improvements in aid of those roads.

Sec. 8238.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. 8238.006. ANNEXATION BY CITY OF GUNTER. Notwithstanding any other law, if all of the territory of the district is annexed by the City of Gunter into the corporate limits of that municipality before the date of the election under Section 8238.003, the district may not be dissolved and shall continue until the district is dissolved under Section 43.074, Local Government Code.

[Sections 8238.007-8238.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8238.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Except as provided by Section 8238.053, directors serve staggered four-year terms.

Sec. 8238.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

Sec. 8238.053. INITIAL DIRECTORS. (a) The initial board consists of:

(1) Erik Nelson;

(2) David Kelly;

(3) Jeff Sallas;

(4) Howell Kemp; and

(5) Jill Tate.

(b) Unless the initial board otherwise agrees, the initial directors shall draw lots to determine which two directors shall serve until the first regularly scheduled election of directors and which three directors shall serve until the second regularly scheduled election of directors.

Sec. 8238.054. CONSENT OF MUNICIPALITY REQUIRED. The initial directors may not hold an election under Section 8238.003 until:

(1) all of the territory of the district is included in the corporate limits of the City of Gunter; and

(2) the City of Gunter has adopted a resolution consenting to the creation of the district.

[Sections 8238.055-8238.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8238.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES.

(a) The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

(b) The district has the powers and duties necessary to accomplish the purposes for which the district is created.

(c) Notwithstanding Subsection (a), the district may not act as a retail provider of water or wastewater service.

(d) The district shall make the district's water and wastewater facilities available to an entity holding the applicable certificate of public convenience and necessity.

Sec. 8238.102. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or improvements in aid of those roads.

(b) A road project must meet all applicable standards, regulations, and ordinances of the municipality or county in whose jurisdiction the district is located.

(c) If a portion of the territory of the district is excluded from the corporate limits of the City of Gunter, the district shall:

(1) improve, maintain, repair, and operate the roads located in that portion of territory in accordance with the ordinances and rules of the political subdivision possessing jurisdiction over the roads in that portion of territory; and

(2) pay the entire cost of performing the district's duties under Subdivision (1).

Sec. 8238.103. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section 54.016, Water Code, the district shall comply with all applicable requirements of any ordinance or resolution adopted by the governing body of the municipality that consents to the creation of the district or to the inclusion of lands within the district.

[Sections 8238.104-8238.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8238.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by revenue or contract payments from any source other than ad valorem taxation.

(b) The district must hold an election in the manner provided by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an operation and maintenance tax or issue bonds payable from ad valorem taxes.

Sec. 8238.152. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8238.151, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

[Sections 8238.153-8238.200 reserved for expansion]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 8238.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

(b) The district may not issue bonds to finance projects authorized by Section 8238.102 unless the issuance is approved by a vote of a two-thirds majority of the voters of the district voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8238.102 may not exceed one-fourth of the assessed value of the real property in the district.

Sec. 8238.202. TAXES FOR BONDS. At the time bonds payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

SECTION \_\_\_\_ .02. The Gunter Municipal Utility District No. 1 initially includes all the territory contained in the following area:

BEING a tract of land located in the JESSE BARKER SURVEY, ABSTRACT NO. 70, ROBERT MASON SURVEY, ABSTRACT NO. 784 and the THOMAS POLK SURVEY, ABSTRACT NO. 938, Grayson County, Texas and being part of a tract of land described as Tract 2 in Deed to Crooked Cross Partners, LTD., recorded in Volume 3491, Page 263, Deed Records, Grayson County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch square pipe found at the most Northerly Northwest corner of said Tract 2 and the Northeast corner of a tract of land described in Deed to Marion Lewis Cole and Linda Rudolf Cole, recorded in Volume 2796, Page 848, Deed Records, Grayson County, Texas, said point being the Southeast corner of a tract of land described in Deed to Martinek Grain and Bins, Inc, a Texas Corporation recorded in Volume 2352, Page 18, Deed Records Grayson County, Texas, and the Southwest corner of a tract of land described in Deed to Kenneth B. Jaresh and Gail A. Jaresh, recorded in Volume 2344, Page 66, Deed Records, Grayson County, Texas;

THENCE along the North line of said Tract 2 the following three (3) courses and distances:

South 88 degrees 57 minutes 20 seconds East, a distance of 941.12 feet to a 1/2 inch square pipe found at the Southeast corner of said Jaresh tract and the Southwest corner of a tract of land described in Deed to Beatrice Ann Jaresh, recorded in Volume 1251, Page 169, Deed Records, Grayson County, Texas;

South 88 degrees 45 minutes 17 seconds East, a distance of 739.56 feet to a 1/2 inch iron rod found at the Southeast corner of said Beatrice Ann Jaresh tract;

South 88 degrees 52 minutes 54 seconds East, a distance of 1,736.94 feet to a 1/2 inch iron rod with a red plastic cap stamped "3258" found at the Northeast corner of said Tract 2 and the Northwest corner of a tract of land described in Deed to Longhorn Trail Ranch II, LTD., recorded in Volume 3768, Page 454, Deed Records Grayson County, Texas;

THENCE South 00 degrees 43 minutes 35 seconds West, leaving said North line, a distance of 2,252.51 feet to a 1/2 inch iron rod found at the Southwest corner of said Longhorn tract;

THENCE South 42 degrees 04 minutes 28 seconds West, a distance of 3,007.40 feet to a 1/2 inch iron rod found at the Northeast corner of a tract of land described in Deed to D.B. Tate, Jr. and Betty Jane Tate, recorded in Volume 2460, Page 683, Deed records, Grayson County, Texas;

THENCE North 89 degrees 19 minutes 32 seconds West, a distance of 4,477.51 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set in the approximate center line of Old Scaggs School Road, at the most Northerly Southwest corner of said Tract 2 from which a 1/2 inch iron rod found bears South 49 degrees 24 minutes 30 seconds West, a distance of 9.55 feet;

THENCE along the approximate center line of said Old Scaggs School Road the following four (4) courses and distances:

North 00 degrees 07 minutes 27 seconds West, a distance of 1,448.47 feet to a 1/2 inch iron rod found at the most Southerly Northwest corner of said Tract 2;

South 89 degrees 02 minutes 31 seconds East, a distance of 3,081.02 feet to a 1/2 inch iron rod found at a Westerly Ell corner of said Tract 2 and the Southeast corner of a tract of land described in Deed to Platinum Ranch Venture, LTD., recorded in Volume 3072, Page 217, Deed Records, Grayson County, Texas;

North 00 degrees 20 minutes 32 seconds East, a distance of 1,561.57 feet to a 1/2 inch iron rod found at the Northeast corner of said Platinum Ranch Venture tract and the Southeast corner of a said Cole tract;

North 00 degrees 38 minutes 33 seconds East, a distance of 1,540.67 feet to the POINT OF BEGINNING and containing 404.154 acres of land, more or less.

SECTION \_\_\_\_ .03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. GUNTER MUNICIPAL UTILITY DISTRICT NO. 2  
SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8239 to read as follows:

CHAPTER 8239. GUNTER MUNICIPAL UTILITY DISTRICT NO. 2

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8239.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of the district.
- (2) "Director" means a member of the board.
- (3) "District" means the Gunter Municipal Utility District No. 2.

Sec. 8239.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8239.003. CONFIRMATION ELECTION REQUIRED. The board shall hold an election to confirm the creation of the district as provided by Section 49.102, Water Code.

Sec. 8239.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) All land and other property included in the district will benefit from the improvements and services to be provided by the district.

(b) The district is created to accomplish:

- (1) the purposes of a municipal utility district as provided by general law;
- and
- (2) to the extent authorized by Section 52, Article III, Texas Constitution, the construction, acquisition, improvement, maintenance, or operation of macadamized, graveled, or paved roads or improvements in aid of those roads.

Sec. 8239.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

Sec. 8239.006. ANNEXATION BY CITY OF GUNTER. Notwithstanding any other law, if all of the territory of the district is annexed by the City of Gunter into the corporate limits of that municipality before the date of the election under Section 8239.003, the district may not be dissolved and shall continue until the district is dissolved under Section 43.074, Local Government Code.

[Sections 8239.007-8239.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8239.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Except as provided by Section 8239.053, directors serve staggered four-year terms.

Sec. 8239.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

Sec. 8239.053. INITIAL DIRECTORS. (a) The initial board consists of:

- (1) Jennifer Milstead;
- (2) Collette Sallas;
- (3) Eddie Collins;
- (4) Herschel Pierce; and
- (5) Todd Cook.

(b) Unless the initial board otherwise agrees, the initial directors shall draw lots to determine which two directors shall serve until the first regularly scheduled election of directors and which three directors shall serve until the second regularly scheduled election of directors.

Sec. 8239.054. CONSENT OF MUNICIPALITY REQUIRED. The initial directors may not hold an election under Section 8239.003 until:

- (1) all of the territory of the district is included in the corporate limits of the City of Gunter; and
- (2) the City of Gunter has adopted a resolution consenting to the creation of the district.

[Sections 8239.055-8239.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8239.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES.

(a) The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

(b) The district has the powers and duties necessary to accomplish the purposes for which the district is created.

(c) Notwithstanding Subsection (a), the district may not act as a retail provider of water or wastewater service.

(d) The district shall make the district's water and wastewater facilities available to an entity holding the applicable certificate of public convenience and necessity.

Sec. 8239.102. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or improvements in aid of those roads.

(b) A road project must meet all applicable construction standards, regulations, and ordinances of the municipality or county in whose jurisdiction the district is located.

(c) If a portion of the territory of the district is excluded from the corporate limits of the City of Gunter, the district shall:

(1) improve, maintain, repair, and operate the roads located in that portion of territory in accordance with the ordinances and rules of the political subdivision possessing jurisdiction over the roads in that portion of territory; and

(2) pay the entire cost of performing the district's duties under Subdivision (1).



Sec. 8239.103. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCES OR RESOLUTIONS. Subject to the limitations of Section 54.016, Water Code, the district shall comply with all applicable requirements of any ordinance or resolution adopted by the governing body of the municipality that consents to the creation of the district or to the inclusion of lands within the district.

[Sections 8239.104-8239.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8239.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by revenue or contract payments from any source other than ad valorem taxation.

(b) The district must hold an election in the manner provided by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an operation and maintenance tax or issue bonds payable from ad valorem taxes.

Sec. 8239.152. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8239.151, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

[Sections 8239.153-8239.200 reserved for expansion]

#### SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 8239.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

(b) The district may not issue bonds to finance projects authorized by Section 8239.102 unless the issuance is approved by a vote of a two-thirds majority of the voters of the district voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8239.102 may not exceed one-fourth of the assessed value of the real property in the district.

Sec. 8239.202. TAXES FOR BONDS. At the time bonds payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

SECTION \_\_\_\_\_.02. The Gunter Municipal Utility District No. 2 initially includes all the territory contained in the following area:

BEING a tract of land located in the W.H. CAMPBELL SURVEY, ABSTRACT NO. 243, W.M. LAKIN SURVEY, ABSTRACT NO. 714, JOHN McMULLEN AND JAMES McGLOIN SURVEY, ABSTRACT NO. 761, ROBERT MASON SURVEY, ABSTRACT NO. 784 and the THOMAS POLK SURVEY, ABSTRACT NO. 938, Grayson County, Texas and being all of a tract of land described as Tract 1 and being part of a tract of land described as Tract 2 in Deed to Crooked Cross Partners, LTD., recorded in Volume 3491, Page 263, Deed Records, Grayson County, Texas and being more particularly described as follows:

BEGINNING at a PK nail found in the approximate center line of Marilee Road, at the Southwest corner of said Tract 2;

THENCE North 00 degrees 11 minutes 49 seconds West, a distance of 2,905.02 feet to a railroad tie fence post found for corner;

THENCE North 00 degrees 20 minutes 00 seconds West, a distance of 1,448.81 feet to a 1/2 inch iron rod found at the Northeast corner of a tract of land described in Deed to D.B. Tate, Jr. and Betty Jane Tate, recorded in Volume 2460, Page 683, Deed Records, Grayson County, Texas;

THENCE North 42 degrees 04 minutes 28 seconds East, a distance of 3,007.40 feet to a 1/2 inch iron rod found at the Southwest corner of a tract of land described in deed to Longhorn Trail Ranch II, LTD., recorded in Volume 3768, Page 454, Deed Records, Grayson County, Texas;

THENCE South 89 degrees 02 minutes 27 seconds East, a distance of 1,756.30 feet to a 1/2 inch iron rod found at the most Easterly Northeast corner of said Tract 2 and the Northwest corner of said Tract 1;

THENCE South 88 degrees 58 minutes 07 seconds East, a distance of 2,459.10 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "#5439" found in the approximate centerline of Longhorn Trail Drive at the Northeast corner of said Tract 1 and the Northwest corner of a tract of land described as Tract 2 in Deed to Jenchin Partners, LTD., recorded in Volume 3014, Page 569, Deed Records, Grayson County, Texas;

THENCE South 00 degrees 33 minutes 16 seconds East, along the West line of said Jenchin Tract 2 and said approximate centerline of said Longhorn Trail Drive, a distance of 2,473.20 feet to a 5/8 inch iron rod found at the Southeast corner of said Tract 1 and the Northeast corner of a tract of land described in Deed to J.B. Hunn and wife, Mitzi M. Hunn, recorded in Volume 2625, Page 182, Deed Records, Grayson County, Texas;

THENCE North 89 degrees 28 minutes 11 seconds West, a distance of 2,498.95 feet to a 5/8 inch iron rod found at the Southwest corner of said Tract 1 in the East line of said Tract 2 at the Northwest corner of said Hunn tract

THENCE South 00 degrees 32 minutes 49 seconds West, a distance of 2,235.87 feet to a metal fence post found at the Southwest corner of said Hunn tract and the Northwest corner of a tract of a tract of land described in Deed to Thomas O. Eller, recorded in Volume 1281, Page 315, Deed Records, Grayson County, Texas;

THENCE South 00 degrees 08 minutes 34 seconds East, a distance of 1,878.75 feet to a 1/2 inch iron rod found in the approximate centerline of said Marilee Road at the Southeast corner of said Tract 2 and the Southwest corner of said Eller tract;

THENCE North 89 degrees 11 minutes 55 seconds West, a distance of 3,720.37 feet To the POINT OF BEGINNING and containing 657.166 acres of land, more or less.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

#### ARTICLE \_\_\_\_\_. BEXAR METROPOLITAN WATER DISTRICT

SECTION \_\_\_\_\_.01. Section 5A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Subsection (c) to read as follows:

(c) The District's boundaries for the purpose of conducting an election are coextensive with the boundaries of Bexar County.

SECTION \_\_\_\_\_.02. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Section 7A and amending Section 9 to read as follows:

Sec. 7A. The District is governed by the Commissioners Court of Bexar County serving ex officio as the board of directors of the district.

Sec. 9. The Board of Directors from time to time shall be authorized to make or cause to be made surveys and engineering investigations for the information of the District to facilitate the accomplishment of the purposes for which the District is created, as expressed in the provisions of this Act; and may employ engineers, attorneys and all other technical and non-technical employees or assistants and fix and provide the amount and manner of their compensation, and may provide for payment of expenditures deemed essential to the proper maintenance and administration of the District. Notwithstanding Section 49.060, Water Code, a member [The members] of the Board of Directors is not entitled to receive fees of office [shall receive a per diem of not more than Ten Dollars (\$10) per day, for the time actually expended on business of the District, together with traveling and other necessary expenses; provided that such per diem fee shall not be paid to a Director for more than one hundred (100) days in any one year].

SECTION \_\_\_\_\_.03. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is repealed.

SECTION \_\_\_\_\_.04. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_ . KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8264 to read as follows:

CHAPTER 8264. KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8264.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Kimberlin Ranch Municipal Utility District No. 1

of Grayson County.

Sec. 8264.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8264.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8264.023 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Grayson County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8264.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8264.005-8264.020 reserved for expansion]

SUBCHAPTER A-I. TEMPORARY PROVISIONS

Sec. 8264.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8264.023; or

(2) the date this chapter expires under Section 8264.003.

Sec. 8264.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8264.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8264.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8264.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8264.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8264.026-8264.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8264.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8264.052-8264.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8264.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8264.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8264.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8264.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8264.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8264.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8264.107-8264.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8264.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8264.201.

[Sections 8264.152-8264.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8264.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8264.101 or 8264.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8264.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8264.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_.02. The Kimberlin Ranch Municipal Utility District No. 1 of Grayson County includes all the territory contained in the following area:

BEING situated in the County of Grayson, State of Texas, being parts of the JOHN NELSON SURVEY, ABSTRACT NO. 902, the JOHN W. BERGIN SURVEY, ABSTRACT NO. 75, and the ANTONIO HERNANDEZ SURVEY, ABSTRACT NO. 489, also being the 1073.77 acre tract of land conveyed to Davidson Land and Cattle Company, L.P. by deed recorded in Volume 2235, Page 597, Real Property Records, GRAYSON County, Texas and being described by metes and bounds as follows:

BEGINNING at a 2 inch steel rod set at the Southeast corner of the 758.750 acre tract of land conveyed to Larry Lehman, et ux, by deed of record in Volume 2555, Page 624-655, of said Real Property Records, the Southwest corner of said 1073.77 acre tract of land, said rod also being in the North line of the 208.67 acre tract of land conveyed to James and Juanell Bridges Family Living Trust by deed of record in Volume 2506, Page 146, of said Real Property Records;

THENCE North 00 degrees 00 minutes 00 seconds West with the West line of said 1073.77 acre tract and the center of a public road a distance of 4674.02 feet to a 2 inch steel rod set at the Southwest corner of a 177.93 acre tract of land conveyed to Louis M. Rexrode, et ux, by deed of record in Volume 2205, Page 639, of said Real Property Records, also being the Southeast corner of the 133.05 acre tract of land conveyed to Henry S. Jackson, et ux, by deed of record in Volume 2059, Page 273, of said Real Property Records;

THENCE North 89 degrees 22 minutes 34 seconds East with the South line of said 177.93 acre tract a distance of 2805.74 feet to a 2 inch steel rod set at a found wooden stake at the Southeast corner of said 177.93 acre tract;

THENCE North 00 degrees 32 minutes 19 seconds West with a fence and the East line of said 177.93 acre tract of land a distance of 2774.19 feet to a 2 inch steel rod set at a found wooden stake at the Northeast corner of said 177.93 acre tract;

THENCE South 89 degrees 47 minutes 48 seconds West with the North line of said 177.93 acre tract of land a distance of 2765.01 feet to a 2 inch steel rod set at the Northwest corner of said 177.93 acre tract, being in the East line of said 133.05 acre tract;

THENCE North 00 degrees 00 minutes 00 seconds West with the center of a public road and said East line a distance of 1296.86 feet to a 2 inch steel rod set at the Northwest corner of said 1073.77 acre tract, the Southeast corner of the 362.631 acre tract of land conveyed to Taylor Strawn and Ernest B. Strawn, Jr., by deed of record in Volume 2209, Page 772, of said Real Property Records, also being the Southwest corner of the 121.14 acre tract of land described as Part Two and conveyed to Jeribeth Sharp by deed of record in Volume 2668, Page 009, of said Real Property Records;

THENCE North 89 degrees 37 minutes 51 seconds East with the South line of said 121.14 acre tract, a distance of 4016.31 feet to a 2 inch steel rod set at a fence corner, being the Southeast corner of said 121.14 acre tract;

THENCE South 00 degrees 10 minutes 16 seconds East with a fence a distance of 1298.84 feet to a 2 inch steel rod set at a fence post;

THENCE North 89 degrees 30 minutes 06 seconds East with a fence a distance of 2512.99 feet to a 2 inch steel rod set at the most Easterly Northeast corner of said 1073.77 acre tract, the Northwest corner of the 1022.21 acre tract of land described as Part One as conveyed to Jeribeth Sharp by deed of record in Volume 2668, Page 009, of said Real Property Records;

THENCE with the West line of said 1022.21 acre tract of land and an existing fence line, the following calls and distances:

South 00 degrees 40 minutes 13 seconds East, a distance of 2497.50 feet to a 2 inch steel rod set at a fence corner;

South 89 degrees 32 minutes 01 seconds West a distance of 150.18 feet to a 2 inch steel rod set a fence corner;

South 00 degrees 44 minutes 41 seconds East\_ a distance of 1112.81 feet to a 2 inch steel rod set a fence corner;

South 89 degrees 13 minutes 04 seconds East a distance of 150.56 feet to a 2 inch steel rod set a fence corner;

South 00 degrees 45 minutes 51 seconds East a distance of 3832.16 feet to a 2 inch steel rod set in a public road, being the Southeast corner of said 1073.77 acre tract, also being in the North line of the 67 acre tract of land conveyed to James S. Rodgers, et ux, by deed of record in Volume 1045, Page 759, of the Deed Records, Grayson County, Texas;

THENCE South 89 degrees 24 minutes 04 seconds West with the South line of said 1073.77 acre tract a distance of 6642.95 feet to the POINT OF BEGINNING and CONTAINING 1065.860 acres of land, more or less.

SECTION \_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_ . KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 2  
OF GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8265 to read as follows:

CHAPTER 8265. KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 2  
OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8265.001. DEFINITIONS. In this chapter:



(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Kimberlin Ranch Municipal Utility District No. 2 of Grayson County.

Sec. 8265.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8265.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8265.023 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Grayson County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8265.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8265.005-8265.020 reserved for expansion]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8265.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8265.023; or

(2) the date this chapter expires under Section 8265.003.

Sec. 8265.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8265.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

Sec. 8265.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8265.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8265.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8265.026-8265.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8265.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8265.052-8265.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8265.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8265.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8265.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8265.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8265.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt; and
- (2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_ .02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8265.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8265.107-8265.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8265.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8264.201.

[Sections 8265.152-8265.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 8265.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8265.101 or 8265.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8265.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8265.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_ .02. The Kimberlin Ranch Municipal Utility District No. 2 of Grayson County includes all the territory contained in the following area:

SITUATED in the County of GRAYSON, State of Texas, being a part of the ROBERT MASON SURVEY, ABSTRACT NO. 784 and the SAMUEL Q. PETTUS SURVEY, ABSTRACT NO. 939, being a part of a 297.715 acre tract of land (described as 300.715 acres less 3.00 acres) conveyed by Regis J. Sutton to Jean Anna Sutton in Agreement of Regis J. Sutton and Jean Anna Sutton Partitioning Community Property dated June 3, 1983, recorded in Volume 1650, Page 260, Deed Records, GRAYSON County, Texas, and being more particularly described by metes and bounds as follows to-wit:

BEGINNING at a found 1/2 inch rebar on the most Southerly South line of said 297.715 acre tract, the North line of a 201.711 acre tract of land conveyed by Charles C. Graham, et ux to Mario Feliciano, Trustee by Deed dated July 9, 1980, recorded in Volume 1523, Page 109, Deed Records, GRAYSON County, Texas, said rebar being North 87 degrees 08 minutes 06 seconds West, a distance of 626.13 feet from a found spike nail maintaining the most Southerly Southeast corner of said 297.715 acre tract,

the most Northerly Northeast corner of said 201.711 acre tract, in a public road known as Wall Street Road and on an East line of said Mason Survey, the West line of the William Kinnamon Survey, Abstract No. 676;

THENCE North 87 degrees 08 minutes 06 seconds West, with the general line of a fence, the most Southerly South line of said 297.715 acre tract, the North line of said 201.711 acre tract, a distance of 1141.44 feet to a fence post;

THENCE North 87 degrees 24 minutes 28 seconds West, continuing with the general line of said fence, the Southerly South line of said 297.715 acre tract, the North line of said 201.77 acre tract, a distance of 2156.98 feet to a set spike nail at the base of a fence corner post for the Northwest corner of said 201.711 acre tract, the most Southerly Southwest corner of said 297.715 acre tract, on the East line of a 223.5639 acre tract of land conveyed by Kent Berlin to The Berlin Family Limited Partnership by Deed dated January 10, 2000, recorded in Volume 2881, Page 924, Official Public Records, GRAYSON County, Texas;

THENCE North 03 degrees 33 minutes 37 seconds East, with the general line of a fence, the East line of said 223.5639 acre tract, a distance of 1112.63 feet to a fence corner post maintaining the Northeast corner of said 223.5639 acre tract, an ell corner of said 297.715 acre tract on a North line of said Mason Survey, the South line of said Pettus Survey;

THENCE North 87 degrees 19 minutes 23 seconds West, with the general line of a fence, the North line of said 223.5639 acre tract, a North line of said Mason Survey, the South line of said Pettus Survey, passing the Northwest corner of said 223.5639 acre tract, the Northeast corner of a 20 foot wide strip of land described in Second Tract in Deed from George M. Carter, et ux to Joe D. Johnson by Deed dated March 29, 1961, recorded in Volume 930, Page 211, Deed Records, GRAYSON County, Texas and continuing for a total distance of 2911.41 feet to a set spike nail at the base of a fence corner post for the Northwest corner of said Mason Survey, the most Westerly Southwest corner of said 297.715 acre tract, the Southwest corner of said Pettus Survey, on the East line of the Sarah Shoto Survey, Abstract No. 1079, the East line of a 100 acre tract of land described in First Tract in said Volume 930, Page 211;

THENCE North 03 degrees 27 minutes 34 seconds East, with the West line of said Pettus Survey, the East line of both said Shoto Survey and 100 acre tract, passing the Northeast corner of said 100 acre tract, the Southeast corner of a 499.67 acre tract of land conveyed by Mary H. Martinek to Mary H. Martinek, Trustee of the Mary H. Martinek Revocable Living Trust by Deed dated April 11, 1997, recorded in Volume 2562, Page 196, Official Public Records, GRAYSON County, Texas and continuing with an East line of said 499.67 acre tract for a total distance of 1263.89 feet to a found 1/2 inch rebar at the base of a fence corner post, said rebar maintaining the Northwest corner of said 297.715 acre tract, the Southwest corner of a 223 acre tract of land now or formerly owned by Thelma Hunter (no Deed reference available);

THENCE South 87 degrees 25 minutes 47 seconds East, with the general line of a fence, the South line of said 223 acre tract, at a distance of 6798.67 feet to a found 3/8 inch rebar maintaining the Southeast corner of said 223 acre tract, the most Northerly Northeast corner of said 297.715 acre tract, in said Wall Street Road and on the East line of said Pettus Survey, the West line of said William Kinnamon Survey, the West line of a tract of land described in North Tract in Quitclaim Deed dated September 30,

1997 from Susan C. deCordova to Susan C. deCordova, Trustee of the deCordova Trust recorded in Volume 2577, Page 155, Official Public Records, GRAYSON County, Texas;

THENCE South 03 degrees 15 minutes 00 seconds West, with an East line of both said 297.715 acre tract and Mason Survey, the West line of both said Kinnamon Survey and North Tract, passing the Southeast corner of said Pettus Survey, the most Northerly Northeast corner of said Mason Survey and continuing for a total distance of 1680.66 feet to a found spike nail maintaining a Southeast corner of said 297.715 acre tract, the Northeast corner of a 3.00 acre tract of land conveyed by Anna Houck Trust to AHG Trust by Deed dated January 30, 2002, recorded in Volume 3194, Page 458, Official Public Records, GRAYSON County, Texas;

THENCE North 87 degrees 04 minutes 00 seconds West with the North line of said 3.00 acre tract, a distance of 626.13 feet to a found 1/2 inch rebar maintaining its Northwest corner;

THENCE South 03 degrees 15 minutes 00 seconds West, with the West line of said 3.00 acre tract, at a distance of 208.71 feet passing a found 1/2 inch rebar maintaining its Southwest corner and continuing for a total distance of 711.76 feet to the PLACE OF BEGINNING and CONTAINING 288.92 acres of land, more or less.

#### TRACT 2

All that certain tract or parcel of land situated in the Robert Mason Survey, Abstract Number 784 County of Grayson, State of Texas, said tract being part of a called 69 1/2 acres tract as described in Deed to Marshall E. Anderson et ux, Marquerite Anderson, filed 11 January 1962, and Recorded in Volume 947 Page 387 of the Deed Records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the northeast corner of the tract being described herein at a set 1 1/2 inch Steel Square Tubing, said tubing being the northeast corner of said Anderson tract, and the southeast corner of a called 100 acres tract as described in the First Tract, and on the west line of a called 1.56 acre tract as described in the Second tract in Deed to Joe D. Johnson, filed 30 March 1961, and Recorded in Volume 930 Page 211 of said Deed Records;

Thence: South 03 degrees 29 minutes 22 seconds West, with the east line of said Anderson tract, and with the west line of said Johnson Second Tract, a distance of 609.07 feet to a found 1/2 inch Steel Square Tubing for the northeast corner of a 1.25 acre tract as surveyed out for Dennis Keating dated 27 December 1999;

Thence: North 86 degrees 56 minutes 26 seconds West, with the north line of said Keating tract, a distance of 124.72 feet to a found 1/2 inch Steel Square Tubing for the northwest corner of said Keating tract;

Thence: South 03 degrees 32 minutes 41 seconds West, with the west line of said Keating tract, a distance of 435.58 feet to a found 1/2 inch Steel Square Tubing for the southwest corner of said Heating tract, and on the north Right-of-Way line of Farm-to-Market Road Number 121 as described in Deed to The State of Texas, filed 11 November 1953 and Recorded in Volume 744 Page 72 of said Deed Records

Thence: North 87 degrees 07 minutes 47 seconds West, with the south line of said Anderson tract, and the north ROW line of said FM 121, a distance of 1856.89 feet to a found State of Texas Concrete Right-of-Way Monument for a corner;

Thence: North 73 degrees 24 minutes 31 seconds West, with the south line of said Anderson tract, and the north ROW line of FM 121, a distance of 332.15 feet to a found 1½ inch Steel Square Tubing for the southeast corner of a 5 acre tract as described in Deed to Ronald R. Baker et ux, Joanie C. Baker, filed 06 November 1995, and Recorded in Volume 2428 Page 31 of said Deed Records;

Thence: North 29 degrees 08 minutes 03 seconds West, with the east line of said Baker tract, a distance of 1078.23 feet to a found 1½ inch Steel Square Tubing for the northeast corner of said Baker tract, and on the south line of a tract as described in Deed to Steve Bryant et ux, Judy Bryant, filed 02 January 2003, and Recorded in Volume 3393 Page 846 of said Deed Records;

Thence: South 88 degrees 17 minutes 06 seconds East, with the north line of said Anderson tract, and with the south line of said Bryant tract, a distance of 1574.07 feet to a found 1½ inch Steel Rebar at the base of a wood fence corner post for the southeast corner of said Bryant tract, and the southwest corner of said Johnson First tract;

Thence: South 87 degrees 58 minutes 16 seconds East, with the north line of said Anderson tract, and the south line of said Johnson First Tract, a distance of 1313.83 feet to the POINT OF BEGINNING and containing 58.946 acres of land.

#### TRACT 3

All that certain tract or parcel of land situated in the Robert Mason Survey, Abstract Number 784 and the Sarah Shoto Survey, Abstract Number 1079, County of Grayson, State of Texas, said tract being all of a called 100 acres tract as described in the First Tract, and all of a called 1.56 acre tract as described in the Second tract in Deed to Joe D. Johnson, filed 30 March 1961, and Recorded in Volume 930 Page 211 of the Deed Records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southeast corner of the tract being described herein at a found 1½ inch Steel Square Tubing, said tubing being the southeast corner of said Johnson tract, and the southwest corner of a called 223.457 acre tract as described in Deed to Gunter 223, LTD, filed 06 June 2005, and Recorded in Volume 3870 Page 800 of said Deed Records, said tubing also being on the north Right-of-Way line of Farm-to-Market Road Number 121 as described in Deed to The State of Texas, filed 11 November 1953 and Recorded in Volume 744 Page 72 of said Deed Records;

Thence: North 86 degrees 52 minutes 52 seconds West, with the south line of said Johnson Seconds Tract, and with the north ROW line of said FM 121, a distance of 20.00 feet to a found 1½ inch Steel Square Tubing for the southwest corner of said Johnson Seconds Tract, and the southeast corner of a 1.25 acre tract as surveyed out for Dennis Keating dated 27 December 1999;

Thence: North 03 degrees 29 minutes 02 seconds East, with the west line of said Johnson Second tract, a distance of 1044.78 feet to a set 1½ inch Steel Square Tubing with a plastic cap marked COX 4577 for the southeast corner of said Johnson First tract and the northeast corner of a tract as described in Deed to Marshall E. Anderson et ux, Marquerite Anderson, filed 11 January 1962, and Recorded in Volume 947 Page 387 of said Deed Records;

Thence: North 87 degrees 58 minutes 16 seconds West, with the south line of said Johnson First Tract, and with the north line of said Anderson tract, a distance of 1313.82 feet to a found 1\2 inch Steel Rebar for the southwest corner of said Johnson First Tract, and the southeast corner of a tract as described in Deed to Steve Bryant et ux, Judy Bryant, filed 02 January 2003, and Recorded in Volume 3393 Page 846 of said Deed Records;

Thence: North 03 degrees 21 minutes 26 seconds East, with the west line of said Johnson First Tract, a distance of 3311.44 feet to a Wood Fence corner Post for the northwest corner of said Johnson First Tract;

Thence: South 86 degrees 54 minutes 56 seconds East, with the north line of said Johnson First Tract, a distance of 1313.67 feet to a set 1\2 inch Steel Square Tubing for the northeast corner of said Johnson First Tract, and on the west line of a called 288.92 acre tract as described in Deed to Inwood Plaza Joint Venture, filed 07 January 2004, and Recorded in Volume 3594 Page 147 of said Deed Records;

Thence: South 03 degrees 27 minutes 34 seconds West, with the east line of said Johnson First Tract, a distance of 960.75 feet to a found 1\2 inch Steel Rebar at the base of a Wood Fence corner Post for the northwest corner of said Johnson Second Tract, and the southwest corner of said Inwood Plaza Joint Venture tract;

Thence: South 87 degrees 14 minutes 29 seconds East, with the north line of said Johnson Second Tract, and with the south line of said Inwood Plaza tract, a distance of 20.98 feet to a found 1\2 inch Steel Rebar at the base of a wood fence corner post for the northeast corner of said Johnson Second Tract, and the northwest corner of said Gunter 223 tract;

Thence: South 03 degrees 20 minutes 36 seconds West, with the east line of said Johnson Second Tract, and the west line of said Gunter 223 tract, a distance of 2326.24 feet to a Wood Fence corner Post for an angle point;

Thence: South 03 degrees 29 minutes 00 seconds West, with the east line of said Johnson Second Tract, and the west line of said Gunter 223 tract, a distance of 1045.16 feet to the POINT OF BEGINNING and containing 101.005 acre of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 3  
OF GRAYSON COUNTY

SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8266 to read as follows:

CHAPTER 8266. KIMBERLIN RANCH MUNICIPAL UTILITY DISTRICT NO. 3  
OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8266.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "Director" means a board member.
- (3) "District" means the Kimberlin Ranch Municipal Utility District No. 3

of Grayson County.

Sec. 8266.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8266.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8266.023 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Grayson County any assets that remain after the payment

of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8266.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8266.005-8266.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8266.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8266.023; or

(2) the date this chapter expires under Section 8266.003.



Sec. 8266.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8266.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8266.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8266.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8266.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8266.026-8266.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8266.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8266.052-8266.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8266.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8266.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8266.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8266.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8266.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt; and
- (2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

- (1) outside the area described by Section \_\_\_\_ .02 of the Act creating this chapter; or
- (2) outside the corporate limits of the city of Gunter.

Sec. 8266.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8266.107-8266.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8266.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8266.201.

[Sections 8266.152-8266.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8266.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8266.101 or 8266.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8266.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8266.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_ .02. The Kimberlin Ranch Municipal Utility District No. 3 of Grayson County includes all the territory contained in the following area:

All that certain tract or parcel of land situated in the Ricardo Garcia Survey, Abstract Number 446 and the M.S. Herrera Survey, Abstract Number 545, County of Grayson, State of Texas, said tract being all of a 303.943 acre tract as described in Deed to Morris Morgan Jr., et ux, Bonita Morgan, filed 26 October 1996, and Recorded in Volume 2364 Page 637, and all of a 20.333 acre tract as described in Deed to Morris Morgan Jr., et ux, Bonita Morgan, filed 02 May 2003, and Recorded in Volume 3446 Page 71, and all of a 22.469 acre tract as described in Deed to Morris Morgan Jr., et ux, Bonita Morgan, filed 20 February 2004, and Recorded in Volume 3616 Page 79 of the Deed Records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southeast corner of the tract being described herein at a found 3¼ inch Steel Rod, said rod being the southeast corner of said Morgan 303.943 acre tract, and the northeast corner of a tract as described in Deed to Martinek Grain & Bin Inc., filed 03 August 1994, and Recorded in Volume 2352 Page 18 of said Deed Records, said rod also being in Scharff Road (gravel surfaced);

Thence: South 88 degrees 48 minutes 47 seconds West, with the south line of said Morgan 303.943acre tract, and passing at 22.90 feet a wood fence corner post on the west side of said road, and continuing on said course for a total distance of 3725.83 feet to a found 1½ inch Steel Square Tubing with a plastic cap marked Cox 4577 for the southwest corner of said Morgan 303.943 acre tract, and the southeast corner of said Morgan 20.333 acre tract;

Thence: South 89 degrees 50 minutes 58 seconds West, with the south line of said Morgan 20.333 acre tract, a distance of 624.98 feet to a found 1½ inch Steel Square Tubing with a plastic cap marked COX 4577 for the southwest corner of said Morgan 20.333 acre tract, and the southeast corner of said Morgan 22.469 acre tract;

Thence: South 89 degrees 52 minutes 55 seconds West, with the south line of said Morgan 22.469 acre tract, a distance of 719.91 feet to a found 1½ inch Steel Square Tubing with a plastic cap marked COX 4577 for the southwest corner of said Morgan 22/469 acre tract;

Thence: North 01 degrees 01 minutes 06 seconds West, with the west line of said Morgan 22.469 acre tract, a distance of 1400.92 feet to a found 1½ inch Steel Rebar by a wood Fence corner Post for the northwest corner of said Morgan 22.469 acre tract, and an ell corner of said Morgan 303.943 acre tract;

Thence: North 01 degrees 01 minutes 06 seconds West, with the west line of said Morgan 303.943 acre tract, a distance of 1583.19 feet to a found 1½ inch Steel Rebar by a wood Fence corner Post for the northwest corner of said Morgan 303.943 acre tract;

Thence: North 89 degrees 11 minutes 45 seconds East, with the north line of said Morgan 303.943acre tract, a distance of 1378.61 feet to a found 1½ inch Steel Rebar by a wood fence corner post for a corner;

Thence: North 89 degrees 04 minutes 46 seconds East, with the north line of said Morgan 303.943 tract, a distance of 3678.41 feet to a found 3¼ inch Steel Rod for th3e northeast corner of said Morgan 303.943 acre tract, and in Scharff Road.

Thence: South 01 degrees 16 minutes 42 seconds East, with the east line of said Morgan 303.943 tract, and in said road, a distance of 2982.52 feet to the POINT OF BEGINNING and containing 347.744 acres of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_ . PLATINUM RANCH MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8256 to read as follows:

CHAPTER 8256. PLATINUM RANCH MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8256.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means the Platinum Ranch Municipal Utility District No. 1 of Grayson County.

Sec. 8256.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 8256.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8256.055 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred to Grayson County; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8256.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or other indebtedness; or

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

Sec. 8256.005. ANNEXATION INTO CITY OF GUNTER. (a) Notwithstanding any other law, if all of the territory of the district is annexed by the City of Gunter into the corporate limits of that municipality before the date of the election held to confirm the creation of the district, the district is not dissolved and shall continue in full force and effect.

(b) Any future annexation or inclusion of additional territory into a district governed by this chapter may not occur unless the City of Gunter is allowed to voluntarily annex the same territory into the municipality's corporate limits.

Sec. 8256.006. DISSOLUTION. Section 43.074, Local Government Code, applies to the dissolution of the district.

[Sections 8256.007-8256.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8256.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Except as provided by Section 8256.053, directors serve staggered four-year terms.

Sec. 8256.052. ELECTION OF DIRECTORS. On the uniform election date in May of each even-numbered year, the appropriate number of directors shall be elected.

Sec. 8256.053. INITIAL DIRECTORS. (a) The initial board consists of:

- (1) Mark McClure;
- (2) Greg Meador;
- (3) Lance Hancock;
- (4) David Howell; and
- (5) Mark Smith.

(b) The terms of the first three directors named in Subsection (a) expire on the uniform election date in May 2008, and the terms of the last two directors named in Subsection (a) expire on the uniform election date in May 2010.

(c) This section expires September 1, 2011.

Sec. 8256.054. INCORPORATION OF DISTRICT TERRITORY INTO MUNICIPALITY REQUIRED. The directors may not hold an election under Section 8256.055 until all of the territory of the district is included in the corporate limits of the City of Gunter.

Sec. 8256.055. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The initial directors shall hold an election to confirm the creation of the district.

[Sections 8256.056-8256.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8256.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES.

(a) The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding Subsection (a), the district may not act as a retail provider of water or wastewater service.

(c) The district shall make the district's water and wastewater facilities available to an entity holding the applicable certificate of convenience and necessity.

Sec. 8256.102. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulatory ordinances of the municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

(c) If a portion of the territory of the district is excluded from the corporate limits of the City of Gunter, the district shall:

(1) improve, maintain, repair, and operate the roads located in that portion of territory in accordance with the ordinances and rules of the political subdivision possessing jurisdiction over the roads in that portion of territory; and

(2) pay the entire cost of performing the district's duties under Subdivision (1).

Sec. 8256.103. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if:

(1) the district has no outstanding bonded debt;

(2) the district is not imposing ad valorem taxes; and

(3) each new district is within the corporate limits of the City of Gunter.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) At the time of creation, any new district created by the division of the district may not contain any land outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter.

[Sections 8256.104-8256.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8256.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8256.201.

[Sections 8256.152-8256.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8256.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8256.101 or 8256.102.

(b) The district may not issue bonds to finance projects authorized by Section 8256.102 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election called for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8256.102 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Platinum Ranch Municipal Utility District No. 1 of Grayson County includes all the territory contained in the following area:

All that certain tract or parcel of land situated in the William Richards Survey, Abstract Number 998, the Robert Mason Survey, Abstract Number 784, the J.R. Worrall Survey, Abstract Number 1357, and the William Wells Survey, Abstract Number 1354, County of Grayson, State of Texas and being all that called 339.24 acre tract of land as described in Deed to Platinum Ranch Venture, LTD, filed 16 February 2001 and recorded in Volume 3033 Page 185 of the Deed Records of the County of Grayson, State of Texas, and being all that called 300.264 acre tract of land as described in Deed to Platinum Ranch Venture, LTD, filed 16 February 2001 and recorded in Volume 3033 Page 189 of said Deed Records, and being all that called 100.00 acre tract of land as described in Deed to Platinum Ranch Venture, LTD, filed

01 March 2001 and recorded in Volume 3038 Page 100 of said Deed Records, and being all that called 851.808 acre tract of land as described in Deed to Platinum Ranch Venture, LTD, filed 16 May 2001 and recorded in Volume 3072 Page 217 of said Deed Records, and being all that called 78.427 acre tract of land as described in Deed to Platinum Ranch Venture, LTD, filed 23 May 2002 and recorded in Volume 3253 Page 743 of said Deed Records, and being more fully described as follows:

BEGINNING for the Southeast corner of the tract being described herein at a found 1½ inch iron rod at the intersection of Old Scaggs School Road and Merilee Roads for the Southeast corner of said 851.808 acre tract, said rod being on the South line of said Mason Survey;

Thence: South 89 degrees 57 minutes 55 seconds West, with the South line of said 851.808 acre tract and said Mason Survey, along the centerline of said Marilee Road, a distance of 3186.43 feet to a found 1½ inch iron rod for the Southwest corner of said 851.808 acre tract and the Southeast corner of said 329.424 acre tract;

Thence: North 89 degrees 22 minutes 52 seconds West, with the South line of said 329.424 acre tract, continuing along the centerline of said road, and passing at 4174.77 feet the Southwest corner of said 329.424 acre tract and the Southeast corner of said 100.00 acre tract, and continuing along said course, a total distance of 5198.85 feet to a found 1½ inch steel square tube for corner at the intersection of said Marilee Road and County Road Number 10;

Thence: North 88 degrees 59 minutes 54 seconds West, continuing with the South line of said 100.00 acre tract, along the centerline of said Marilee Road, a distance of 244.55 feet to a found 1½ inch steel square tube at the intersection of said Marilee Road and Blaine Road for the Southwest corner of said 100.00 acre tract;

Thence: North 00 degrees 07 minutes 57 seconds West, with the West line of said 100.00 acre tract, along the centerline of said Blaine Road, and passing at 3425.72 feet the Northwest corner of said 100.00 acre tract and the Southwest corner of said 300.264 acre tract, and continuing along said course and road, and passing at 5630.58 feet the Northwest corner of said 300.264 acre tract and the Southwest corner of said 78.427 acre tract, and continuing along said course and road, a total distance of 7236.34 feet to a found 1½ inch steel square tube at the intersection of said Blaine Road and Jaresh Road for the Northwest corner of said 78.427 acre tract;

Thence: North 88 degrees 26 minutes 13 seconds East, with the North line of said 78.427 acre tract, along the centerline of said Jaresh Road, a distance of 2076.20 feet to a found 1½ inch iron rod for the Northeast corner of said 78.427 acre tract;

Thence: South 01 degrees 09 minutes 52 seconds East, with the East line of said 78.427 acre tract, and passing at 14.0 feet a cross-tie fence corner post on the South side of said Jaresh Road, and continuing along said course, along and near a fence, a total distance of 1662.51 feet to a found 1½ inch steel square tube for the Southeast corner of said 78.427 acre tract, said tubing being on the North line of said 300.264 acre tract, said tubing also being the Southwest corner of a called 252.043 tract of land as described in Deed to Ronald Evans Box, et ux Nita Gay Box, filed 15 December 1992 and recorded in Volume 2246 Page 173 of said Deed Records;

Thence: North 89 degrees 32 minutes 42 seconds East, with the North line of said 300.264 acre tract and the South line of said Box tract, with a fence, a distance of 1771.60 feet to a bois d' arc post for corner;

Thence: North 89 degrees 04 minutes 11 seconds East, continuing with the North line of said 300.264 acre tract and the South line of said Box tract, with a fence, a distance of 1940.19 feet to a cross-tie fence corner post for an ell corner of this tract, said corner also being the Southeast corner of said Box tract;

Thence: North 00 degrees 40 minutes 31 seconds West, with the West line of said 851.808 acre tract and the East line of said Box tract, along and near a fence, a distance of 1208.96 feet to a wood fence corner post for an ell corner of this tract and a Northeast corner of said Box tract;

Thence: South 87 degrees 48 minutes 54 seconds West, continuing with the West line of said 851.808 acre tract and the East line of said Box tract, along and near a fence, a distance of 1749.62 feet to a pipe fence corner post for corner;

Thence: North 01 degrees 29 minutes 27 seconds West, continuing with the West line of said 851.808 acre tract and the East line of said Box tract, along and near a fence, a distance of 1664.74 feet to a pipe fence corner post for corner;

Thence: North 87 degrees 51 minutes 31 seconds East, continuing with the West line of said 851.808 acre tract and the East line of said Box tract, along and near a fence, 849.86 feet to a pipe fence corner post for corner;

Thence: North 01 degrees 26 minutes 50 seconds West, continuing with the West line of said 851.808 acre tract and the East line of said Box tract, along and near a fence, a distance of 1216.06 feet to a pipe fence corner post for the Northwest corner of said 851.808 acre tract, said post also being the Southwest corner of a called 374.17 acre tract of land as described in Deed to Martinek Grain & Bins, Inc., filed 01 June 1993 and recorded in Volume 2272 Page 912 of said Deed Records;

Thence: North 87 degrees 58 minutes 36 seconds East, with the North line of said 851.808 acre tract and the South line of said 374.17 acre tract, with the general course of a fence, a distance of 973.27 feet to a wood post for corner;

Thence: North 87 degrees 53 minutes 22 seconds East, continuing with the North line of said 851.808 acre tract and the South line of said 374.17 acre tract, with said fence, a distance of 1091.88 feet to a wood fence corner post for corner;

Thence: North 89 degrees 57 minutes 15 seconds East, continuing with the North line of said 851.808 acre tract and the South line of said 374.17 acre tract, with said fence, a distance of 1491.72 feet to a cross-tie fence corner post for the Northeast corner of said 851.808 acre tract, said post also being the most Westerly Northwest corner of a called 178.842 acre tract of land as described in Deed to Martinek Grain & Bins, Inc., dated 03 August 1994 and recorded in Volume 2352 Page 18 of said Deed Records;

Thence: South 02 degrees 33 minutes 15 seconds East, with the East line of said 851.808 acre tract, along and near a fence, a distance of 960.89 feet to a found 1½ inch iron rod for a Southwest corner of said 178.842 acre tract, said rod also being the Northwest corner of a called 112.268 acre tract of land as described in Deed to Marion Cole, et ux Linda Cole, dated 27 May 1999 and recorded in Volume 2796 Page 848 of said Deed Records;

Thence: South 02 degrees 57 minutes 08 seconds East, continuing with the East line of said 851.808 acre tract and the West line of said Cole tract, along and near a fence, a distance of 1552.77 feet to a found 1½ inch iron rod for the Southwest corner of said Cole tract;



Thence: South 89 degrees 54 minutes 04 seconds East, continuing with the East line of said 851.808 acre tract and the South line of said Cole tract, along and near a fence, and passing a cross-tie fence corner post on the West side of Old Skaggs School Road, and continuing along said course, a distance of 3118.80 feet to a set 1½ inch steel square tube with a plastic cap marked COX 4577 in the centerline of said Old Skaggs School Road for the Southeast corner of said Cole tract;

Thence: South 00 degrees 04 minutes 13 seconds East, continuing with the East line of said 851.808 acre tract, along the center of said Old Skaggs School Road, a distance of 1561.21 feet to a found 1½ inch iron rod for corner, said road making a turn to the West at this corner;

Thence: North 89 degrees 46 minutes 04 seconds West, continuing with the East line of said 851.808 acre tract, along the center of said Old Skaggs School Road, a distance of 3072.50 feet to a found nail for corner, said nail being at a turn of said Old Skaggs School Road;

Thence: South 00 degrees 51 minutes 03 seconds East, continuing with the East line of said 851.808 acre tract, along the center of said Old Scaggs School Road, a distance of 5800.26 feet to the POINT OF BEGINNING and containing 1659.998 acres of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. PRESTON SUMMIT MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8254 to read as follows:

CHAPTER 8254. PRESTON SUMMIT MUNICIPAL UTILITY DISTRICT NO. 1  
OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8254.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Preston Summit Municipal Utility District No. 1 of

Grayson County.

Sec. 8254.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8254.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8254.023 before September 1, 2011:

(1) the district is dissolved September 1, 2011, except that the district shall:

- (A) pay any debts incurred;
- (B) transfer to Grayson County any assets that remain after the payment of debts; and
- (C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2014.

Sec. 8254.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

- (1) the organization, existence, or validity of the district;
- (2) the right of the district to impose taxes;
- (3) the validity of the district's bonds, notes, or indebtedness; or
- (4) the legality or operation of the district or the board.

[Sections 8254.005-8254.020 reserved for expansion]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8254.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

- (1) the date directors are elected under Section 8254.023; or
- (2) the date this chapter expires under Section 8254.003.

Sec. 8254.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8254.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8254.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8254.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8254.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8254.026-8254.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8254.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8254.052-8254.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8254.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8254.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8254.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8254.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8254.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_ .02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8254.106. COMPLIANCE WITH MUNICIPAL CONSENT RESOLUTIONS. The district shall comply with all applicable requirements of any ordinance or resolution adopted by the governing body of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8254.107. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8254.108-8254.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8254.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8254.201.

[Sections 8254.152-8254.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8254.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8254.101 or 8254.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8254.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8254.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_ .02. The Preston Summit Municipal Utility District No. 1 of Grayson County includes all the territory contained in the following area:

TRACT 1:

SITUATED in the County of Grayson, State of Texas, being a part of the John Blundell Survey, Abstract No. 95, a part of the Orry A. VanDusen Survey, Abstract, No. 1424, a part of the William P. Johnson Survey, Abstract No. 628 and a part of the Daniel Lloyd Survey, Abstract No. 706, being a part of the 709.93648 acre tract of land (Tract Two) and a part of the "approximate" 68.3 acre tract of land (Tract One), conveyed by Correction Warranty Deed from C. J. Christie and wife, Mattie P. Christie, to Christie Farm, Ltd., on February 12, 1993 (effective date: June 17, 1992), recorded in Volume 2255, Page 516, Real Property Records, Grayson County, Texas, and being more particularly described as one tract of land, by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch rebar set in the South line of said Blundell Survey and the North line of the Asa Hartfield Survey, Abstract No. 490, at an angle point in the East line of the Tommy Allen, III, 537.375 ac. in Vol. 3187, Pg. 766, O.P.R.G.C.T., at the Southwest corner of said Christie 709.93648 ac. and the Northwest corner of the Sangani Properties, Ltd. 26.861 ac. (Tract 3) in Vol. 3684, Pg. 182, O.P.R.G.C.T., said

rebar being in the West ditch of Fallon Road, a "North-South" public road, and being 15.5 ft. West of the center of the asphalt paving of Fallon Road, and being in-line with the center of Savage Road, a public road to the East;

THENCE North 24 deg. 58 min. 30 sec. East, with the East line of said Allen 537.375 ac., intersecting the center of the asphalt paving of Fallon Road at about 100 ft., and continuing now with said center of Fallon Road, leaving said center of road at about 2400, and continuing for a total distance of 2457.37 ft. to a 1/2 inch rebar set near the East edge of said asphalt paving of said road, in the East line of said VanDusen Survey and the most Western West line of said Johnson Survey, at an angle point in said East line of the Allen 537.375 ac.;

THENCE North 01 deg. 50 min. 30 sec. East, with said East line of the VanDusen Survey and then the most Eastern East line of the H.T. & B.R.R. Survey, Abstract No. 605 and with said Western West line of the Johnson Survey, intersecting the center of the asphalt paving of Fallon Road at about 80 ft., and continuing now with said center of Fallon Road, leaving said center of road at about 4800, and continuing for a total distance of 5330.70 ft. to a 1/2 inch rebar set in an "East-West" wire fence maintaining the South line of both the John S. Thom (AKA.; John. S. Thom) Survey, Abstract No. 1189 and the Phillip S. Wildman 183.689 ac. (Exhibit "A") in Vol. 2535, Pg. 484, O.P.R.G.C.T., at the Northwest corner of both said Johnson Survey and the Christie 709.93648 ac., the most Eastern Northeast corner of said H.T. & B.R.R. Survey;

THENCE South 89 deg. 00 min. 22 sec. East, with the general course of said wire fence maintaining said South line of the Thom Survey and the North line of said Johnson Survey, a distance of 1618.98 ft. to a 5/8 inch rebar found in concrete, at the Southeast base of a crosstie corner post, at the Southeast corner of said Wildman 183.689 ac. and the Southwest corner of the Phillip Sherwood Wildman and wife, Teresa Marie "Donohoe" Wildman 240.811 ac. (Exhibit "A") in Vol. 2583, Pg. 538, O.P.R.G.C.T.;

THENCE South 87 deg. 56 min. 05 sec. East, with the "scattered" remains of an old fence, continuing with said South line of the Thom Survey and said North line of the Johnson Survey, a distance of 2665.50 ft. to a spike nail found near the West base of a corner post, in the center of an old "North-South" public road, now abandoned, in the West line of both the Mary Miller Survey, Abstract No. 775 and the Jack A. Turpin 233.480 ac. (Tract No. 1) in Vol. 1963, Pg. 436. R.P.R.G.C.T., at the Southeast corner of both the Thom Survey and the Wildman 240.811 ac., the Northeast corner of both the Johnson Survey and the Christie 709.93648 ac.;

THENCE South 00 deg. 12 min. 02 sec. East, with the general course of a wire fence along the center of said abandoned road, with said West line of the Miller Survey and the East line of said Johnson Survey, a distance of 1331.48 ft. to an 8 inch wood post maintaining an angle point in the west line of said Turpin 233.480 ac.;

THENCE South 17 deg. 23 min.. 18 sec. East, with a wire fence maintaining the West line of said Turpin 233.480 ac., but not with said Miller & Johnson Survey lines and not with the center of said abandoned road, a distance of 301.70 ft. to an 8 inch wood post maintaining another angle point in the West said Turpin 233.480 ac, in the West line of said abandoned road;

THENCE South 00 deg. 28 min. 22 sec. East, with the general course of a wire fence maintaining the West line of said Turpin 233.480 ac., and along the West line of said abandoned road, a distance of 1461.48 ft. to a crosstie corner post maintaining the Southwest corner of said Turpin 233.480 ac.;

THENCE South 89 deg. 20 min. 53 sec. East, with a wire fence maintaining the South line of said Turpin 233.480 ac., a distance of 16.97 ft. to a 1/2 inch rebar found at the base of a corner post, in the center of said abandoned road, in the East line of both said Johnson Survey and the Christie 709.93648 Sc., the West line of said Miller Survey, at the Northwest corner of the Edwin A. Trapp, Jr. Revocable Trust, 278.389 ac. (Tract One Exhibit "A") in Vol. 2271, Pg. 274, R.P.R.G.C.T.;

THENCE South 00 deg. 17 min. 02 sec. East, with the general course of a wire fence along the center of said abandoned road, with said West line of the Miller Survey and said East line of the Johnson Survey, a distance of 1813.09 ft. to a 5/8 inch rebar found at the base of a corner post, at the Southwest corner of said Miller Survey, the most Western Southwest corner of said Trapp 278.389ac. and the Northwest corner of both said Daniel Lloyd Survey and the Christie 68.3 ac.;

THENCE North 89 deg. 30 min. 05 sec. East, with the general course of a wire fence maintaining a South line of said Miller Survey and the North line of both said Lloyd Survey and the Christie 68.3 ac., leaving said abandoned road at 17 ft., and continuing with said fence, for a total distance 914.48 ft. to a 1/2 inch rebar found at the base of a corner post, in the West right-of-way line of State Hwy. 289, at the most Eastern Northeast corner of the herein described tract;

THENCE Southwesterly, with the West right-of-way line of State Hwy. 289, the following calls and distances:

1. South 28 deg. 15 min. 55 sec. West, a distance of 774.73 ft. to a point at the East base of fence post;
2. South 15 deg. 32 min. 08 sec. West, a distance of 251.91 ft. to a point at the East base of a corner post, in North right-of-way line of the St. Louis, San Francisco & Texas (Frisco) Railroad, at the most Eastern Southeast corner of the herein described tract;

THENCE Southwesterly, with the North right-of-way line of said Frisco Railroad, the following calls and distances:

1. South 76 deg. 48 min. 15 sec. West, a distance of 3250.09 ft. to a point at the beginning of a curve;
2. Southwesterly, with a curve to the left having a central angle (delta) of 29 deg. 09 min. 37 sec. and a radius of 3869.83 ft. (chord bears South 62 deg. 13 min.. 27 sec. West, 1948.33 ft.), an arc distance of 1969.52 ft. to a 1/2 inch rebar set in the center of said Savage Road, in the South line of said Blundell Survey and the North line of said Hartfield Survey, at the most Southern Southeast corner of both the Christie 709.93648 ac. and the herein described tract;

THENCE North 88 deg. 36 mm, 08 sec. West, with the center of Savage Road and with said Survey lines, a distance of 1216.55 ft. to the PLACE OF BEGINNING and containing 721.495 ACRES of land.

## TRACT 2:

SITUATED in the County of Grayson, State of Texas, being a part of the John Blundell Survey, Abstract No. 95, a part of the William P. Johnson Survey, Abstract No. 628 and a part of the Daniel Lloyd Survey, Abstract No. 706, being part of the 90.71166 acre tract of land (Tract Three) and a part of the "approximate" 68.3 acre tract of land (Tract One), conveyed by Correction Warranty Deed from C. J. Christie and wife, Mattie P. Christie, to Christie Farm, Ltd., on February 12, 1993 (effective date: June 17, 1992), recorded in Volume 2255, Page 516, Real Property Records, Grayson County, Texas, and being more particularly described as one tract of land, by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch rebar found in the West right-of-way line of State Hwy. 289 and the center of Savage Road, a public road to the West, in the most Southern South line of said Johnson Survey, in the South line of said Christie 90.71166 ac. and the North line of the Asa Hartfield Survey, Abstract No. 490, at the most Southern Southeast corner of the herein described tract and the Northeast corner of the Sangani Properties, Ltd. 278.933 ac. (Tract 2) in Vol. 3684, Pg. 182, O.P.R.G.C.T.;

THENCE Westerly, with the center of Savage Road, with the South line of said Christie 90.71166 ac. and the North line of said Sangani 278.933 ac., the following calls and distances:

1. North 88 deg. 01 min. 29 sec. West, a distance of 2702.40 ft. to an angle point;
2. North 88 deg. 36 min. 08 sec. West, 969.77 ft. to a 1/2 inch rebar set in the South or Southeast right-of-way line of the St. Louis, San Francisco & Texas (Frisco) Railroad, at the Southwest corner of said Christie 90.71166 ac. and the Northwest corner of said Sangani 278.933 ac.;

THENCE Northeasterly, with the South or Southeast right-of-way line of said Frisco Railroad, the following calls and distances:

1. Northeasterly, with a curve to the right having a central angle (delta) of 27 deg. 32 min. 56 sec. and a radius of 3769.83 ft. (chord bears North 61 deg, 01 min. 47 sec. East, 1795.20 ft.), an arc distance of 1812.61 ft. to a point at the end of said curve;
2. North 76 deg. 48 min. 15 sec. East, a distance of 3195.27 ft. to a point at the East base of a corner post, in the West right-of-way line of State Hwy. 289, at the Northeast corner of the herein described tract;

THENCE Southeasterly, with the West right-of-way line of State Hwy. 289. the following calls and distances:

1. South 15 deg. 32 min. 08 sec. West, a distance of 625.74 ft. to a point on a concrete & brass monument, said point being North 38 deg. West, 0.5 ft. from the center of said monument;
2. South 25 deg. 08 min. 43 sec. West, a distance of 632.15 ft. to a point on a concrete & brass monument, said point being North 17 deg. West, 0.3 ft. from the center of said monument;
3. South 41 deg. 35 min. 40 sec. West, a distance of 314.23 ft. to a point on a concrete & brass monument, said point being North 21 deg. West, 0.2 ft. from the center of said monument;
4. South 46 deg. 32 min. 40 sec. West, a distance of 251.92 ft. to a point on a concrete & brass monument, in the North line of said Savage Road, said point being North 47 deg. West, 0.2 ft. from the center of said monument;

THENCE North 88 deg. 59 min. 29 sec. West, continuing with said West right-of-way line of Hwy. 289, along a "flare-out in said right-of-way and with the North line of Savage Road, a distance of 210.77 ft. to a point on a concrete & brass monument, said point being 0.8 ft. South of the center of said monument;

THENCE South 01 deg. 37 min. 50 sec. West, again with said West right-of-way line of Hwy. 289 and partially across Savage Road, a distance of 33.58 ft. to the PLACE OF BEGINNING and containing 95.259 ACRES of land.

TRACT 3:

SITUATED in the County of Grayson, State of Texas, being a part of the Daniel Lloyd Survey, Abstract No. 706, being a part of the "approximate" 68.3 acre tract of land (Tract One), conveyed by Correction Warranty Deed from C. J. Christie and wife, Mattie P. Christie, to Christie Farm, Ltd., on February 12, 1993 (effective date: June 17, 1992), recorded in Volume 2255, Page 516, Real Property Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch rebar found in East right-of-way line of State Hwy. 289 and the center of Strawn Road, an "East-West" public road, in the North line of the Asa Hartfield Survey, Abstract No. 490, at the Southwest corner of both said Daniel Lloyd Survey and the Christie 68.3 ac., the Southeast corner of the William P. Johnson Survey, Abstract No. 628;

THENCE North 00 deg. 13 min. 14 sec. West, with the East right-of-way line of said Hwy. 289, with the West line of both said Daniel Lloyd Survey and the Christie 68.3 ac. and the East line of said Johnson Survey, a distance of 180.01 ft. to a point in the center of a concrete & brass monument, at an angle point in said right-of-way;

THENCE Northeasterly, continuing with said East right-of-way line of Hwy. 289, but not with said Survey lines, the following calls and distances:

1. North 39 deg. 45 min. 23 sec. East, a distance of 104.24 ft. to a point in the center of a concrete & brass monument at an angle point;
2. North 46 deg. 32 min. 40 sec. East, a distance of 656.69 ft. to a point at the beginning of a curve;
3. Northeasterly, with a curve to the left having a central angle (delta) of 42 deg. 14 min. 00 sec. and a radius of 1482.21 ft. (chord bears North 25 deg. 25 min. 40 sec. East, 1067.99 ft.), an arc distance of 1092.55 ft. to a point at the end of said curve;
4. North 04 deg. 18 min. 40 sec. East, a distance of 75.10 ft. to a 1/2 inch rebar set in the South right-of-way line of the St. Louis, San Francisco & Texas (Frisco) Railroad, at most Northern Northwest corner of the herein described tract;

THENCE North 76 deg. 48 min. 15 sec. East, with the South right-of-way line of said Frisco Railroad, a distance of 324.79 ft. to a point in the East line of said Christie 68.3 ac. and a West line of the Edwin A. Trapp, Jr. Revocable Trust, 278.389 ac. (Tract One, Exhibit "A") in Vol. 2271, Pg. 274, R.P.R.G.C.T., at the Northeast corner of the herein described tract;

THENCE South 00 deg. 09 min. 43 sec. East, with said West line of the Trapp 278.389 ac., passing a crosstie corner post at 8 ft., and continuing now with the general course of a wire fence, passing a 1/2 inch rebar found in fence at 1777.7 ft., passing a corner post in the North line of Strawn Road and leaving said fence at about 1792 ft., and continuing for a total distance of 1816.60 ft. to a point in the center of



Strawn Road in the South line of said Daniel Lloyd Survey and the North line of said Hartfield Survey, at the Southeast corner of said Christie 68.3 ac. and the most Southern Southwest corner of said Trapp 278.389 ac.;

THENCE South 89 deg. 37 min. 18 sec. West, with the center of Strawn Road and with said Survey lines, a distance of 1328.26 ft. to the PLACE OF BEGINNING and containing 29.764 ACRES of land.

TRACT 4:

SITUATED in the County of Grayson, State of Texas, being a part of the Daniel Lloyd Survey, Abstract No. 706, being a part of the "approximate" 68.3 acre tract of land (Tract One), conveyed by Correction Warranty Deed from C. J. Christie and wife, Mattie P. Christie, to Christie Farm, Ltd., on February 12, 1993 (effective date: June 17, 1992), recorded in Volume 2255, Page 516, Real Property Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a point in the East right-of-way line of State Hwy. 289, in the North line of both said Daniel Lloyd Survey and the Christie 68.3 ac., in the South line of the Mary Miller Survey, Abstract No. 775 and a South line of the Edwin A. Trapp, Jr. Revocable Trust, 278.389 ac. (Tract One, Exhibit "A") in Vol. 2271, Pg. 274, R.P.R.G.C.T., at the Northwest corner of the herein described tract, said point being 2.1 ft. West of a 1/2 inch rebar found at the base of a corner post;

THENCE North 89 deg. 36 min. 08 sec. East, with said South line of the Trapp 278.389 ac. and with said Survey lines, passing said rebar at 2.1 ft., and continuing now with a wire fence, for a total distance of 155.34 ft. to a 1/2 inch rebar found at the base of a corner post, at the Northeast corner of said Christie 68.3 ac. and an Ell corner of said Trapp 278.389 ac.;

THENCE South 00 deg. 09 min. 43 sec. East, with the general course of a wire fence maintaining a West line of said Trapp 278.389 ac. and the East line of said Christie 68.3 ft., a distance of 727.30 ft. to a point in the North right-of-way line of the St. Louis, San Francisco & Texas (Frisco) Railroad, at the Southeast corner of the herein described tract;

THENCE South 76 deg. 48 min. 15 sec. West with the North right-of-way line of said Frisco Railroad, a distance of 316.39 ft. to a concrete & brass monument found in said East right-of-way line of State Hwy. 289, at the Southwest corner of the herein described tract;

THENCE North 10 deg. 41 min. 06 sec. East, with the East right-of-way line of State Hwy. 289, a distance of 812.53 ft. to the PLACE OF BEGINNING and containing 3.995 ACRES of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_ . SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF  
GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8258 to read as follows:

CHAPTER 8258. SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 1 OF  
GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8258.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Sangani Ranch Municipal Utility District No. 1 of

Grayson County.

Sec. 8258.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8258.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8258.023 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Grayson County any assets that remain after the payment

of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 8258.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8258.005-8258.020 reserved for expansion]

SUBCHAPTER A-I. TEMPORARY PROVISIONS

Sec. 8258.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8258.023; or

(2) the date this chapter expires under Section 8258.003.

Sec. 8258.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8258.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8258.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8258.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8258.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8258.026-8258.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8258.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8258.052-8258.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8258.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8258.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8258.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8258.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8258.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8258.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8258.107-8258.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8258.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8258.201.

[Sections 8258.152-8258.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8258.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8258.101 or 8258.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8258.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8258.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_.02. The Sangani Ranch Municipal Utility District No. 1 of Grayson County includes all the territory contained in the following area:

Tract 1

All that certain tract or parcel of land situated in the A. S. A. Hartfield Survey, Abstract Number 490, Grayson County, Texas, and being part of a called Tract No. 3 as described in a deed from Jack A. Turpin to JMS & Co., a Texas General Partnership as recorded in Volume 1963, Page 451, Deed Records of Grayson County, Texas, and being more particularly described as follows:

Beginning at a 1/2" iron rod found in the south line of said Tract No. 3 and in the east right-of-way line of State Highway 289 and also in an asphalt road under apparent public use posted as Mackey Road;

Thence North 00 Degrees 32 Minutes 59 Seconds West with the said east monumented right-of-way line and generally with a fence line, a distance of 114.58 feet to a right-of-way monument found for corner;

Thence North 45 Degrees 35 Minutes 10 Seconds East with the said east monumented right-of-way line and generally with a fence line, a distance of 180.50 feet to a right-of-way monument found for corner;

Thence North 40 Degrees 07 Minutes 07 Seconds East with the said east right-of-way line and generally with a fence line, a distance of 329.14 feet to a 1/2" capped iron rod set for corner;

Thence North 45 Degrees 35 Minutes 13 Seconds East with the said east right-of-way line and generally with a fence line, a distance of 1391.07 feet to a 1/2" capped iron rod set for corner;

Thence North 51 Degrees 15 Minutes 05 Seconds East with the said east monumented right-of-way line and generally with a fence line, a distance of 494.20 feet to a concrete monument for corner;

Thence North 45 Degrees 35 Minutes 13 Seconds East with the said east right-of-way line and generally with a fence line, a distance of 131.23 feet to a 1/2" capped iron rod set for corner;

Thence North 42 Degrees 32 Minutes 58 Seconds East with the said east monumented right-of-way line and generally with a fence line, a distance of 3 15.33 feet to a concrete monument for corner;

Thence North 45 Degrees 35 Minutes 13 Seconds East with the said east right-of-way line and generally with a fence line, a distance of 98.43 feet to a 1/2" capped iron rod set for corner;

Thence North 40 Degrees 15 Minutes 20 Seconds East with the said east right-of-way line and generally with a fence line, a distance of 354.85 feet to a 1/2" capped iron rod set for the north corner of said Tract No. 3 and at the northwest corner of a called 26.14 acre tract of land described in a deed to Penny S. Avery as recorded in Volume 2670, Page 802, Deed Records of Grayson County, Texas;

Thence South 01 Degrees 16 Minutes 21 Seconds East with the east line of said Tract No. 3 and with the west line of said 26.14 acre tract and also with or near a fence line, passing a 1/2" iron rod found at 2400.96 feet and continuing along said coarse for a total distance of 2425.74 feet to a 60 D nail found at the southeast corner of said Tract No. 3 and at the southwest corner of said 26.14 acre tract and also in said asphalt road; Thence South 89 Degrees 39 Minutes 37 Seconds West with the south line of said Tract No. 3 and along said asphalt road, a distance of 2379.51 feet to the POINT OF BEGINNING and containing in total 69.234 acres of land and in the occupied road way and a total of 1.413 acres of land.

#### Tract 2

All that certain tract or parcel of land situated in the A. S. A. Hartfield Survey, Abstract Number 490, Grayson County, Texas, and being part of a called Tract No. 2 as described in a deed from Jack A. Turpin to JMS & Co., a Texas General Partnership as recorded in Volume 1963, Page 451, Deed Records of Grayson County, Texas, and being more particularly described as follows:

Beginning at a 1/2" capped iron rod set at the southwest corner of said Tract No. 2 and in an asphalt road under apparent public use posted as Fallow Road and also in the west line of said Hartfield Survey;

Thence North 00 Degrees 57 Minutes 46 Seconds East with the west line of said Tract No. 2 and along said asphalt road most of the way and also with the said west line, a distance of 1786.81 feet to a 1/2" capped iron rod set for corner in the southeast right-of-way line of S.C. & S.F. RAILROAD;

Thence North 12 Degrees 29 Minutes 16 Seconds East with the west line of said Tract No. 2 and with the said southeast right-of-way line, a distance of 1260.61 feet to a 1/2" capped iron rod set for corner at the start of a curve to the right having a radius of 3699.71 feet;

Thence with said curve to the right and with the said west line and also with the said southeast right-of-way line an arc length of 991.94 feet and said curve having a chord bearing of North 20 Degrees 16 Minutes 14 Seconds East, a distance of 988.97 feet to a 1/2" capped iron rod set for corner at the start of a curve to the right having a radius of 3772.73 feet;

Thence with said curve to the right and with the said west line and also with the said southeast right-of-way line an arc length 1350.21 feet and said curve having a chord bearing of North 38 Degrees 02 Minutes 43 Seconds East, a distance of 1343.02 feet to a 60 D nail found at the northwest corner of said Tract No. 2 and in an asphalt road under apparent public use posted as Savage Road;

Thence South 89 Degrees 33 Minutes 30 Seconds East with the north line of said Tract No. 2 and along said asphalt road, a distance of 969.10 feet to a 60 D nail found for corner;

Thence South 89 Degrees 58 Minutes 51 Seconds East with the said north line and along said asphalt road, a distance of 2702.37 feet to a point for the northeast corner of said Tract No. 2 and in the west right-of-way line of State Highway 289;

Thence South 00 Degrees 40 Minutes 28 Seconds West with the said west monumented right-of-way line, a distance of 198.93 feet to a 1/2" iron rod found in concrete for corner;

Thence South 45 Degrees 35 Minutes 18 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 967.85 feet to a brass capped monument found for corner;

Thence South 51 Degrees 18 Minutes 23 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 494.83 feet to a brass capped monument found for corner;

Thence South 45 Degrees 49 Minutes 03 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 97.35 feet to a brass capped monument found for corner;

Thence South 39 Degrees 52 Minutes 13 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 494.65 feet to a brass capped monument found for corner;

Thence South 45 Degrees 35 Minutes 18 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 1205.10 feet to a brass capped monument found for corner;

Thence South 51 Degrees 19 Minutes 11 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 329.75 feet to a brass capped monument found for corner;

Thence South 45 Degrees 28 Minutes 36 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 98.33 feet to a brass capped monument found for corner;

Thence South 48 Degrees 35 Minutes 13 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 315.45 feet to a brass capped monument found for corner;

Thence South 45 Degrees 56 Minutes 27 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 130.31 feet to a brass capped monument found for corner;

Thence South 39 Degrees 47 Minutes 37 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 495.56 feet to a brass capped monument found for corner;

Thence South 45 Degrees 35 Minutes 13 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 1226.52 feet to a concrete monument found for corner;

Thence South 51 Degrees 18 Minutes 15 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 494.51 feet to a concrete monument found for corner;

Thence South 46 Degrees 15 Minutes 32 Seconds West with the said west monumented right-of-way line and generally near a fence line, a distance of 97.79 feet to a concrete monument found for corner;

Thence South 37 Degrees 09 Minutes 28 Seconds West with the said west right-of-way line, a distance of 409.29 feet to a 1/2" capped iron rod set at the southeast corner of said Tract No. 2;

Thence South 89 Degrees 39 Minutes 37 Seconds West with the south line of said Tract No. 2, a distance of 261.85 feet to the POINT OF BEGINNING and containing in total 278.933 acres of land and in the occupied in roadway and a total of 6.477 acres of land.

## Tract 3

All that certain tract or parcel of land situated in the A. S. A. Hartfield Survey, Abstract Number 490, Grayson County, Texas, and being all of a called Tract No. 1 and all of a called Tract No. 4 as described in a deed from Jack A. Turpin to JMS & Co., a Texas General Partnership as recorded in Volume 1963, Page 451, Deed Records of Grayson County, Texas, and being more particularly described as follows: Beginning at a 1/2" capped iron rod set at the northwest corner of said Tract No. 1 and at the northwest corner of said Hartfield Survey and also in an asphalt road under apparent public use posted as Fallow Road;

Thence South 89 Degrees 33 Minutes 30 Seconds East with the north line of said Tract No. 1 and with the north line of said Hartfield Survey, a distance of 1212.54 feet to a 60 D nail found for the northeast corner of said Tract No. 4 and in an asphalt road under apparent public use posted as Savage Road and in the northwest right-of-way line of S.C. & S.F. RAILROAD and also in a curve to the left having a radius of 3872.73 feet;

Thence with said curve to the left and with the said northwest right-of-way line an arc length of 1276.90 feet and said curve having a chord bearing of South 37 Degrees 14 Minutes 32 Seconds West, a distance of 1271.12 feet to a 1/2" capped iron rod set for corner at the start of a curve to the left having a radius of 3799.71 feet;

Thence with said curve to the left and with said northwest line an arc length of 1018.75 feet and said curve having a chord bearing of South 20 Degrees 16 Minutes 14 Seconds West, a distance of 1015.70 feet to a 1/2" capped iron rod set for corner;

Thence South 12 Degrees 29 Minutes 16 Seconds West with the said northwest right-of-way line, a distance of 771.10 feet to a 60 D nail set for the south corner of said Tract No. 1 and in said Fallow Road and also in the west line of said Hartfield Survey;

Thence North 00 Degrees 57 Minutes 32 Seconds East with the west line of said Tract No. 1 and with the said west line and also with said Fallow Road, a distance of 1721.54 feet to a 60 D nail set for corner;

Thence North 01 Degrees 57 Minutes 45 Seconds East with the west line of said Tract No. 1 and with the said west line and also with said Fallow Road, a distance of 866.75 feet to a 60 D nail set for corner;

Thence North 06 Degrees 54 Minutes 43 Seconds East with the west line of said Tract No. 1, a distance of 140.40 feet to the POINT OF BEGINNING and containing in total 26.861 acres of land and in an occupied road way and a total of 2.173 acres of land.

SECTION \_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.



(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_ . SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 2 OF GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8259 to read as follows:

CHAPTER 8259. SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 2 OF GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8259.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Sangani Ranch Municipal Utility District No. 2 of Grayson County.

Sec. 8259.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8259.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8259.023 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Grayson County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 8259.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8259.005-8259.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8259.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8259.023; or

(2) the date this chapter expires under Section 8259.003.

Sec. 8259.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8259.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8259.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8259.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8259.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8259.026-8259.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8259.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8259.052-8259.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 8259.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8259.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8259.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8259.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8259.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

- (1) has no outstanding bonded debt; and
- (2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_\_.02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8259.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8259.107-8259.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8259.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8259.201.

[Sections 8259.152-8259.200 reserved for expansion]

#### SUBCHAPTER E. BONDS

Sec. 8259.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8259.101 or 8259.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8259.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8259.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Sangani Ranch Municipal Utility District No. 2 of Grayson County includes all the territory contained in the following area:

Tract One

All that certain tract or parcel of land situated in the Daniel Lloyd Survey, Abstract Number 706, County of Grayson, State of Texas, said tract being part of Tract One a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 may 1993, and recorded in volume 2271 page 274 of the real property records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southwest corner of the tract being described herein at a set 1½ inch steel square tubing, said tubing being the most southerly southwest corner of said Trapp Tract One, same being the southeast corner of Tract One as described in deed to Christie Farm Ltd., filed 16 February 1993, and recorded in volume 2255 page 516 of said real property records, and said tubing being on the north line of Tract Two a called 400.00 acre tract as described in said Trapp deed, said tubing also being in Strawn Road;

Thence: North 01 degrees 32 minutes 43 seconds West, with the west line of said Trapp Tract One, and with the east line of said Christie Farm tract, and passing at 38.88 feet a set 1½ inch steel square tubing on the north side of said road, and continuing on said course with an old barbed wire fence, and tree line, a total distance of 1816.23 feet to a set 1½ inch steel square tubing for the northwest corner of this tract, said tubing being on the south line of the Burlington Northern Railroad;

Thence: North 75 degrees 22 minutes 08 seconds East, with the south line of said railroad, a distance of 1154.39 feet to a set 1½ inch steel square tubing for the start of a curve to the left having a central angle of 19 degrees 36 minutes 08 seconds, and a radius of 2898.24 feet, and chord bearing of North 65 degrees 34 minutes 04 seconds East, and a chord distance of 986.73 feet;

Thence: With the south line of said railroad and with said curve to the left, an arc length of 991.56 feet to a set 1½ inch steel square tubing for the northeast corner of this tract, said tubing being an ell corner of said Trapp Tract One;

Thence: South 01 degrees 55 minutes 00 seconds East, with the east line of said Trapp Tract One, and with the center of said road, a distance of 2456.64 feet to a set 1½ inch steel square tubing in a turn in said road for the most southerly southeast corner of said Trapp Tract One, and said tubing being on the north line of Tract 2 a called 114 acre tract as described in deed to Brandon Douglas Hunter, filed 11 July 2002, and recorded in volume 3278 page 336 of the official public records of Grayson County, Texas;

Thence: South 88 degrees 19 minutes 20 seconds West, with the south line of said Trapp Tract One, and with the north line of said Hunter tract, and with said road, and passing at a distance of 1410.88 feet to a found railroad spike, and continuing on said course a total distance of 1854.17 feet to a found 1½ inch rebar for the northwest corner of said Hunter tract, same being the northeast corner of said Trapp Tract Two, said rebar also being at the intersection of said Strawn Road and Harris Road;

Thence: South 88 degrees 19 minutes 19 seconds West, with the south line of said Trapp Tract One, and with the north line of said Trapp Tract Two, and with said Strawn Road, a distance of 195.22 feet to the POINT OF BEGINNING and containing 97.316 acres of land.

### Tract Two

All that certain tract or parcel of land situated in the Daniel Lloyd Survey, Abstract Number 706, County of Grayson, State of Texas, said tract being part of Tract One a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 may 1993, and recorded in volume 2271 page 274 of the real property records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southwest corner of the tract being described herein at a set 1½ inch steel square tubing, said tubing being the most westerly southwest corner of said Trapp Tract One, same being the northwest corner of Tract One as described in deed to Christie Farm Ltd., filed 16 February 1993, and recorded in volume 2255 page 516 of said real property records, and said tubing being on the east line of Tract Two as described in said Christie deed, said tubing also being in an abandoned road;

Thence: North 01 degrees 39 minutes 37 seconds West, with the west line of said Trapp Tract One, and with the east line of said Christie Tract Two, and with a barbed wire fence in the center of said abandoned road bed, a distance of 1813.36 feet to a found 1½ inch rebar for the northwest corner of said Trapp Tract One, said rebar being on the south line of a called 233.48 acre tract as described in deed to JMS Ltd., filed 23 June 2004, and recorded in volume 3684 page 164 of the official public records of Grayson County, Texas;

Thence: North 88 degrees 52 minutes 52 seconds East, with the north line of said Trapp Tract One, and with the south line of said JMS tract, and with an old barbed wire fence, a distance of 1395.71 feet to a found 1½ inch rebar with a plastic cap marked Underwood for the northeast corner of this tract, said rebar being the southeast corner of said JMS tract, and said rebar being on the west line of State Highway Number 289;

Thence: With the west line of said highway the following five (5) calls:

1. South 10 degrees 50 minutes 55 seconds West, a distance of 27.66 feet,
2. South 05 degrees 41 minutes 07 seconds West, a distance of 164.82 feet,
3. South 11 degrees 06 minutes 58 seconds West, a distance of 823.97 feet,
4. South 14 degrees 04 minutes 31 seconds West, a distance of 656.55 feet,
5. South 27 degrees 11 minutes 10 seconds West, a distance of 194.90 feet to a found 1½ inch rebar with a plastic cap marked Underwood for the southeast corner of this tract, said rebar being on the south line of said Trapp Tract One, same being the north line of said Christie Tract One;

Thence: South 88 degrees 07 minutes 17 seconds West, with the south line of said Trapp Tract One, and with the north line of said Christie Tract One, a distance of 914.29 feet to the POINT OF BEGINNING and containing 49.540 acres of land.

### Tract Three

All that certain tract or parcel of land situated in the Daniel Lloyd Survey, Abstract Number 706, County of Grayson, State of Texas, said tract being part of Tract One a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 may 1993, and recorded in volume 2271 page 274 of the real property records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the northwest corner of the tract being described herein at a found 1½ inch rebar with a plastic cap marked Underwood, said rebar being on the north line of said Trapp Tract One, and said rebar being the southwest corner of a called 134.431

acre tract as described in deed to JMS Ltd., filed 23 June 2004, and recorded in volume 3684 page 164 of the official public records of Grayson County, Texas, said rebar also being on the east line of State Highway Number 289;

Thence: North 89 degrees 11 minutes 13 seconds East, with the north line of said Trapp Tract One, and with the south line of said JMS tract, and with an old barbed wire fence, and tree line, a distance of 2500.41 feet to a found 1/2 inch rebar by an old wood fence corner post for the northeast corner of said Trapp Tract One, same being the northwest corner of a called 76 acre tract, the Second Tract in Exhibit "B" as described in deed to Freels Family Limited Partnership, filed 09 January 1997, and recorded in volume 2516 page 609 of said official public records;

Thence: South 00 degrees 53 minutes 47 seconds East, with the east line of said Trapp Tract One, and with the west line of said Freels tract, a distance of 1192.97 feet to a set 1/2 inch steel square tubing for the southeast corner of this tract, said tubing being on the north line of the Burlington Northern Railroad, said tubing also being in a curve to the right having a central angle of 39 degrees 50 minutes 05 seconds, and a radius of 2798.24 feet, and chord bearing of South 55 degrees 27 minutes 06 seconds West, and a chord distance of 1906.53 feet;

Thence: With the north line of said railroad, and with said curve to the right, an arc length of 1945.47 feet to a set 1/2 inch steel square tubing for the end of said curve;

Thence: South 75 degrees 22 minutes 08 seconds West, with the north line of said railroad, a distance of 1131.15 feet to a set 1/2 inch steel square tubing for the most southerly southwest corner of this tract, said tubing being on the west line of said Trapp Tract One, and said tubing being on the east line of Tract One as described in deed to Christie Farm Ltd., filed 16 February 1993, and recorded in volume 2255 page 516 of said real property records;

Thence: North 01 degrees 32 minutes 43 seconds West, with the west line of said Trapp Tract One, and with the east line of said Christie Tract One, and with an old barbed wire fence and tree line, a distance of 727.86 feet to a found 1/2 inch rebar by a wood fence corner post for an ell corner of said Trapp Tract One, same being the northeast corner of said Christie Tract One;

Thence: South 88 degrees 13 minutes 00 seconds West, with the south line of said Trapp Tract One, and with the north line of said Christie Tract One, and with an old barbed wire fence and tree line, a distance of 152.97 feet to a found 1/2 inch rebar with a plastic cap marked Underwood for the most westerly southwest corner of this tract, said rebar being on the east line of said highway;

Thence: With the east line of said highway the following three (3) calls:

1. North 09 degrees 22 minutes 56 seconds East, a distance of 129.92 feet,
2. North 08 degrees 16 minutes 56 seconds East, a distance of 657.02 feet,
3. North 11 degrees 12 minutes 13 seconds East, a distance of 1042.97 feet to the POINT OF BEGINNING and containing 127.870 acres of land.

#### Tract Four

All that certain tract or parcel of land situated in the Daniel Lloyd Survey, Abstract Number 706, County of Grayson, State of Texas, said tract being part of Tract One a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 May 1993, and recorded in volume 2271 page 274 of the real property records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southeast corner of the tract being described herein at a set 1½ inch steel square tubing, said tubing being the most easterly southeast corner of said Trapp Tract One, same being the southwest corner of a called 76 acre tract, the Second Tract in Exhibit "B" as described in deed to the Freels Family Limited Partnership, filed 09 January 1997, and recorded in volume 2516 page 609 of the official public records of Grayson County, Texas, said tubing also being in the center of Strawn Road;

Thence: South 89 degrees 06 minutes 49 seconds West, with the south line of said Trapp Tract One, and with the center of said road, a distance of 389.89 feet to a set 1½ inch steel square tubing for the southwest corner of this tract, said tubing being on the south line of the Burlington Northern Railroad, said tubing also being in a curve to the left having a central angle of 11 degrees 00 minutes 26 seconds, and a radius of 2898.24 feet, and a chord bearing of North 43 degrees 38 minutes 14 seconds East, and a chord distance of 555.93 feet;

Thence: With the south line of said railroad, and with said curve to the left, an arc length of 556.78 feet to a set 1½ inch steel square tubing for the northeast corner of this tract, said tubing being on the east line of said Trapp Tract One, same being the west line of said Freels tract;

Thence: South 00 degrees 53 minutes 47 seconds West, with the east line of said Trapp Tract One, and with the west line of said Freels Tract, and passing at 366.36 feet a set 1½ inch steel square tubing on the north side of said road, and continuing on said course a total distance of 396.36 feet to the POINT OF BEGINNING and containing 1.660 acres of land.

#### Tract 5

All that certain tract or parcel of land situated in the Asa Hartfield Survey, Abstract Number 490 and the Harry Campbell Survey, Abstract Number 244, County of Grayson, State of Texas, said tract being the remainder of Tract Two a called 400.00 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 May 1993, and recorded in volume 2271 page 274 of the real property records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the most northerly northeast corner of the tract being described herein at a found 1½ inch rebar, said rebar being the most northerly northeast corner of said Tract Two, and said rebar being the northwest corner of Tract 2, a called 114 acre tract as described in deed to Brandon Douglas Hunter, filed 11 July 2002, and recorded in volume 3278 page 336 of the official public records of Grayson County, Texas, and said rebar being on the south line of Tract One a called 278.389 acre tract as described in said Trapp deed, said rebar also being at the intersection of Strawn Road and Harris Road;

Thence: South 01 degrees 41 minutes 56 seconds East, with the east line of said Tract Two, and with the west line of said Hunter Tract 2, and with said Harris Road, a distance of 1637.62 feet to a found 1½ inch rebar for an ell corner of said Tract Two, same being the southwest corner of said Hunter Tract 2;

Thence: North 88 degrees 41 minutes 40 seconds East, with the north line of said Tract Two, and with the south line of said Hunter Tract 2, and with an old barbed wire fence and tree line, and passing at 3859.69 feet a wood fence post, and continuing on said course a total distance of 3994.01 feet to a point in the East Fork of the Trinity River for the most easterly northeast corner of said Tract Two;

Thence: With the East Fork of the Trinity River the following thirty five (35) calls:

1. South 04 degrees 16 minutes 06 seconds West, a distance of 13.44 feet,
2. South 71 degrees 38 minutes 03 seconds West, a distance of 30.00 feet,
3. South 16 degrees 22 minutes 03 seconds West, a distance of 35.50 feet,
4. South 44 degrees 05 minutes 05 seconds East, a distance of 118.73 feet,
5. South 21 degrees 02 minutes 52 seconds East, a distance of 114.70 feet,
6. South 28 degrees 15 minutes 39 seconds East, a distance of 49.91 feet,
7. South 46 degrees 49 minutes 00 seconds East, a distance of 93.47 feet,
8. South 59 degrees 59 minutes 37 seconds East, a distance of 97.33 feet,
9. North 87 degrees 21 minutes 13 seconds East, a distance of 56.79 feet,
10. North 41 degrees 45 minutes 50 seconds East, a distance of 32.24 feet,
11. North 21 degrees 45 minutes 20 seconds West, a distance of 68.89 feet,
12. North 13 degrees 33 minutes 07 seconds East, a distance of 51.57 feet,
13. South 76 degrees 46 minutes 26 seconds East, a distance of 67.85 feet,
14. South 56 degrees 03 minutes 42 seconds East, a distance of 47.74 feet,
15. South 05 degrees 21 minutes 57 seconds West, a distance of 66.45 feet,
16. South 19 degrees 16 minutes 48 seconds West, a distance of 44.53 feet,
17. South 62 degrees 01 minutes 44 seconds West, a distance of 46.70 feet,
18. South 24 degrees 16 minutes 44 seconds East, a distance of 107.73 feet,
19. North 80 degrees 21 minutes 03 seconds East, a distance of 72.00 feet,
20. North 41 degrees 38 minutes 02 seconds East, a distance of 51.16 feet,
21. North 71 degrees 31 minutes 13 seconds East, a distance of 90.02 feet,
22. South 87 degrees 37 minutes 31 seconds East, a distance of 84.31 feet,
23. South 29 degrees 55 minutes 31 seconds East, a distance of 251.82 feet,
24. South 36 degrees 47 minutes 19 seconds West, a distance of 208.87 feet,
25. South 39 degrees 55 minutes 52 seconds West, a distance of 166.41 feet,
26. South 27 degrees 53 minutes 18 seconds East, a distance of 118.83 feet,
27. South 51 degrees 28 minutes 57 seconds East, a distance of 47.21 feet,
28. South 35 degrees 04 minutes 21 seconds East, a distance of 307.05 feet,
29. South 89 degrees 36 minutes 39 seconds East, a distance of 85.00 feet,
30. North 85 degrees 30 minutes 21 seconds East, a distance of 155.00 feet,
31. South 11 degrees 27 minutes 21 seconds West, a distance of 200.00 feet,
32. South 43 degrees 02 minutes 39 seconds East, a distance of 160.00 feet,
33. South 07 degrees 28 minutes 29 seconds East, a distance of 135.00 feet,
34. South 02 degrees 28 minutes 21 seconds West, a distance of 95.00 feet,
35. South 43 degrees 16 minutes 03 seconds East, a distance of 77.43 feet to a point in a Soil Conservation Lake for the southeast corner of said Tract Two, said point being on the north line of a tract as described in deed to W. J. Harris, filed 08 November 1950, and recorded in volume 629 page 119 of the deed records of said Grayson County, Texas;

Thence: South 88 degrees 00 minutes 17 seconds West, with the south line of said Tract Two, and with the north line of said Harris tract, and passing at 540.02 feet a set 1½ inch steel square tubing on the west edge of said lake, and continuing on said course with an old barbed wire fence and tree line, a total distance of 3456.64 feet to a



found 1½ inch rebar for the northeast corner of a called 4.461 acre tract as described in deed to Barry Harris et ux, Vickie Lynn Harris, filed 03 September 1993, and recorded in volume 2291 page 101 of said real property records;

Thence: South 88 degrees 44 minutes 13 seconds West, with the south line of said Tract Two, and with the north line of said Harris 4.461 acre tract, and with said fence and tree line, a distance of 334.09 feet to a found 1½ inch rebar for the northwest corner of said Harris 4.461 acre tract;

Thence: South 88 degrees 38 minutes 06 seconds West, with the south line of said Tract Two, and with said fence and tree line, a distance of 1370.38 feet to a found 1½ inch rebar in said Harris Road for the most southerly southwest corner of said Tract Two, same being the northwest corner of said W. J. Harris tract, and said rebar being on the east line of Tract 1, a called 105.27 acre tract as described in said Hunter deed;

Thence: North 01 degrees 42 minutes 39 seconds West, with the west line of said Tract Two, and with the east line of said Hunter Tract 1, and with said road, a distance of 780.48 feet to a set 1½ inch steel square tubing for an ell corner of said Tract Two, same being the northeast corner of said Hunter Tract 1;

Thence: South 88 degrees 47 minutes 26 seconds West, with the south line of said Tract Two, and with the north line of said Hunter Tract 1, and passing at 207.13 feet a wood fence post, and continuing on said course with an old barbed wire fence, and tree line, a total distance of 2201.38 feet to a found 1½ inch rebar for the northwest corner of said Hunter Tract 1, same being the northeast corner of a tract as described in partition deed to Edna M. Woodall, filed 12 September 1977, and recorded in volume 1404 page 596 of said deed records;

Thence: South 88 degrees 46 minutes 48 seconds West, with the south line of said Tract Two, and with the north line of said Woodall tract, and with said fence, a distance of 772.94 feet to a set 1½ inch steel square tubing for a southwest corner of said Tract Two, same being the southeast corner of a called 26.14 acre tract as described in deed to Penny S. Avery, filed 07 July 1998, and recorded in volume 2670 page 802 of said official public records;

Thence: North 02 degrees 17 minutes 36 seconds West, with the west line of said Tract Two, and with the east line of said Avery tract, a distance of 710.78 feet to a found 1½ inch rebar for an ell corner of said Tract Two, same being the northeast corner of said Avery tract;

Thence: North 63 degrees 23 minutes 26 seconds West, with the south line of said Tract Two, and with the north line of said Avery tract, a distance of 710.78 feet to a found 1½ inch rebar for the most westerly southwest corner of said Tract Two, same being the most northerly corner of said Avery tract, and said rebar being on the east line of State Highway Number 289;

Thence: With the east line of said Highway the following nine (9) calls:

1. North 45 degrees 06 minutes 45 seconds East, a distance of 386.68 feet,
2. South 44 degrees 48 minutes 33 seconds East, a distance of 20.00 feet,
3. North 45 degrees 11 minutes 27 seconds East, a distance of 1000.00 feet,
4. North 44 degrees 48 minutes 33 seconds East, a distance of 20.13 feet,
5. North 45 degrees 07 minutes 15 seconds East, a distance of 872.90 feet,
6. North 50 degrees 55 minutes 36 seconds East, a distance of 164.98 feet,
7. North 45 degrees 21 minutes 48 seconds East, a distance of 120.47 feet,

8. North 88 degrees 27 minutes 27 seconds East, a distance of 216.10 feet,  
 9. North 00 degrees 42 minutes 19 seconds West, a distance of 26.46 feet to a set 1½ inch steel square tubing in said Strawn Road for the remainder northwest corner of said Tract Two, same on the southwest corner of Tract One as described deed to Christie Farm Ltd., filed 16 February 1993, and recorded in volume 2255 page 516 of said real property records;

Thence: North 88 degrees 07 minutes 11 seconds East, with the north line of said Tract Two, and with the south line of said Christie Farm tract, and with said road, a distance of 1328.08 feet to a set 1½ inch steel square tubing for the southeast corner of said Christie Farm tract, same being the southwest corner of said Trapp Tract One;  
 Thence: North 88 degrees 19 minutes 19 seconds East, with the north line of said Tract Two, and with the south line of said Trapp Tract One, and with said road, a distance of 195.22 feet to the POINT OF BEGINNING and containing 399.348 acres of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

ARTICLE \_\_\_\_\_. SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 3 OF  
 GRAYSON COUNTY

SECTION \_\_\_\_\_.01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8260 to read as follows:

CHAPTER 8260. SANGANI RANCH MUNICIPAL UTILITY DISTRICT NO. 3 OF  
GRAYSON COUNTY  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8260.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Sangani Ranch Municipal Utility District No. 3 of Grayson County.

Sec. 8260.002. NATURE OF DISTRICT. The district is a municipal utility district in Grayson County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8260.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8260.023 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that the district shall:

(A) pay any debts incurred;  
(B) transfer to Grayson County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 8260.004. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes;

(3) the validity of the district's bonds, notes, or indebtedness; or

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

[Sections 8260.005-8260.020 reserved for expansion]

#### SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8260.021. TEMPORARY DIRECTORS. (a) On or after September 1, 2007, a person who owns land in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as temporary directors the five persons named in the petition.

(b) The commission shall appoint as temporary directors the five persons named in the first petition received by the commission under Subsection (a).

(c) If a temporary director fails to qualify for office, the commission shall appoint a person to fill the vacancy.

(d) Temporary directors serve until the earlier of:

(1) the date directors are elected under Section 8260.023; or

(2) the date this chapter expires under Section 8260.003.

Sec. 8260.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall meet at a location in the district agreeable to a majority of the directors. At the meeting, the temporary directors shall elect officers from among the temporary directors and conduct any other district business.

Sec. 8260.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION; ANNEXATION BY CITY. (a) The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

(b) The temporary directors may not hold the election until the City of Gunter has annexed into its corporate limits all territory described by Section \_\_\_\_\_.02 of the Act creating this chapter.

Sec. 8260.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8260.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8260.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2014.

[Sections 8260.026-8260.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8260.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8260.052-8260.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8260.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES.

The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8260.102. WATER AND WASTEWATER FACILITIES AND SERVICES. (a) The district shall make available any district water or wastewater facility to each person that holds a certificate of convenience and necessity for land in the district.

(b) The district may not provide retail water or wastewater services.

Sec. 8260.103. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the district.

(b) A road project must meet all applicable construction standards, subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located.

Sec. 8260.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY EXCLUDED FROM CITY. If the City of Gunter excludes district territory from the city's corporate limits, the district shall maintain, improve, operate, and repair any road located in that territory in accordance with the ordinances and rules of each political subdivision in whose jurisdiction the road is located.

Sec. 8260.105. DIVISION OF DISTRICT. (a) The district may be divided into two new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) The division procedure is prescribed by Sections 53.030 through 53.041, Water Code.

(c) Any new district created by the division of the district has all the powers and duties of the district.

(d) Any new district created by the division of the district may not, at the time the new district is created, contain any land:

(1) outside the area described by Section \_\_\_\_ .02 of the Act creating this chapter; or

(2) outside the corporate limits of the city of Gunter.

Sec. 8260.106. LIMITATION ON ANNEXATION. (a) The district may not add land to the district under Subchapter J, Chapter 49, Water Code, if the land is located outside the corporate limits of the city of Gunter.

(b) Section 43.075, Local Government Code, does not apply to the district.

[Sections 8260.107-8260.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8260.151. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of or interest on bonds or other obligations issued under Section 8260.201.

[Sections 8260.152-8260.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 8260.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, to finance the construction, maintenance, or operation of a project under Section 8260.101 or 8260.103.

(b) The district may not issue bonds or other obligations to finance projects authorized by Section 8260.103 unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(c) Bonds or other obligations issued or incurred to finance projects authorized by Section 8260.103 may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Sangani Ranch Municipal Utility District No. 3 of Grayson County includes all the territory contained in the following area:

Tract One

All that certain tract or parcel of land situated in the Mary Miller Survey, Abstract Number 775, County of Grayson, State of Texas, said tract being the remainder tract of a called 233.48 acre tract as described in deed to JMS Ltd., filed 23 June 2004, and recorded in volume 3684 page 164 of the official public records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southeast corner of the tract being described herein at a found 1½ inch rebar marked Underwood 4709 on the west right of way line of State Highway Number 289, said rebar being the remainder southeast corner of said JMS tract, same being the southwest corner of a called 2.286 acre tract as described in deed to the State of Texas, and recorded in volume 2816 page 376 of said official public records, and said rebar being the northwest corner of a called 1.186 acre tract as described in deed to the State of Texas, and recorded in volume 2792 page 411 of said official public records, and said rebar also being on the north line of Tract One, a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 May 1993, and recorded in volume 2271 page 274 of the real property records of Grayson County, Texas;

Thence: South 88 degrees 52 minutes 52 seconds West, with the south line of said JMS tract, and with the north line of said Trapp tract, and with a barbed wire fence, and passing at 1395.71 feet a found 1½ inch rebar in the center of an abandoned road, being the northwest corner of said Trapp tract, and continuing on said course a total distance of 1413.20 feet to a cross-tie fence corner post for the southwest corner of said JMS tract;

Thence: North 01 degrees 47 minutes 38 seconds West, with the west line of said JMS tract, and with the west line of said abandoned road, and with a barbed wire fence, a distance of 1462.01 feet to a wood fence corner post for an angle point in the west line of said JMS tract;

Thence: North 19 degrees 12 minutes 28 seconds West, with the west line of said JMS tract, and with a barbed wire fence, a distance of 294.56 feet to a wood fence corner post for an angle point in the west line of said JMS tract;

Thence: North 01 degrees 32 minutes 37 seconds West, with the west line of said JMS tract, and with the center of said abandoned road, and with a barbed wire fence, a distance of 1338.47 feet to a set 1/2 inch steel square tubing for an angle point, said tubing being the southeast corner of a called 240.811 acre tract as described in deed to Phillip S. Wildman et ux, Teresa Marie Wildman, filed 23 October 1997, and recorded in volume 2583 page 538 of said official public records;

Thence: North 01 degrees 36 minutes 23 seconds West, with the east line of said Wildman tract, and with said fence, and with the center of said abandoned road, a distance of 1833.73 feet to a set 3/8 inch rebar for the northwest corner of said JMS tract;

Thence: North 88 degrees 36 minutes 19 seconds East, with the north line of said JMS tract, and with an old barbed wire fence and tree line, a distance of 2639.27 feet to a set 1/2 inch steel square tubing in the west right of way line of said highway for the northeast remainder corner of said JMS tract, same being the northwest corner of said State of Texas 2.286 acre tract;

Thence: With the west line of said highway, the following eleven (11) calls:

1. South 11 degrees 11 minutes 30 seconds West, a distance of 1730.40 feet to a concrete monument,
2. South 16 degrees 52 minutes 30 seconds West, a distance of 165.19 feet to a concrete monument,
3. South 11 degrees 59 minutes 16 seconds West, a distance of 98.10 feet to a concrete monument,
4. South 05 degrees 28 minutes 02 seconds West , a distance of 164.76 feet to a concrete monument,
5. South 11 degrees 10 minutes 10 seconds West, a distance of 1601.67 feet to a concrete monument,
6. South 16 degrees 42 minutes 42 seconds West, a distance of 329.66 feet to a concrete monument,
7. South 11 degrees 42 minutes 34 seconds West, a distance of 98.54 feet to a concrete monument,
8. South 05 degrees 23 minutes 27 seconds West, a distance of 329.86 feet to a concrete monument,
9. South 11 degrees 12 minutes 13 seconds West, a distance of 298.04 feet to a concrete monument,
10. South 16 degrees 49 minutes 07 seconds West, a distance of 164.79 feet to a concrete monument,
11. South 11 degrees 19 minutes 08 seconds West, a distance of 70.88 feet to the POINT OF BEGINNING and containing 231.164 acres of land.

## Tract Two

All that certain tract or parcel of land situated in the Mary Miller Survey, Abstract Number 775, County of Grayson, State of Texas, said tract being the remainder tract of a called 136.431 acre tract as described in deed to JMS Ltd., filed 23 June 2004, and recorded in volume 3684 page 164 of the official public records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southwest corner of the tract being described herein at a found 1½ inch rebar marked Underwood 4709 on the east right of way line of State Highway Number 289, said rebar being the remainder southwest corner of said JMS tract, same being the southeast corner of a called 0.959 acre tract as described in deed to the State of Texas, and recorded in volume 2816 page 376 of said official public records, and said rebar being the northeast corner of a called 0.954 acre tract as described in deed to the State of Texas, and recorded in volume 2792 page 417 of said official public records, and said rebar also being on the north line of Tract One, a called 278.389 acre tract as described in deed to Edwin A. Trapp Jr., Trustee, filed 24 May 1993, and recorded in volume 2271 page 274 of the real property records of Grayson County, Texas;

Thence: With the east line of said highway, the following five (5) calls:

1. North 11 degrees 30 minutes 45 seconds East, a distance of 505.16 feet to a concrete monument,
2. North 16 degrees 23 minutes 59 seconds East, a distance of 329.37 feet to a concrete monument,
3. North 11 degrees 09 minutes 31 seconds East, a distance of 98.37 feet to a concrete monument,
4. North 05 degrees 23 minutes 20 seconds East , a distance of 330.13 feet to a concrete monument,
5. North 11 degrees 11 minutes 34 seconds East, a distance of 518.12 feet to a found 1½ inch rebar marked 4709 for the northwest remainder corner of said JMS tract, same being the northeast corner of said State of Texas 0.959 acre tract;

Thence: North 88 degrees 56 minutes 27 seconds East, with the north line of said JMS tract, and with an old barbed wire fence and tree line, a distance of 1333.17 feet to a set 1½ inch steel square tubing for an angle point in the north line of said JMS tract;

Thence: North 89 degrees 09 minutes 04 seconds East, with the north line of said JMS tract, and with said fence, a distance of 2317.18 feet to a set 1½ inch steel square tubing for the northeast corner of said JMS tract, same being the west right of way line of the Burlington Northern Railway, as described in deed to Red River Texas and Southern Railway Company, filed 04 November 1905, and recorded in volume 168 page 52 of the deed records of Grayson County, Texas;

Thence: South 25 degrees 45 minutes 19 seconds West, with the east line of said JMS tract, and with the west line of said railway, a distance of 1949.51 feet to a set 1½ inch steel square tubing for the southeast corner of said JMS tract;

Thence: South 88 degrees 55 minutes 54 seconds West, with the south line of said JMS tract, and with an old barbed wire fence and tree line, a distance of 647.14 feet to a found 1½ inch rebar for the northeast corner of said Trapp tract;

Thence: South 89 degrees 11 minutes 13 seconds West, with the south line of said JMS tract, and with the north line of said Trapp tract, and with said fence, a distance of 2500.41 feet to the POINT OF BEGINNING and containing 135.678 acres of land.

### Tract Three

All that certain tract or parcel of land situated in the Mary Miller Survey, Abstract Number 775, County of Grayson, State of Texas, said tract being all of a called 85.470 acre tract as described in deed to JMS Ltd., filed 23 June 2004, and recorded in volume 3684 page 164 of the official public records of the County of Grayson, State of Texas, and being more fully described as follows:

Beginning for the southeast corner of the tract being described herein at a found 1½ inch steel square tubing, said tubing being the southeast corner of said JMS tract, same being the northeast corner of a tract as described in deed to the Freels Family Limited Partnership, filed 09 January 1997, and recorded in volume 2516 page 609 of said official public records, and said tubing being in Old Preston Road;

Thence: South 88 degrees 55 minutes 54 seconds West, with the south line of said JMS tract, and with the north line of said Feeels tract, a distance of 2011.77 feet to a set 1½ inch steel square tubing for the southwest corner of said JMS tract, same being the east right of way line of the Burlington Northern Railway, as described in deed to Red River Texas and Southern Railway Company, filed 04 November 1905, and recorded in volume 168 page 52 of the deed records of Grayson County, Texas;

Thence: North 25 degrees 45 minutes 19 seconds East, with the west line of said JMS tract, and with the east line of said railway, a distance of 3372.95 feet to a set 1½ inch steel square tubing for the northwest corner of said JMS tract;

Thence: South 89 degrees 54 minutes 13 seconds East, with the north line of said JMS tract, a distance of 470.60 feet to a found 1½ inch steel square tubing for the northeast corner of said JMS tract, and said tubing being in said road;

Thence: South 01 degrees 26 minutes 09 seconds East, with the east line of said JMS tract, and with said road, a distance of 3000.51 feet to the POINT OF BEGINNING and containing 85.710 acres of land.

SECTION \_\_\_\_\_.03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and article to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this article with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this article are fulfilled and accomplished.

### ARTICLE \_\_\_\_\_. EFFECTIVE DATE

SECTION \_\_\_\_\_.01. This Act takes effect September 1, 2007.

The amendment was read.

Senator Duncan, on behalf of Senator Estes, moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.



The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 2003** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Patrick, Averitt, Lucio, and Nichols.

### **SENATE BILL 965 WITH HOUSE AMENDMENT**

Senator Shapiro called **SB 965** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 965** (House committee report) as follows:

(1) On page 2, line 11 insert the following between the words "process" and "that":

"which should include the State of Texas HUB provisions"

(2) On page 4, between lines 6 and 7, insert new subsection (f)(6):

"(6) ability to meet HUB provisions."

(3) One page 16, line 10, after the word "project" delete the word "may" and insert the word "shall".

(4) On page 16, line 12 insert the following before the word "responsible":  
"responsive and"

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 965** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Nelson, Carona, West, and Harris.

### **CONFERENCE COMMITTEE ON HOUSE BILL 1498**

Senator Eltife called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1498** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1498** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Eltife, Chair; Hegar, Hinojosa, Uresti, and Deuell.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2819**

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2819** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2819** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Hinojosa, Estes, Lucio, and Janek.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2960**

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2960** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2960** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Jackson, Janek, Van de Putte, and Eltife.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3066**

Senator Patrick called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3066** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3066** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Duncan, Williams, Deuell, and Uresti.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 222**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2007

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 222** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS  
ELTIFE  
FRASER  
HARRIS  
HINOJOSA

On the part of the Senate

THOMPSON  
CASTRO  
GIDDINGS  
T. SMITH

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to a security freeze on a consumer file maintained by a consumer reporting agency.

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

SECTION 1. Subsection (a), Section 20.034, Business & Commerce Code, is amended to read as follows:

(a) On written request sent by certified mail that includes proper identification provided by a consumer [~~and a copy of a valid police report, investigative report, or complaint made under Section 32.51, Penal Code~~], a consumer reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives the request.

SECTION 2. Section 20.0385, Business & Commerce Code, is amended to read as follows:

Sec. 20.0385. **APPLICABILITY OF SECURITY ALERT AND SECURITY FREEZE.** (a) The requirement under this chapter to place a security alert or security freeze on a consumer file does not apply to:

(1) a check service or fraud prevention service company that issues consumer reports:

(A) to prevent or investigate fraud; or

(B) for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; or

(2) a deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

(b) The requirement under this chapter to place a security freeze on a consumer file does not apply to a consumer reporting agency that:

(1) acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(2) does not maintain a permanent database of credit information from which new consumer reports are produced.

(c) Notwithstanding Section 20.12, a violation of a requirement under this chapter to place, temporarily lift, or remove a security freeze on a consumer file is not a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

SECTION 3. Section 20.04, Business & Commerce Code, is amended to read as follows:

Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES OR SERVICES.

(a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer or for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period or for an identified requester, or removing a security freeze in accordance with this chapter. The amount of the charge for the disclosure of information pertaining to the consumer may not exceed \$8. The amount of the charge for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period, or removing a security freeze may not exceed \$10 per request. The amount of the charge for temporarily lifting a security freeze for an identified requester may not exceed \$12 per request. On January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer or for placing, temporarily lifting, or removing a security freeze. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file:

(A) made not later than the 60th day after the date on which adverse action is taken against the consumer; or

(B) made on the expiration of a 45-day security alert;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report;

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report or to request a security alert; [☐]

(5) a request for a security alert made by a consumer; or  
(6) the placement, temporary lifting, or removal of a security freeze at the request of a consumer who has submitted to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the alleged commission of an offense under Section 32.51, Penal Code.

SECTION 4. Subsection (e), Section 20.037, Business & Commerce Code, is repealed.

SECTION 5. The change in law made by this Act applies only to a request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made on or after the effective date of this Act. A request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made before the effective date of this Act is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2007.

The Conference Committee Report on **SB 222** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
 SENATE BILL 1520**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas  
 May 24, 2007

Honorable David Dewhurst  
 President of the Senate

Honorable Tom Craddick  
 Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1520** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH  
 CARONA  
 HARRIS  
 HINOJOSA  
 WATSON

On the part of the Senate

PAXTON  
 CORTE  
 MCCALL  
 ANCHIA  
 SOLOMONS

On the part of the House

A BILL TO BE ENTITLED  
 AN ACT

relating to ad valorem tax lien transfers.

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

SECTION 1. Section 32.06, Tax Code, is amended by amending Subsections (a-1), (a-2), (a-3), (b), (c), (d), (f), (i), and (k) and adding Subsections (a-4), (b-1), (c-1), (d-1), (f-1), (f-2), (f-3), (f-4), and (k-1) to read as follows:

(a-1) A person may authorize another person to pay the ~~[delinquent]~~ taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating:

- (1) the authorization;
- (2) the name and street address of the transferee authorized to pay the taxes of the property owner; ~~[and]~~
- (3) a description of the property by street address, if applicable, and legal description; and
- (4) notice has been given to the property owner that if they are age 65 or disabled, they may be eligible for a tax deferral under Section 33.06.

(a-2) A ~~[After a]~~ tax lien may be ~~[is]~~ transferred to the person who pays the taxes on behalf of the property owner under the authorization for:

- (1) taxes that are delinquent at the time of payment; or
- (2) taxes that are not delinquent at the time of payment if:
  - (A) the property is not subject to a recorded mortgage lien; or
  - (B) a tax lien transfer authorized by the property owner has been executed and recorded for one or more prior years on the same property and the property owner has executed an authorization consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent~~]; taxes on the property that become due in subsequent tax years may be transferred before the delinquency date~~ in the manner provided by Subsection (a-1).

(a-3) If the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector shall certify in one document the transfer of the liens for all the taxes.

(a-4) The Finance Commission of Texas shall:

- (1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer; and
- (2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section ~~[A tax lien may be transferred before the delinquency date in the manner provided by Subsection (a-1) only if the real property is not subject to a lien other than the tax lien].~~

(b) If a transferee authorized to pay a property owner's taxes pursuant to Subsection (a-1) pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to that transferee. In addition, the collector or a person designated by the collector shall certify ~~[on the sworn document]~~ that ~~[payment of]~~ the taxes and any penalties and interest on the ~~[described]~~ property and collection costs have ~~[has]~~ been paid ~~[made]~~ by the transferee on behalf of the property owner ~~[liable for the taxes when imposed]~~ and that the taxing unit's tax lien is transferred to that transferee. The collector shall attach to the certified statement ~~[sworn document]~~ the collector's seal of office or sign the statement ~~[document]~~ before a notary public and deliver ~~[the sworn document,]~~ a tax receipt~~;~~ and the statement ~~[affidavit]~~ attesting to the transfer of the tax lien to the transferee within 30 days. The ~~[sworn document,]~~ tax receipt~~;~~ and statement ~~[affidavit attesting to the transfer of the tax lien]~~ may be combined into one document. The collector shall

[conspicuously] identify in a discrete field in the applicable property owner's [taxpayer's] account the date of the transfer of a tax lien transferred under this section. When a tax lien is released, the transferee shall file a release with the county clerk of each county in which the property encumbered by the lien is located for recordation by the clerk and send a copy to the collector. The transferee may charge the property owner a reasonable fee for filing the release.

(b-1) Not later than the 10th business day after the date the certified statement is received by the transferee, the transferee shall send by certified mail a copy of the sworn document described by Subsection (a-1) to any mortgage servicer and to each holder of a recorded first lien encumbering the property. The copy must be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by the mortgage servicer to the property owner, or the address of the holder of a recorded first lien as shown in the real property records.

(c) Except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien:

(1) in the manner provided by law for foreclosure of tax liens; or

(2) in the manner specified in Section 51.002, Property Code, and Section 32.065, after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736, Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section [of this code], if the property owner and the transferee enter into a contract that is secured by a lien on the property.

(c-1) If a transferee seeks to foreclose a tax lien on the property under Subsection (c)(2):

(1) the application for the foreclosure must be served on and name as parties the owner of the property and the holder of any recorded preexisting first lien on the property and must:

(A) allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution;

(B) state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution;

(C) state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity of the debt to the property owner and each holder of a recorded first lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code; and

(D) confirm that the property owner has not requested a deferral of taxes authorized by Section 33.06; and

(2) the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure.

(d) A transferee shall record [To be enforceable,] a tax lien transferred as provided by this section [must be recorded] with the [sworn] statement [and affidavit] attesting to the transfer of the tax lien as described by [in] Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.

(f) The holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent [tax lien is recorded in all counties in which the property is located], to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee.

(f-1) If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, the mortgage servicer or the holder of the first lien may send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lienholder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission of Texas by rule shall prescribe the form and content of the notice under this subsection.

(f-2) The rights granted by Subsections (f) and (f-1) do not affect a right of redemption in a foreclosure proceeding described by Subsection (k) or (k-1).

(f-3) Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided.

(f-4) Failure to comply with Subsection (b-1), (f), or (f-1) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust.

(i) A foreclosure of a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise. [The transferee of a tax lien or any successor in interest must notify the holders of all recorded liens on the property before foreclosure in the same manner and within the same time frame as the transferee must notify the owner of the property under Section 51.002, Property Code.]

(k) Beginning on the date the foreclosure deed is recorded, the person whose property is sold as provided by Subsection (c) or the mortgage servicer of a prior recorded lien against the property is entitled to redeem the foreclosed property from the purchaser or the purchaser's successor by paying the purchaser or successor:

(1) 125 percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period with cash or cash equivalent funds; and

(2) the amount reasonably spent by the purchaser in connection with the property as costs within the meaning of Section 34.21(g) and the legal judgment rate of return on that amount.



(k-1) The right of redemption provided by Subsection (k) may be exercised on or before the second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a mineral interest. For any other property, the right of redemption must be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record. If a person redeems the property as provided by Subsection (k) and this subsection, the purchaser at the tax sale or the purchaser's successor shall deliver a deed without warranty to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

SECTION 2. Subsections (b), (c), and (d), Section 32.065, Tax Code, are amended to read as follows:

(b) Notwithstanding any agreement to the contrary, a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property shall provide for a power of sale and foreclosure in the manner provided by Section 32.06(c)(2) [~~under Chapter 51, Property Code,~~] and:

- (1) an event of default;
- (2) notice of acceleration;
- (3) recording of the deed of trust or other instrument securing the contract entered into under Subsection (a) in each county in which the property is located;
- (4) recording of the sworn document and affidavit attesting to the transfer of the tax lien;
- (5) requiring the transferee to serve foreclosure notices on the property owner at the property owner's last known address in the manner provided [required] by Section 32.06(c)(2) [~~Sections 51.002(b), (d), and (e), Property Code,~~] or by a commercially reasonable delivery service that maintains verifiable records of deliveries for at least five years from the date of delivery; and

(6) requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the notice of sale in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes on the first page, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows: "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)."

(c) Notwithstanding any other provision of this code, a transferee of a tax lien or the transferee's assignee is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure or judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

(d) Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section. The transferee of a tax lien under this section is not required to obtain a license under Title 4, Finance Code.

SECTION 3. Subsection (g), Section 32.065, Tax Code, as added by Chapter 406, Acts of the 79th Legislature, Regular Session, 2005, is repealed.

SECTION 4. (a) The change in law made by this Act applies only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. A transfer of an ad valorem tax lien that occurs before the effective date of this Act is covered by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Sections 32.06 and 32.065, Tax Code, applies to all foreclosures under those sections that occur on or after the effective date of this Act, other than a foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed. A foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed is governed by the law in effect at the time the contract was executed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2007.

The Conference Committee Report on **SB 1520** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 482

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2007

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 482** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FRASER  
ELTIFE  
HARRIS  
BRIMER  
WHITMIRE  
On the part of the Senate

P. KING  
STRAUS  
TURNER  
HARTNETT  
MILLER  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to competition and customer choice in the retail electric power market; providing an administrative penalty.

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

SECTION 1. Sections 15.023(b) and (d), Utilities Code, are amended to read as follows:

(b) The penalty for a violation may be in an amount not to exceed \$25,000 except as provided by Section 39.157. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system. Violations of Section 39.157 shall be included in the highest class of violations.

SECTION 2. Section 15.024(f), Utilities Code, is amended to read as follows:

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

SECTION 3. Section 17.008, Utilities Code, is amended to read as follows:

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

(1) "Credit history":

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

- (i) financial responsibility;
- (ii) payment habits; or
- (iii) creditworthiness; and

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

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

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

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

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

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

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

~~(1) for an existing residential customer; or~~

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

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

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

(f) A retail electric provider may not require a person applying for residential electric service to provide a security deposit or advance payment as a condition of service if:

(1) it can be shown that the person was a customer of one or more retail electric providers or electric utilities in this state during the entire 12-month period preceding the request for electric service; and

(2) during the preceding 12-month period, the person was not late in paying an electric service bill.

(g) If a person applying for residential electric service does not provide the documentation described in Subsection (f), nothing in this section limits [(h) This section does not limit] a retail electric provider's authority to require a deposit or advance payment as a condition of service.

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

SECTION 4. Section 39.051, Utilities Code, is amended by adding Subsections (h), (i), (j), (k), and (l) to read as follows:

(h) On or before January 1, 2008, a transmission and distribution utility, and power generation companies and retail electric providers affiliated with the transmission and distribution utility, and their common holding company shall each:

(1) have a name and logo that is distinct from the name and logo of each of the companies to which this subsection applies;

(2) have a board of directors composed exclusively of individuals who are not members of the board of directors of any of the other companies to which this subsection applies;

(3) have officers who are not officers of any of the other companies to which this subsection applies;

(4) have headquarters, operations facilities, and other office space located in a building or buildings separate and apart from the building or buildings in which the headquarters, operations facilities, and other office space where the other companies to which this subsection applies are located;

(5) maintain an arm's-length relationship in all transactions and not share information which could be used for market manipulation or market power abuse with the other companies to which this subsection applies;

(6) enter into transactions with the other companies to which this subsection applies only as permitted by a commission-approved affiliate code of conduct and only as approved by a majority of the directors of its governing board of directors;

(7) prepare separate annual financial statements in accordance with generally accepted accounting principles showing its assets and liabilities as separate and distinct from the assets of the other companies to which this subsection applies;

(8) ensure that the commission has complete access to all of the books and records of the transmission and distribution utility and to transactions between the transmission and distribution utility and any of the other companies to which this subsection applies provided further that any entity to which this subsection applies shall ensure that the commission has complete access to all of the entity's books and records necessary for the commission to exercise its authority under this chapter;

(9) maintain separate property, equipment, offices, financing arrangements, computer systems, and information systems from the other companies to which this subsection applies; and

(10) the chief executive officer and any other employee, as designated by the commission, of each transmission and distribution company, power generation company and retail electric provider affiliated with the transmission and distribution company and owned by a common holding company shall file annually with the commission a certificate under oath affirming that, to the knowledge of such officer or employee, such company has operated during the prior 12 months in material compliance with the code of conduct as approved by the commission and applicable to such company. As provided by Section 15.030, an intentional and knowing violation of this subdivision constitutes a felony of the third degree.

(i) Subsection (h) applies only to a transmission and distribution utility that served more than 850,000 end-use customer meters on December 31, 2006, and power generation companies and retail electric providers affiliated with that transmission and distribution utility, and their common holding company. If a transmission and distribution utility served more than 850,000 end-use customer meters on December 31, 2006, and was not affiliated with a power generation company or retail electric provider on January 1, 2008, but becomes affiliated with a power generation company or retail electric provider after that date, the requirements of Subsection (h) shall apply to the transmission and distribution utility and any power generation companies and any retail electric providers affiliated with the transmission and distribution utility at the time the entities become affiliated.

(j) A transmission and distribution utility and its common holding company:

(1) shall implement safeguards adequate to ensure that creditors of the other companies to which Subsection (h) applies, other than the creditors of the transmission and distribution utility, do not have recourse against the transmission and distribution utility;

(2) shall not permit any affiliate to obtain credit, other than a subsidiary of the transmission and distribution utility, under a guarantee from the transmission and distribution utility or an arrangement that would directly or indirectly pledge assets in the rate base of the transmission and distribution utility, pledge cash, or pledge expected revenue of the transmission and distribution utility;

(3) shall not act in a manner that in any way suggests or implies that reliability of electric service, or restoration of service to a customer following an outage, is dependent upon a customer receiving service from a competitive affiliate of the transmission and distribution utility;

(4) shall not engage in any practice that implies to customers or other persons engaged in competitive electric services that service provided by a competitive affiliate of the transmission and distribution utility will result in a higher level of service from the transmission and distribution utility; and

(5) shall not temporarily assign employees engaged in transmission or distribution utility system operations to a competitive affiliate.

(k) A transmission and distribution utility or affiliate may not circumvent the provisions or the intent of Subsections (h), (i), and (j) by using any affiliate to provide information, services, or subsidies between the transmission and distribution utility and the other companies to which Subsection (h) applies.

(l) A transmission and distribution utility in conjunction with the competitive affiliates of the transmission and distribution utility may petition the commission for an exception to the restrictions contained in Subsections (h), (i), and (j). The commission shall not grant a petition under this subsection if the commission finds that the exception may harm the competitive market or create a competitive advantage.

SECTION 5. Section 39.101, Utilities Code, is amended by amending Subsection (a) and adding Subsection (i) to read as follows:

(a) Before customer choice begins on January 1, 2002, the commission shall ensure that retail customer protections are established that entitle a customer:

(1) to safe, reliable, and reasonably priced electricity, including protection against service disconnections in an extreme weather emergency as provided by Subsection (h) or in cases of medical emergency or nonpayment for unrelated services;

(2) to privacy of customer consumption and credit information; provided, however, that the release to competitive retail electric providers of the names and addresses of residential customers that were served by the affiliated retail electric provider at the end of the price to beat period shall not be considered a violation of customer privacy;

(3) to bills presented in a clear format and in language readily understandable by customers;

(4) to the option to have all electric services on a single bill, except in those instances where multiple bills are allowed under Chapters 40 and 41;

(5) to protection from discrimination on the basis of race, color, sex, nationality, religion, or marital status;

(6) to accuracy of metering and billing;

(7) to information in English and Spanish and any other language as necessary concerning rates, key terms and conditions, in a standard format that will permit comparisons between price and service offerings, and the environmental impact of certain production facilities;

(8) to information in English and Spanish and any other language as necessary concerning low-income assistance programs and deferred payment plans; and

(9) to other information or protections necessary to ensure high-quality service to customers.

(i) A retail electric provider may not state or imply that it can provide a level of reliability of electric service or preferential treatment in the restoration of service following an outage that is better than another provider can provide. A retail electric provider may make claims regarding the provider's customer service reliability. The commission may impose an administrative penalty for a violation of this subsection in accordance with Section 15.024. A violation of this subsection shall be included in the highest class of violations in the classification system established by the commission under Section 15.023.

SECTION 6. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1015 to read as follows:

Sec. 39.1015. SUSPENSION OF DISCONNECTION FOR CERTAIN CUSTOMERS. (a) In this section:

(1) "Critical care residential customer" means a residential electric customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition.

(2) "Elderly low-income customer" means a low-income customer who is 65 years old or older.

(3) "Low-income customer" means an electric customer who is on the list maintained by the Low-Income Discount Administrator established under Section 39.903, or if there is no current list, an electric customer:

(A) whose household income is not more than 125 percent of the federal poverty guidelines;

(B) who receives food stamps from the Health and Human Services Commission; or

(C) who receives medical assistance from a state agency that administers a part of the medical assistance program.

(4) "Service provider" means a retail electric provider, power generation company, aggregator, or other entity that provides retail electric service.

(b) During the period beginning July 1 and ending September 30 of each year a service provider:

(1) may not disconnect service or authorize the disconnection of service to a critical care residential customer or elderly low-income customer who contacts the service provider regarding bill payment or in response to a disconnection notice;

(2) may not disconnect service or authorize the disconnection of service to a low-income customer other than an elderly low-income customer if the customer:

(A) contacts the service provider regarding bill payment or in response to a disconnection notice; and

(B) enters into a deferred payment plan with the service provider for the current month's electric charges and meets the terms of any then current deferred payment plan;

(3) shall request reconnection of service or reconnect service to a critical care residential customer or an elderly low-income customer whose service is disconnected before or during the period if:

(A) the customer contacts the service provider regarding bill payment or in response to a disconnection notice; or

(B) the service provider has previously been notified that the customer is a critical care residential customer;

(4) shall request reconnection of service or reconnect service to a low-income customer whose service is disconnected before or during the period if the customer enters into a deferred payment plan with the service provider; and

(5) shall rescind a request for disconnection of service to a critical care residential customer, elderly low-income customer, or low-income customer made before the period begins if the service provider is prohibited under this subsection from disconnecting or authorizing the disconnection of the customer's service during the period.

(c) A service provider may not disconnect service or authorize the disconnection of a critical care residential customer's service during the period provided by Subsection (b) regardless of whether the customer contacts the service provider as provided by Subsection (b) if the service provider has previously been notified that the customer is a critical care residential customer.

(d) A service provider shall allow a critical care residential customer, elderly low-income customer, or low-income customer to establish with the provider a deferred payment plan in person or by telephone. The service provider shall confirm the payment plan with the customer in writing. The deferred payment plan may not include a penalty for late payments accrued during the period provided by Subsection (b). The service provider shall allow a critical care residential customer, elderly



low-income customer, or low-income customer to renegotiate the terms of the deferred payment plan at least one time, regardless of whether the customer's economic or financial circumstances have changed. For a low-income customer other than an elderly low-income customer, during the period provided by Subsection (b), the payment plan may require the payment of not more than 33 percent of the then current month's charges plus any due installments of a previous deferred payment plan. For a low-income customer other than an elderly low-income customer, the service provider is not required to extend a deferred payment plan entered into under this subsection beyond the March billing cycle following the period provided by Subsection (b).

(e) A deferred payment plan established under Subsection (d) for one or more electric bills that come due during the period provided by Subsection (b) must provide:

(1) for a critical care residential customer or elderly low-income customer, that the customer is not required to pay more than 25 percent of the deferred electric bills as part of the first electric bill issued after the end of the period and that the remaining balance is to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments; and

(2) for a low-income customer other than an elderly low-income customer, that the customer is required to pay not more than 33 percent of the deferred bills to initiate the agreement and that the remaining balance is to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments.

(f) A service provider may pursue disconnection of electrical service for a critical care residential customer or an elderly low-income customer only after the period provided by Subsection (b) and only if the customer does not meet the terms of the deferred payment plan, unless the disconnection is otherwise prohibited. A service provider may pursue disconnection of service for a low-income customer other than an elderly low-income customer if the customer does not meet the terms of the deferred payment plan, unless the disconnection is otherwise prohibited. The service provider shall give the customer appropriate notice that the customer has not met the terms of the plan before the service provider disconnects or authorizes the disconnection of service.

(g) A service provider may encourage a critical care residential customer or elderly low-income customer to make partial payment of a deferred electric bill during the period provided by Subsection (b), but the service provider shall clearly inform the customer that the customer may not be disconnected for nonpayment before October 1 following the period provided by Subsection (b).

(h) The commission by rule shall prohibit a customer who receives a deferred payment plan under Subsection (d) and who owes a past due deferred balance from switching to a different retail electric provider.

(i) This section does not apply to metered electric service sold to residential customers on a prepaid basis.

SECTION 7. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1016 to read as follows:

Sec. 39.1016. CANCELLATION FEE. A retail electric provider may not charge a residential customer who requests cancellation of retail electric service provided on a month-to-month basis a fee relating to the cancellation.

SECTION 8. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1017 to read as follows:

Sec. 39.1017. COMMISSION RULES REGARDING DEPOSITS. (a) In this section, "elderly low-income customer" means an electric customer who is 65 years old or older and:

(1) whose household income is not more than 125 percent of the federal poverty guidelines;

(2) receives food stamps from the Health and Human Services Commission;

or

(3) receives medical assistance from a state agency that administers a part of the medical assistance program.

(b) Notwithstanding Section 17.008, the commission by rule shall require a retail electric provider to waive the requirement that an elderly low-income customer applying for residential electric service provide a security deposit or advance payment as a condition of service.

SECTION 9. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. PROMOTION OF RESIDENTIAL CUSTOMER CHOICE. (a) A reference in this section to "retail electric provider" includes:

(1) a successor in interest to the retail electric provider; and

(2) a provider that was an affiliate of the retail electric provider on

December 31, 2006.

(b) The purpose of this section is to promote customer choice for residential customers by imposing a charge on certain retail electric providers to provide an additional incentive for them to compete for residential customers.

(c) This section applies only to a retail electric provider that on December 31, 2006, had more than 250,000 residential customers in this state and was required to offer service to residential customers at the price to beat in accordance with Section 39.202. This section does not apply to a retail electric provider at any time after the retail electric provider has not been assessed a charge under Subsection (d) for two consecutive years.

(d) The commission annually shall impose a charge on a retail electric provider if the gross number of residential customers the provider gained during a calendar year, as measured by move-in and switch transactions processed by the independent organization, in areas where customer choice is available outside the transmission and distribution utility service territory in which it was required to offer the price to beat was less than the following customer target number:

(1) for a retail electric provider with one million or more residential customers in this state on December 31, 2006, a gain of 120,000 residential customers; and

(2) for a retail electric provider with fewer than one million residential customers in this state on December 31, 2006, a gain of 45,000 residential customers.

(e) The annual charge the commission shall impose under Subsection (d) is computed by multiplying the difference between the applicable target number of residential customers gained as provided by Subsection (d)(1) or (2) and the gross number of residential customers that the retail electric provider actually gained during the relevant calendar year by:

- (1) \$100 on December 31, 2007;
- (2) \$200 on December 31, 2008; and
- (3) \$300 on December 31, 2009.

(f) Money collected from the charge assessed under this section may be appropriated only for programs devised and directed by the commission as provided by this subsection. If appropriations from the system benefit fund are sufficient to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h), the money collected from the charges under Subsection (d) may be used only for a residential customer education program under Section 39.902, including the provision of call center services when the commission conducts a customer education program. If appropriations from the system benefit fund are not sufficient to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h), the money collected from the charges under Subsection (d) may be appropriated only for the following purposes, in the following order of priority:

- (1) to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h); and
- (2) for a residential customer education program under Section 39.902, using money remaining after the reduced rate prescribed by Section 39.903(h) has been fully implemented.

(g) The commission may adopt rules as necessary or appropriate to carry out this section.

(h) This section expires March 31, 2010.

SECTION 10. LEGISLATIVE FINDINGS. The legislature finds that:

- (1) the "filed rate" doctrine is at odds with the intent of the state legislature to restructure the electric utility industry in this state; and
- (2) the "filed rate" doctrine in a right of action regarding the deregulated wholesale and retail electric markets for a violation of Section 39.157, Utilities Code, or of Sections 15.01 through 15.26, Business & Commerce Code, is abolished.

SECTION 11. Section 39.157(a), Utilities Code, is amended to read as follows:

(a) To prevent market power abuses or other violations of this section, the ~~The~~ commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section have occurred or are presently occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by ordering a person to cease a practice that the commission finds is a market power abuse, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by requiring refunds or disgorgement sufficient to remedy the impact of the market power abuses, by imposing an administrative penalty as authorized by Chapter 15 and in an amount not to exceed

three times the actual damages to the market or the level of penalties that the Federal Energy Regulatory Commission is authorized to impose under 16 U.S.C. Section 825o-1, as amended by the federal Energy Policy Act of 2005, by ordering the auction of entitlements to uncommitted capacity as necessary to mitigate the ability of the person to engage in market power abuses for a period not to exceed two years in an amount and form to be determined by the commission, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356, including an amendment to specify that any generation units that are covered by the registration may be required to bid at a level not more than incremental cost, including operational costs and the amortization of start-up costs over an appropriate period, in markets operated by the independent organization, provided a person subject to this requirement shall not be prevented from receiving the market clearing price for services offered in any markets operated by the independent organization. Section 15.024(c) does not apply to an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, ~~and~~ collusion, unreasonably preferential, prejudicial, or discriminatory treatment by a power generation company in selling wholesale electric generation services to retail electric providers affiliated with the power generation company as compared to sales to retail electric providers not affiliated with the power generation company, and any practice that implies to customers or other persons engaged in competitive electric services that service provided by a competitive affiliate of the utility will result in a higher level of service from the electric utility. A violation of this section or rules adopted by the commission under this section ~~[the code of conduct provided by Subsection (d)]~~ that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws. For purposes of this section, "uncommitted capacity" means capacity available for bidding by persons found to have committed market power abuse or affiliates of the person found to have committed market power abuse into markets operated by the independent organization.

SECTION 12. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. CONSIDERATION AND APPROVAL OF CERTAIN TRANSACTIONS. (a) To protect retail customers in this state, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility;

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be transferred or sold; or

(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred.

(b) The commission shall approve a transaction under Subsection (a) if the commission finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility. The commission shall make the determination concerning a transaction under this subsection not later than the 180th day after the date the commission receives the relevant report. If the commission has not made a determination before the 181st day after that date, the transaction is considered approved.

(c) Subsections (a) and (b) do not apply to a transaction described by Subsection (a) for which a definitive agreement was executed before April 1, 2007, if an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility made a filing for review of the transaction under Section 14.101 before May 1, 2007, and the resulting proceeding was not withdrawn.

(d) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing under this section or under Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101. The commission may reasonably interpret and enforce conditions adopted pursuant to this subsection.

(e) Unless instructed to do so by specific legislative actions and no earlier than January 1, 2017, the commission shall not implement or consider the implementation of retail electric competition in electric control areas within the state that were in the Southwest Power Pool on January 1, 2004, and that are not subject to Subchapter I or Subchapter J.

SECTION 13. Section 39.202, Utilities Code, is amended by adding Subsections (q), (r), and (s) to read as follows:

(q) If a retail electric provider is assessed a charge under Section 39.110, on a schedule to be determined by the commission, the commission shall require the retail electric provider to provide the commission with the names and addresses of the residential customers who have not affirmatively chosen a retail electric provider or electric service plan. The commission shall release the names and addresses of those customers to all retail electric providers licensed by the commission and currently offering residential service. The commission shall provide updated information on the list of names and addresses to remove the customers who have affirmatively made a choice in relation to providers or plans.

(r) The commission may annually conduct a program to assist residential customers who have not affirmatively chosen a retail electric provider or electric service plan to select a competitive retail electric provider or alternative plan from the existing provider.

(s) The commission shall not provide the name and address of a customer as required by Subsection (q) if the customer contacts the commission and requests to have their information removed from the list. Additionally, the commission shall not contact any customer under a program undertaken pursuant to Subsection (r) if the customer has requested that their information be withheld or removed from the list.

SECTION 14. Subchapter E, Chapter 39, Utilities Code, is amended by adding Sections 39.2025 and 39.2026 to read as follows:

Sec. 39.2025. ELECTRICITY RATE REDUCTION. (a) In this section, "residential customers under a price to beat tariff on December 31, 2006" means residential customers of an affiliated retail electric provider who:

(1) were served on December 31, 2006, at the price to beat tariff regardless of whether the tariff was revised under order issued by the commission before December 31, 2006, implementing an agreed settlement;

(2) have not affirmatively chosen an electric service plan after December 31, 2006; and

(3) continue to be served by the affiliated retail electric provider; and

(4) did not receive at least a 10 percent reduction from the price charged on June 30, 2006, prior to June 30, 2007.

(b) A retail electric provider shall reduce the price charged to residential customers under a price to beat tariff on December 31, 2006, by 15 percent from the price tariffed to be charged on June 30, 2006, as follows:

(1) a 10 percent reduction on July 1, 2007; and

(2) up to and including an additional five percent on September 1, 2007, if the commission determines that the additional reduction will not harm retail competition in the affected transmission and distribution utility service territory.

(c) In making the determination in Subsection (b)(2), the commission shall find that retail competition will be harmed if the additional reduction is expected to result in:

(1) a decrease in the number of customers switching to alternative retail electric providers; or

(2) a retail price that is below market prices for comparable service.

(d) The rate reduction given under this subsection may not be considered as a residential customer's affirmative choice of an electric service plan.

Sec. 39.2026. MARKET REVIEW BASED ON PRICE OF ELECTRICITY. (a) The commission may review, as described in Subsection (b), the price of the electric service plan under which customers who took service under a price to beat tariff on December 31, 2006, who have not subsequently chosen an alternate retail electric service plan are served in a transmission and distribution utility service territory if:

(1) at the end of calendar year 2007 the number of such customers exceeds 25 percent of the number of residential customers in the transmission and distribution utility service territory in which such customers take service; or

(2) at the end of calendar year 2008 the number of such customers exceeds 20 percent of the number of residential customers in the transmission and distribution utility service territory in which such customers take service.

(b) If the price charged by a retail electric provider to applicable residential customers is more than two cents per kilowatt hour higher for more than six consecutive months than the simple average of the prices charged for other similar electric service plans in the relevant transmission and distribution utility service territory, the commission may initiate a review of the retail electric provider's price charged to such residential customers. If the commission determines that the retail electric provider's price charged to such customers is not reasonable based on its review, the commission may reduce the retail electric provider's residential price charged to such customers, but not to less than one cent per kilowatt hour higher than the simple average of the prices charged for other similar electric service plans in the relevant transmission and distribution utility service territory at the time the downward adjustment is required.

(c) The commission may adopt and enforce rules as necessary or appropriate to carry out this section.

(d) This section expires on September 1, 2009.

SECTION 15. Section 39.262(c), Utilities Code, is amended to read as follows:

(c) After January 10, 2004, at a schedule and under procedures to be determined by the commission, each transmission and distribution utility, its affiliated retail electric provider, and its affiliated power generation company shall jointly file to finalize stranded costs under Subsections (h) and (i) and reconcile those costs with the estimated stranded costs used to develop the competition transition charge in the proceeding held under Section 39.201. Any resulting difference shall be applied to the nonbypassable delivery rates of the transmission and distribution utility, except that at the utility's option, any or all of the amounts recovered under this section [~~remaining stranded costs~~] may be securitized under Subchapter G.

SECTION 16. Section 39.301, Utilities Code, is amended to read as follows:

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

associated with the regulatory assets or other amounts [~~stranded costs~~] sought to be securitized. The present value calculation shall use a discount rate equal to the proposed interest rate on the transition bonds.

SECTION 17. Section 39.302(4), Utilities Code, is amended to read as follows:

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

SECTION 18. Sections 39.303(a) and (b), Utilities Code, are amended to read as follows:

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

(b) The financing order shall detail the amount of regulatory assets and other amounts [~~stranded costs~~] to be recovered and the period over which the nonbypassable transition charges shall be recovered, which period may not exceed 15 years. If an amount determined under Section 39.262 is subject to judicial review at the time of the securitization proceeding, the financing order shall include an adjustment mechanism requiring the utility to adjust its rates, other than transition charges, or provide credits, other than credits to transition charges, in a manner that would refund over the remaining life of the transition bonds any overpayments resulting from securitization of amounts in excess of the amount resulting from a final determination after completion of all appellate reviews. The adjustment mechanism may not affect the stream of revenue available to service the transition bonds. An adjustment may not be made under this subsection until all appellate reviews, including, if applicable, appellate reviews following a commission decision on remand of its original orders, have been completed.

SECTION 19. Section 39.902, Utilities Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) After the opening of the retail electric market, the commission shall conduct ongoing customer education designed to help customers make informed choices of electric services and retail electric providers. As part of ongoing education, the commission may provide customers information concerning prices available in the marketplace, savings available to customers by switching retail electric providers or service plans, and information concerning specific retail electric providers, including instances of complaints against them and records relating to quality of customer service.



(d) The commission may require a transmission and distribution utility to issue public service announcements that inform customers that service reliability and the restoration of electric service following an outage are not contingent on the customer's receiving service from a particular retail electric provider.

SECTION 20. Section 39.903, Utilities Code, is amended by amending Subsections (a), (e), (j), and (l) and adding Subsection (e-1) to read as follows:

(a) The system benefit fund is an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section ~~or other law~~. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund.

(e) Money in the system benefit fund may be appropriated only to provide funding ~~solely~~ for the following ~~regulatory~~ purposes, in the following order of priority:

(1) programs to~~±~~

~~[(A)]~~ assist low-income electric customers by providing the 10-20 ~~[40]~~ percent reduced rate prescribed by Subsection (h); ~~and~~

~~[(B)] provide one time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low income persons and who have been threatened with disconnection for nonpayment;~~

(2) customer education programs;

(3) [;] administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter; and

(4) [(3)] programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2).;

(e-1) Subsection (e)(2) expires on September 1, 2011 [;]

~~[(4) programs to assist low income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and~~

~~[(5) reimbursement to the commission and the Health and Human Services Commission for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary].~~

(j) The commission shall adopt rules providing for methods of enrolling customers eligible to receive reduced rates under Subsection (h). The rules must provide for automatic enrollment as one enrollment option. On [The Texas Department of Human Services, or] request of the commission, each appropriate governmental entity shall assist in the adoption and implementation of these rules. Each assisting governmental entity [The commission and the Texas Department of Human Services] shall enter into a memorandum of understanding with the commission establishing the respective duties of the commission and the entity [department] in relation to the automatic enrollment. Each assisting governmental entity shall supply to the commission any information necessary for the commission to implement automatic enrollment for reduced rates under Subsection (h). The commission shall prepare a report each calendar quarter with information concerning the enrollment of customers eligible for the reduced rates. The commission shall

compile the information into an annual report to be published for periodic distribution not later than January 1 of each odd-numbered year. The commission shall send a copy of each annual and quarterly report to each member of the legislature and the electric utility restructuring legislative oversight committee.

(1) For the purposes of this section, a "low-income electric customer" is an electric customer:

(1) whose household income is not more than 125 percent of the federal poverty guidelines; or

(2) who:

(A) receives food stamps from the Health and Human Services Commission ~~[Texas Department of Human Services]~~ or medical assistance from a state agency administering a part of the medical assistance program;

(B) receives federal housing assistance;

(C) has a child enrolled in the national school lunch program for free or reduced-price lunches; or

(D) receives lifeline telephone service.

SECTION 21. The Public Utility Commission of Texas shall adopt rules required by Section 39.903, Utilities Code, as amended by this Act, not later than January 1, 2008.

SECTION 22. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The Conference Committee Report on **SB 482** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 993

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas

May 24, 2007

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 993** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

NELSON  
ELLIS  
DEUELL  
SHAPIRO  
JANEK

On the part of the Senate

MCREYNOLDS  
DELISI  
D. HOWARD  
VILLARREAL  
S. KING

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to nursing peer review and the regulation of the practice of nursing.

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

SECTION 1. Section 301.002, Occupations Code, is amended by adding Subdivisions (1-a) and (1-b) to read as follows:

(1-a) "Chief nursing officer" means the registered nurse who is administratively responsible for the nursing services at a facility.

(1-b) "Patient safety committee" has the meaning assigned by Section 303.001.

SECTION 2. Subsection (b), Section 301.303, Occupations Code, is amended to read as follows:

(b) The board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period ~~[and may not require that more than 10 hours of the continuing education consist of classroom instruction in approved programs. The remaining hours of continuing education may consist of any combination of:~~

~~[(1) classroom instruction;~~

~~[(2) institutional based instruction; or~~

~~[(3) individualized study].~~

SECTION 3. Section 301.352, Occupations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (f) to read as follows:

(a) A person may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission as provided by Subsection (a-1).

(a-1) A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the nurse to the board; or

(2) is a violation of this chapter or a rule of the board.

(f) A violation of this section is subject to Section 301.413.

SECTION 4. Subchapter H, Chapter 301, Occupations Code, is amended by adding Section 301.355 to read as follows:

Sec. 301.355. POLICIES APPLICABLE TO NURSES EMPLOYED BY MEDICAL AND DENTAL UNITS. (a) The president of a medical and dental unit, as defined by Section 61.003, Education Code, shall determine whether a nurse who is employed by the unit for practice in patient care or in clinical activities is a full-time employee for purposes of:

(1) employees group benefits under Chapter 1551 or 1601, Insurance Code;

(2) leave under Chapter 661 or 662, Government Code; and

(3) longevity pay under Section 659.043, Government Code.

(b) A determination under Subsection (a) does not entitle a nurse who works less than 40 hours a week to the full state contribution to the cost of any coverage or benefit. However, from money other than money appropriated from the general revenue fund, the medical and dental unit may contribute to the cost of any coverage or benefit an amount that exceeds the state contribution.

SECTION 5. The heading to Subchapter I, Chapter 301, Occupations Code, is amended to read as follows:

SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE  
CONCERNS [DUTY TO REPORT VIOLATION]

SECTION 6. Section 301.401, Occupations Code, is amended to read as follows:

Sec. 301.401. DEFINITIONS [GROUNDS FOR REPORTING NURSE]. In this subchapter:

(1) "Conduct subject to reporting" means conduct by a nurse that:

(A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(2) "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person.

(3) "Nursing educational program" means an educational program that is considered approved by the board that may lead to an initial license as a registered nurse or vocational nurse.

(4) "Nursing student" means an individual who is enrolled in a nursing educational program [a) Except as provided by Subsection (b), the following are grounds for reporting a nurse under Section 301.402, 301.403, 301.405, or 301.407:

[(1) likely exposure by the nurse of a patient or other person to an unnecessary risk of harm;

[(2) unprofessional conduct by the nurse;

[(3) failure by the nurse to adequately care for a patient;

[(4) failure by the nurse to conform to the minimum standards of acceptable nursing practice; or

[(5) impairment or likely impairment of the nurse's practice by chemical dependency].

[(b) Subsection (a) does not apply to a minor incident, as defined by Section 301.419, if the incident is not required to be reported under a rule adopted under Section 301.419.]

SECTION 7. The heading to Section 301.402, Occupations Code, is amended to read as follows:

Sec. 301.402. MANDATORY REPORT BY NURSE [~~DUTY OF NURSE TO REPORT~~].

SECTION 8. Subsections (b), (e), and (f), Section 301.402, Occupations Code, are amended to read as follows:

(b) A nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

(1) another nurse has engaged in conduct subject to reporting [~~is subject to a ground for reporting under Section 301.401~~]; or

(2) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(e) Instead of reporting to the board under Subsection (b), a [~~A~~] nurse may make a report required under:

(1) Subsection (b)(1) to a nursing peer review committee under Chapter 303; or

(2) Subsection (b)(2) to the nursing educational program in which the student is enrolled [~~instead of reporting to the board~~].

(f) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to Section 301.413 [~~nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, the employer or entity includes an employee or agent of the employer or entity~~].

SECTION 9. Subchapter I, Chapter 301, Occupations Code, is amended by adding Section 301.4025 to read as follows:

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a written, signed report to the appropriate licensing board or accrediting body, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

(1) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or

(2) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(b) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to Section 301.413.

SECTION 10. Section 301.403, Occupations Code, is amended to read as follows:

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT.

(a) Except as provided by Subsection (b), a [A] nursing peer review committee operating under Chapter 303 that determines that a nurse has engaged in conduct subject to reporting [has a ground for reporting a nurse under Section 301.401] shall file with the board a written, signed report that includes:

- (1) the identity of the nurse;
- (2) a description of any corrective action taken against the nurse;
- (3) a recommendation [~~statement~~] whether the [~~nursing peer review committee recommends that the~~] board should take formal disciplinary action against the nurse and the basis for the recommendation;
- (4) a description of the conduct subject to [ground for] reporting;
- (5) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control [~~rather than a deficiency in the nurse's judgment, knowledge, training, or skill~~]; and
- (6) any additional information the board requires.

(b) A report under Subsection (a) is not required if:

- (1) the nursing peer review committee determines that the reported conduct was a minor incident that is not required to be reported under board rule; or
- (2) the nurse has been reported to the board for the conduct under Section 301.405.

SECTION 11. Section 301.404, Occupations Code, is amended to read as follows:

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. [~~(a) In this section, "nursing educational program" and "nursing student" have the meanings assigned by Section 301.402(a).~~

~~[(b)]~~ A nursing educational program that has reasonable cause to suspect that the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

SECTION 12. Subsections (b), (c), and (e), Section 301.405, Occupations Code, are amended to read as follows:

(b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a nurse, or a substantially equivalent action against a nurse who is a staffing agency nurse, because the nurse engaged in conduct subject to reporting [a ground under Section 301.401 exists to report the nurse] shall report in writing to the board:

- (1) the identity of the nurse;
- (2) the conduct subject to reporting that resulted in [ground that preceded] the termination, suspension, or other substantive disciplinary action or substantially equivalent action; and

(3) any additional information the board requires.

(c) If a person who makes a report required under Subsection (b) is required under Section 303.0015 to establish a nursing peer review committee, the person shall submit a copy of the report to the nursing peer review committee. The nursing peer review committee shall review the conduct to determine if any deficiency in care by the reported nurse was the result of a factor beyond the nurse's control. A nursing peer review committee that determines that there is reason to believe that the nurse's deficiency in care was the result of a factor beyond the nurse's control shall report the conduct to the patient safety committee at the facility where the reported conduct occurred, or if the facility does not have a patient safety committee, to the chief nursing officer ~~[Except as provided by Subsection (g), each person subject to this section that regularly employs, hires, or otherwise contracts for the services of 10 or more nurses shall develop a written plan for identifying and reporting a nurse under Section 301.401(a). The plan must provide for the review of the nurse and the incident by a nursing peer review committee established and operated under Chapter 303. Review by the committee is only advisory, but is required, even if the nurse is voluntarily or involuntarily terminated].~~

(e) The requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not subject a person's administrative decision to discipline a nurse to the peer review process ~~[or prevent a person from taking disciplinary action before review by the peer review committee is conducted].~~

SECTION 13. Subsection (b), Section 301.407, Occupations Code, is amended to read as follows:

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe that a nurse has engaged in conduct subject to reporting ~~[a ground for reporting a nurse exists under Section 301.401]~~ shall report the nurse in writing to the board or to a nursing peer review committee under Chapter 303 ~~[the identity of that nurse].~~

SECTION 14. Subsections (a), (b), (c), and (e), Section 301.413, Occupations Code, are amended to read as follows:

(a) A person named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a report required, authorized, or reasonably believed to be required or authorized under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352, or as a result of requesting in good faith a nursing peer review determination under Section 303.005, may file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who:

(1) reports, without malice, under this subchapter; or

(2) requests, in good faith, a nursing peer review determination under

Section 303.005.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review determination under Section 303.005 has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) \$5,000 [~~\$1,000~~];

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, or for requesting a peer review committee determination under Section 303.005 if:

(1) the person was suspended or terminated within 60 days after the date the report, refusal, or request was made; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) [~~A~~] authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) [~~B~~] made without malice;

(B) the request for a peer review committee determination that is the subject of the cause of action was:

(i) authorized under Section 303.005; and

(ii) made in good faith; or

(C) the refusal to engage in conduct was authorized by Section 301.352.

SECTION 15. Section 301.457, Occupations Code, is amended by adding Subsection (g) to read as follows:

(g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

SECTION 16. Section 303.001, Occupations Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Patient safety committee" means a committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety, including:

(A) the entity's medical staff composed of individuals licensed under Subtitle B; or

(B) a medical committee under Subchapter D, Chapter 161, Health and Safety Code.

SECTION 17. Chapter 303, Occupations Code, is amended by adding Section 303.0015 to read as follows:



Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER REVIEW COMMITTEE. (a) A person shall establish a nursing peer review committee to conduct nursing peer review under this chapter and Chapter 301:

(1) for vocational nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses; and

(2) for professional nurses, if the person regularly employs, hires, or contracts for the services of 10 or more nurses, at least five of whom are registered nurses.

(b) A person required to establish a nursing peer review committee under this section may contract with another entity to conduct the peer review for the person.

SECTION 18. Section 303.005, Occupations Code, is amended by adding Subsections (a-1) and (i) and amending Subsections (b), (d), and (h) to read as follows:

(a-1) For purposes of this section, a nurse or nurse administrator does not act in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is not a reasonable factual or legal basis for the request or action.

(b) If a person who is required to establish a nursing peer review committee under Section 303.0015 [~~regularly employs, hires, or otherwise contracts for the services of at least 10 nurses~~] requests a nurse [~~one of those nurses~~] to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse's duty to a patient.

(d) If a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, the determination [~~The determinations~~] of the peer review committee shall be considered in any [~~a~~] decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but the determination is [~~determinations are~~] not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(h) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a nurse who in good faith requests a peer review determination under this section or a person who advises a nurse of the nurse's right to request a determination or of the procedures for requesting a determination. A violation of this subsection is subject to Section 301.413 [~~A person is not required to provide a peer review determination under this section for a request made by a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses~~].

(i) A person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) shall adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

SECTION 19. Chapter 303, Occupations Code, is amended by adding Section 303.0075 to read as follows:

Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer review committee and a patient safety committee established by the same entity may share information.

(b) A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee. The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee. This subsection does not affect the application of Section 303.007 to a nursing peer review committee.

(c) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

SECTION 20. Section 303.011, Occupations Code, is amended to read as follows:

Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating a nurse's conduct, the nursing peer review committee shall review the evidence to determine the extent to which a deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(b) The nursing peer review committee shall report a deficiency in care that the committee determines was the result of a factor beyond the nurse's control to a patient safety committee for evaluation. The patient safety committee shall evaluate the influence of the factors on the conduct of the nurse being evaluated and on the practice of other nurses within the entity that established the committee. The committee shall report its findings to the nursing peer review committee.

SECTION 21. The following provisions of the Occupations Code are repealed:

- (1) Subsection (d), Section 301.303;
- (2) Subsection (e), Section 301.352;
- (3) Subsections (a) and (c), Section 301.402;
- (4) Subsections (d), (f), (g), and (h), Section 301.405;
- (5) Subsection (a), Section 301.419; and
- (6) Subsection (h), Section 303.005.

SECTION 22. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect when the conduct occurs, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act by the amendment of Subsection (b), Section 301.303, Occupations Code, applies only to an application for renewal of a license issued under Chapter 301, Occupations Code, that is submitted on or after the effective date of this Act. An application for renewal submitted before the effective date of this Act is governed by the law in effect when the application is submitted, and the former law is continued in effect for that purpose.

SECTION 23. This Act takes effect September 1, 2007.

The Conference Committee Report on **SB 993** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 792**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2007

Honorable David Dewhurst  
President of the Senate

Honorable Tom Craddick  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 792** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WILLIAMS  
BRIMER  
CARONA  
NICHOLS

W. SMITH  
HARLESS  
KOLKHORST  
PHILLIPS  
PICKETT

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects; authorizing the issuance of bonds; providing penalties.

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

**ARTICLE 1. TERM OF CERTAIN TOLL OR FEE COLLECTION  
CONTRACTS WITH PRIVATE ENTITIES**

SECTION 1.01. Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years or any lesser term provided in a comprehensive development agreement.

SECTION 1.02. Subsection (h), Section 223.208, Transportation Code, is amended to read as follows:

(h) A ~~[Except as provided by this section, a]~~ comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The comprehensive development agreement must contain ~~[may be for a term not longer than 70 years if the agreement:~~

~~[(1) contains]~~ an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement~~]; and~~

~~[(2) outlines the benefit the state will derive from having a term longer than 50 years].~~

SECTION 1.03. Subsection (f), Section 227.023, Transportation Code, is amended to read as follows:

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

SECTION 1.04. Subsection (i), Section 370.302, Transportation Code, is amended to read as follows:

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

SECTION 1.05. The changes in law made by this article apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

## ARTICLE 2. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS

SECTION 2.01. Subsection (m), Section 223.203, Transportation Code, is amended to read as follows:

(m) The department may ~~[shall]~~ pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A ~~[The]~~ stipulated amount must be stated in the request for proposals and may not

exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

SECTION 2.02. Subsection (m), Section 370.306, Transportation Code, is amended to read as follows:

(m) An authority may ~~shall~~ pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A ~~The~~ stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

### ARTICLE 3. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

SECTION 3.01. Subchapter E, Chapter 223, Transportation Code, is amended by adding Section 223.210 to read as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this section:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project:

(A) is a part of the state highway system; or

(B) is subject to the jurisdiction of the department.

(2) "Toll project entity" means a public entity authorized by law to acquire, design, construct, finance, operate, or maintain a toll project, including:

(A) the department;

(B) a regional tollway authority;

(C) a regional mobility authority; or

(D) a county.

(b) A comprehensive development agreement entered into with a private participant by a toll project entity on or after May 1, 2007, for the acquisition, design, construction, financing, operation, or maintenance of a toll project may not contain a provision permitting the private participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

(c) Subsection (b) does not apply to a comprehensive development agreement in connection with:

(1) a project associated with the highway designated as the Trinity Parkway in the City of Dallas; or

(2) a project:

(A) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(B) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and

(C) for which the department has issued a request for qualifications before May 1, 2007.

(d) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more.

(e) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the State Highway 99 project.

(f) Subsection (b) does not apply to a comprehensive development agreement in connection with a project:

(1) on the ISTEA High Priority Corridor identified in Sections 1105(c)(18) and (20) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. No. 102-240), as amended by Section 1211 of the Transportation Equity Act for the 21st Century (Pub. L. No. 105-178, as amended by Title IX, Pub. L. No. 105-206), including land adjacent to the project needed to widen the project for a transportation use, if the project remains in a highway corridor designated by those laws; and

(2) located south of Refugio County.

(g) Subsection (b) does not apply to a comprehensive development agreement in connection with the State Highway 161 project in Dallas County.

(g-1) Subsection (b) does not apply to a comprehensive development agreement in connection with a project other than a Trans-Texas Corridor project if:

(1) the project is located in the territory of a regional mobility authority that:

(A) was created before January 1, 2005; and

(B) is composed of a single county having a population of less than 125,000; and

(2) the commissioners court of the county in which the project is located by official action approves the exemption from Subsection (b).

(h) Notwithstanding the TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority and approved on August 10, 2006, by the authority and on August 24, 2006, by the department, Subsection (b) does not apply to a comprehensive development agreement entered into in connection with State Highway 121 if before the commission or the department enters into a contract for the financing, construction, or operation of the project with a private participant, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the North Texas Tollway Authority, and the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007. If the financial value of the commitment is determined to be equal to or greater value than any other commitment submitted prior to March 26, 2007, the commission shall allow the North Texas Tollway Authority to develop the project.

(i) Notwithstanding Subsection (c), Subsection (b) applies to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

(j) For purposes of Subsection (c)(2), "managed lane facility" means a facility that increases the efficiency of a controlled-access highway through various operational and design actions and that allows lane management operations to be adjusted at any time. The term includes high-occupancy vehicle lanes, single-occupant vehicle express lanes, tolled lanes, priced lanes, truck lanes, bypass lanes, dual use facilities, or any combination of those facilities.

(k) The department may not enter into a comprehensive development agreement in connection with a project described by Subsection (c)(2) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the agreement that states that the commissioners court:

(1) acknowledges that the comprehensive development agreement may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the comprehensive development agreement; and

(2) knowing of those potential penalties, agrees that the department should execute the comprehensive development agreement.

(k-1) If the department incurs a monetary penalty for the construction of a competing transportation project under a provision in a comprehensive development agreement approved by a county under Subsection (k), payment of the penalty may be made only with money that would otherwise be allocated for projects in the department district in which the county is located.

(l) On or after the effective date of this section, a toll project entity may not sell or enter into a contract to sell a toll project of the entity to a private entity.

(m) A legislative study committee is created. The committee is composed of nine members, appointed as follows:

(1) three members appointed by the lieutenant governor;

(2) three members appointed by the speaker of the house of representatives;  
and

(3) three members appointed by the governor.

(n) The legislative study committee shall select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a comprehensive development agreement entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. In addition, the committee shall examine the public policy implications of selling an existing and operating toll project to a private entity.

(o) Not later than December 1, 2008, the legislative study committee shall:

(1) prepare a written report summarizing:

(A) any hearings conducted by the committee;

(B) any legislation proposed by the committee;

(C) the committee's recommendations for safeguards and protections of the public's interest when a contract for the sale of a toll project to a private entity is entered into; and

(D) any other findings or recommendations of the committee; and

(2) deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(p) On December 31, 2008, the legislative study committee created under this section is abolished.

(q) This section expires September 1, 2009.

(r) Subsection (b) does not apply to a project that is located in a county with a population of 300,000 or more and adjacent to an international border, except that Subsection (b) does not apply to a project that is located in a county that has a population of 600,000 or more and is adjacent to an international border only if before May 1, 2007, the project has been adopted by the metropolitan planning organization for the county in the transportation improvement plan or metropolitan transportation plan.

#### ARTICLE 4. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

SECTION 4.01. Section 223.201, Transportation Code, is amended by amending Subsection (f) and adding Subsections (h) and (i) to read as follows:

(f) Except as provided by Subsections (h) and (i), the [The] authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009 [2014].

(h) Subsection (f) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or to a comprehensive development agreement in connection with a project:

(1) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and



(3) for which the department has issued a request for qualifications before May 1, 2007.

(i) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (f) or Section 223.210(b) expires August 31, 2011.

SECTION 4.02. Section 370.305, Transportation Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Except as provided by Subsections (e) and (f), the authority to enter into comprehensive development agreements under this [This] section expires on August 31, 2009 [2011].

(e) Subsection (d) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a project:

(1) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and

(3) for which the department has issued a request for qualifications before the effective date of this subsection.

(f) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (d) or Section 223.210(b) expires August 31, 2011.

#### ARTICLE 5. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION

SECTION 5.01. Subchapter A, Chapter 227, Transportation Code, is amended by adding Sections 227.005 and 227.006 to read as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor.

(b) Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

ARTICLE 6. USE OF CERTAIN CONTRACT PAYMENTS AND OTHER REVENUE

SECTION 6.01. Section 228.0055, Transportation Code, is amended to read as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS AND OTHER REVENUE.

(a) Payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement shall ~~may~~ be used by the commission or the department to finance the construction, maintenance, or operation of [a] transportation projects [~~project~~] or air quality projects [~~project~~] in the region.

(b) The department shall allocate the distribution of funds to department districts in the region that are located in the boundaries of the metropolitan planning organization in which the project that is the subject of the comprehensive development agreement is located based on the percentage of toll revenue from users from each department district of the project. To assist the department in determining the allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each department district based on the number of recorded electronic toll collections.

(c) The commission or the department may not:

(1) revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a department district's allocation because of a payment under Subsection (a); or

(2) take any other action that would reduce funding allocated to a department district because of payments received under a comprehensive development agreement.

(d) A metropolitan planning organization may not take any action that would reduce distribution of funds or other resources to a department district because of the use of a payment or other revenue under Subsection (a).

ARTICLE 7. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL PROJECT ENTITY

SECTION 7.01. Subchapter A, Chapter 228, Transportation Code, is amended by adding Sections 228.011, 228.0111, and 228.012 to read as follows:

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This section applies only to a county acting under Chapter 284 and the development, construction, and operation of all or a portion of any of the following toll projects, a component of that project, or the functional equivalent of that project:

(1) Beltway 8 Tollway East, between US 59 North and US 90 East;

(2) Hardy Downtown Connector, consisting of the proposed direct connection from the Hardy Toll Road southern terminus at Loop 610 to downtown Houston;

(3) State Highway 288, between US 59 and Grand Parkway South (State Highway 99);

(4) US 290 Toll Lanes, between IH 610 West and the Grand Parkway Northwest (State Highway 99);

(5) Fairmont Parkway East, between Beltway 8 East and Grand Parkway East (State Highway 99);

(6) South Post Oak Road Extension, between IH 610 South and near the intersection of Beltway 8 and Hillcroft in the vicinity of the Fort Bend Parkway Tollway;

(7) Westpark Toll Road Phase II, between Grand Parkway (State Highway 99) and FM 1463;

(8) Fort Bend Parkway, between State Highway 6 and the Brazos River; and

(9) Montgomery County Parkway, between State Highway 242 and the Grand Parkway (State Highway 99), and if the Grand Parkway project has not begun construction, a nontolled extension of the Montgomery County Parkway to allow a connection to Interstate Highway 45.

(b) The county is the entity with the primary responsibility for the financing, construction, and operation of a toll project located in the county. A county may develop, construct, and operate a project described in Subsection (a) at any time, regardless of whether it receives a first option notice from the commission or the department under Subsection (e).

(b-1) Consistent with federal law, the department shall assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use state highway right-of-way owned by the department and to access the state highway system. The commission or the department may not require the county to pay for the use of the right-of-way or access, except to reimburse the department as provided by this subsection. The county shall pay an amount to reimburse the department for the department's actual costs to acquire the right-of-way. If the department cannot determine that amount, the amount shall be determined based on the average historical right-of-way acquisition values for right-of-way located in proximity to the project on the date of original acquisition of the right-of-way. Money received by the department under this subsection shall be deposited in the state highway fund and used in the department district in which the project is located.

(c) The department and the county must enter into an agreement that includes reasonable terms to accommodate the use of the right-of-way by the county and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department, including public safety and congestion mitigation on the right-of-way.

(d) Subsection (b) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a project of the county under Chapter 284.

(e) Before the department may enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, the commission or department shall provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county:

(1) on terms agreeable to the county; and

(2) in a manner determined by the county to be consistent with the practices and procedures by which the county finances, constructs, or operates a project.

(f) A county's right to exercise the first option under Subsection (e) is effective for six months after the date of the receipt by the county of written notice from the commission or the department meeting the requirements of Subsection (e) and describing in reasonable detail the location of the toll project, a projected cost estimate, sources and uses of funds, and a construction schedule. If a county exercises the first option with respect to a toll project, the county must enter into one or more contracts for the financing, construction, or operation of the toll project within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to development are concluded. A contract may include agreements for design of the project, acquisition of right-of-way, and utility relocation. If the county does not enter into a contract during the two-year period, the commission or the department may enter into a contract for the financing, construction, or operation of the toll project with a different entity.

(g) An agreement entered into by the county and the department in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(h) If the county approves, the commission may remove any right-of-way to be used by a county under this section from the state highway system. If the right-of-way used by a county under this section remains part of the state highway system, the county must comply with department design and construction standards.

(i) Notwithstanding an action of a county taken under this section, the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(j) Notwithstanding any other law, the commission and the department are not liable for any damages that result from a county's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

Sec. 228.0111. TOLL PROJECTS OF LOCAL TOLL PROJECT ENTITIES.

(a) In this section:

(1) "Local toll project entity" means:

- (A) a regional tollway authority under Chapter 366;
- (B) a regional mobility authority under Chapter 370; or
- (C) a county acting under Chapter 284.

(2) "Market valuation" means the valuation of a toll project that:

(A) is based on the terms and conditions established mutually by a local toll project entity and the department for the development, construction, and operation of a toll project, including the initial toll rate and the toll rate escalation methodology; and

(B) takes into account a traffic and revenue study of the toll project using agreed-upon assumptions, an agreed project scope, market research, the estimated cost to finance, construct, maintain, and operate the project, and other information determined appropriate by the local toll project entity and the department.

(3) "Region" has the meaning assigned by Section 228.001, except that the region of a county acting under Chapter 284 is composed of that county and the counties that are contiguous to that county.

(4) "Toll project subaccount" means a subaccount created under Section 228.012.

(b) This section does not apply to a toll project described in Section 228.011(a).

(c) A local toll project entity is the entity with primary responsibility for the financing, construction, and operation of a toll project located within its boundaries.

(d) Subsection (c) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a toll project of a local toll project entity.

(e) Except as provided in this subsection, if a local toll project entity or the department determines that a toll project located within the boundaries of the local toll project entity should be developed, constructed, and operated as a toll project, the local toll project entity and the department mutually shall agree on the terms and conditions for the development, construction, and operation of the toll project, including the initial toll rate and the toll rate escalation methodology. The terms and conditions for the procurement and operation of the State Highway 99 project shall be approved by the metropolitan planning organization in which the project is located.

(e-1) If the local toll project entity and the department are unable to mutually agree on the terms and conditions for the development, construction, and operation of the toll project as required by Subsection (e), neither the local toll project entity nor the department may develop the project as a toll project.

(f) After agreeing on the terms and conditions for a toll project under Subsection (e), or after metropolitan planning organization approval of the terms and conditions for the State Highway 99 project, the local toll project entity and the department mutually shall determine which entity, including a third party under contract with the local toll project entity or the department, will develop a market valuation of the toll project that is based on the terms and conditions established under Subsection (e). The department and the local toll project entity have 90 days after the date of the receipt of a final draft version of the market valuation designated as "complete; subject to approval by the Texas Department of Transportation and (name of local toll project entity)" to mutually approve the market valuation included in the draft version or, in the alternative, negotiate and agree on a different market valuation. If the department and the local toll project entity are unable to agree on a market valuation within the 90-day period, the market valuation in the draft version is considered to be final for purposes of this section and mutually approved on the last day of that period.

(f-1) The department and a local toll project entity may agree to waive the requirement to develop a market valuation under this section.

(f-2) If the department and the local toll project entity are unable to mutually determine which entity will develop the market valuation of the toll project under Subsection (f), neither the department nor the local toll project entity may develop, construct, or operate the project as a toll project.

(f-3) A third party that develops a market valuation under Subsection (f) may not:

(1) invest money in a private entity that participates in the financing, development, construction, or operation of that toll project, either directly or indirectly through investment in the entity's equities or obligations, provided that fees for services are not considered direct or indirect investment; or

(2) directly or indirectly through one or more intermediaries, control, be controlled by, or be under common control with a private entity that participates in the financing, development, construction, or operation of that toll project, as the term "control" is described by Section 21.605, Business Organizations Code.

(g) A local toll project entity has the first option to develop, finance, construct, and operate a toll project under the terms and conditions established under Subsection (e). A local toll project entity, other than a regional mobility authority under Chapter 370, has six months after the date that the market valuation is mutually approved under Subsection (f) to decide whether to exercise the option. For a project proposed to be located within the boundaries of a regional mobility authority under Chapter 370, after the market valuation is final under Subsection (f), the metropolitan planning organization for the region in which the project is located shall determine whether the toll project should be developed using the business terms incorporated in the market valuation. If the metropolitan planning organization determines that the toll project should be developed using the business terms in the market valuation, the regional mobility authority has six months after the date the metropolitan planning organization decides whether to exercise the option to develop the project. If a local toll project entity exercises the option with respect to a toll project under this subsection, the local toll project entity, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the toll project are secured and all legal challenges to development are concluded, must:

(1) enter into a contract for the construction of the toll project; and

(2) either:

(A) commit to make a payment into a toll project subaccount in an amount equal to the value of the toll project as determined by the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located;

(B) commit to construct, within the period agreed to by the local toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project; or

(C) for a regional mobility authority under Chapter 370, commit to using, for a period to be agreed upon by the department and the authority, all surplus revenue from the toll project for the purposes authorized by Section 370.174(b) in an amount equal to the valuation of the project.

(h) If a local toll project entity exercises the option with respect to a toll project under Subsection (g) and has not begun the environmental review of the project, the local toll project entity shall begin the environmental review within six months of exercising the option.

(i) If a local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (g), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (g)(2) within the two-year period prescribed in Subsection (g), the department has the option to develop, finance, construct, and operate the toll project under the terms and conditions agreed to under Subsection (e). The department has two months after the date the local toll project entity fails to exercise its option or enter into a construction contract and make a commitment described in Subsection (g)(2) to decide whether to exercise its option. If the department exercises its option with respect to a toll project under this subsection, the department, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to such development are concluded, must:

(1) enter into a contract for the construction of the toll project; and

(2) either:

(A) commit to make a payment into the toll project subaccount in an amount equal to the value of the toll project as determined by the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located; or

(B) commit to construct, within the period agreed to by the local toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project.

(j) If the department does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (i), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (i)(2) within the two-year period prescribed in Subsection (i), the local toll project entity and the department may meet again for the purpose of agreeing on revised terms and conditions for the development, construction, and operation of the toll project, and the local toll project entity and the department shall follow the process prescribed in Subsections (f)-(i).

(k) Consistent with federal law, the commission and the department shall assist a local toll project entity in the development, financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project. Notwithstanding any other law, the toll project entity and the commission may agree to remove the project from the state highway system and transfer ownership to the local toll project entity. The commission or the department may not require a local toll project entity to pay for the use of the right-of-way or access, except to reimburse the department for actual costs incurred or to be incurred by the department that are owed to a third party, including the federal government, as a result of that use by the local toll project entity. If a local toll project entity exercises its option to develop, construct, and operate a toll project under this section, the following shall be deducted from the amount of the toll project entity commitment under Subsection (g)(2):

(1) an amount equal to the amount reimbursed under this subsection, if any;  
and

(2) with respect to a county operating under Chapter 284, an amount equal to the costs of any road, street, or highway project undertaken by the county under Section 284.0031 before the acceptance of the market valuation, if the county requests a deduction and specifies in reasonable detail a description and cost of the project and the department agrees that any such road, street, or highway project constitutes an additional transportation project under Subsection (g)(2)(B).

(l) A local toll project entity shall enter into an agreement with the department for any project for which the entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) and for which the entity intends to use state highway right-of-way. An agreement entered into under this subsection must contain provisions necessary to ensure that the local toll project entity's construction, maintenance, and operation of the project complies with the requirements of applicable federal and state law.

(m) Notwithstanding any other law, the commission and the department are not liable for any damages that result from a local toll project entity's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

(n) An agreement entered into by a local toll project entity and the department in connection with a toll project that is financed, constructed, or operated by the local toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(o) Notwithstanding an action of a local toll project entity taken under this section, the commission or department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(p) A local toll project entity and the department may issue bonds, including revenue bonds and refunding bonds, or other obligations, and enter into credit agreements, to pay any costs associated with a project under this section, including the payments deposited to the applicable toll project subaccount, and the costs to construct, maintain, and operate additional transportation projects that the local toll project entity or the department commits to undertake in accordance with this section, as follows:

(1) the bonds or other obligations and the proceedings authorizing the bonds or other obligations must be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code;

(2) the bonds or other obligations may be payable from and secured by revenue of one or more projects of the local toll project entity or the department, including toll road system revenues, or such other legally available revenue or funding sources as the local toll project entity or department shall determine;

(3) the bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance;



(4) the bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the local toll project entity or the department, other than the revenue sources pledged for which the bonds or other obligations are issued; and

(5) the local toll project entity and the department may issue obligations and enter into credit agreements under Chapter 1371, Government Code, and for purposes of that chapter, a local toll project entity and the department shall be considered a public utility and any cost authorized to be financed in accordance with this subsection is an eligible project.

(q) The provisions of this section requiring metropolitan planning organization approval of the terms and conditions for the State Highway 99 project expire August 31, 2009.

(r) This section expires August 31, 2011.

(s) This section does not apply to:

(1) any project for which the department has issued a request for qualifications or request for competing proposals and qualifications before May 1, 2007, except for the State Highway 161 project in Dallas County;

(2) the eastern extension of the President George Bush Turnpike from State Highway 78 to IH 30 in Dallas County;

(3) the Phase 3 and 4 extensions of the Dallas North Tollway in Collin and Denton Counties from State Highway 121 to the Grayson County line, and the planned future extension into Grayson County, regardless of which local toll project entity develops the extension into Grayson County;

(4) the Lewisville Lake Bridge (and portions of FM 720 widening projects) in Denton County; or

(5) the Southwest Parkway (State Highway 121) in Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department shall create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement, the surplus revenue of a toll project or system, and payments received under Sections 228.0111(g)(2) and (i)(2). The department shall create subaccounts in the account for each project, system, or region. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount.

(b) The department shall hold money in a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located. Except as provided by Subsection (c), money shall be allocated to projects authorized by Section 228.0055 or Section 228.006, as applicable.

(c) Money in a subaccount received from a county or the department under Section 228.0111 in connection with a project for which a county acting under Chapter 284 has the first option shall be allocated to transportation projects located in the county and the counties contiguous to that county.

(d) Not later than January 1 of each odd-numbered year, the department shall submit to the Legislative Budget Board, in the format prescribed by the Legislative Budget Board, a report on cash balances in the subaccounts created under this section and expenditures made with money in those subaccounts.

(e) The commission or the department may not:

(1) revise the formula as provided in the department's unified transportation program or a successor document in a manner that results in a decrease of a department district's allocation because of the deposit of a payment into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111; or

(2) take any other action that would reduce funding allocated to a department district because of the deposit of a payment received from the department or local toll project entity into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111.

SECTION 7.02. Section 228.0111, Transportation Code, as added by this article, applies to a project associated with State Highway 161 in Dallas County.

#### ARTICLE 8. COUNTY AUTHORITY IN CONNECTION WITH CERTAIN TOLL PROJECTS

SECTION 8.01. Subdivision (3), Section 284.001, Transportation Code, is amended to read as follows:

(3) "Project" means:

(A) a causeway, bridge, tunnel, turnpike, highway, ferry, or any combination of those facilities, including:

(i) [~~(A)~~] a necessary overpass, underpass, interchange, entrance plaza, toll house, service station, approach, fixture, and accessory and necessary equipment that has been designated as part of the project by order of a county;

(ii) [~~(B)~~] necessary administration, storage, and other buildings that have been designated as part of the project by order of a county; and

(iii) [~~(C)~~] all property rights, easements, and related interests acquired; or

(B) a turnpike project or system, as those terms are defined by Section 370.003.

SECTION 8.02. Section 284.003, Transportation Code, is amended to read as follows:

Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST. (a) A county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, may:

(1) construct, acquire, improve, operate, maintain, or pool a project located:

(A) exclusively in the county;

(B) in the county and outside the county; or

(C) in one or more counties adjacent to the county;

(2) issue tax bonds, revenue bonds, or combination tax and revenue bonds to pay the cost of the construction, acquisition, or improvement of a project;

(3) impose tolls or charges as otherwise authorized by this chapter;

(4) construct a bridge over a deepwater [~~deep water~~] navigation channel, if the bridge does not hinder maritime transportation; [~~or~~]

(5) construct, acquire, or operate a ferry across a deepwater navigation channel;

(6) in connection with a project, on adoption of an order exercise the powers of a regional mobility authority operating under Chapter 370; or

(7) enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to the department under Chapter 223 or to a regional tollway authority under Chapter 366.

(b) The county or a local government corporation may exercise a power provided by Subsection (a)(6) only in a manner consistent with the other powers provided by this chapter. To the extent of a conflict between this chapter and Chapter 370, this chapter prevails.

(c) A project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under this chapter to provide transportation services to the general public is public property used for a public purpose and exempt from taxation by this state or a political subdivision of this state.

(d) If the county constructs, acquires, improves, operates, maintains, or pools a project under this chapter, before December 31 of each even-numbered year the county shall submit to the department a plan for the project that includes the time schedule for the project and describes the use of project funds. The plan may provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under this chapter. A plan is not subject to approval, supervision, or regulation by the commission or the department, except that:

(1) any use of state or federal highway funds must be approved by the commission;

(2) any work on a highway in the state highway system must be approved by the department; and

(3) the department shall supervise and regulate work on a highway in the state highway system.

(e) Except as provided by federal law, an action of a county taken under this chapter is not subject to approval, supervision, or regulation by a metropolitan planning organization.

(f) The county may enter into a protocol or other agreement with the commission or the department to implement this section through the cooperation of the parties to the agreement.

(g) An action of a county taken under this chapter must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of a county taken under this chapter,

the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable the state to receive federal-aid highway funds.

SECTION 8.03. Subchapter A, Chapter 284, Transportation Code, is amended by adding Sections 284.0031 and 284.0032 and amending Section 284.004 to read as follows:

Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS.

(a) The commissioners court of a county or a local government corporation, without state approval, supervision, or regulation may:

(1) authorize the use or pledge of surplus revenue to pay or finance the costs of a project for the study, design, construction, maintenance, repair, or operation of roads, streets, highways, or other related facilities that are not part of a project under this chapter; and

(2) prescribe terms for the use of the surplus revenue, including the manner in which revenue from a project becomes surplus revenue and the manner in which the roads, streets, highways, or other related facilities are to be studied, designed, constructed, maintained, repaired, or operated.

(b) To implement this section, a county may enter into an agreement with the commission, the department, a local governmental entity, or another political subdivision of this state.

(c) A county may not take an action under this section that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project.

(d) Except as provided by this section, a county has the same powers, including the powers to finance and to encumber surplus revenue, and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, or operation of a road, street, highway, or other related facility under this section as are available to the county with respect to a project under this chapter.

(e) Notwithstanding other provisions of this section:

(1) any work on the state highway system must be approved by the department; and

(2) the department shall supervise and regulate any work on a highway in the state highway system.

Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county is requested by the commission to participate in the development of a project under this chapter that has been designated as part of the Trans-Texas Corridor, the county has, in addition to all powers granted by this chapter, all powers of the department related to the development of a project that has been designated as part of the Trans-Texas Corridor.

Sec. 284.004. USE OF COUNTY PROPERTY. (a) Notwithstanding any other law, a county may use any county property for a project under this chapter, regardless of when or how the property is acquired.

(b) In addition to authority granted by other law, a county may use state highway right-of-way and may access state highway right-of-way in accordance with Sections 228.011 and 228.0111.

SECTION 8.04. Subsections (c) and (d), Section 284.008, Transportation Code, are amended to read as follows:

(c) Except as provided by Subsection (d), a project becomes a part of the state highway system and the commission shall maintain the project without tolls when:

(1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer; or

(2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders.

(d) ~~A [Before construction on a project under this chapter begins, a]~~ county may request that the commission adopt an order stating that a ~~[the]~~ project will not become part of the state highway system under Subsection (c). If the commission adopts the order:

(1) Section 362.051 does not apply to the project;

(2) the project must be maintained by the county; and

(3) the project will not become part of the state highway system unless the county transfers the project under Section 284.011.

SECTION 8.05. Subsections (b) and (c), Section 284.065, Transportation Code, are amended to read as follows:

(b) An existing project may be pooled in whole or in part with a new project or another existing project.

(c) A project may ~~[not]~~ be pooled more than once.

#### ARTICLE 9. REGIONAL TOLLWAY AUTHORITIES

SECTION 9.01. Section 366.003, Transportation Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Surplus revenue" means the revenue of a turnpike project or system remaining at the end of any fiscal year after all required payments and deposits have been made in accordance with all bond resolutions, trust agreements, indentures, credit agreements, or other instruments and contractual obligations of the authority payable from the revenue of the turnpike project or system.

SECTION 9.02. Section 366.301, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

SECTION 9.03. Chapter 366, Transportation Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) An authority may use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design, construction, rehabilitation, expansion, or improvement of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

(c) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. An authority may accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) any other information the authority considers relevant or necessary.

(c) An authority shall publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Subsection (f). The authority must qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) An authority shall issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information the authority considers relevant or necessary, including information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) engineering or architectural designs;

(4) the private entity's ability to meet schedules; or

(5) a financial plan, including costing methodology and cost proposals.

(g) In issuing a request for proposals under Subsection (f), an authority may solicit input from entities qualified under Subsection (e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) An authority shall evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to the authority.

(i) An authority may enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) If at any point in negotiations under Subsection (i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into negotiations with the private entity submitting the next-highest-ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) An authority may pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority, with the unsuccessful private entity, jointly owns the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful private entity of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful private entity and does not confer liability on the authority.

(n) An authority may prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Section 366.185 and Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 366.402(b)(1) and (2), unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement unless the private entity consents to the disclosure of the information or material; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement or during the authority's preparation of a proposal to the department relating to a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

(a) Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.



(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to, or instead of, performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and is owned by the authority.

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, are to be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a turnpike project under this subchapter, including:

(1) methods to determine the applicable cost, profit, and project distribution among the private participants and the authority;

(2) reasonable methods to determine and classify toll rates and the responsibility for setting toll rates;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under this subchapter may include any provision the authority considers appropriate, including a provision:

(1) providing for the purchase by the authority, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a turnpike project designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement;

(2) establishing the purchase price, as determined in accordance with the methodology established by the parties in the comprehensive development agreement, for the interest of a private participant in the comprehensive development agreement and related property;

(3) providing for the payment of an obligation incurred under the comprehensive development agreement, including an obligation to pay the purchase price for the interest of a private participant in the comprehensive development agreement, from any available source, including securing the obligation by a pledge of revenues of the authority derived from the applicable project, which pledge shall have priority as established by the authority;

(4) permitting the private participant to pledge its rights under the comprehensive development agreement;

(5) concerning the private participant's right to operate and collect revenue from the turnpike project; and

(6) restricting the right of the authority to terminate the private participant's right to operate and collect revenue from the turnpike project unless and until any applicable termination payments have been made.

(c) An authority may enter into a comprehensive development agreement under this subchapter with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Section 366.406 does not apply to an obligation of an authority under a comprehensive development agreement, nor is an authority otherwise constrained from issuing bonds or other financial obligations for a turnpike project payable solely from revenues of that turnpike project or from amounts received under a comprehensive development agreement.

(e) Notwithstanding any other law, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, an obligation of an authority under a comprehensive development agreement entered into under this subchapter to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project, may be enforced by mandamus against the authority in a district court of any county of the authority, and the sovereign immunity of the authority is waived for that purpose. The district courts of any county of the authority shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

(f) If an authority enters into a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project, the private participant shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the private participant will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll;  
and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(g) Except as provided by this subsection, a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants, an authority shall adopt rules, procedures, and other guidelines governing selection of private participants for comprehensive development agreements and negotiations of comprehensive development agreements. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations under this subchapter.

(c) An authority has exclusive judgment to determine the terms of an agreement.

Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments received by an authority under a comprehensive development agreement shall be used by the authority to finance the construction, maintenance, or operation of a turnpike project or a highway.

(b) The authority shall allocate the distribution of funds received under Subsection (a) to the counties of the authority based on the percentage of toll revenue from users, from each county, of the project that is the subject of the comprehensive development agreement. To assist the authority in determining the allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each county within the authority based on the number of recorded electronic toll collections.

SECTION 9.04. Subsection (f), Section 366.033, Transportation Code, is amended to read as follows:

(f) An authority may rent, lease, franchise, license, or otherwise make portions of any property of the authority, including tangible or intangible property, [~~its properties~~] available for use by others in furtherance of its powers under this chapter by increasing:

(1) the feasibility or efficient operation [~~the revenue~~] of a turnpike project or system; or

(2) the revenue of the authority.

SECTION 9.05. Subchapter B, Chapter 366, Transportation Code, is amended by adding Sections 366.037 and 366.038 to read as follows:

Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to the powers granted under this chapter and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Subsection (c), the board of an authority may by resolution, and on making the findings set forth in this subsection, authorize the use of surplus revenue of a turnpike project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility is:

(1) situated in a county in which the authority is authorized to design, construct, and operate a turnpike project;

(2) anticipated to either:

(A) enhance the operation or revenue of an existing, or the feasibility of a proposed, turnpike project by bringing traffic to that turnpike project or enhancing the flow of traffic either on that turnpike project or to or from that turnpike project to another facility; or

(B) ameliorate the impact of an existing or proposed turnpike project by enhancing the capability of another facility to handle traffic traveling, or anticipated to travel, to or from that turnpike project; and

(3) not anticipated to result in an overall reduction of revenue of any turnpike project or system.

(b) The board in the resolution may prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility shall be studied, designed, constructed, maintained, repaired, or operated.

(c) An authority shall enter into an agreement to implement this section with the department, the commission, a local governmental entity, or another political subdivision that owns a street, road, alley, or highway that is directly affected by the authority's turnpike project or related facility.

(d) An authority may not:

(1) take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue of a turnpike project or system; or

(2) commit in any fiscal year expenditures under this section exceeding 10 percent of its surplus revenue from the preceding fiscal year.

(e) In authorizing expenditures under this section, the board shall consider:

(1) balancing throughout the counties of the authority the application of funds generated by its turnpike projects and systems, taking into account where those amounts are already committed or programmed as a result of this section or otherwise; and

(2) connectivity to an existing or proposed turnpike project or system.

(f) Except as provided by this section, an authority has the same powers and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, and operation of a highway or similar facility under this section as are available to the authority with respect to a turnpike project or system.

(g) Notwithstanding other provisions of this section:

(1) any work on a highway in the state highway system must be approved by the department; and

(2) the department shall supervise and regulate any work on a highway in the state highway system.

Sec. 366.038. TOLL COLLECTION. An authority shall provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity.

SECTION 9.06. The heading to Section 366.185, Transportation Code, is amended to read as follows:

Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES [COMPETITIVE BIDDING].

SECTION 9.07. (a) Section 366.185, Transportation Code, is amended by amending Subsection (a) and adding Subsections (c) through (f) to read as follows:

(a) A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project may ~~must~~ be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

(c) An authority may procure a combination of engineering, design, and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority.

(d) The authority shall adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

(d-1) The rules adopted under Subsection (d) may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code, and shall provide materially similar injunctive and declaratory action enforcement rights regarding the improper disclosure or use of unique or nonordinary information as provided in that subchapter.

(e) Notwithstanding any other law requiring a competitive bidding procedure, an authority may let a contract for the construction of a turnpike project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the authority during the design of the turnpike project and is responsible for the construction of the turnpike project in accordance with the authority's specifications. A construction manager-at-risk shall be selected on the basis of criteria established by the authority, which may include the construction manager-at-risk's experience, past performance, safety record, proposed personnel and methodology, proposed fees, and other appropriate factors that demonstrate the construction manager-at-risk's ability to provide the best value to the authority and to deliver the required services in accordance with the authority's specifications.

(f) The authority shall adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

(b) Subsection (d-1), Section 366.185, Transportation Code, as added by this section, takes effect only if H.B. No. 1886, Acts of the 80th Legislature, Regular Session, 2007, is enacted and becomes law.

SECTION 9.08. Subchapter F, Chapter 366, Transportation Code, is amended by adding Sections 366.2521 and 366.2522 to read as follows:

Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(b) A director commits an offense if the person solicits, accepts, or agrees to accept any benefit from:

(1) a person the director knows to be subject to regulation, inspection, or investigation by the authority; or

(2) a person the director knows is interested in or likely to become interested in any contract, purchase, payment, claim, transaction, or matter involving the exercise of the director's discretion.

(c) A director who receives an unsolicited benefit that the director is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(d) This section does not apply to:

(1) a fee prescribed by law to be received by a director;

(2) a benefit to which the director is lawfully entitled; or

(3) a benefit for which the director gives legitimate consideration in a capacity other than as a director.

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

(f) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.08, Penal Code, the actor may be prosecuted under this section or Section 36.08.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. (a) A person commits an offense if the person offers, confers, or agrees to confer any benefit on a director that the person knows the director is prohibited from accepting under Section 366.2521.

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

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.09, Penal Code, the actor may be prosecuted under this section or Section 36.09.

SECTION 9.09. Subchapter F, Chapter 366, Transportation Code, is amended by adding Section 366.2575 to read as follows:

Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. On request of the commissioners court of a county of an authority, the board shall vote on whether to build a project that the county requests.

SECTION 9.10. Subchapter G, Chapter 366, Transportation Code, is amended by adding Section 366.305 to read as follows:

Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an authority is requested by the commission to participate in the development of a turnpike project that has been designated as part of the Trans-Texas Corridor, the authority shall have, in addition to all powers granted in this chapter, all powers of the department related to the development of Trans-Texas Corridor projects.

SECTION 9.11. The TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by the department is invalidated.

#### ARTICLE 10. REGIONAL MOBILITY AUTHORITIES

SECTION 10.01. Section 370.251, Transportation Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), the ~~The~~ governing body of an authority is a board of directors consisting of representatives of each county in which a transportation project of the authority is located or is proposed to be located. The commissioners court of each county that initially forms the authority shall appoint at least two directors to the board. Additional directors may be appointed to the board at the time of initial formation by agreement of the counties creating the authority to ensure fair representation of political subdivisions in the counties of the authority that will be affected by a transportation project of the authority, provided that the number of directors must be an odd number. The commissioners court of a county that is subsequently added to the authority shall appoint one director to the board. The governor shall appoint one director to the board who shall serve as the presiding officer of the board and shall appoint an additional director to the board if an appointment is necessary to maintain an odd number of directors on the board.

(a-1) To be eligible to serve as director of an authority created by a municipality an individual:

(1) may be a representative of an entity that also has representation on a metropolitan planning organization in the region where the municipality is located; and

(2) is required to be a resident of Texas regardless of whether the metropolitan planning organization's geographic area includes territory in another state.

SECTION 10.02. Subsection (d), Section 370.301, Transportation Code, is amended to read as follows:

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

SECTION 10.03. (a) Section 370.314, Transportation Code, is amended to read as follows:

Sec. 370.314. DESIGN-BUILD PROCEDURES [~~COMBINATION OF ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES~~]. (a) An authority may procure a combination of engineering, design, and construction services in a single procurement for a transportation project provided that any contract awarded must be the one that results in the best value to the authority.

(b) Procedures adopted under Subsection (a) may not materially conflict with the design-build procedures provided by Subchapter J, Chapter 271, Local Government Code.

(b) Subsection (a) of this section takes effect only if H.B. No. 1886, Acts of the 80th Legislature, Regular Session, 2007, is enacted and becomes law.

#### ARTICLE 11. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR TOLL PROJECTS

SECTION 11.01. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 371 to read as follows:

#### CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL PROJECTS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. In this chapter:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

(A) a part of the state highway system; or

(B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including:

(A) the department, including under Chapter 227;

(B) a regional tollway authority under Chapter 366;

(C) a regional mobility authority under Chapter 370; or

(D) a county under Chapter 284.

Sec. 371.002. APPLICABILITY. This chapter does not apply to a project for which the commission selected an apparent best value proposer before May 1, 2007.

[Sections 371.003-371.050 reserved for expansion]

#### SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members.

(b) At least 30 days before entering into a comprehensive development agreement, a toll project entity shall provide the Legislative Budget Board with:

(1) a copy of the version of the proposed comprehensive development agreement to be executed;



(2) a copy of the proposal submitted by the apparent best value proposer;  
and

(3) a financial forecast prepared by the toll project entity that includes:

(A) toll revenue the entity projects will be derived from the project during the planned term of the agreement;

(B) estimated construction costs and operating expenses; and

(C) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

(c) Before entering into a comprehensive development agreement, a toll project entity shall provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. The entity may not enter into the comprehensive development agreement before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code. On or after the date the comprehensive development agreement is entered into, the financial forecasts and traffic revenue reports are public information under Chapter 552, Government Code.

[Sections 371.053-371.100 reserved for expansion]

#### SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

(b) The formula shall be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.

(c) A formula under Subsection (b) may not include any estimate of future revenue from the project, if not included in an agreed base case financial model under Subsection (b). Compensation to the private participant upon termination for convenience may not exceed the amount determined using the formula under Subsection (b).

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may:

(1) if authorized to issue bonds for that purpose, issue bonds to:

(A) make any applicable termination payments to the private participant; or

(B) purchase the interest of the private participant in the comprehensive development agreement or related property; or

(2) provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Except as provided by Subsection (c), a comprehensive development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of:

(1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement;

(2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes;

(3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or

(4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

(d) The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) A comprehensive development agreement that contains a provision described by Subsection (b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Sections 371.104-371.150 reserved for expansion]

#### SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;  
(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;  
(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

(7) the projected total amount of concession payments.

(b) A toll project entity may not enter into a contract for the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate.

(b) Instead of the notice required by Subsection (a), if the toll project entity estimates that the contract involves an amount less than \$300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed.

(c) If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published.

Sec. 371.153. HEARING. (a) A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract.

(b) A hearing under this section must be held in the county seat of the county in which the toll project is located.

(c) A hearing under this section must include a formal presentation and a mechanism for responding to comments and questions.

## ARTICLE 12. METROPOLITAN PLANNING ORGANIZATIONS

SECTION 12.01. Subchapter D, Chapter 472, Transportation Code, is amended by adding Section 472.034 to read as follows:

Sec. 472.034. ETHICS POLICY. Each policy board shall adopt bylaws establishing an ethics policy to prevent a policy board member from having a conflict of interest in business before the metropolitan planning organization.

## ARTICLE 13. TOLL COLLECTION

SECTION 13.01. Subchapter B, Chapter 228, Transportation Code, is amended by adding Section 228.059 to read as follows:

Sec. 228.059. TOLL COLLECTION AND ENFORCEMENT BY OTHER ENTITY; OFFENSE. An entity operating a toll lane pursuant to Section 228.007(b) has, with regard to toll collection and enforcement for that toll lane, the same powers and duties as the department under this chapter. A person who fails to pay a toll or administrative fee imposed by the entity commits an offense. Each failure to pay a toll or administrative fee imposed by the entity is a separate offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$250, and the provisions of Section 228.056 apply to the prosecution of the offense under this section. The entity may use revenues for improvement, extension, expansion, or maintenance of the toll lane.

#### ARTICLE 14. ISSUANCE OF BONDS

SECTION 14.01. Subsections (b) and (d), Section 222.003, Transportation Code, are amended to read as follows:

(b) The aggregate principal amount of the bonds and other public securities that are issued may not exceed \$6 [~~\$3~~] billion. The commission may only issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 [~~\$4~~] billion each year.

(d) Of the aggregate principal amount of bonds and other public securities that may be issued under this section, the commission shall issue bonds or other public securities in an aggregate principal amount of \$1.2 billion [~~\$600 million~~] to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system. The commission by rule shall prescribe criteria for selecting projects eligible for funding under this section. In establishing criteria for the projects, the commission shall consider accident data, traffic volume, pavement geometry, and other conditions that can create or exacerbate hazardous roadway conditions.

#### ARTICLE 15. EFFECTIVE DATE

SECTION 15.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The Conference Committee Report on **SB 792** was filed with the Secretary of the Senate.

### RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

#### Memorial Resolutions

**SR 1130** by Estes, In memory of Specialist Ryan Collins of Vernon.

**SR 1142** by Watson, In memory of Sara Alvarez Canchola of Austin.

**SR 1144** by Lucio, In memory of Sabas V. Garza, Jr., of Raymondville.

**HCR 267** (Fraser), In memory of Emma Louise Stengel Bean of Menard.

#### Congratulatory Resolutions

**SR 1131** by Gallegos, Congratulating the Saint Thomas High School baseball team for winning a state championship.

**SR 1132** by Hegar, Recognizing the First State Bank of New Braunfels on the occasion of its 100th anniversary.

**SR 1133** by Hegar, Recognizing the City of Bastrop on the occasion of its 175th anniversary.

**SR 1134** by Nelson, Recognizing registered nurses on the occasion of National Nurses Week.

**SR 1135** by Shapiro, Congratulating Grant Stanis on the occasion of his graduation from the McCombs School of Business at The University of Texas at Austin.

**SR 1136** by Ellis, Commending Pro-Vision, Incorporated, in Houston for its educational and developmental programs.

**SR 1137** by Watson, Commending the Rotary Club of Austin for its Service Austin project.

**SR 1138** by Watson, Recognizing Celia A. White on the occasion of her retirement from the Texas Department of Criminal Justice.

**SR 1139** by Watson, Recognizing the Delwood II neighborhood in Austin on the occasion of the 50th anniversary of its Fourth of July celebration.

**SR 1140** by Watson, Recognizing Patrick and Patsy Sconci on the occasion of their 50th wedding anniversary.

**SR 1141** by Watson, Congratulating Christopher Cribb for winning a Gold Seal award from the Texas Art Education Association.

**SR 1143** by Watson, Recognizing Nehoma Annabelle Moultrie Brown of Austin on the occasion of her 80th birthday.

**SR 1145** by Lucio, Recognizing Christine A. Champion on the occasion of her retirement from the Brownsville Independent School District.

**SR 1146** by Lucio, Commending Tony Romo for his accomplishments in the sport of football.

**SR 1147** by Lucio, Recognizing First Baptist School on the occasion of the graduation of its first high school class.

**HCR 207** (Wentworth), Honoring retired United States Air Force Lieutenant Colonel Richard Cole, the last surviving member of General Jimmy Doolittle's crew.

**HCR 266** (Duncan), Honoring the 100th anniversary of Saint Joseph Catholic Church in Rowena.

#### ADJOURNMENT

On motion of Senator Whitmire, the Senate at 8:22 p.m. adjourned, in memory of Specialist Ryan Collins of Vernon, until 10:30 a.m. tomorrow.

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**APPENDIX**

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**COMMITTEE REPORT**

The following committee report was received by the Secretary of the Senate:

May 24, 2007

**JURISPRUDENCE — HB 1331**

**SIGNED BY GOVERNOR**

May 24, 2007

**SB 812, SCR 85**

OFFICIAL MEMORANDUM  
STATE OF TEXAS  
OFFICE OF THE GOVERNOR

MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES  
OF THE EIGHTIETH TEXAS LEGISLATURE, REGULAR SESSION:

The Texas Constitution in Article 4, Section 14, grants the governor the legislative power to approve or disapprove bills passed by both houses of the legislature. Nothing in that section or the remainder of the Texas Constitution anticipates or describes the process of returning a bill to the legislature for the purpose of correction and amendment once it has been delivered to the governor for review (*Teem v. State*, 79 Tex. Crim. 285, 183 S.W. 1144, 1151 (1916)).

Senate Bill No. 924 by Brimer was passed by the Eightieth Texas Legislature, Regular Session, and properly transmitted to my executive office on Tuesday, May 22, 2007. The legislature has now passed and properly transmitted to me Senate Concurrent Resolution No. 85 by Brimer requesting that I return Senate Bill No. 924 to the legislature so that they may correct a technical error in the enrolling of the bill.

In this instance, I have taken no formal action on Senate Bill No. 924 and I am agreeing to the request of the legislature. While I am under no obligation to comply with this request, pursuant to established practice and previous case law, I hereby return the enrolled copy of Senate Bill No. 924 with this message to the senate for correction and further consideration by the legislature.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 24th day of May, 2007.

/s/Rick Perry  
Governor of Texas

(seal)

ATTESTED BY:

/s/Roger Williams  
Secretary of State