

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-SIXTH DAY**  
(Monday, May 25, 2009)

The Senate met at 10:24 a.m. pursuant to adjournment and was called to order by President Pro Tempore Duncan.

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

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

The Honorable Eddie Lucio, Jr., Texas Senate, offered the invocation as follows:

In respect to all the families around the world who have lost a loved one at times of war and times of peace as they have served under a United States flag, we pray. Dear Lord, on this day, we remember those who have served us by protecting our freedoms. On this day that we celebrate with our friends and family, help us remember that our freedom to speak of You and our freedom to worship You and our freedom to do that which we ought to do have all been bought at the price and sacrifice of many lives. Your son died for our eternal life in heaven. So, too, Your children died protecting us here on Earth. Help us always to be mindful of the sacrifices made by those in uniform for all our freedoms. Eternal rest grant unto them, O Lord, and let perpetual light shine upon them. May the souls of the faithful departed, through the mercy of God, rest in peace. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Saturday, May 23, 2009, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

## **CO-SPONSOR OF HOUSE BILL 58**

On motion of Senator Averitt, Senator Zaffirini will be shown as Co-sponsor of **HB 58**.

## **CO-SPONSOR OF HOUSE BILL 136**

On motion of Senator Van de Putte, Senator Zaffirini will be shown as Co-sponsor of **HB 136**.

**CO-SPONSOR OF HOUSE BILL 635**

On motion of Senator Zaffirini, Senator Van de Putte will be shown as Co-sponsor of **HB 635**.

**CO-SPONSORS OF HOUSE BILL 821**

On motion of Senator Watson, Senators Carona and Zaffirini will be shown as Co-sponsors of **HB 821**.

**CO-SPONSOR OF HOUSE BILL 1357**

On motion of Senator Deuell, Senator Shapiro will be shown as Co-sponsor of **HB 1357**.

**CO-SPONSOR OF HOUSE BILL 1795**

On motion of Senator Uresti, Senator Zaffirini will be shown as Co-sponsor of **HB 1795**.

**CO-SPONSORS OF HOUSE BILL 1801**

On motion of Senator Shapiro, Senators Ellis and Zaffirini will be shown as Co-sponsors of **HB 1801**.

**CO-SPONSOR OF HOUSE BILL 3613**

On motion of Senator Williams, Senator Patrick will be shown as Co-sponsor of **HB 3613**.

**CO-SPONSOR OF HOUSE BILL 3646**

On motion of Senator Shapiro, Senator Seliger will be shown as Co-sponsor of **HB 3646**.

**CO-SPONSORS OF HOUSE BILL 4833**

On motion of Senator Wentworth, Senators Uresti and Zaffirini will be shown as Co-sponsors of **HB 4833**.

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

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

**SENATE RESOLUTION 647**

Senator Nelson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Mayor Vic Burgess, who is retiring from the City of Corinth in May, 2009, after many years of public service; and

WHEREAS, Vic Burgess has served in the non-paying position of mayor since 2003; he previously served on the city council for more than five years and as Denton County judge for four years; he was a volunteer police reserve officer for the City of Lewisville for six years and a reserve officer for the Denton County Sheriff's Department for two and one-half years; and

WHEREAS, He has worked in real estate since 1964 and currently maintains a real estate office in Denton; after growing up in Yale, Michigan, and attending Oakland College in Rochester, Michigan, he moved to California in 1961 and studied liberal arts and real estate at Fullerton Junior College and Orange Coast Junior College; and

WHEREAS, During his tenure as mayor and as a member of the city council of Corinth, Vic has demonstrated a high level of energy, integrity, and professionalism; he is noted for his exceptional mediation skills and his enthusiasm and dedication to the citizens of the City of Corinth; and

WHEREAS, Mayor Vic Burgess can take great pride in his accomplishments, and the citizens of Corinth will long reap the benefits of his commitment to service and to the community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby commend Mayor Vic Burgess for his many contributions to the City of Corinth 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 high regard from the Texas Senate.

**SR 647** was again read.

The resolution was previously adopted on Monday, April 20, 2009.

#### **SENATE RESOLUTION 989**

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Anne Legendre Armstrong, who died July 30, 2008, at the age of 80; and

WHEREAS, An ambassador to Great Britain, an adviser to four United States presidents, and a recipient of the Presidential Medal of Freedom, Anne Legendre Armstrong was an inspiration to generations of women who admired her for her distinguished record of public service on behalf of our nation and its institutions; and

WHEREAS, Born December 27, 1927, in New Orleans, Louisiana, Anne Legendre graduated from Foxcroft School, where she was valedictorian of her class and head of the student body; she earned a bachelor's degree from Vassar College, where she was elected to Phi Beta Kappa in her junior year; and

WHEREAS, She married Tobin Armstrong in 1950, and the couple raised five children on the Armstrong family ranch in South Texas; the ranch remained Anne Armstrong's home throughout her life, and she and her husband enjoyed a marriage of 55 years; and

WHEREAS, In 1971, Mrs. Armstrong was named cochair of the Republican National Committee; she was the first woman to hold that post for either national political party, and in 1972, she was the first woman to deliver a keynote address at a national political convention; and

WHEREAS, Mrs. Armstrong was appointed counselor to the president with cabinet rank by President Richard Nixon; she remained in that position under President Gerald Ford, who eventually named her Ambassador to the Court of Saint James's; and

WHEREAS, President Ronald Reagan appointed Mrs. Armstrong chair of the President's Foreign Intelligence Advisory Board, a position she continued to hold under the leadership of President George H. W. Bush; in 1987, President Reagan honored her for her patriotism and outstanding service to the nation by awarding her the Presidential Medal of Freedom; and

WHEREAS, Mrs. Armstrong and her husband played an active role in Texas politics and helped to establish Texas as a two-party state; in addition to her political undertakings, Mrs. Armstrong served on the board of regents of the Texas A&M University System and was a director on the boards of such corporations as General Motors, American Express, and Halliburton; and

WHEREAS, An exemplary lady of exceptional strength and resolve, Mrs. Armstrong gave unselfishly of her time and energy to others, and her generosity and legacy of patriotism and public service will long be remembered by all who knew her; and

WHEREAS, Anne Armstrong was noted for her warmth and intelligence and was a devoted wife, mother, and grandmother, and she leaves behind memories that will be deeply treasured by all who were privileged to share in her life; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby extend sincere condolences to the bereaved family of Anne Legendre Armstrong: her sons and daughters-in-law, J. Barclay Armstrong and Nancy, James Armstrong and Lucy, and Tobin Armstrong, Jr., and Ardon; her daughters and sons-in-law, Katharine and Ben Love and Sarita and Bob Hixon; her sister, Katharine Legendre King; and her 13 grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Anne Legendre Armstrong.

**SR 989** was read and was adopted by a rising vote of the Senate.

### **GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate family members of Anne Legendre Armstrong: her son, Tobin Armstrong, Jr., and his wife, Ardon; and her daughter, Sarita Hixon, and her husband, Bob Hixon.

The Senate welcomed its guests.

### **(Senator Carona in Chair)**

### **PHYSICIAN OF THE DAY**

Senator Zaffirini was recognized and presented Dr. Jake Margo of Rio Grande City as the Physician of the Day.

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

### **CONCLUSION OF MORNING CALL**

The Presiding Officer at 10:53 a.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3896 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3896** at this time on its second reading:

**CSHB 3896**, Relating to the authority of the governing body of a municipality or the commissioners court of a county to enter into an ad valorem tax abatement agreement.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3896 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3896** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3353 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **HB 3353** at this time on its second reading:

**HB 3353**, Relating to an environmental service fee at public institutions of higher education.

The motion prevailed.

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

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Nichols, Shapiro, Williams.

**HOUSE BILL 3353 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3353** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Nichols, Shapiro, Williams.

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

### HOUSE BILL 3461 ON SECOND READING

Senator Watson moved to suspend the regular order of business to take up for consideration **HB 3461** at this time on its second reading:

**HB 3461**, Relating to the powers and duties of the School Land Board and the commissioner of the General Land Office.

The motion prevailed.

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

The bill was read second time.

Senator Watson offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 3461** (Senate committee report) by adding the following SECTIONS to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 32.002, Natural Resources Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (f) to read as follows:

(a) This chapter does not apply to:

(1) land dedicated by the constitution or a law of this state to The University of Texas System, land donated by a will or instrument in writing or otherwise to The University of Texas System, as trustee, for a scientific, educational, or other charitable or public purpose, or any other land under the control of the Board of Regents of The University of Texas System;

(2) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System or land under the control of the Board of Regents of The Texas A&M University System;

(3) minerals subject to lease under Subchapter F, Chapter 52, [~~of this code,~~] commonly known as the Relinquishment Act, and Subchapters B and C, Chapter 53[~~;~~ ~~of this code~~];

(4) [~~oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley, which is located in a producing area, unless the oil or gas is leased for the specific purpose of drilling a horizontal well;~~]

~~[(5) oil and gas underlying land owned by the state that was acquired to construct or maintain a highway, road, street, or alley if the Texas Transportation Commission has determined that such right of way is no longer needed for use by citizens as a road pursuant to Section 202.021, Transportation Code;~~

~~[(6)]~~ land owned by the ~~[Texas]~~ Parks and Wildlife Department; or

(5) [(7)] land owned by the Texas Board of Criminal Justice.

(a-1) Oil and gas underlying land that is owned by this state, was acquired to construct or maintain a highway, road, street, or alley, is located in a producing area, and is subject to an oil or gas lease may be pooled or unitized only prospectively and is subject to Sections 32.201, 32.202, and 32.203.

(b) For purposes of Subsection (a-1) ~~[Subsection (a)(4) of this section]~~, land is located in a producing area if the closest boundary line of the surface of such land is within 2,500 feet of a well capable of producing oil or gas in paying quantities ~~[as of January 1, 1985]~~.

(f) This chapter does not authorize drilling or other operations on the surface of land during the period in which the land is used by this state as a highway, road, street, or alley.

SECTION \_\_\_\_ . Section 32.203, Natural Resources Code, is amended to read as follows:

Sec. 32.203. COMPENSATORY ROYALTY. Compensatory royalty shall be paid to the state on any lease offered and granted under Section 32.201 of this code if the lease is not being held by production on the tract, by production from a pooled unit, or by payment of shut-in royalties in accordance with the terms of the lease, and if oil or gas is sold and delivered in paying quantities from a well located within 2,500 feet of the leased premises and completed in a producible reservoir underlying the state lease or in any case in which drainage is occurring. Such compensatory royalty shall be paid at the royalty rate provided in the state lease based on the value of production from the well as provided in the lease on which such well is located. The compensatory royalty shall be paid in the same proportion that the acreage of the state lease has to the acreage of the state lease plus the acreage of a standard [the] proration unit under statewide field rules or, if applicable, the special field rules adopted by the Railroad Commission of Texas for the field in which [surrounding] the [draining] well has been completed. The compensatory royalty is to be paid monthly to the commissioner on or before the last day of the month next succeeding the month in which the oil or gas is sold and delivered from the well ~~[causing the drainage or from the well located within 2,500 feet of the leased premises and completed in a producible reservoir under the state lease]~~. Notwithstanding anything herein to the contrary, compensatory royalty payable under this section shall be no less than an amount equal to double the annual rental payable under the state lease. Payment of compensatory royalty shall maintain the state lease in force and effect for so long as such payments are made as provided in this section.

SECTION \_\_\_\_ . Subchapter F, Chapter 32, Natural Resources Code, is amended by adding Section 32.207 to read as follows:

Sec. 32.207. ADVERTISING FOR BIDS; POOLING. Section 52.076 applies to oil and gas under land owned by this state that was acquired to construct or maintain a highway, road, street, or alley in the same manner as that section applies to oil and gas under a riverbed or channel.

SECTION \_\_\_\_\_. Sections 32.002 and 32.203, Natural Resources Code, as amended by this Act, and Section 32.207, Natural Resources Code, as added by this Act, do not authorize:

(1) any person, including this state or a local government, to claim damages relating to production from a legally permitted and legally producing well the drilling of which was commenced before the effective date of this Act; or

(2) a state or local taxing authority to reallocate liability for severance or ad valorem taxes or increase the amount of those taxes imposed based on production from or the value attributable to production from a legally permitted and legally producing well the drilling of which was commenced before the effective date of this Act.

The amendment to **HB 3461** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Seliger.

Senator Watson offered the following amendment to the bill:

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

Amend **HB 3461** by inserting the following new SECTION, appropriately numbered and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 52.136, Natural Resources Code, is amended in Subsection (b) as follows:

(b) By acceptance of a lease, the lessee grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by the lease, all proceeds which may accrue to the lessee from the sale of the oil and gas, whether the proceeds are held by the lessee or another person, and all fixtures on and improvements to the area covered by the lease used in connection with the production or processing of the oil and gas, to secure the payment of royalties and other amounts due or to become due under the lease or this subchapter and to secure payment of damages or loss that the state may suffer by reason of the lessee's breach of a covenant or condition of the lease, whether express or implied. By acceptance of a lease, the lessee having a financial or cost bearing interest in the lease grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by any other lease of state land or minerals held by the lessee having a financial or cost bearing interest in the lease only to the extent of the interest of the lessee having a financial or cost bearing interest in the lease. A lessee or operator may request a hearing before the School Land Board, either prior to or after the exercising of the State's lien rights, for re-consideration of the lien and matters relating to the lien.

The amendment to **HB 3461** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Seliger.

Senator Huffman offered the following amendment to the bill:

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

Amend **HB 3461** (Senate committee report) by adding the appropriately numbered SECTION \_\_\_\_ to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 61.021, Natural Resources Code is amended to read as follows:

Sec. 61.021. AREA NOT COVERED BY SUBCHAPTER. (a) None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

(b) A local government or local official may not adopt, apply, or enforce a beach access and use plan or any other provision of this subchapter within a state or national park area, wildlife refuge, or other designated state or national natural area.

(c) Any requirement to keep a beach open for vehicular traffic under this subchapter or the rules promulgated hereunder shall not apply to any beach or segment of beach within 3,100 feet of a natural science laboratory in any county with a population of 40,000 or fewer.

The amendment to **HB 3461** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Nays: Seliger.

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

**HB 3461** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Seliger.

### **HOUSE BILL 3461 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3461** be placed on its third reading and final passage.

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

Nays: Seliger.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 715 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **CSHB 715** at this time on its second reading:

**CSHB 715**, Relating to motor vehicle inspection stations that perform emissions inspections using only the onboard diagnostic system of inspected vehicles.

The motion prevailed.

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

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Jackson, Uresti, Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 715 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 715** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Jackson, Uresti, Williams.

The bill was read third time.

Senator Shapleigh offered the following amendment to the bill:

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

Amend **CSHB 715** (Senate committee report) on third reading as follows:

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

SECTION \_\_\_\_\_. (a) Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 108 to read as follows:

CHAPTER 108. REQUIREMENTS FOR RETAIL SELLERS OF MOTOR  
VEHICLE TIRES

Sec. 108.001. DEFINITION. In this chapter, "dealer" has the meaning assigned by Section 503.001, Transportation Code.

Sec. 108.002. RENDERING CERTAIN MOTOR VEHICLE TIRES UNUSABLE. (a) A business that sells new or used tires at retail for use on a motor vehicle shall render a tire held as inventory or purchased or received in exchange from a customer unusable if the tire does not meet the inspection criteria adopted by rule of the Department of Public Safety under Section 548.002, Transportation Code.

(b) A business shall render a tire unusable for purposes of Subsection (a) by:

(1) puncturing a hole two inches across from the surface through the entire body of the tire so that the tire cannot be temporarily repaired by the use of blowout patches or boots; or

(2) taking any other action necessary to prevent the tire from being used on a motor vehicle.

(c) While the tires remain mounted on the motor vehicle, this section does not apply to tires mounted on the wheels of a motor vehicle that is:

(1) held as inventory by a dealer; or

(2) purchased or received in exchange by a dealer as part of a motor vehicle retail installment transaction.

Sec. 108.003. EXEMPTION FOR CERTAIN BUSINESSES. This chapter does not apply to a business that uses a used or scrap tire transporter that:

(1) is registered with the Texas Commission on Environmental Quality; and

(2) has provided the commission with a bond in an amount of at least \$100,000.

Sec. 108.004. RULEMAKING AUTHORITY. The Department of Public Safety may adopt rules to implement this chapter.

Sec. 108.005. CIVIL PENALTY. (a) A business that violates this chapter is liable to the state for a civil penalty in an amount not to exceed \$500 for each violation.

(b) The attorney general or the appropriate district or county attorney may bring an action under this chapter in the name of the state in a district court in:

(1) Travis County; or

(2) the county in which the violation occurs.

(b) This section takes effect September 1, 2009.

(2) In SECTION 2 of the bill (page 1, line 25), strike "This" and substitute "Except as otherwise provided by this Act, this".

**(Senator Eltife in Chair)**

The amendment to **CSHB 715** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Nays: Harris, Jackson, Uresti, Williams.

Senator Carona offered the following amendment to the bill:

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

Amend **CSHB 715** (Senate committee printing) on third reading as follows:

(1) Strike SECTION 2 in its entirety.

(2) After SECTION 1, insert the following appropriately numbered SECTIONS:

SECTION \_\_. The heading to Section 548.3065, Transportation Code, is amended to read as follows:

Sec. 548.3065. ADMINISTRATIVE AND CIVIL PENALTIES ~~[PENALTY]~~.

SECTION \_\_. Section 548.3065, Transportation Code, is amended by amending Subsection (c) and adding Subsections (c-1), (e), and (f) to read as follows:

(c) For purposes of Subsection (a) ~~[Except as otherwise provided by this section]~~, the procedures for determining and administering an administrative penalty ~~[under this section]~~ against a person charged with violating this chapter are the same as those prescribed by Section 643.251 for determining and administering an administrative penalty against a motor carrier under that section.

(c-1) The Texas Commission on Environmental Quality may impose an administrative penalty on a person in the amount of \$500 for each violation of this subchapter or a rule adopted by the commission under this subchapter.

(e) An inspection station that violates a provision of this chapter or a rule of the department issued under this chapter is liable for a civil penalty of not less than \$250 or more than \$500 for each violation. The district or county attorney for the county in which the inspection station is located or the attorney general may bring suit in the name of this state to collect the penalty.

(f) An inspector who violates a provision of this chapter or a rule of the department issued under this chapter is liable for a civil penalty of not less than \$250 or more than \$500 for each violation. The district or county attorney for the county in which the inspection station that employs the inspector is located or the attorney general may bring suit in the name of this state to collect the penalty.

SECTION \_\_. Subchapter G, Chapter 548, Transportation Code, is amended by adding Section 548.4045 to read as follows:

Sec. 548.4045. BOND REQUIRED. (a) An application for certification as an inspection station or an inspector must be accompanied by a surety bond in the amount of \$500, payable to this state and conditioned on the future compliance with this chapter and rules adopted by the department or the Texas Commission on Environmental Quality under this chapter.

(b) The attorney general or the district or county attorney for the county in which the inspection station is located or in which the inspection station that employs the inspector is located may bring suit in the name of this state to recover on the bond.

SECTION \_\_. Section 548.601, Transportation Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1) or as [Unless] otherwise specified in this chapter, an offense under this section is a Class C misdemeanor.

(b-1) An offense under Subsection (a)(1), (5), or (6) is a Class A misdemeanor.

SECTION \_\_. (a) The change in law made by this Act to Sections 548.3065 and 548.601, Transportation Code, applies only to a violation or an offense committed by a vehicle inspection station or a vehicle inspector on or after the effective date of this Act. A violation or an offense committed by a vehicle inspection station or a vehicle inspector before the effective date of this Act is governed by the law in effect when the violation or offense was committed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act in connection with an application for certification as a vehicle inspection station or a vehicle inspector applies only to an application for certification that is filed on or after the effective date of this Act. An application for certification as a vehicle inspection station or a vehicle inspector that is filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 7. SECTION 1 of this Act takes effect December 31, 2010. The remaining SECTIONS of this Act take effect September 1, 2009.

The amendment to **CSHB 715** was read.

Senator Carona offered the following amendment to Floor Amendment No. 2 on Third Reading:

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

Amend Floor Amendment No. 2 on Third Reading, in SECTION \_\_ of the bill, added Section 548.3065(c-1), Transportation Code (page 1, line 19), by striking "Texas Commission on Environmental Quality" and substituting "department".

The amendment to Floor Amendment No. 2 on Third Reading to **CSHB 715** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 on Third Reading except as follows:

Nays: Harris, Jackson, Uresti, Williams.

Senator Carona offered the following amendment to Floor Amendment No. 2 on Third Reading:

**Floor Amendment No. 4 on Third Reading**

Amend Floor Amendment No. 2 on Third Reading to **CSHB 715**, third reading, as follows:

In Section \_\_, added Section 548.3065, Transportation Code, add the following new Subsection (g):

(g) The imposition or collection of a penalty under this section does not preclude the department from taking administrative action against an inspection station or inspector for a violation of this chapter or a rule adopted under this chapter.

The amendment to Floor Amendment No. 2 on Third Reading to **CSHB 715** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4 on Third Reading except as follows:

Nays: Harris, Jackson, Uresti, Williams.

Question recurring on the adoption of Floor Amendment No. 2 on Third Reading to **CSHB 715**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 on Third Reading as amended except as follows:

Nays: Harris, Jackson, Uresti, Williams.

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

**CSHB 715** as amended was finally passed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Jackson, Uresti, Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 10 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 10** at this time on its second reading:

**CSHB 10**, Relating to the regulation of residential mortgage loan originators; providing a penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 10 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 10** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 192 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 192** at this time on its second reading:

**CSHB 192**, Relating to the absence of a student from school for activities in connection with obtaining United States citizenship.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 192** (Senate committee report) in SECTION 1 of the bill by striking the recital (page 1, lines 13-15) and substituting the following:

Section 25.087(b), Education Code, is amended to read as follows:

The amendment to **CSHB 192** was read and was adopted by a viva voce vote.

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

Senator Shapiro offered the following amendment to the bill:

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

Amend **CSHB 192** (Senate committee report) in SECTION 1 of the bill, immediately following Subdivision (2) of amended Section 25.087(b), Education Code (page 1, between lines 29 and 30), by inserting the following:

(b-3) A temporary absence for purposes of Subsection (b)(2) includes the temporary absence of a student diagnosed with autism spectrum disorder on the day of the student's appointment with a health care practitioner, as described by Section 1355.015(b), Insurance Code, to receive a generally recognized service for persons with autism spectrum disorder, including applied behavioral analysis, speech therapy, and occupational therapy.

The amendment to **CSHB 192** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

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

**CSHB 192** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 192 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 192** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3076 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **HB 3076** at this time on its second reading:

**HB 3076**, Relating to a parenting and paternity awareness program used in the health curriculum for public schools.

The motion prevailed.

Senators Jackson, Nichols, and Patrick asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3076** by adding an appropriately numbered SECTION to read as follows:

SECTION \_\_. Section 28.002, Education Code, is amended by adding Subsection (r) to read as follows:

(r) In adopting the essential knowledge and skills for the health curriculum under Subsection (a)(2)(B), the State Board of Education shall adopt essential knowledge and skills that address the dangers, causes, consequences, signs, symptoms, and treatment of binge drinking and alcohol poisoning. The agency shall compile a list of evidence-based alcohol awareness programs from which a school district shall choose a program to use in the district's middle school, junior high school, and high school health curriculum. In this subsection, "evidence-based alcohol awareness program" means a program, practice, or strategy that has been proven to effectively prevent or delay alcohol use among students, as determined by evaluations that use valid and reliable measures and that are published in peer-reviewed journals.

SECTION \_\_. Section 28.002(r) applies beginning with the 2009-2010 school year

The amendment to **HB 3076** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Hegar, Jackson, Nichols, Patrick.

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

**HB 3076** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Hegar, Jackson, Nichols, Patrick.

**HOUSE BILL 3076 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3076** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Jackson, Nichols, Patrick.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Hegar, Jackson, Nichols, Patrick.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1720 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1720** at this time on its second reading:

**CSHB 1720**, Relating to the use of public funds by a political subdivision for communications that contain false information relating to a ballot measure; providing a criminal penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1720 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1720** be placed on its third reading and final passage.

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

The bill was read third time.

Senator Davis offered the following amendment to the bill:

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

Amend **CSHB 1720** (Senate committee report) on third reading as follows:

(1) In SECTION 1 of the bill, strike the recital (page 1, lines 14-16) and substitute the following:

Section 255.003, Election Code, is amended to read as follows:

(2) In SECTION 1 of the bill, immediately before amended Section 255.003(b), Election Code (page 1, between lines 16 and 17), insert the following:

Sec. 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING. (a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

(3) In SECTION 1 of the bill, following amended Section 255.003(c), Election Code (page 1, between lines 31 and 32), insert the following:

(d) It is an affirmative defense to prosecution for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of this section in a written opinion issued by:

- (1) a court of record;
- (2) the attorney general; or

(3) the commission.

(e) On written request of the governing body of a political subdivision that has ordered an election on a measure, the commission shall prepare an advance written advisory opinion as to whether a particular communication relating to the measure does or does not comply with this section.

(f) Subsections (d) and (e) do not apply to a port authority or navigation district.

(4) In SECTION 2 of the bill (page 1, line 32), strike "Section 255.003, Election Code, as amended" and substitute "(a) Section 255.003(b-1), Election Code, as added".

(5) Between SECTIONS 2 and 3 of the bill (page 1, between lines 37 and 38), insert the following:

(b) Section 255.003(d), Election Code, as added by this Act, applies to the prosecution of conduct committed before, on, or after September 1, 2009, as to which:

(1) judgment has not been entered or a sentence has not been imposed; or

(2) if judgment has been entered and a sentence imposed, an appeal is pending or the time for appeal has not expired.

The amendment to **CSHB 1720** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Nays: Harris, Williams.

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

**CSHB 1720** as amended was finally passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 773 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 773** at this time on its second reading:

**HB 773**, Relating to extending the expiration date of the Property Redevelopment and Tax Abatement Act.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 773 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 773** be placed on its third reading and final passage.

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

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

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 25, 2009

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 181**, Designating the section of the Brazos River Basin and its contributing watershed in Somervell County as the Scenic Riverway of Somervell County.

**HCR 188**, Designating Roanoke as the Unique Dining Capital of Texas.

**HCR 252**, Requesting the governor to appoint a Governor's Task Force on Horse and Greyhound Racing.

**HCR 258**, Urging the University of Houston and other institutions of higher education to cease displaying the flag of the Socialist Republic of Vietnam and to replace it with the Freedom and Heritage Flag.

**SCR 5**, Designating the Texas Medal of Honor Memorial on the campus of Hill College in Hillsboro as the official State Memorial to Texas-Born Medal of Honor Recipients.

**SCR 10**, Urging Congress to provide emergency funding and resources to begin immediately addressing increasing delays at United States ports of entry on the Texas-Mexico border.

**SCR 11**, Designating Bridgeport as the official Stagecoach Capital of Texas.

**SCR 22**, Urging Congress to reopen consideration of the case to posthumously award the Medal of Honor to World War I hero Marcelino Serna.

**SCR 64**, Commemorating the 170th anniversary of the founding of the Sabine Pass community.

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

**HB 19** (143 Yeas, 1 Nays, 1 Present, not voting)

**HB 107** (138 Yeas, 0 Nays, 1 Present, not voting)

**HB 348** (143 Yeas, 0 Nays, 1 Present, not voting)

**HB 422** (139 Yeas, 0 Nays, 1 Present, not voting)

**HB 449** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 621** (135 Yeas, 0 Nays, 1 Present, not voting)

**HB 675** (139 Yeas, 0 Nays, 1 Present, not voting)

**HB 783** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 1113** (139 Yeas, 0 Nays, 1 Present, not voting)

**HB 1257** (137 Yeas, 0 Nays, 2 Present, not voting)

**HB 1294** (137 Yeas, 0 Nays, 1 Present, not voting)

**HB 1362** (139 Yeas, 5 Nays, 1 Present, not voting)

**HB 1365** (137 Yeas, 0 Nays, 1 Present, not voting)

**HB 1452** (147 Yeas, 0 Nays, 1 Present, not voting)

**HB 1487** (136 Yeas, 0 Nays, 1 Present, not voting)

**HB 1761** (142 Yeas, 0 Nays, 1 Present, not voting)

**HB 1883** (138 Yeas, 0 Nays, 2 Present, not voting)

**HB 1919** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 1985** (144 Yeas, 0 Nays, 1 Present, not voting)

**HB 2187** (140 Yeas, 1 Nays, 1 Present, not voting)

**HB 2447** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 2572** (146 Yeas, 0 Nays, 1 Present, not voting)

**HB 2580** (135 Yeas, 1 Nays, 1 Present, not voting)

**HB 2983** (138 Yeas, 0 Nays, 1 Present, not voting)

**HB 3129** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 3358** (139 Yeas, 0 Nays, 1 Present, not voting)

**HB 3391** (138 Yeas, 0 Nays, 1 Present, not voting)

**HB 3961** (130 Yeas, 1 Nays, 1 Present, not voting)

**HB 4114** (139 Yeas, 1 Nays, 1 Present, not voting)

**HB 4127** (137 Yeas, 0 Nays, 1 Present, not voting)

**HB 4149** (138 Yeas, 0 Nays, 1 Present, not voting)

**HB 4328** (141 Yeas, 2 Nays, 1 Present, not voting)

**HB 4779** (138 Yeas, 0 Nays, 1 Present, not voting)

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

**HB 216** (non-record vote)

House Conferees: Menendez - Chair/Davis, John/Hughes/Naishtat/Rose

**HB 987** (non-record vote)

House Conferees: Creighton - Chair/Coleman/Flynn/Gonzalez Toureilles/Solomons

**HB 2330** (non-record vote)

House Conferees: Guillen - Chair/King, Susan/Kolkhorst/Naishtat/Zerwas

**HB 2591** (non-record vote)

House Conferees: Thompson - Chair/Gutierrez/Hamilton/Jones/Menendez

**HB 2925** (non-record vote)

House Conferees: Herrero - Chair/Cohen/Creighton/Gonzalez Toureilles/Hardcastle

**HB 4102** (non-record vote)

House Conferees: Eiland - Chair/McCall/Ortiz, Jr./Ritter/Taylor

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

**SB 956** (non-record vote)

House Conferees: Branch - Chair/Anchia/Crownover/Giddings/McCall

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 482** (141 Yeas, 0 Nays, 1 Present, not voting)

**SB 562** (135 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HOUSE BILL 1423 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1423** at this time on its second reading:

**HB 1423**, Relating to granting charters to public junior colleges for open-enrollment charter schools.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 1423 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1423** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3094 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3094** at this time on its second reading:

**CSHB 3094**, Relating to the regulation of massage parlors by counties; providing penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3094 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3094** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1285 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1285** at this time on its second reading:

**HB 1285**, Relating to persons authorized to administer an oath in this state.

The bill was read second time.

Senator Huffman offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1285**, page 2, line 3, amending subsection (9) to include the following language as follows:

(9) an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Criminal Procedure Code;

The amendment to **HB 1285** was read and was adopted by a viva voce vote.

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

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

**HB 1285** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 1285 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1285** be placed on its third reading and final passage.

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

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

**BILLS SIGNED**

The Presiding Officer, Senator Eltife in Chair, announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 8, HB 236, HB 396, HB 405, HB 409, HB 473, HB 488, HB 497, HB 551, HB 558, HB 594, HB 618, HB 643, HB 655, HB 669, HB 693, HB 709, HB 846, HB 962, HB 1020, HB 1029, HB 1060, HB 1093, HB 1191, HB 1232, HB 1366, HB 1409, HB 1568, HB 1579, HB 1682, HB 1721, HB 1789, HB 1802, HB 1965, HB 1975, HB 2004, HB 2039, HB 2063, HB 2068, HB 2201, HB 2217, HB 2259, HB 2263, HB 2333, HB 2424, HB 2529, HB 2542, HB 2548, HB 2549, HB 2558, HB 2640, HB 2665, HB 2667, HB 2726, HB 2729** (signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 2735, HB 2765, HB 2796, HB 2829, HB 2835, HB 2840, HB 2985, HB 3012, HB 3108, HB 3137, HB 3139, HB 3231, HB 3246, HB 3340, HB 3429.**

**GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate a group of students from Freer High School in Freer: Tracie Beck, Marshall Garcia, Ross Robertson, and Arturo Fernandez, accompanied by staff member Rachel de los Santos.

The Senate welcomed its guests.

**HOUSE BILL 2685 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2685** at this time on its second reading:

**HB 2685**, Relating to the landowner's bill of rights.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2685 ON THIRD READING**

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2685** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1506 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 1506** at this time on its second reading:

**CSHB 1506**, Relating to the imposition of conditions on certain defendants charged with an offense involving family violence.

The motion prevailed.

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

The bill was read second time.

Senator Hinojosa moved to postpone further consideration of the bill to a time certain of 1:00 p.m. today.

The motion prevailed.

Question — Shall **CSHB 1506** be passed to third reading?

**GUESTS PRESENTED**

Senator Nichols was recognized and introduced to the Senate a group of students from Athens High School in Athens.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2093 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2093** at this time on its second reading:

**CSHB 2093**, Relating to the certification of a county jailer as a special officer for offenders with mental impairments.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2093** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 59.06, Code of Criminal Procedure, is amended by adding Subsections (r) and (s) to read as follows:

(r) As a specific exception to Subsection (c)(2), (3), or (4), a law enforcement agency may transfer not more than 10 percent of the gross amount credited to the agency's fund to a separate special fund in the treasury of the political subdivision or state law enforcement agency, as applicable. The law enforcement agency shall administer the separate special fund. Interest received from the investment of money in the fund shall be credited to the fund. The agency may use money in the fund only to provide scholarships to children of peace officers who were employed by the

agency or by another law enforcement agency with which the agency has overlapping geographic jurisdiction and who were killed in the line of duty. Scholarships under this subsection may be used only to pay the costs of attendance at an institution of higher education or private or independent institution of higher education, including tuition and fees and costs for housing, books, supplies, transportation, and other related personal expenses. In this subsection, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(s) Not later than April 1 of each year, the attorney general shall develop a report detailing the total value of forfeited property in this state in the preceding calendar year, as specified according to the law enforcement agency seizing the property. The attorney general shall maintain in a prominent location on its publicly accessible Internet website a link to the most recent annual report developed under this subsection.

The amendment to **CSHB 2093** was read and was adopted by a viva voce vote.

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

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

**CSHB 2093** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2093 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2093** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 58 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 58** at this time on its second reading:

**HB 58**, Relating to the eligibility of private or independent institutions of higher education to participate in the advanced research program administered by the Texas Higher Education Coordinating Board.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 58 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 58** be placed on its third reading and final passage.

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

Nays: Shapiro.

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

**HOUSE BILL 1945 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **HB 1945** at this time on its second reading:

**HB 1945**, Relating to the date of the general election for certain political subdivisions.

The motion prevailed.

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

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Williams.

**HOUSE BILL 1945 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1945** be placed on its third reading and final passage.

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

Nays: Williams.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3612 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **CSHB 3612** at this time on its second reading:

**CSHB 3612**, Relating to the creation of a pilot program that allows taxpayer appeals from certain appraisal review board determinations in certain counties to be heard by the State Office of Administrative Hearings.

The motion prevailed.

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

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3612** (Senate committee printing) in SECTION 1 of the bill, in added Section 2003.912(b)(3), Government Code, after "Tax Code," and before "in" insert the following:

"except for the award of attorney's fees under Sec. 42.29, Tax Code,"

The amendment to **CSHB 3612** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Wentworth.

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

**CSHB 3612** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Wentworth.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3612 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3612** be placed on its third reading and final passage.

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

Nays: Wentworth.

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

**HOUSE BILL 200 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 200** at this time on its second reading:

**HB 200**, Relating to continuing education requirements for public school principals.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 200 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 200** be placed on its third reading and final passage.

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

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

**(President in Chair)**

**HOUSE BILL 451 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 451** at this time on its second reading:

**HB 451**, Relating to health benefit plan coverage for autism spectrum disorder.

The motion prevailed.

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

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 451** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. (a) Subchapter D, Chapter 117, Human Resources Code, is amended by adding Section 117.075 to read as follows:

Sec. 117.075. AUTISM PROGRAM. (a) To the extent appropriated money is available for the purpose, the department shall provide services to children not younger than three or older than eight years of age who are diagnosed with autism spectrum disorder, to enhance communication, social, and independent living skills so that the children may fully participate in society.

(b) The services must include applied behavioral analysis and must complement and not duplicate services outlined in a child's individualized education plan developed by an independent school district.

(b) The executive commissioner of the Health and Human Services Commission shall develop the autism program required under Section 117.075, Human Resources Code, as added by this Act, not later than January 1, 2010.

The amendment to **HB 451** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Williams.

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

**HB 451** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Williams.

### HOUSE BILL 451 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 451** be placed on its third reading and final passage.

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

Nays: Williams.

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

### COMMITTEE SUBSTITUTE HOUSE BILL 1506 ON SECOND READING

The President laid before the Senate **CSHB 1506** by Senator Hinojosa on its second reading. The bill had been read second time and further consideration postponed to a time certain of 1:00 p.m. today:

**CSHB 1506**, Relating to the imposition of conditions on certain defendants charged with an offense involving family violence.

Question — Shall **CSHB 1506** be passed to third reading?

Senator Hinojosa offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 1506** (Senate committee printing) in SECTION 2 of the bill as follows:

(1) Strike added Articles 17.49(j) and (k), Code of Criminal Procedure (page 2, line 61 through page 3, line 6) and substitute:

(j) A magistrate that imposes a condition described by Subsection (b) may only allow or require the defendant to execute or be released under a type of bond that is authorized by this chapter.

(2) In added Article 17.49(l), Code of Criminal Procedure (page 3, line 7), strike "l)" and substitute "k".

The amendment to **CSHB 1506** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Shapleigh.

Senator West offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **CSHB 1506** (Senate committee printing) on page 1, line 45, by inserting "no more than \$75 per month of" between "pay" and "the".

The amendment to **CSHB 1506** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Shapleigh.

Senator Averitt offered the following amendment to the bill:

### Floor Amendment No. 3

Amend **CSHB 1506** (Senate committee printing) by adding the following new SECTIONS and renumbering the remaining sections accordingly:

SECTION \_\_\_\_\_. Article 42.035, Code of Criminal Procedure, is amended by amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) A court [~~in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice~~] may require a defendant to serve all or part of a sentence of confinement in county jail by participating in an [submitting to] electronic monitoring program rather than being confined in the county jail, if the program:

(1) is operated by a community supervision and corrections department that serves the county in which the court is located and has been approved by the community justice assistance division of the Texas Department of Criminal Justice; or

(2) is operated by the commissioners court of the county, or by a private vendor under contract with the commissioners court, under Section 351.904, Local Government Code, if the defendant has not been placed on community supervision.

(d) A defendant who submits to electronic monitoring or participates in the house arrest program under this article [~~section~~] discharges a sentence of confinement in the same manner as if the defendant were confined in county jail [~~without deductions, good conduct time credits, or commutations~~].

(e) A court may revoke a defendant's participation in an electronic monitoring program and require the defendant to serve the remainder of the defendant's sentence of confinement in county jail if the defendant violates a condition imposed by a court under this article, including a condition requiring the defendant to pay for participating in the program under Subsection (c).

SECTION \_\_\_\_\_. Subsection (e), Article 43.09, Code of Criminal Procedure, is amended to read as follows:

(e) A court in a county that operates an electronic monitoring program or contracts with a private vendor to operate an electronic monitoring program under Section 351.904, Local Government Code, or that is served by a community supervision and corrections department that operates [has] an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by participating in the program [submitting to electronic monitoring]. A defendant who participates in an [that submits to] electronic monitoring program under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

SECTION \_\_\_\_\_. Article 43.10, Code of Criminal Procedure, is amended to read as follows:

Art. 43.10. MANUAL LABOR. Where the punishment assessed in a conviction for a misdemeanor is confinement in jail for more than one day~~[;]~~ or ~~[where in such conviction the punishment]~~ is ~~[assessed]~~ only ~~[at]~~ a pecuniary fine and the defendant ~~[party so convicted]~~ is unable to pay the fine and costs adjudged against the defendant ~~[him]~~, or where the defendant ~~[party]~~ is sentenced to jail for a felony or is confined in jail after conviction of a felony, the defendant ~~[party convicted]~~ shall be required to work in the county jail industries program or shall be required to do manual labor in accordance with ~~[the provisions of this article under]~~ the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of defendants under this article ~~[said parties so convicted]~~;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules and regulations of the Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works and maintenance projects, including public works and maintenance projects for a political subdivision located in whole or in part in the county. They may be put to labor upon maintenance projects for a cemetery that the commissioners court uses public funds, county employees, or county equipment to maintain under Section 713.028, Health and Safety Code. They may also be put to labor providing maintenance and related services to a nonprofit organization that qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, and is organized as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), provided that, at the sheriff's request, the commissioners court determines that the nonprofit organization provides a public service to the county or to a political subdivision located in whole or in part in the county;

5. A defendant ~~[One]~~ who from age, disease, or other physical ~~[or]~~ mental disability is unable to do manual labor shall not be required to work. The defendant's ~~[His]~~ inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a defendant is entitled to have one day deducted from each sentence the defendant ~~[he]~~ is serving. ~~[The deduction authorized by this article, when combined with the deduction required by Article 42.10 of this code, may not exceed two thirds (2/3) of the sentence.]~~

SECTION \_\_\_\_\_. Article 43.101, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A defendant who is confined in county jail before ~~awaiting~~ trial, after conviction of a misdemeanor, or ~~a defendant confined in county jail~~ after conviction of a felony or revocation of community supervision, parole, or mandatory supervision and awaiting transfer to the ~~institutional division of the~~ Texas Department of Criminal Justice may volunteer to participate in any work program operated by the sheriff that uses the labor of convicted defendants.

(b) The sheriff may accept a defendant as a volunteer under Subsection (a) ~~of this section~~ if the defendant is not awaiting trial for an offense involving violence or is not awaiting transfer to the ~~institutional division of the~~ Texas Department of Criminal Justice after conviction of a felony involving violence, and if the sheriff determines that the inmate has not engaged previously in violent conduct and does not pose a security risk to the general public if allowed to participate in the work program.

(d) For each day of volunteer work, in addition to any other credits allowed by law, the court or sheriff may deduct one day from each sentence imposed on the defendant in relation to the offense or violation of the terms of release for which the defendant was confined in county jail.

SECTION \_\_\_\_\_. Subsection (b), Article 44.041, Code of Criminal Procedure, is amended to read as follows:

(b) A court that releases a defendant under this article must require the defendant to participate in a program under Article 42.033, 42.034, 42.035, or 42.036 ~~of this code~~ during the pendency of the appeal. A ~~The~~ defendant required to participate in a program may ~~not~~ receive credit toward completion of the defendant's sentence while participating in the ~~a~~ program in the same manner and to the same extent provided by Article 42.033, 42.034, 42.035, or 42.036, as applicable ~~required by this subsection~~.

SECTION \_\_\_\_\_. Subchapter Z, Chapter 351, Local Government Code, is amended by adding Section 351.904 to read as follows:

Sec. 351.904. ELECTRONIC MONITORING PROGRAM. (a) A commissioners court of a county may establish and operate an electronic monitoring program for the purpose of monitoring defendants required by a court of the county to participate in an electronic monitoring program under:

(1) Article 43.09, Code of Criminal Procedure, to discharge a fine or costs;  
or

(2) Article 42.035, Code of Criminal Procedure, as an alternative to serving all or part of a sentence of confinement in county jail.

(b) The commissioners court shall provide for the sheriff or the community supervision and corrections department serving the county, under an agreement with the commissioners court, to oversee and operate, or, if the program is operated by a private vendor under Subsection (c), oversee the operation of, an electronic monitoring program established under this section.

(c) A commissioners court may contract with a private vendor to operate an electronic monitoring program under this section, including by enrolling and tracking participants in the program and performing periodic reviews with participants regarding compliance with the program.

(d) A commissioners court may use money that a defendant is ordered to pay to a county under Article 42.035(c), Code of Criminal Procedure, to pay for the services of a private vendor that operates an electronic monitoring program under Subsection (c).

(e) A commissioners court may subsidize all or part of the cost of a defendant's participation in an electronic monitoring program under this section if the defendant is indigent.

(f) A commissioners court may contract for any available electronic monitoring technology, including a technology that provides continuous positional tracking of the participant, that meets the approval of the commissioners court and either the sheriff or the community supervision and corrections department, as appropriate.

SECTION \_\_\_\_\_. Section 6, Article 42.032, Code of Criminal Procedure, is repealed.

SECTION \_\_\_\_\_. Subsection (e), Article 42.035, Code of Criminal Procedure, as added by this Act, applies only to a defendant who is sentenced to a term of confinement in county jail for an offense committed on or after September 1, 2009. A defendant who is sentenced to a term of confinement in county jail for an offense committed before September 1, 2009, 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, 2009, if any element of the offense occurred before that date.

SECTION \_\_\_\_\_. The changes in law made by this Act in amending Article 43.10 and Subsection (b), Article 44.041, Code of Criminal Procedure, and in repealing Section 6, Article 42.032, Code of Criminal Procedure, apply only to credit that is earned by a defendant as a result of participation in a program or work performed on or after the effective date of this Act. The accrual of credit by a defendant as a result of participation in a program or work performed before the effective date of this Act is governed by the law in effect when the participation occurred or work was performed, and the former law remains in effect for that purpose.

The amendment to **CSHB 1506** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Nays: Shapleigh.

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

**CSHB 1506** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Shapleigh.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1506 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1506** be placed on its third reading and final passage.

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

Nays: Shapleigh.

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

**REMARKS ORDERED PRINTED**

On motion of Senator West and by unanimous consent, the exchange between Senators West and Huffman regarding **CSHB 1506** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Huffman:** Senator West, I'm wondering if you could clarify for me what specifically you are attempting to accomplish with your amendment, your floor amendment?

**Senator West:** Yes, first of all, I want to make certain that this amendment applies to the individual who's the subject of the GPS. It would be no more than \$75 per month. And I want to make certain that it's the legislative intent that we're not trying to create an unfunded mandate on the county also.

**Senator Huffman:** Alright, and that was what I was concerned about. So, it's an individual, and let me ask you this, my understanding is that an individual could not be required to be obligated for more than \$75 per month. If it was a situation where an individual, we're talking about a defendant, had the means to pay more and chose to do so in order to be able to make a bond, would that be acceptable under the law?

**Senator West:** Right, it would be. In the current law, that would be acceptable, because the reality is this is permissive anyway with the court. The court has discretion right now, from what I understand.

**Senator Huffman:** Alright, so we're still keeping the discretion of the courts wide open. We won't, we can't force someone to pay more than, an individual defendant to pay more than \$75 per month, and there's no requirement under your amendment that places an unfunded mandate upon the counties to make them provide GPS monitoring, for them to, in other words, to pick up any costs over \$75 per month. Is that correct?

**Senator West:** Say that last part again.

**Senator Huffman:** There's no, this, your amendment does not require a county to pick up the additional cost of over \$75 a month, which may be—

**Senator West:** No, it does not, it does—

**Senator Huffman:** Okay.

**Senator West:** Right. And I would ask that our remarks be reduced to writing and be made a part of the journal so we can make certain that if anyone has any issue about what the legislative intent is, as it relates to this particular amendment, they can be guided by this exchange between Senator, former Judge Huffman and State Senator Royce West, former defense attorney and prosecutor.

**Senator Huffman:** Wonderful, thank you, Senator. It's always such a pleasure to work with you on these issues.

**Senator West:** We always get it done, don't we?

**Senator Huffman:** We do, yes Sir. Thank you.

**COMMITTEE SUBSTITUTE  
HOUSE JOINT RESOLUTION 14 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSHJR 14** at this time on its second reading:

**CSHJR 14**, Proposing a constitutional amendment to prohibit the taking of property for transfer to a private entity for certain purposes.

The motion prevailed.

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

The resolution was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Davis.

**COMMITTEE SUBSTITUTE  
HOUSE JOINT RESOLUTION 14 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHJR 14** be placed on its third reading and final passage.

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

Nays: Davis.

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

**HOUSE JOINT RESOLUTION 127 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 127** at this time on its second reading:

**HJR 127**, Proposing a constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.

The resolution was read second time.

Senator Ellis offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HJR 127** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the joint resolution and renumber subsequent SECTIONS of the joint resolution as appropriate:

SECTION \_\_\_\_ . Article III, Texas Constitution, is amended by adding Section 49-b-1 to read as follows:

Sec. 49-b-1. BENEFITS FOR SURVIVORS OF TEXAS NATIONAL GUARD MEMBERS. (a) In this section:

(1) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(2) "Eligible survivor" means a person designated as a beneficiary on the deceased individual's group life insurance program under 38 U.S.C. Section 1965 et seq.

(b) This section applies only to a member of the Texas National Guard who died after September 11, 2001, while:

(1) on federal active duty under Title 10, United States Code; or

(2) serving in a named military operation on active duty under state authority in accordance with Title 32, United States Code.

(c) The adjutant general's department or another agency designated by the legislature may pay \$250,000 to:

(1) the eligible survivor of an individual described by Subsection (b) or the appropriate pro rata portion of that amount to the eligible survivors of the individual; or

(2) the heirs of an individual described by Subsection (b) if there are no eligible survivors of that individual.

(d) An eligible survivor or heir must apply for benefits in accordance with rules adopted under this section.

(e) The benefit provided under this section is in addition to any other benefit provided under state or federal law.

(f) The state agency administering the benefits provided by this section shall adopt rules to administer this section, including rules and procedures for making and proving a claim, appealing decisions, and receiving benefits under this section.

(2) Strike Section 2 of the joint resolution (page 1, lines 42-47), and substitute the following:

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices and to provide a death benefit to the survivors or heirs of certain members of the Texas National Guard."

The amendment to **HJR 127** was read and was adopted by a viva voce vote.

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

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

**HJR 127** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE JOINT RESOLUTION 127 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 127** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 2013 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2013** at this time on its second reading:

**HB 2013**, Relating to tuition and laboratory fee exemptions at public institutions of higher education for certain volunteer firefighters enrolled in fire science courses.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

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

Amend **HB 2013** (Senate committee printing), in SECTION 1 of the bill, in added Section 54.208(a)(2), Education Code (page 1, line 23), by striking "is an active member" and substituting "is currently, and has been for at least one year, an active member".

The amendment to **HB 2013** was read and was adopted by a viva voce vote.

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

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

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

Amend **HB 2013** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_ . Subchapter A, Chapter 130, Education Code

Amendment to Sec. 130.0012. **PILOT PROJECT: BACCALAUREATE DEGREE PROGRAMS.** (a) The Texas Higher Education Coordinating Board shall establish a pilot project authorizing public junior colleges to offer baccalaureate degree programs in the fields of applied science and applied technology at a community college which currently:

- (1) has offered an associates degree in fire science for at least 35 years;
- (2) has a facility in place that is operational;

(3) has the requisite faculty to comply with the accreditation requirements of the Commission on Colleges of the Southern Association of Colleges and Schools; and

(4) enters into an agreement with the coordinating board to waive state funding for one or more academic years for all or a specified level of courses offered under the program under subsection (g).

(2) In SECTION 3 of the bill, immediately following amended Section 130.0012(b), Education Code (page 3, between lines 1 and 2), insert the following:

(g) In its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college receive substantially the same state support for junior-level and senior-level courses offered under this section as that provided to a general academic teaching institution for substantially similar courses. In determining the contact hours attributable to students enrolled in a junior-level or senior-level course offered under this section used to determine a public junior college's proportionate share of state appropriations under Section 130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations. This subsection does not prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses offered under this section. The governing board of a public junior college that offers a degree program under this section may enter into an agreement with the coordinating board to waive state funding for one or more academic years for all or a specified level of courses offered under the program. The coordinating board may not include state funding for those courses in its funding recommendations to the legislature for public junior colleges for any academic year for which the governing board of the public junior college has agreed to waive state funding under this subsection.

The amendment to **HB 2013** was read.

Senator Van de Putte withdrew Floor Amendment No. 2.

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

**HB 2013** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 2013 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2013** be placed on its third reading and final passage.

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

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

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

On motion of Senator Williams and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., was suspended and the time was extended to 6:00 p.m. today for the Tuesday, May 26, 2009, Intent Calendar.

**RECESS**

On motion of Senator Williams, the Senate at 2:08 p.m. recessed until 2:45 p.m. today.

**AFTER RECESS**

The Senate met at 3:00 p.m. and was called to order by Senator Eltife.

**BILLS AND RESOLUTIONS SIGNED**

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

**HB 3435, HB 3668, HB 3692, HB 3756, HB 3800, HB 3951, HB 4029, HB 4043, HB 4110, HB 4291, HB 4339, HB 4358, HB 4706, HB 4762, HCR 18, HCR 57, HCR 126, HCR 168, HCR 237, HB 587, HB 605, HB 768, HB 1096, HB 1134, HB 1255, HB 1272, HB 1297, HB 1332, HB 1345, HB 1358, HB 1404, HB 1407, HB 1425, HB 1445, HB 1705, HB 1728, HB 1749, HB 1912, HB 2289, HB 2353, HB 2876, HB 2918, HB 2927, HB 3554, HB 4139, HB 4577, HB 4661, HJR 39, HB 19, HB 107, HB 348, HB 407, HB 422, HB 449, HB 471, HB 739, HB 749, HB 802, HB 807, HB 888, HB 890, HB 1023, HB 1031, HB 1058, HB 1084, HB 1178, HB 1294, HB 1487, HB 1740, HB 1785, HB 1881, HB 1883, HB 1922, HB 1947, HB 1949, HB 1966, HB 1985, HB 2065, HB 2130, HB 2186, HB 2191, HB 2283, HB 2401, HB 2480, HB 2580, HB 2893, HB 2963, HB 2972, HB 2991, HB 3517, HB 3643, HB 3674, HB 4149, HB 4154, HB 4231, HB 4276, HB 4341, HB 4540, HB 4541, HB 4593.**

**SENATE RESOLUTION 1003**

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in joining citizens across America in observing our national holiday, Memorial Day, on Monday, May 25, 2009; and

WHEREAS, Memorial Day was originally called Decoration Day and was first observed on May 30, 1868, when flowers were placed on the graves of Union and Confederate soldiers; in 1968, Congress designated the last Monday in May as Memorial Day; and

WHEREAS, On Memorial Day, we pay homage to those who lost their lives fighting for our nation, for it is due to their courage and sacrifice that today our nation is free and prosperous; and

WHEREAS, This special day is an opportunity for Americans everywhere to express their heartfelt gratitude to the United States veterans, both living and dead, for the valor and dedication they have shown on behalf of our beloved country; today, there are over 1.5 million veterans living in Texas and deserving of our praise; and

WHEREAS, Those who died for their country in World War I, World War II, the Korean Conflict, the Vietnam War, the Gulf War, Operation Iraqi Freedom, and other conflicts have left behind legacies of courage and devotion for generations of American citizens, as well as memories that will be treasured forever in the hearts and minds of all who knew them; and

WHEREAS, It is a grateful nation today that reflects upon our American heritage and recognizes the extreme sacrifices made by all who serve in the armed forces; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby express appreciation to all the brave men and women who have served our great country and honor the memory of those who died on its behalf; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of all who sacrificed their lives to protect our nation.

**SR 1003** was read.

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

On motion of Senator Van de Putte, the resolution was adopted by a rising vote of the Senate.

### **REMARKS ORDERED PRINTED**

On motion of Senator Harris and by unanimous consent, the remarks regarding **SR 1003** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks will be printed in an addendum to this day's journal.

### **SENATE RESOLUTION 996**

Senator Whitmire offered the following resolution:

WHEREAS, It is a pleasure for the Texas Senate to pay tribute to one of its most respected and beloved longtime staff members, Dianne Arrington, who is retiring as the Senate Journal Clerk after more than 27 years of loyal service to the Senate and more than 34 years of service to the state; and

WHEREAS, Prior to joining the Texas Senate, Dianne worked for the Texas House of Representatives for nearly two years and with the Texas Legislative Council for four years; she joined the Senate Journal Office in 1981, became the Assistant Journal Clerk in 1988, and was promoted to the position of Journal Clerk in 1991; she has been a fixture on the Senate floor through 11 regular legislative sessions and 17 called sessions; over that long course, she has never missed even a single day of session; and

WHEREAS, As head of the Journal Department, Dianne has handled her wide-ranging responsibilities with the utmost dedication and professionalism; while her position would be a daunting challenge for anyone, Dianne has distinguished herself by exhibiting both poise and perseverance in carrying out her duties; and

WHEREAS, As Journal Clerk, she has been responsible for the accurate accounting of the Senate's daily proceedings and debates during sessions and the documentation of bills and resolutions that were passed, the amendments presented, and the votes that were taken; required to be present on the floor whenever the Senate is in session, she is noted for her strict attention to floor debate, for her good humor, for her much-needed stamina, and, most certainly, for her valuable role as the one-and-only candy custodian; and

WHEREAS, As an exemplary legislative employee and officer, Dianne has effectively handled her heavy workloads and deadlines with patience and resolve; she is known for her wit and her smile and for treating others with warmth and respect; and

WHEREAS, A little known facet of Dianne's personality is her love of adventure; whether hang gliding in Hawaii or cruising on the seven seas, she lives life to the fullest, with evident relish and enjoyment; and

WHEREAS, A favorite among those who walk the Capitol halls and a cherished friend to many, Dianne will be greatly missed by all in the legislature who have had the privilege of knowing her, working with her, and laughing with her; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby commend Dianne Arrington on her outstanding service to the Senate and her exceptional leadership as Senate Journal Clerk and extend to her best wishes for the next chapter of her life yet to be explored; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of Dianne Arrington as an expression of esteem from the Texas Senate.

**SR 996** was read.

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

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

### **REMARKS ORDERED PRINTED**

On motion of Senator Davis and by unanimous consent, the remarks regarding **SR 996** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Whitmire:** Members, as you know, today and the next couple of days will be extremely busy ones on the floor, but I believe that it is important that we stop and recognize and honor one of our most valued Senate officers, Dianne Arrington, the Senate Journal Clerk, who has decided to retire at the end of the summer and so will not be returning when we next meet again. You know, Members, one of the duties of being Dean is the privilege of saying thank you on behalf of the Senate and expressing the tremendous appreciation for a job well done, and today I am truly honored to say thank you to Dianne. You've heard the resolution, and there really isn't much I can add to it. What an incredible employee she has been. Dianne has been a fixture on the Senate floor for 21 years, 18 of those as Journal Clerk. The resolution stated that she has never missed a day of session during those 21 years, and I would like to add that she's never been late or left early during that time either. Dianne is here when we arrive, and she's here when we leave. A master of

parliamentary procedure, Dianne keeps us on track and procedurally correct. No matter how badly we mangle a motion or skip a step, the journal shows that we did it and said it right, because Dianne makes sure that it does. Through thick and thin, Dianne has a smile for every one of us, and she even has candy for us. I could go on and on, but suffice it to say, the Senate has been blessed to have such a dedicated and loyal employee, and she will be missed more than she realizes. Dianne, on behalf of the Senate, thank you for your incredible service and loyalty to the institution and to each and every one of us.

**Senator Wentworth:** Mr. President, if I could just suggest one thing to the rest of us as a little present to her, let's just stop and consider before we make any more motions to reduce things and spread them upon the journal from now on.

(Laughter)

**Senator Davis:** Mr. President, I think it would be both ironic and fitting that we ask that the remarks that were just made by the Senators here on the floor today, on behalf of Dianne, be reduced to writing and recorded in the journal.

#### **HOUSE BILL 2654 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2654** at this time on its second reading:

**HB 2654**, Relating to imposition of the motor vehicle sales tax on motor vehicles transferred as the result of a gift.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 2654 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2654** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 4745 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4745** at this time on its second reading:

**HB 4745**, Relating to the Lockney General Hospital District.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 4745 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 4745** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3082 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3082** at this time on its second reading:

**CSHB 3082**, Relating to the obstruction of streets by certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3082 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3082** be placed on its third reading and final passage.

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

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

**HOUSE BILL 4730 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4730** at this time on its second reading:

**HB 4730**, Relating to the Martin County Hospital District.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 4730** (Senate committee printing) by adding the following appropriately numbered SECTIONS and renumbering any subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The board may employ physicians or other health care providers as the board considers necessary for the efficient operation of the district.

(b) The board shall adopt and maintain policies to ensure that a physician employed under this section exercises independent medical judgment when providing care to patients at the hospital operated by the district. The policies adopted under this subsection must include policies relating to:

- (1) credentialing;
- (2) quality assurance;
- (3) utilization review;
- (4) peer review;
- (5) medical decision-making; and
- (6) due process.

(c) A physician employed by the district under this section is subject to the same standards and procedures regarding credentialing, peer review, quality of care, and privileges as a physician not employed by the district.

(d) The district shall give equal consideration regarding the issuance of credentials and privileges to physicians employed by the hospital and physicians not employed by the district.

(e) A physician employed by the district shall retain independent medical judgment in providing care to patients at the hospital operated by the district and may not be penalized for reasonably advocating for patient care.

(f) This section may not be construed as altering, voiding, or prohibiting any relationship between a hospital and a physician, including a contract or arrangement with an approved nonprofit health corporation that is certified under Section 162.001(b), Occupations Code, and that holds a certificate of authority issued under Chapter 844, Insurance Code.

(g) A contract to employ a physician pursuant to this section shall not include a covenant not to compete upon termination of the contract.

(h) This section may not be construed as authorizing the board to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

The amendment to **HB 4730** was read and was adopted by a viva voce vote.

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

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

**HB 4730** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 4730 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 4730** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1665 ON SECOND READING**

Senator Harris moved to suspend the regular order of business to take up for consideration **HB 1665** at this time on its second reading:

**HB 1665**, Relating to the penalty imposed on defaulting jurors.

The motion prevailed.

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

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Nichols.

**HOUSE BILL 1665 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1665** be placed on its third reading and final passage.

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

Nays: Nichols.

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

**COMMITTEE SUBSTITUTE****HOUSE BILL 756 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 756** at this time on its second reading:

**CSHB 756**, Relating to the making or acceptance of political contributions in certain office buildings owned by or leased to the state.

The motion prevailed.

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

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 756 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 756** be placed on its third reading and final passage.

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

Nays: Williams.

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

**(President Pro Tempore Duncan in Chair)**

**HOUSE JOINT RESOLUTION 7 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 7** at this time on its second reading:

**HJR 7**, Proposing a constitutional amendment to require partnering with the United States Department of Veterans Affairs and other federal agencies to establish a veterans hospital in the Rio Grande Valley region of the state.

The resolution was read second time.

Senator Hinojosa offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HJR 7** (Senate committee printing) by striking all below the resolving clause and substituting the following:

SECTION 1. Article XVI, Texas Constitution, is amended by adding Section 73 to read as follows:

Sec. 73. The state may contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state.

SECTION 2. The constitutional amendment proposed by this resolution shall be submitted to the voters at an election to be held November 3, 2009. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing the state to contribute money, property, and other resources for the establishment, maintenance, and operation of veterans hospitals in this state."

The amendment to **HJR 7** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent: Williams.

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

**HJR 7** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent: Williams.

**HOUSE JOINT RESOLUTION 7 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 7** be placed on its third reading and final passage.

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

Absent: Williams.

The resolution was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 963 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 963** at this time on its second reading:

**CSHB 963**, Relating to a criminal history evaluation letter determining occupational license eligibility.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 963** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 53.002, Occupations Code, is amended to read as follows:

Sec. 53.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department of government;

(2) a peace officer or an applicant for a license as a peace officer described by Article 2.12, Code of Criminal Procedure, or to a reserve law enforcement officer, a county jailer, or a public security officer licensed or applying for a license under Chapter 1701; [✕]

(3) a person licensed or applying for a license under Chapter 1702;

(4) a person licensed or applying for a license issued by the Texas State Board of Public Accountancy;

(5) a person licensed or applying for a license under Chapter 156, Finance Code; or

(6) a person who:

(A) is licensed or is applying for a license issued by the Texas Medical [State] Board [of Medical Examiners], the Texas State Board of Pharmacy, the State Board of Dental Examiners, the Texas State Board of Examiners of Psychologists, the Texas Board of Nursing, the Texas Optometry Board, or the State Board of Veterinary Medical Examiners; and

(B) has been convicted of:

(i) a felony under Chapter 481 or 483 or Section 485.033, Health and Safety Code;

(ii) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(iii) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

SECTION \_\_\_\_\_. Subsection (a), Section 53.021, Occupations Code, is amended to read as follows:

(a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license.

SECTION \_\_\_\_\_. Subchapter B, Chapter 53, Occupations Code, is amended by adding Section 53.0211 to read as follows:

Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR CRIMINAL CONVICTIONS. (a) Notwithstanding any other law and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:

(1) the license for which the applicant applied; or

(2) a provisional license described by Subsection (b).

(b) A licensing authority may issue a provisional license for a term of six months to an applicant who has been convicted of an offense.

(c) The licensing authority shall revoke a provisional license if the provisional license holder:

(1) commits a new offense;

(2) commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or

(3) violates the law or rules governing the practice of the occupation for which the provisional license is issued.

(d) The licensing authority shall issue the license for which the applicant originally applied to a provisional license holder on the expiration of the provisional license term if the provisional license holder does not engage in conduct described by Subsection (c).

(e) If the licensing authority revokes a provisional license under Subsection (c), the provisional license holder is disqualified from receiving the license for which the applicant originally applied.

(f) An applicant who is on community supervision, mandatory supervision, or parole and who is issued a provisional license under this section shall provide to the licensing authority the name and contact information of the probation or parole department to which the person reports. The licensing authority shall notify the probation or parole department that a provisional license has been issued. The probation or parole department shall notify the licensing authority if the person's community supervision, mandatory supervision, or parole supervision is revoked during the term of the provisional license.

SECTION \_\_\_\_\_. The changes in law made by this Act by the amendment of Sections 53.002 and 53.021(a), Occupations Code, and the addition of Section 53.0211, Occupations Code, apply only to an application for a license filed with a licensing authority, to which Chapter 53, Occupations Code, applies, on or after the effective date of this Act. An application filed before that date is governed by the law in effect when the application is filed, and the former law is continued in effect for that purpose.

The amendment to **CSHB 963** was read and was adopted by a viva voce vote.

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

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

**CSHB 963** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 963 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 963** be placed on its third reading and final passage.

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

The bill was read third time.

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

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

Amend **CSHB 963** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The heading to Chapter 55, Occupations Code, is amended to read as follows:

CHAPTER 55. LICENSING OF [~~RENEWAL OF LICENSE WHILE ON~~  
MILITARY MEMBER OR MILITARY SPOUSE ~~[DUTY]~~]

SECTION 2. Chapter 55, Occupations Code, is amended by adding Section 55.004 to read as follows:

Sec. 55.004. TEMPORARY LICENSE. (a) In this section, "military" means the armed forces of the United States.

(b) A state agency that issues a license shall adopt rules for the expedited issuance of a temporary license to an applicant who:

- (1) is serving on active duty as a member of the military;
- (2) was honorably discharged from active duty as a member of the military not more than one year before the date of the application; or
- (3) is the spouse of a person who is serving on active duty as a member of the military.

(c) The state agency shall issue the temporary license under this section to a qualified applicant who:

- (1) submits an application on a form prescribed by the agency; and
- (2) pays the required fees.

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, 2009.

The amendment to **CSHB 963** was read and was adopted by a viva voce vote.

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

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

**CSHB 963** as again amended was finally passed by the following vote: Yeas 31, Nays 0.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1174 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1174** at this time on its second reading:

**CSHB 1174**, Relating to payment by a municipality or river authority for certain damages caused by the municipality's or river authority's operation of a sanitary sewer system.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

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

Amend **CSHB 1174** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 552.912(a), Local Government Code (page 1, line 17), between "a river authority" and "may pay", insert ", other than a river authority listed in Subsection (c),".

(2) In SECTION 1 of the bill, at the end of added Section 552.912, Local Government Code (page 1, between lines 23 and 24), insert the following:

(c) This section does not apply to the Trinity River Authority, the San Jacinto River Authority, the Sabine River Authority, or the Lower Neches Valley River Authority.

The amendment to **CSHB 1174** was read and was adopted by a viva voce vote.

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

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

**CSHB 1174** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1174 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1174** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 1770 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 1770** at this time on its second reading:

**CSHB 1770**, Relating to the Tax Increment Financing Act.

The motion prevailed.

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

The bill was read second time.

Senator Nichols offered the following amendment to the bill:

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

Amend **CSHB 1770** (Senate committee report) by adding the following SECTIONS to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 311.006, Tax Code, is amended to read as follows:

(a) A municipality may not create a reinvestment zone if:

(1) more than 10 percent of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes; or

(2) the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds:

(A) 20 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if the municipality is the county seat of a county:

(i) that is adjacent to a county with a population of 3.3 million or more; and

(ii) in which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.), and that is subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property; or

(B) 15 percent of the total appraised value of taxable real property in the municipality and in the industrial districts created by the municipality, if Paragraph (A) does not apply to the municipality.

SECTION \_\_\_\_ . Section 311.006(a), Tax Code, as amended by this Act, applies only to a reinvestment zone created on or after the effective date of this Act. The creation of a reinvestment zone before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendment to **CSHB 1770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Williams.

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

**CSHB 1770** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Williams.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1770 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1770** be placed on its third reading and final passage.

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

Nays: Williams.

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

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3621 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 3621** at this time on its second reading:

**CSHB 3621**, Relating to certain charges included in a motor vehicle installment agreement.

The motion prevailed.

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

The bill was read second time.

Senator Carona offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 3621** (Senate committee printing) in SECTION 1 of the bill, in amended Section 348.006(c)(2)(A), Finance Code (page 1, line 37), by striking "\$100".

The amendment to **CSHB 3621** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Shapleigh.

Senator Davis offered the following amendment to the bill:

### Floor Amendment No. 2

**CSHB 3621** is amended by inserting the following between the subsection designator "(e)" and the word "The" on page 3, line 5 of the Committee Substitute: "Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge."

The amendment to **CSHB 3621** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Shapleigh.

Senator Averitt offered the following amendment to the bill:

### Floor Amendment No. 3

Amend **CSHB 3621** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 15.303, Finance Code, is amended to read as follows:

Sec. 15.303. DEPUTY COMMISSIONER. (a) The [~~Subject to the commissioner's approval, the~~] commissioner may appoint a deputy commissioner[~~, who must have the qualifications required of the commissioner~~].

~~(b)~~ The deputy commissioner serves at the will of the commissioner and, at the commissioner's direction, may exercise the powers and prerogatives of the commissioner.

~~(b)~~ ~~(c)~~ The deputy commissioner is an employee of the department [~~commission~~] and is subject to the commissioner's [~~commission's~~] orders and directions.

~~(c)~~ ~~(d)~~ During the commissioner's absence or inability to act, the deputy commissioner shall perform the commissioner's duties.

(d) The commissioner may appoint assistant deputy commissioners, whose powers shall be limited to the powers, duties, or functions set forth in the appointment.

SECTION \_\_. Section 15.305, Finance Code, is amended to read as follows:

Sec. 15.305. GENERAL COUNSEL. A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission, may not serve as general counsel to the commission or the department.

SECTION \_\_. Section 15.308, Finance Code, is amended to read as follows:

Sec. 15.308. COMPENSATION OF EMPLOYEES. (a) The commission shall set the compensation of the commissioner [~~and deputy commissioner~~]. The compensation shall be paid according to the General Appropriations Act.

(b) Except for the commissioner [~~and deputy commissioner~~], Chapter 654, Government Code, applies to any department position.

SECTION \_\_. Subsection (c), Section 15.402, Finance Code, is amended to read as follows:

(c) The commission by rule shall establish reasonable and necessary fees to recover the costs of maintaining and operating the department and enforcing [~~for the administration of~~] this chapter and Subtitle D, Title 3.

SECTION \_\_. Section 15.408, Finance Code, is amended to read as follows:

Sec. 15.408. COLLECTION OF MONEY. The commissioner shall collect all fees, charges, and revenues required to be paid by a credit union under Section 15.402(c). All money paid to the department under this chapter and Subtitle D, Title 3, is subject to Subchapter F, Chapter 404, Government Code. A credit union is not entitled to a refund of any unused portion of the fee, charge, or revenue.

SECTION \_\_. Subsection (a), Section 15.410, Finance Code, is amended to read as follows:

(a) The commission shall adopt, and the commissioner shall enforce, reasonable rules requiring a credit union, ~~except a corporate central credit union~~, to provide share and deposit insurance protection for credit union members and depositors.

SECTION \_\_. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4111 to read as follows:

Sec. 15.4111. REGULATORY COORDINATION. (a) To ensure effective coordination among and between the department and other state and federal agencies, the commissioner may enter into cooperative, coordinating, or information-sharing agreements with those agencies.

(b) To further the rapid restoration of credit union services after an emergency, the commissioner may enter into cooperative, coordinating, or information-sharing agreements with credit unions or credit union trade associations or other organizations affiliated with or representing one or more credit unions.

(c) Disclosure of information by or to the department under this section does not constitute a waiver of or otherwise affect or diminish any legal privilege to which the information is otherwise subject, even if the disclosure is not governed by a confidentiality agreement. Notwithstanding other applicable law, a party to an agreement described by this section shall execute, honor, and comply with requirements to maintain confidentiality and oppose disclosure of information

obtained from the department, and shall treat as confidential any information obtained from the department that is entitled to confidential treatment under applicable state or federal law.

SECTION \_\_. Section 121.002, Finance Code, is amended by amending Subdivision (2) and adding Subdivision (10-a) to read as follows:

(2) "Credit union," unless the context relates to a federal credit union, means a voluntary, cooperative, nonprofit financial institution authorized to do business in this state under this subtitle for purposes of:

(A) encouraging thrift among its members;

(B) creating a source of credit at fair and reasonable interest rates;

(C) developing and providing to its members alternative methods of financing their purchases at reasonable costs;

(D) providing an opportunity for its members to use, protect, or [and] control their money or property to improve or maintain their economic or [and] social condition; and

(E) conducting any other business, engaging in any other activity, or providing any other service that may benefit its members.

(10-a) "Share-insuring organization" means a cooperative share insurance fund, guaranty corporation, or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty to protect or guarantee against loss the share and deposit accounts in the credit union up to a specified level for each account.

SECTION \_\_. Chapter 121, Finance Code, is amended by adding Section 121.007 to read as follows:

Sec. 121.007. COST OF SUPERVISION AND REGULATION. (a) Each credit union shall promptly pay the fees, charges, and revenues established by the commission under Section 15.402 to recover:

(1) the cost of examination;

(2) the credit union's equitable or proportionate share of the costs of maintenance and operation of the department; and

(3) the costs of enforcement of this subtitle and Chapter 15.

(b) The commission shall adjust those fees, charges, and revenues so that the amount collected during the fiscal year equals the total amount appropriated, including amounts appropriated for both direct and indirect costs for that fiscal year.

SECTION \_\_. Subchapter A, Chapter 122, Finance Code, is amended by adding Section 122.0011 to read as follows:

Sec. 122.0011. EXPENSE FUND. (a) Before a credit union organized under this subtitle may be authorized to do business, the credit union shall create a fund from which operating expenses may be paid until earnings, together with net worth allocations and dividends that may be declared and credited, are sufficient to cover operating expenses.

(b) Except as provided by this section, the amounts contributed to the expense fund are not a liability of the credit union.

(c) The credit union may pay dividends to contributors to the expense fund on amounts contributed to the same extent the credit union pays dividends to a member. Any amount contributed to the expense fund is considered a deposit of the credit union, which the credit union's board may reduce pro rata as operating expenses are paid from the fund.

(d) With the prior written consent of the commissioner, contributions to the expense fund may be repaid to the contributors, in accordance with this subsection, from the net earnings of the credit union after the credit union has attained a net worth ratio greater than six percent. At the close of each dividend period, the board may pay or credit the accounts of the contributors an amount that is not more than one percent of the net earnings of the credit union during that period until the contributors have been repaid in full.

(e) If the credit union is liquidated before the contributions to the expense fund have been fully repaid, any portion of the contributions not needed for the payment of the expenses of liquidation and for the payment of depositors in full shall be paid to the contributors in proportion to their contributions until they have been repaid in full.

(f) The commission may adopt reasonable rules necessary to administer this section and to accomplish the purposes of this subchapter.

SECTION \_\_. Subsection (b), Section 122.007, Finance Code, is amended to read as follows:

(b) The commissioner's order may be appealed to the commission not later than the 30th ~~[60th]~~ day after the date of the order.

SECTION \_\_. Subsections (a) and (c), Section 122.013, Finance Code, are amended to read as follows:

(a) A foreign credit union may do business in this state if it is organized in a state or country that allows any ~~[a]~~ credit union organized under this subtitle to do business in that state or country.

(c) The commissioner may suspend or revoke a foreign credit union's authority to do business in this state if the commissioner finds that the foreign credit union:

(1) has failed to conduct its business in this state in a manner consistent with the laws of this state ~~[violated a rule adopted under this subtitle];~~

(2) is in an unsafe or unsound condition;

(3) refuses to comply with an order of the commissioner ~~[is engaged in a pattern of unsafe or unsound practices];~~ ~~[or]~~

(4) refuses to comply with a request by the commissioner to review the books and records of the credit union; or

(5) has not met or does not meet a ~~[commission]~~ requirement imposed by commission rules.

SECTION \_\_. Subchapter A, Chapter 122, Finance Code, is amended by adding Section 122.0131 to read as follows:

Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. If a state contiguous to this state experiences an emergency, on a request by that state's credit union regulatory agency, the commissioner may authorize one or more credit unions located in that state to open temporary offices in this state to more promptly restore credit union services to their members. The commissioner shall issue an order permitting the temporary office and specifying the period of time the office may

remain open. On a finding that the conditions requiring the temporary office continue to exist, the commissioner may extend the period the office may remain open. A credit union may convert a temporary office to a permanent location if it qualifies to do business in this state as a foreign credit union under Section 122.013 and commission rules.

SECTION \_\_. Section 122.051, Finance Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:

(a) A person may be a member of a credit union only if the person is an incorporator or other person who:

(1) shares a definable community of interest, in accordance with the credit union's articles of incorporation or bylaws, including a community of interest based on occupation, association, or residence;

(2) has done one or both of the following:

(A) paid an entrance fee or membership fee, or both, as required by the bylaws; or

(B) met ~~(3) has complied with~~ the minimum share or deposit account~~[, including membership share,]~~ requirements or complied with other qualifying ~~[account]~~ requirements that [established by] the board may establish; and

(3) ~~[(4)]~~ has complied with any other requirement of the articles of incorporation and bylaws.

(d) ~~[In this subsection, "good cause" includes the act of physically or verbally abusing a credit union member or employee.]~~ A person's membership in a credit union may be terminated, ~~[or]~~ suspended, or restricted ~~[for good cause or for not maintaining membership requirements,]~~ under the conditions and in accordance with the procedures provided in the bylaws for having done any of the following:

(1) violated the membership agreement or any policy adopted by the board;

(2) been physically or verbally abusive to credit union members or staff;

(3) caused a financial loss to the credit union;

(4) been involved in suspicious or unusual account activity; or

(5) committed any other act or engaged in any activity proscribed by rules adopted by the commission.

~~(d-1) [A credit union may also discontinue providing any or all services to a member for good cause without terminating or suspending the person's membership.]~~ Termination or suspension of a person's membership in the credit union or discontinuing services does not relieve the person from any outstanding obligations owed to the credit union.

SECTION \_\_. Section 122.053, Finance Code, is amended by amending Subsections (d), (e), and (f) and adding Subsections (g), (h), and (i) to read as follows:

(d) The bylaws shall prescribe the directors' terms and the board's duties. A term may not exceed three years. If the terms are longer than one year, the terms shall be staggered so that an approximately equal number expire each year. A director may serve more than one term.

(e) The board or its executive committee shall meet at least once each month. The board may permit the executive committee to act on its behalf in all except one meeting per calendar quarter. The board shall have no fewer than four regularly scheduled meetings each year.

(f) To ~~If and to~~ the extent provided in the bylaws, a director may participate in and act at any meeting of the board by means of electronic communications equipment through which all persons participating in the meeting may simultaneously hear each other and ~~can~~ communicate during the meeting ~~[with each other]~~. Participation in a meeting in the manner authorized by this subsection constitutes attendance at a meeting. However, each director must physically attend at least one meeting each calendar year.

(g) A director of a credit union who is present at a meeting of its board of directors at which action on any matter is taken is presumed to have assented to the action taken unless the minutes of the meeting specifically indicate otherwise.

(h) The directors, officers, and employees shall hold in confidence all matters presented to the board for deliberation and determination, except if disclosure of a matter is permitted by applicable law.

(i) The board shall adopt a code of ethics for all directors, officers, and honorary or advisory directors. The code of ethics must include standards that are reasonably necessary to promote:

(1) honest and ethical conduct, including the ethical handling of actual and apparent conflicts of interest between personal and professional relationships; and

(2) compliance with applicable laws.

SECTION \_\_. Subchapter B, Chapter 122, Finance Code, is amended by adding Section 122.0531 to read as follows:

Sec. 122.0531. ACTION BY BOARD OF DIRECTORS WITHOUT MEETING. (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this subtitle at a board meeting may be taken without a meeting if the action is consented to by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

SECTION \_\_. Subsections (a) and (c), Section 122.056, Finance Code, are amended to read as follows:

(a) The board may appoint ~~[not more than three]~~ individuals to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and otherwise aid the board in carrying out the board's duties and responsibilities.

(c) An honorary or advisory director may participate in any board deliberation. An honorary or advisory director must hold in confidence all matters presented to the board.

SECTION \_\_. Section 122.061, Finance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) While serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union, a person may not:

(1) participate, directly or indirectly, in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of a member of the person's immediate family or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested; or

(2) become employed by, engage in, or own an interest in a business or professional activity that the person could reasonably expect to:

(A) require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union; or

(B) impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.

(c) In this section, "member of a person's immediate family" means a person's parents, spouse, children, or siblings.

SECTION \_\_. Subchapter B, Chapter 122, Finance Code, is amended by adding Sections 122.065 and 122.066 to read as follows:

Sec. 122.065. FIDUCIARY RELATIONSHIP. Directors and officers are considered to have a fiduciary relationship with the credit union, as an entity, and must discharge the duties of their respective positions:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director or officer believes to be in the best interests of the credit union.

Sec. 122.066. RELIANCE BY DIRECTORS OR OFFICERS. (a) Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging the director's or officer's duties to the credit union, may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

(1) an officer or employee of the credit union whom the director or officer believes in good faith to be reliable and competent in the matters presented;

(2) legal counsel, a certified public accountant, or another person regarding a matter the director or officer believes in good faith is within the person's professional or expert competence; or

(3) in the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

(b) Information, opinions, reports, or statements on which a director or officer may rely under this section may be written or oral or formal or informal.

SECTION \_\_. Subchapter D, Chapter 122, Finance Code, is amended by adding Section 122.1511 to read as follows:

Sec. 122.1511. AUTHORITY TO PURCHASE ASSETS. (a) A credit union, with the prior written approval of the commissioner, may purchase all or substantially all of the assets of another entity.

(b) Except as otherwise expressly provided by another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing credit union responsible for any liability or obligation of the selling entity not expressly assumed by the purchasing credit union.

SECTION \_\_. Subchapter E, Chapter 122, Finance Code, is amended by adding Section 122.204 to read as follows:

Sec. 122.204. CONVERSION OF MUTUAL SAVINGS INSTITUTION TO STATE CREDIT UNION. (a) A mutual savings institution may convert to a state credit union by complying with the laws of the original chartered authority and on the approval of the commissioner.

(b) Application for approval of the conversion to a state credit union must be submitted to the department in the form prescribed by the commissioner.

(c) The commissioner may cause an examination to be made of any converting mutual savings institution. The converting mutual savings institution shall pay all fees and charges prescribed by the commission.

SECTION \_\_. Subsection (a), Section 122.257, Finance Code, is amended to read as follows:

(a) If the commissioner finds that a credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union has engaged, is engaging, or is about to engage in an act, practice, or transaction meeting any of the criteria [makes a finding] listed in Section 122.255, the commissioner may issue [and determines that] an order directing the credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union to cease and desist from engaging [is necessary and] in the act, practice, or transaction or from doing any act in furtherance [best interest] of the act, practice, or transaction [credit union involved and its depositors, creditors, and members, the commissioner may serve on the credit union, its board, and each offending person an order to cease and desist from a violation or practice specified in the order] and to take appropriate affirmative action within a reasonable period, as prescribed by [that] the commissioner, [considers necessary] to correct the conditions [a condition] resulting from the act, [a violation or unsafe or unsound] practice, or transaction [found].

SECTION \_\_. Section 123.003, Finance Code, is amended to read as follows:

Sec. 123.003. ENLARGEMENT OF POWERS. (a) Notwithstanding any other law, and subject to Subsection (b), a [~~A~~] credit union may engage in any activity [~~in which it could engage~~], exercise any power [~~it could exercise~~], or make any loan or investment permissible for [~~it could make, if it were operating as~~] a [~~federal~~] credit union organized under federal law or the law of another state.

(a-1) A credit union that intends to engage in an activity, exercise a power, or make a loan or investment authorized under Subsection (a) shall submit written notice to the commissioner describing the activity, power, loan, or investment and the specific federal or state authority on which the credit union is relying. The credit union may proceed as described in the notice on or after the 30th day following submission of the notice, unless the commissioner extends the period in accordance with this subsection, or prohibits the activity, power, loan, or investment.

(a-2) The commissioner may prohibit the credit union from engaging in an activity, exercising a power, or making a loan or investment as described in the notice under Subsection (a-1) only if the commissioner finds that:

- (1) specific authority does not exist; or
- (2) the engagement, exercise, or making would adversely affect the safety and soundness of the credit union.

(a-3) The commissioner may extend the 30-day period if the commissioner determines that the credit union's notice under Subsection (a-1) raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the credit union may not proceed without the commissioner's prior written approval. The commissioner must issue either an approval or prohibition letter not later than the 60th day after the date the notice is submitted.

(b) The commission may adopt rules relating to the exercise of [Notwithstanding any other law, and in addition to the powers and authorities conferred under Subsection (a), a credit union has the] powers or authorities granted under this section [of a foreign credit union operating a branch in this state if the commissioner finds that exercise of those powers or authorities is convenient for and affords an advantage to the credit union's members and maintains the fairness of competition and parity between the credit union and any foreign credit union. A credit union does not have the field of membership powers or authorities of a foreign credit union operating a branch in this state].

SECTION \_\_. Section 123.104, Finance Code, is amended to read as follows:

Sec. 123.104. MEMBERSHIP IN OTHER ORGANIZATION; OPERATION AS CORPORATE CENTRAL CREDIT UNION. A credit union may:

- (1) be a member of:
  - (A) another credit union organized under this subtitle or other law; and
  - (B) another organization approved by the board; or
- (2) operate, with the commissioner's approval, as a corporate central credit union.

SECTION \_\_. Subchapter B, Chapter 123, Finance Code, is amended by adding Section 123.1041 to read as follows:

Sec. 123.1041. CORPORATE CENTRAL CREDIT UNION. (a) Any number of credit unions may apply to organize a corporate central credit union to engage exclusively in corporate financial and operational activities that are part of or incidental to the credit union business.

(b) Membership in the corporate central credit union consists of and is limited to:

- (1) credit unions incorporated under this subtitle, the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), or any other law applicable to credit unions; and
- (2) organizations owned by credit unions.

(c) A corporate central credit union has the powers and privileges of any other credit union incorporated under this subtitle and, subject to rules adopted by the commission, may have the power to:

- (1) provide access for its members on a mutual basis to financial systems and the services and products of financial institutions;

(2) provide its members with research and consulting services concerning financial matters, institutions, and products;

(3) provide financial system support services and facilities;

(4) establish and execute financial programs to assist its members in meeting the members' needs;

(5) provide safekeeping or trustee services to or on behalf of its members;  
and

(6) issue uninsured share investments or classes of share investments in amounts in excess of \$250,000 with terms and conditions that may vary from other shares authorized by this subtitle as approved by the department.

SECTION 26. Subsection (c), Section 123.208, Finance Code, is amended to read as follows:

(c) The commissioner may restrict or prohibit the payment of a dividend:

(1) if the commissioner issues a cease and desist order under Section 122.257; or

(2) as necessary to protect the member's interests and preserve the solvency of the credit union as authorized by commission rule.

SECTION \_\_. Subchapter A, Chapter 124, Finance Code, is amended by adding Section 124.006 to read as follows:

Sec. 124.006. ADVANCES PAID BY CREDIT UNION. (a) A credit union may pay taxes, assessments, insurance premiums, and similar charges for the protection of the credit union's interest in property that secures a loan of the credit union.

(b) A payment under Subsection (a) is an advance, and the credit union may:

(1) carry the payment on the credit union's books as an asset of the credit union for which the credit union may charge interest; or

(2) add the payment to the unpaid balance of the loan to which it applies as of the first day of the month in which the payment is made.

(c) With the exception of a loan secured by an encumbrance against the equity in a homestead property, a payment under Subsection (a) is a lien against the property that secures the loan for which it is made. For an extension of credit as defined and authorized by Section 50(a)(6), Article XVI, Texas Constitution, additional terms and conditions apply as provided by that section for the payment to become a lien against the property.

SECTION \_\_. Section 124.051, Finance Code, is amended to read as follows:

Sec. 124.051. OPEN-END CREDIT PLAN. (a) A credit union may enter into a written agreement with a member under which:

(1) the member is allowed to borrow money from time to time; and

(2) interest may from time to time be computed on the unpaid balance.

(b) If, at any time, application of the contract interest rate to the outstanding unpaid balance results in a charge of less than \$1, the lawful interest charge shall be \$1.

SECTION \_\_. Section 124.151, Finance Code, is amended to read as follows:

Sec. 124.151. PREPAYMENT PRIVILEGE. (a) A loan may be prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business, except as provided by Subsection (b) or Section 124.152.

(b) A prepayment penalty may be charged on a business loan.

(c) In this section, "business loan" means a loan other than a loan made primarily for personal, family, or household purposes.

SECTION \_\_. Subsection (a), Section 124.351, Finance Code, is amended to read as follows:

(a) A credit union may invest money not used in loans to members in:

(1) capital shares, obligations, participation certificates, or common or preferred stock of an agency, association, or company, subject to Section 124.352(a);

(2) loans to a national or state credit union association or corporation of which the credit union is a member;

(3) obligations, bonds, notes, or other evidences of indebtedness of a state or political subdivision of a state;

(4) certificates of deposit or other accounts issued by a state or national bank, savings and loan association, savings association, or mutual savings bank;

(5) securities, obligations, participations, or other instruments of or issued by the United States, or in a trust established for investing directly or collectively in those investments;

(6) loans to, shares of, or deposits in another credit union, a corporate central credit union, a corporate credit union, a central liquidity facility established under state or federal law, a trust, or an organization established for lending directly or collectively to credit unions;

(7) securities, obligations, participations, or other instruments fully or partially guaranteed as to principal, interest, or both by the United States, or in a trust established for investing directly or collectively in those investments;

(8) participation loans with another credit union, corporation, credit organization, or financial organization;

(9) notes receivable, loans to members, or other assets of a credit union operating under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.); and

(10) other investments authorized by rules adopted by the commission that satisfy Subsection (b).

SECTION \_\_. Subchapter H, Chapter 124, Finance Code, is amended by adding Section 124.353 to read as follows:

Sec. 124.353. PASSIVE INVESTMENT IN MINERAL INTERESTS. (a) A credit union may hold a nonworking mineral or royalty interest if:

(1) the credit union acquires the interest incidental to a lawful investment or to avoid or minimize a loss on a loan or investment previously made in good faith;

(2) the interest is not subject to expenses of exploration, development, production, operation, maintenance, or abandonment, or any other expense associated with extracting and marketing the minerals subject to the rights or interest;

(3) the interest is reasonably valued on the books of the credit union for not more than a nominal amount, and the aggregate amount of earnings from those interests is separately disclosed in the financial statements of the credit union;

(4) the credit union does not make any new investments relating to the rights or interests without the approval of the commissioner; and

(5) the commissioner determines that the possession of the rights or interests is not inconsistent with the safety and soundness of the credit union.

(b) The commissioner may order a credit union that holds a nonworking mineral or royalty interest to divest the interest at any time if the commissioner determines that continued ownership of the interest is detrimental to the credit union.

(c) Subject to compliance with this section, nonworking mineral or royalty interests are not considered to be real property for purposes of this subtitle.

SECTION \_\_. Section 125.402, Finance Code, is amended to read as follows:

Sec. 125.402. DISCLOSURE OF RECORDS OF MEMBER; CONFIDENTIALITY. (a) The directors, officers, committee members, and employees and any honorary or advisory directors of a credit union shall hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by commission rules adopted under Subsection (d) or other applicable law.

(b) A credit union is not required to disclose or produce to a third party or permit a third party to examine a record pertaining to the affairs of a credit union member unless:

(1) the request is made in connection with an examination or audit by a government agency authorized by law to examine credit unions;

(2) the member consents to the disclosure or production of the record; or

(3) the request is made by the department or is made in response to:

(A) a subpoena or other court order; or

(B) an administrative subpoena or summons issued by a state or federal agency as authorized by law.

(c) ~~(b)~~ The commission may authorize the disclosure of information relating to a credit union member under circumstances and conditions that the commission determines are appropriate or required in the daily operation of the credit union's business.

(d) ~~(c)~~ The commission may adopt reasonable rules relating to the:

(1) permissible disclosure of nonpublic personal information about ~~confidentiality of~~ the accounts of credit union members; and

(2) duties of the credit union to maintain ~~that~~ confidentiality.

SECTION \_\_. Subsection (c), Section 126.002, Finance Code, is amended to read as follows:

(c) The commissioner may disclose the information described by Subsection (a) to a law enforcement agency, a share-insuring organization, or another department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

SECTION \_\_. Subsection (a), Section 126.051, Finance Code, is amended to read as follows:

(a) The department, through examiners it appoints and in accordance with commission rules, shall ~~[periodically]~~ examine the condition and affairs ~~[books and records]~~ of each credit union, and may examine the condition and affairs of any subsidiary wholly owned or controlled by a credit union, at least once during each 24-month period. The department may examine a credit union or its subsidiaries more frequently if the commissioner considers it necessary or advisable to safeguard the interest of depositors, creditors, and members or to efficiently enforce applicable law.

SECTION \_\_. This Act takes effect September 1, 2009.

The amendment to **CSHB 3621** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Nays: Shapleigh.

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

**CSHB 3621** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Shapleigh.

### **COMMITTEE SUBSTITUTE HOUSE BILL 3621 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3621** be placed on its third reading and final passage.

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

Nays: Shapleigh.

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

### **HOUSE BILL 2000 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **HB 2000** at this time on its second reading:

**HB 2000**, Relating to health benefit plan coverage for certain amino acid-based elemental formulas.

The motion prevailed.

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

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2000** as follows by adding the following new sections and renumbering subsequent sections appropriately:

SECTION \_\_\_\_\_. Subdivisions (1) and (2), Section 1358.051, Insurance Code, are amended to read as follows:

(1) "Diabetes equipment" means:

(A) blood glucose monitors, including noninvasive glucose monitors and glucose monitors designed to be used by blind individuals;

(B) insulin pumps and associated appurtenances;

(C) insulin infusion devices and devices that facilitate insulin therapy and enhance glucose control; and

(D) podiatric appliances for the prevention of complications associated with diabetes.

(2) "Diabetes supplies" means:

(A) test strips for blood glucose monitors;

(B) visual reading and urine test strips;

(C) lancets and lancet devices;

(D) insulin and insulin analogs;

(E) injection aids and devices that facilitate insulin therapy and enhance glucose control;

(F) syringes;

(G) prescriptive and nonprescriptive oral agents for controlling blood sugar levels; and

(H) glucagon emergency kits.

SECTION \_\_\_\_\_. This Act applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2010. A policy delivered, issued for delivery, or renewed before January 1, 2010, 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.

ZAFFIRINI  
WATSON

The amendment to **HB 2000** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Estes, Nichols, Williams.

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

**HB 2000** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Estes, Nichols, Williams.

**HOUSE BILL 2000 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2000** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Estes, Nichols, Williams.

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

**HOUSE BILL 4445 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4445** at this time on its second reading:

**HB 4445**, Relating to the licensing and appointment of certain court interpreters.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 4445** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 57.002, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) A licensed court interpreter appointed by a court under Subsection (a) or (b) must hold a license that includes the appropriate designation under Section 57.043(d) that indicates the interpreter is permitted to interpret in that court.

SECTION 2. Section 57.043, Government Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) The executive director shall issue a court interpreter license to an applicant who:

(1) can interpret for an individual who can hear but who does not comprehend English or communicate in English;

(2) passes the appropriate examination prescribed by the executive director not earlier than two years before the date the executive director receives the applicant's application for a license; and

(3) possesses the other qualifications for the license required by this subchapter or by rules adopted under this subchapter.

(d) A license issued under this subchapter must include at least one of the following designations:

(1) a basic designation that permits the interpreter to interpret court proceedings in justice courts and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as a magistrate; or

(2) a master designation that permits the interpreter to interpret court proceedings in all courts in this state, including justice courts and municipal courts described by Subdivision (1).

(e) In adopting rules relating to licensing under this subchapter, the commission shall, after consulting with the board, prescribe the minimum score an individual must achieve on an examination to receive a license that includes a basic designation under Subsection (d) and the minimum score an individual must achieve to receive a license that includes a master designation under that subsection.

SECTION 3. Section 57.046(a), Government Code, is amended to read as follows:

(a) The executive director shall prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in interpreting under this subchapter. The same examinations must be used for issuing a license that includes a basic designation or master designation as described by Section 57.043(d).

SECTION 4. (a) Notwithstanding Section 57.043(e), Government Code, as added by this Act, and not later than December 1, 2009, the executive director of the Texas Department of Licensing and Regulation shall issue to a person who, on September 1, 2009, holds a court interpreter license issued under Section 57.043(a), Government Code, a new court interpreter license that includes a master designation described by Section 57.043(d)(2), Government Code, as added by this Act.

(b) Section 57.043(d), Government Code, as added by this Act, applies only to a court interpreter license, other than a court interpreter license issued under Subsection (a) of this section, that is initially issued under Section 57.043(a), Government Code, on or after September 1, 2009, and to the subsequent renewal of that license.

(c) Section 57.002(b-1), Government Code, as added by this Act, applies only to the appointment of a licensed court interpreter on or after January 1, 2010. An appointment before that date is governed by the law in effect on the date the appointment was made, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2009.

The amendment to **HB 4445** was read.

Senator Gallegos moved to postpone further consideration of the bill to a time certain of 5:15 p.m. today.

The motion prevailed.

Question — Shall Floor Amendment No. 1 to **HB 4445** be adopted?

### HOUSE BILL 2163 ON SECOND READING

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2163** at this time on its second reading:

**HB 2163**, Relating to a study regarding the provision of certain medications through the Medicaid vendor drug program to children younger than 16 years of age.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **HB 2163** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) In this section, "pharmacy care management services" means services provided by a pharmacy to support patients receiving treatment or therapy through a specialty pharmacy drug or therapy and maximize adherence to the drug or therapy, including:

(1) significant caregiver and provider contact and education regarding the relevant disease, disease prevention and treatment, and counseling related to drug indications, benefits, risks, complications, and appropriate use of the prescribed drug or therapy;

(2) patient compliance services, including coordination of provider visits with delivery of the specialty drug or therapy to the provider, compliance with the dosing regimen, patient reminders, compilation of data, and assisting providers in the development of compliance programs; and

(3) tracking services, including developing ordering processes with a provider, screening referrals, and tracking a patient's weight for dosing requirements.

(b) The Health and Human Services Commission shall study the feasibility of establishing separate reimbursement rates under the Medicaid vendor drug program for pharmacies that provide pharmacy care management services to patients who are administered specialty pharmacy drugs, including drugs indicated for the prophylaxis of respiratory syncytial virus, blood factor, or any other biologic or therapy that requires complex care.

(c) In conducting the study under Subsection (b) of this section, the Health and Human Services Commission shall consult with the Centers for Medicare and Medicaid Services and may consider the adoption of pharmacy care management services reimbursement for pharmacy services adopted by other state Medicaid programs.

(d) The Health and Human Services Commission shall seek information from specialty pharmacy providers or other sources regarding the costs of providing pharmacy care management services.

(e) Not later than September 1, 2010, the Health and Human Services Commission shall submit a written report of the results of the study conducted under Subsection (b) of this section to the legislature.

The amendment to **HB 2163** was read and was adopted by a viva voce vote.

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

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

**HB 2163** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2163 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2163** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2859 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2859** at this time on its second reading:

**HB 2859**, Relating to notice requirements for a county selling surplus or salvage property.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2859** (Senate committee report) in SECTION 1 of the bill, in added Section 263.153(c), Local Government Code (page 1, line 17), between "subchapter" and "shall", by inserting "having an estimated value of not more than \$500".

The amendment to **HB 2859** was read and was adopted by a viva voce vote.

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

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

**HB 2859** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2859 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2859** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3872 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3872** at this time on its second reading:

**HB 3872**, Relating to the qualifications to be a veterans county service officer.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **HB 3872** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 657, Government Code, is amended by designating Sections 657.001 through 657.009 as Subchapter A and adding a heading for Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Section 657.001, Government Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Minimum qualifications" means the experience and education to perform the essential tasks of a job identified in the posting for the job.

(3) "Public entity" means a state agency, including a [public] department, commission, board, authority, office, or other agency.

SECTION 3. Subchapter A, Chapter 657, Government Code, as added by this Act, is amended by adding Section 657.0015 to read as follows:

Sec. 657.0015. EXCEPTIONS. This chapter does not apply to:

(1) appointments made by the governor; or

(2) the employment of:

(A) a head of a division or department in a state office or agency headed by a single elected state official; or

(B) a person who advises or reports directly to an elected state official.

SECTION 4. Sections 657.002(a) and (b), Government Code, are amended to read as follows:

(a) A veteran qualifies for a veteran's employment preference if the veteran:

(1) served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability;

(2) was honorably discharged from military service; and

(3) meets the minimum qualifications for the position [is competent].

(b) A veteran's surviving spouse who has not remarried or an orphan of a veteran qualifies for a veteran's employment preference if:

(1) the veteran was killed while on active duty;

(2) the veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law; and

(3) the spouse or orphan meets the minimum qualifications for the position [is competent].

SECTION 5. Sections 657.003(a) and (b), Government Code, are amended to read as follows:

(a) An individual who qualifies for a veteran's employment preference is entitled to a preference in employment with or appointment to a public entity or for a public work of this state over other applicants for the same position who do not have [a] greater qualifications for the position [qualification].

(b) An individual who has an established service-connected disability and is entitled to a veteran's employment preference is entitled to preference for employment or appointment in a position [~~for which a competitive examination is not held~~] over all other applicants for the same position who are without a service-connected disability and who do not have [~~a~~] greater qualifications for the position [~~qualification~~].

SECTION 6. Section 657.005(a), Government Code, is amended to read as follows:

(a) The individual whose duty is to appoint or employ an applicant for a position with a public entity or public work of this state or an officer or the chief administrator of the entity or work who receives an application for appointment or employment by an individual entitled to a veteran's employment preference, before appointing or employing any individual, shall investigate the qualifications of the applicant for the position. If the applicant is of good moral character and can perform the duties of the position and no other applicant for the position has greater qualifications than the applicant entitled to a veteran's employment preference, the officer, chief executive, or individual whose duty is to appoint or employ shall appoint or employ the applicant for the position.

SECTION 7. Section 657.007(b), Government Code, is amended to read as follows:

(b) The preference granted under this section applies only to the extent that a reduction in workforce by an employing public entity involves other employees of the same [~~a similar type or~~] classification.

SECTION 8. Section 657.008, Government Code, is amended to read as follows:

Sec. 657.008. REPORTING REQUIREMENTS. (a) A state agency [~~public entity~~] shall file quarterly with the comptroller a report that states:

(1) any measures taken by the state agency during the quarter to inform individuals entitled to a hiring preference under this chapter of their rights under this chapter;

(2) the appeals process available through the state agency to an individual entitled to a hiring preference under this chapter who alleges that the state agency violated the individual's rights under this chapter;

(3) the percentage of the total number of employees hired by the state agency [~~entity~~] during the reporting period who are persons entitled to a preference under this chapter; and

(4) [~~(2)~~] the percentage of the total number of the agency's [~~entity's~~] employees who are persons entitled to a preference under this chapter[~~; and~~

[~~(3) the number of complaints filed with the governing body of the entity under Section 657.010 during that quarter and the number of those complaints resolved by the governing body~~].

(b) The comptroller shall file annually with the legislature a report that compiles and analyzes information that the comptroller receives from state agencies [~~public entities~~] under Subsection (a).

SECTION 9. Chapter 657, Government Code, is amended by adding Subchapters B and C to read as follows:

SUBCHAPTER B. COMPLAINT TO PUBLIC ENTITY

Sec. 657.051. COMPLAINT PROCEDURE. (a) An individual who is entitled to a veteran's employment preference under this chapter may appeal a hiring decision made by a public entity by filing a written complaint with the public entity not later than the 30th day after the date the individual receives notice of the hiring decision.

(b) The individual must state in the complaint:

(1) the name of the public entity; and

(2) the allegations that form the basis of the complaint.

Sec. 657.052. DECISION. (a) Not later than the 30th day after the date the public entity receives a complaint, the public entity shall issue a decision on the complaint and notify the applicant of the decision.

(b) If the public entity determines that an individual should have been offered the position because of the preference granted under this chapter, the public entity shall offer to appoint or employ the applicant:

(1) for the position; or

(2) for the next similar position that becomes available for which the individual meets the minimum qualifications.

SUBCHAPTER C. HEARING

Sec. 657.101. COMPLAINT; HEARING. (a) An applicant for employment with a state agency who is entitled to a veteran's employment preference under this chapter may appeal the state agency's hiring decision after following the complaint procedure in Subchapter B by filing a request for a hearing with the state agency.

(b) The applicant must request a hearing not later than the 30th day after the date the applicant receives notice of the decision issued under Section 657.052.

(c) Not later than the 15th day after the date the state agency receives a request for a hearing, the state agency shall refer the case to the agency's governing board.

Sec. 657.102. DECISION. If the agency's governing board determines that the applicant should have been offered the position applied for because of the preference granted under this chapter, the individual responsible for making hiring decisions for the state agency shall:

(1) offer to appoint or employ the applicant for the position; or

(2) offer to appoint or employ the applicant for the next similar position that becomes available for which the applicant meets the minimum qualifications.

SECTION 10. Section 657.010, Government Code, is repealed.

SECTION 11. The changes in law made by this Act to Chapter 657, Government Code, apply to an application for employment only if the application is submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect at the time the application is submitted, and the former law is continued in effect for that purpose.

SECTION 12. The changes in law made by this Act to Chapter 657, Government Code, apply only to a public work for which a public entity first advertises or otherwise solicits bids, proposals, offers, or qualifications to perform any portion of the work on or after the effective date of this Act. A public work for which a public entity first advertised or otherwise solicited bids, proposals, offers, or

qualifications to perform any portion of the work before that date is governed by the law in effect when the first advertisement or solicitation was given, and the former law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2009.

The amendment to **HB 3872** was read and was adopted by a viva voce vote.

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

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

**HB 3872** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 3872 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3872** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3613 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3613** at this time on its second reading:

**HB 3613**, Relating to the determination of the market value of a residence homestead for ad valorem tax purposes on the basis of the property's value as a residence homestead.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

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

Amend **HB 3613** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.131 to read as follows:

Sec. 11.131. RESIDENCE HOMESTEAD OF 100 PERCENT OR TOTALLY DISABLED VETERAN. (a) In this section:

(1) "Disabled veteran" has the meaning assigned by Section 11.22.

(2) "Residence homestead" has the meaning assigned by Section 11.13.

(b) A disabled veteran who receives from the United States Department of Veterans Affairs or its successor 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or of individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran's residence homestead.

(b) Subsection (a), Section 11.22, Tax Code, is amended to read as follows:

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property the veteran owns and designates as provided by Subsection (f) ~~[of this section]~~ in accordance with the following schedule:

an exemption of	for a disability rating of	
up to:	at least:	but less <del>[not greater]</del> than:
\$5,000 of the	10%	30%
assessed value		
7,500	30 <del>[34]</del>	50
10,000	50 <del>[54]</del>	70
12,000	70 <del>[74]</del> and over	

(c) Subsection (c), Section 11.43, Tax Code, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.131, 11.17, 11.18, 11.182, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), (j), or (j-1), 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

(d) Subsection (a), Section 11.431, Tax Code, is amended to read as follows:

(a) The chief appraiser shall accept and approve or deny an application for a residence homestead exemption, including a disabled veteran residence homestead exemption, after the deadline for filing it has passed if it is filed not later than one year after the delinquency date for the taxes on the homestead.

(e) Section 403.302, Government Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) For purposes of Subsection (d), a residence homestead that receives an exemption under Section 11.131, Tax Code, in the year that is the subject of the study is not considered to be taxable property.

(f) Section 11.131, Tax Code, as added by this Act, applies to a tax year beginning on or after January 1, 2009.

(g) 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, 2009.

The amendment to **HB 3613** was read and was adopted by a viva voce vote.

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

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

**HB 3613** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on passage to third reading.

#### **HOUSE BILL 3613 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3613** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 2556 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2556** at this time on its second reading:

**HB 2556**, Relating to the rights and duties of the parties to a motor vehicle retail installment contract or a conditional delivery agreement involving the sale or conditional delivery of a motor vehicle; providing an administrative penalty.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 2556 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2556** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 3654 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3654** at this time on its second reading:

**HB 3654**, Relating to certain duties of and reports submitted to the Commission on Jail Standards regarding county jail inmates who are pregnant.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3654 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3654** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2521 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2521** at this time on its second reading:

**CSHB 2521**, Relating to a preference in state purchasing for certain media-related services offered by businesses based in Texas.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2521** (Senate committee printing) by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_. Section 2155.266, Government Code, is amended to read as follows:

Sec. 2155.266. REGISTRATION AND RENEWAL FEE. (a) The comptroller [~~commission~~] may charge a person applying for registration on the master bidders list a registration fee and may charge a registrant a biennial renewal fee in an amount designed to recover the comptroller's [~~commission's~~] costs in:

- (1) making and maintaining the master bidders list; and
- (2) soliciting bids or proposals under this subchapter.

(b) In addition to the fee provided by Subsection (a), the comptroller shall also collect \$20 from each registrant to be used for the purpose of enforcing compliance with requirements of state purchasing statutes and the prevention of fraud in the historically underutilized businesses program as set forth in Chapter 2161 [~~The commission shall set the amount of the fees by rule~~].

The amendment to **CSHB 2521** was read and was adopted by a viva voce vote.

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

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

**CSHB 2521** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2521 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2521** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3854 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3854** at this time on its second reading:

**HB 3854**, Relating to the powers of certain development corporations related to Hurricane Ike disaster relief and to the validation of certain governmental acts or proceedings of counties affected by Hurricane Ike.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3854 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3854** be placed on its third reading and final passage.

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

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

**(Senator Eltife in Chair)**

**HOUSE BILL 1325 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1325** at this time on its second reading:

**HB 1325**, Relating to the degrees awarded by the Texas State Technical College System.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 1325 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1325** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3186 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3186** at this time on its second reading:

**HB 3186**, Relating to the collection and use of biometric identifiers.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

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

Amend **HB 3186** (Senate committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 503.001(c-1), Business & Commerce Code (page 1, line 37), between "individual" and "is", insert "captured for a commercial purpose".

(2) In SECTION 1 of the bill, in added Section 503.001(c-2), Business & Commerce Code (page 1, line 45), between "identifier" and "has", insert "captured for a commercial purpose".

The amendment to **HB 3186** was read and was adopted by a viva voce vote.

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

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

**HB 3186** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 3186 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3186** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 3864 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3864** at this time on its second reading:

**HB 3864**, Relating to the acceptance of certain donated building projects by the Parks and Wildlife Department.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3864** (Senate committee printing) by adding the following sections to the bill, numbered appropriately, and by renumbering any subsequent sections of the bill accordingly.

SECTION \_\_\_\_\_. Subtitle D, Title 4, Government Code, is amended by adding Chapter 450 to read as follows:

CHAPTER 450. TEXAS PARTNERSHIP FOR CHILDREN IN NATURE

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

Sec. 450.001. DEFINITION. In this chapter, "partnership" means the Texas Partnership for Children in Nature.

Sec. 450.002. SUNSET PROVISION. The Texas Partnership for Children in Nature is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the partnership is abolished and this chapter expires September 1, 2021.

Sec. 450.003. COMPOSITION OF PARTNERSHIP. The partnership is composed of seven members as follows:

(1) three public members as follows, appointed by the executive director of the Parks and Wildlife Department in consultation with the commissioner of education:

(A) one public member who represents parent-teacher organizations;  
and

(B) two public members each of whom represents a nonprofit organization dedicated to education concerning or protection of the environment; and

(2) four ex officio members as follows:

(A) the executive director of the Parks and Wildlife Department;

(B) the commissioner of education;

(C) the commissioner of state health services; and

(D) the commissioner of agriculture.

Sec. 450.004. PUBLIC MEMBERS: ELIGIBILITY; APPOINTMENT; VACANCY. (a) A person appointed as a public member of the partnership must be a resident of this state.

(b) Appointments of public members to the partnership shall be made:

(1) without regard to the race, color, disability, sex, religion, age, or national origin of an appointee; and

(2) so that various geographic areas of this state are represented in the partnership.

(c) The governor, in consultation with the executive director of the Parks and Wildlife Department and the commissioner of education, shall fill any vacancy in an appointed position in the partnership for the unexpired portion of the term.

Sec. 450.005. EX OFFICIO MEMBERS: ELIGIBILITY; DESIGNATION OF REPRESENTATIVE. (a) An ex officio member of the partnership vacates the person's position in the partnership if the person ceases to hold the position that qualifies the person for service in the partnership.

(b) An ex officio member may designate a representative to serve in the partnership in the member's place. A representative designated under this subsection must be an officer or employee of the state agency that employs the ex officio member or of which the ex officio member is an officer.

Sec. 450.006. REMOVAL OF PUBLIC MEMBER. (a) It is a ground for removal of a public member from the partnership if the member:

(1) is ineligible for public membership under Section 450.004(a);

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

(3) is absent from more than two consecutive partnership meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the members of the partnership.

(b) The validity of an action of the partnership is not affected by the fact that the action is taken when a ground for removal of a partnership member exists.

(c) If a member of the partnership has knowledge that a potential ground for removal exists, the member shall notify the presiding officer of the partnership of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 450.007. TERM OF PUBLIC MEMBER. (a) A public member of the partnership serves a term of four years.

(b) A public member is eligible for reappointment to another term or part of a term.

(c) A public member may not serve more than two consecutive terms. For purposes of this prohibition, a member is considered to have served a term only if the member has served more than half of the term.

Sec. 450.008. OFFICERS; WORKING GROUPS. (a) The executive director of the Parks and Wildlife Department or the executive director's representative serves as the presiding officer of the partnership.

(b) The presiding officer of the partnership may appoint one or more working groups for any purpose consistent with the duties of the partnership under this chapter.

Sec. 450.009. COMPENSATION; EXPENSES. (a) A public member of the partnership is not entitled to compensation but is entitled to reimbursement for the travel expenses incurred by the member while transacting partnership business, as provided by the General Appropriations Act.

(b) An ex officio member's service in the partnership is an additional duty of the underlying position that qualifies the member for service in the partnership. The entitlement of an ex officio member to compensation or to reimbursement for travel expenses incurred while transacting partnership business is governed by the law that applies to the member's service in that underlying position, and any payment to the member for either purpose must be made from money that may be used for the purpose and is available to the state agency that the member serves in that underlying position.

Sec. 450.010. MEETINGS; VOTING; PUBLIC ACCESS. (a) The partnership shall meet at the call of the presiding officer.

(b) An ex officio member of the partnership may vote on partnership business.

(c) The partnership shall develop and implement policies that provide the public with a reasonable opportunity to appear before the partnership and speak on any issue under the jurisdiction of the partnership.

Sec. 450.011. STAFF COORDINATION. The Parks and Wildlife Department shall provide staff support to the partnership, in coordination with the Texas Education Agency, the Department of State Health Services, and the Texas Department of Agriculture.

[Sections 450.012-450.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES; FUNDING

Sec. 450.051. ADVISORY STATUS OF PARTNERSHIP. (a) In implementing its powers and duties under this chapter, the partnership functions only in an advisory capacity. Membership in the partnership does not constitute a public office.

(b) Chapter 2110 does not apply to the partnership.

Sec. 450.052. GENERAL POWERS AND DUTIES OF PARTNERSHIP.

(a) The partnership shall promote the well-being of this state's children by providing children with opportunities to spend more time outdoors and to learn about the environment through experiential activities outdoors and formal and informal education concerning the environment. To accomplish those purposes, the partnership shall:

(1) develop and assist in the implementation of a plan to provide children with structured and unstructured opportunities for outdoor recreation, scientific study, and learning that includes:

(A) development and implementation of strategies to provide increased support for programs under which school grounds are converted into natural habitats for play and outdoor classrooms;

(B) establishment of trail systems that connect communities, parks, and schools to encourage walking, biking, and increased time outdoors by children and their families;

(C) establishment of nature play areas in communities to offer outdoor experiences close to children's homes;

(D) establishment, in partnership with the Department of Family and Protective Services, the advisory council on juvenile services, and appropriate community nonprofit organizations, of a statewide civic justice corps to provide students at risk of dropping out of school with opportunities to serve on conservation crews in state parks and on other public land;

(E) establishment, in cooperation with school districts, local parks departments, and appropriate nonprofit organizations, of an outdoor classroom program on public land that provides service learning opportunities and voluntary programming aligned with the required curriculum under Section 28.002, Education Code;

(F) provision to children and their families of increased access to naturalists who present interpretive activities at state parks and on other public land to enhance discovery and enjoyment of this state's natural resources; and

(G) provision to children who are members of minority groups of increased access to state parks and other public land, through partnership with appropriate organizations;

(2) develop and assist in the implementation of a state environmental literacy plan that includes:

(A) a review of current environmental education in public schools, including student environmental literacy levels;

(B) identification of curriculum necessary to develop environmentally literate students;

(C) identification of model outdoor field and service learning experiences that can be integrated into the required curriculum under Section 28.002, Education Code;

(D) professional development opportunities for professional educators and for students who are in educator preparation programs and development programs for other environmental educators; and

(E) methods to annually measure and report, at the state and local levels, progress of public school students toward becoming environmentally literate;

(3) devise a method to measure:

(A) baseline data concerning the amount of time children spend outdoors; and

(B) any increased time children spend outdoors as a result of the partnership's efforts; and

(4) identify opportunities for and barriers to implementing environmental literacy programs in public schools and on public land.

(b) Not later than December 1 of each even-numbered year, the partnership shall submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education, natural resources, land and resource management, or environmental regulation regarding the partnership's recommendations concerning the partnership's duties under Subsection (a).

(c) The partnership shall adopt rules as necessary for its own procedures.

Sec. 450.053. FUNDING. The partnership may accept gifts and grants from a public or private source for the partnership to use in performing the partnership's powers and duties under this chapter.

SECTION 2. As soon as practicable after the effective date of this Act, appointments of public members shall be made to the Texas Partnership for Children in Nature as provided by Chapter 450, Government Code, as added by this Act. Notwithstanding Section 450.007, Government Code, as added by this Act, the terms of initial public members appointed to the Texas Partnership for Children in Nature expire February 1, 2013.

SECTION 3. This Act takes effect September 1, 2009.

The amendment to **HB 3864** was read and was adopted by a viva voce vote.

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

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

**HB 3864** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3864 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3864** be placed on its third reading and final passage.

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

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

**HOUSE BILL 4445 ON SECOND READING**

The Presiding Officer, Senator Eltife in Chair, laid before the Senate **HB 4445** by Senator Gallegos on its second reading. The bill had been read second time, an amendment offered, and further consideration postponed to a time certain of 5:15 p.m. today:

**HB 4445**, Relating to the licensing and appointment of certain court interpreters.

Question — Shall Floor Amendment No. 1 to **HB 4445** be adopted?

The amendment to **HB 4445** was adopted by a viva voce vote.

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

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

**HB 4445** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 4445 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 4445** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 666 ON SECOND READING**

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 666** at this time on its second reading:

**CSHB 666**, Relating to certain costs used to fund drug court programs.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 666** by adding the appropriately numbered **SECTIONS** to read as follows:

SECTION \_\_\_\_\_. Chapter 469, Health and Safety Code, is amended by designating Sections 469.001 through 469.009 as Subchapter A and adding a heading to that subchapter to read as follows:

SUBCHAPTER A. DRUG COURT PROGRAMS

SECTION \_\_\_\_\_. Chapter 469, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ASSOCIATE JUDGES FOR DRUG COURT PROGRAMS

Sec. 469.051. APPOINTMENT BY PRESIDING JUDGE. (a) Subject to available state funding, the presiding judge of each administrative judicial region shall appoint a full-time or part-time associate judge to establish and administer a drug court program described by Section 469.002 if, after conferring with each judge of a court in the region that serves a county with a population of 200,000 or less, the presiding judge determines one or more of those judges desire the appointment of an associate judge under this section.

(b) The presiding judge may limit an appointment under this section to a specified period and may terminate an appointment at any time.

(c) An associate judge may be appointed under this section to serve more than one court. Two or more judges of administrative judicial regions may jointly appoint one or more associate judges to serve courts located in the regions.

(d) Not later than the 31st day after the date an associate judge is appointed under this section, the judges of the courts served by the associate judge, after consulting with the associate judge and each presiding judge of the administrative judicial region who appointed the associate judge, shall establish a court referral protocol for the referral of cases to the drug court program administered by the associate judge.

Sec. 469.052. QUALIFICATIONS. To be eligible for appointment as an associate judge under this subchapter, a person must:

(1) be a United States citizen;

(2) have resided in this state for the two years immediately preceding the date of appointment;

(3) meet one of the following qualifications:

(A) be eligible for assignment under Section 74.054, Government Code, because the person is named on the list of retired and former judges subject to assignment under Section 74.055, Government Code; or

(B) be licensed to practice law in this state and have been practicing law in this state or been acting as a judge of a court in this state for the four years immediately preceding the date of appointment, but is not otherwise eligible for assignment as provided by Paragraph (A);

(4) not have been defeated for reelection to a judicial office;

(5) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(6) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before the final disposition of the proceedings.

Sec. 469.053. DESIGNATION OF HOST COUNTY. (a) Subject to the approval of the commissioners court of the proposed host county, the presiding judges of the administrative judicial regions by majority vote shall determine the host county of an associate judge appointed under this subchapter.

(b) The host county shall provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) An associate judge is not required to reside in the host county.

Sec. 469.054. ORDER OF REFERRALS; GENERAL POWERS OF ASSOCIATE JUDGE. (a) To refer cases involving defendants who are eligible to participate in the drug court program to an associate judge appointed under this subchapter, the referring court must issue an order of referral specifying the associate judge's duties.

(b) An order of referral issued under this section must be consistent with the court referral protocol established for the associate judge under Section 469.051(d). In the event of a conflict between the order of referral and the court referral protocol, the order of referral controls.

(c) An order of referral may:

(1) limit the powers of the associate judge and direct the associate judge to report on specific issues and perform particular acts;

(2) set the time and place for a hearing;

(3) specify a date for filing the associate judge's findings;

(4) designate proceedings for more than one case over which the associate judge presides; and

(5) set forth general powers and limitations of authority of the associate judge applicable to any case referred.

(d) Except as limited by an order of referral, an associate judge to whom a case is referred may perform any act necessary and proper for the efficient performance of the associate judge's duties under an order of referral.

Sec. 469.055. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. At the request of a party, the associate judge shall provide a court reporter to record the proceedings before the judge.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

Sec. 469.056. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the associate judge.

(b) If the referring court does not modify, correct, reject, reverse, or recommit an action of the associate judge before the 31st day after the date the associate judge takes the action, the action becomes the decree of the court.

Sec. 469.057. JUDICIAL IMMUNITY. An associate judge has the same judicial immunity as a district judge.

Sec. 469.058. COMPENSATION. (a) An associate judge appointed under this subchapter is entitled to a salary as determined by a majority vote of the presiding judges of the administrative judicial regions. The salary may not exceed 90 percent of the salary paid to a district judge as set by the state General Appropriations Act.

(b) The associate judge's salary shall be paid from funds available as provided by this subchapter.

Sec. 469.059. PERSONNEL. (a) The presiding judge of an administrative judicial region who appointed an associate judge under this subchapter or the presiding judges of the administrative judicial regions, by majority vote, may appoint personnel as needed to implement and administer the provisions of this subchapter.

(b) The salaries of the personnel shall be paid from funds available as provided by this subchapter.

Sec. 469.060. SUPERVISION OF ASSOCIATE JUDGES. The office of court administration shall assist the presiding judges in:

(1) monitoring the associate judges' compliance with any applicable job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;

(2) addressing the training needs and resource requirements of the associate judges;

(3) conducting annual performance evaluations for the associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges; and

(4) receiving, investigating, and resolving complaints about particular associate judges or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

Sec. 469.061. FUNDING. (a) The office of court administration may contract for available state, county, and federal funds from any source and may employ personnel needed to implement and administer this subchapter. An associate judge and other personnel appointed under this subchapter are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.

(b) The presiding judges of the administrative judicial regions, state agencies, and counties may contract for available federal funds from any source to reimburse costs and salaries associated with associate judges and personnel appointed under this subchapter and may also use available state and county funds and public or private grants.

(c) The presiding judges and the office of court administration in cooperation with other agencies shall take action necessary to maximize the amount of federal money available to fund the use of associate judges under this subchapter.

Sec. 469.062. ASSIGNMENT OF JUDGES AND APPOINTMENT OF VISITING ASSOCIATE JUDGES. (a) This subchapter does not limit the authority of a presiding judge to assign a judge eligible for assignment under Chapter 74, Government Code, to administer a drug court program under this subchapter.

(b) If an associate judge appointed under this subchapter is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, disability, or military service, or if there is a vacancy in the position of associate judge, the presiding judge of the administrative judicial region in which the associate judge serves or the vacancy occurs may appoint a visiting associate judge to perform the duties of the associate judge during the period the associate judge is unable to perform the associate judge's duties or until another associate judge is appointed to fill the vacancy.

(c) A person is not eligible for appointment under this section unless the person has served as an associate judge, a district judge, or a county court judge for at least two years before the date of appointment.

(d) A visiting associate judge appointed under this section is subject to each provision of this subchapter that applies to an associate judge serving under a regular appointment under this subchapter. A visiting associate judge appointed under this section is entitled to compensation, to be determined by a majority vote of the presiding judges of the administrative judicial regions, through use of funds under this subchapter. A visiting associate judge is not considered to be a state employee for any purpose.

(e) Section 2252.901, Government Code, does not apply to the appointment of a visiting associate judge under this section.

Sec. 469.063. LIMITATION ON LAW PRACTICE BY ASSOCIATE JUDGE. An associate judge appointed under this subchapter may not engage in the private practice of law.

SECTION \_\_\_\_. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

The amendment to **CSHB 666** was read and was adopted by a viva voce vote.

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

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

**CSHB 666** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 666 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 666** be placed on its third reading and final passage.

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

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

**(President in Chair)**

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

On motion of Senator Williams and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., was again suspended and the time was extended to 8:00 p.m. today for the Tuesday, May 26, 2009, Intent Calendar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2488 ON SECOND READING**

On motion of Senator Shapiro, on behalf of Senator Ogden, and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2488** at this time on its second reading:

**CSHB 2488**, Relating to open-source textbooks for public schools.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2488** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. Subchapter A, Chapter 31, Education Code, is amended by adding Section 31.004 to read as follows:

Sec. 31.004. CERTIFICATION OF PROVISION OF TEXTBOOKS, ELECTRONIC TEXTBOOKS, AND INSTRUCTIONAL MATERIALS. Each school district and open-enrollment charter school shall annually certify to the State Board of Education and the commissioner that, for each subject in the required curriculum and each grade level, the district provides each student with textbooks, electronic textbooks, or instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.

SECTION \_\_\_\_. To the extent of any conflict, Section 31.004, Education Code, as added by this Act, prevails over Section 31.004, Education Code, as added by H.B. No. 4294, Acts of the 81st Legislature, Regular Session, 2009, regardless of the relative dates of enactment.

The amendment to **CSHB 2488** was read and was adopted by a viva voce vote.

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

Senator Shapiro, on behalf of Senator Ogden, offered the following amendment to the bill:

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

Amend **CSHB 2488** (Senate committee report) as follows:

In SECTION 2 of the bill, on page 1, strike lines 32-35 and substitute "(1) a public institution of higher education that is designated as a research university or emerging research university under the higher education coordinating board's accountability system, or a private university located in this state that is a member of the Association of American Universities; or".

The amendment to **CSHB 2488** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Shapiro, on behalf of Senator Ogden, and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2488** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2488 ON THIRD READING**

Senator Shapiro, on behalf of Senator Ogden, moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2488** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 4338 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4338** at this time on its second reading:

**CSHB 4338**, Relating to title insurance agents and title insurance companies.

The bill was read second time.

Senator Fraser moved to postpone further consideration of the bill to a time certain of 7:00 p.m. today.

The motion prevailed.

Question — Shall **CSHB 4338** be passed to third reading?

(Senator Estes in Chair)

(President in Chair)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 300 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business to take up for consideration **CSHB 300** at this time on its second reading:

**CSHB 300**, Relating to the continuation and functions of the Texas Department of Transportation, including the transfer of certain functions to the Texas Department of Motor Vehicles and the Texas Department of Licensing and Regulation; providing penalties.

The motion prevailed by the following vote: Yeas 24, Nays 7.

Yeas: Averitt, Carona, Davis, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Fraser, Huffman, Jackson, Nelson, Ogden, Patrick.

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 300** (Senate committee printing) as follows:

(1) In SECTION 1.18 of the bill, added Section 223.0411(a), Transportation Code (page 7, lines 40 and 41), strike added Subdivisions (3) and (4) and substitute the following:

(3) the Associated General Contractors of Texas; and

(4) the Texas Consultant Engineering Council.

(2) In SECTION 1.24 of the bill, amended Section 228.055(b), Transportation Code (page 9, line 55), strike "30th" and substitute "90th".

(3) In SECTION 2.06 of the bill, added Section 201.808, Transportation Code (page 19, lines 9 through 16), strike added Subsection (g) and substitute the following:

(g) The transportation project and performance reporting system established under Subsection (b) must include:

(1) information relating to each source of the department's funds, including the identification of revenue from each comprehensive development agreement or toll project; and

(2) information relating to all expenditures of the department by type of expenditure, as described in the comptroller's statewide accounting system, and reported for all applicable organizational groups and categories, including:

(A) the entire department;

(B) each department division;

(C) each department district; and

(D) each program funding category for project expenses.

(4) In SECTION 2.10 of the bill, added Section 472.0331(b), Transportation Code (Page 25, line 3), strike "must" and substitute "may".

(5) In SECTION 2.12 of the bill, added Section 472.153(a), Transportation Code (page 25, line 52), strike "must" and substitute "may".

(6) In SECTION 3.01 of the bill, added Section 201.605(i), Transportation Code (page 27), strike lines 34 through 36 and substitute the following:

(i) The commission by rule shall provide for notice to owners of adjoining property and affected local governments and public officials and provide an opportunity for comment on a state highway project

(7) In SECTION 4.03 of the bill, amended Section 223.201(a), Transportation Code (page 30), strike lines 29 through 32 and substitute the following: operate, extend, or expand a state highway[-

~~(1) toll project;~~

~~(2) facility or a combination of facilities on the Trans Texas Corridor;~~

(8) Add the following appropriately numbered SECTION to ARTICLE 4 of the bill and renumber subsequent SECTIONS of that article accordingly:

SECTION \_\_\_\_\_. Subchapter E, Chapter 223, Transportation Code, is amended by adding Section 223.2011 to read as follows:

Sec. 223.2011. COMPREHENSIVE DEVELOPMENT AGREEMENTS IN CERTAIN COUNTIES FOR CERTAIN PROJECTS. (a) In this section, "region" means a county with a population of 3.3 million or more and the counties adjacent to that county.

(b) This section applies only to:

(1) the portion of IH 69 and any successor project located in:

(A) a county with a population of 3.3 million or more; or

(B) any adjacent county;

(2) a comprehensive development agreement or related agreement entered into by the department in connection with the project under Subdivision (1); and

(3) a toll project or other project in the region the revenues or assets of which are to be used in connection with the financing of a project under Subdivision (1).

(c) Any payments, project savings, refinancing dividends, and any other revenue, including surplus revenue, received by the commission or the department under the comprehensive development agreement or any related agreement, and any revenue attributable to any toll project or other project in the region described by Subsection (b)(3), may be used only to pay the costs or to finance the construction, maintenance, or operation of transportation projects or air quality projects in the region.

(d) The private entity that is a party to the comprehensive development agreement does not have any right under the agreement or any related agreement that conflicts with, infringes on, or impairs the rights of any county with respect to the development or operation of any project under Section 228.011 or 228.0111 or other applicable law that provides for a process under which the county has the first option to develop and operate a project.

(e) A comprehensive development agreement and any related agreement that includes a provision that grants a private entity the right to finance and develop a toll project in the region or to collect and receive toll revenue from a toll project in the region is not effective unless the agreement complies with this section.

(9) In SECTION 4.06 of the bill, amended Section 223.208(e), Transportation Code (page 31, line 14), strike "or Section 227.023(c)" and substitute "[~~or Section 227.023(e)~~]"

(10) Immediately after SECTION 4.10 of the bill (page 33, between lines 2 and 3) insert the following:

SECTION 4.11. The change in law made by this article to Section 223.201(a), Transportation Code, does not apply to a comprehensive development agreement entered into by the Texas Department of Transportation under Section 227.023, Transportation Code, before the effective date of this Act. A comprehensive development agreement entered into under Section 227.023, Transportation Code, before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

(11) In SECTION 7.01 of the bill, added Section 1003.002(a), Transportation Code (page 45, line 42), strike "or the department".

(12) Between ARTICLES 14 and 16 of the bill (page 69, between lines 3 and 4) insert the following:

#### ARTICLE 15. TEXAS MOBILITY FUND

SECTION 15.01. Sections 201.943(b), (e), and (f), Transportation Code, are amended to read as follows:

(b) Obligations must be secured by and payable from a pledge of and lien on all or part of the money in the fund, including revenues of this state that are dedicated or appropriated for deposit to fund. Obligations may be additionally secured by and payable from credit agreements. The commission may pay amounts due on the obligations from discretionary money available to it that is not dedicated to or appropriated for other specific purposes.

(e) Long-term obligations in the amount proposed to be issued by the commission may not be issued unless the comptroller projects in a comptroller's certification that the amount of money dedicated to the fund pursuant to Section 49-k(e), Article III, Texas Constitution, and required to be on deposit in the fund pursuant to Section 49-k(f), Article III, Texas Constitution, together with any other money or revenue that the commission pledges or otherwise commits for those purposes, including receipts from credit agreements and money received or to be received from the federal government, and the investment earnings on ~~that~~ money in the fund, during each year of the period during which the proposed obligations are scheduled to be outstanding will be equal to at least 110 percent of the requirements to pay the principal of and interest on the proposed long-term obligations during that year.

(f) Short-term obligations in the amount proposed by the commission may not be issued unless the comptroller, in a comptroller's certification:

(1) assumes that the short-term obligations will be refunded and refinanced to mature over a 20-year period with level principal requirements and bearing interest at then current market rates, as determined by the comptroller; and

(2) projects that the amount of money dedicated to the fund pursuant to Section 49-k(e), Article III, Texas Constitution, and required to be on deposit in the fund pursuant to Section 49-k(f), Article III, Texas Constitution, together with any other money or revenue that the commission pledges or otherwise commits for those purposes, including receipts from credit agreements and money received or to be received from the federal government, and the investment earnings on ~~that~~ money in the fund, during each year of the assumed 20-year period will be equal to at least 110 percent of the requirements to pay the principal of and interest on the proposed refunding obligations during that year.

SECTION 15.02. 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, 2009.

(13) In ARTICLE 19 of the bill, strike SECTION 19.07 (page 83, lines 42 through 58) and renumber subsequent SECTIONS of that article accordingly.

(14) In the recital to SECTION 19.09 of the bill (page 83, line 67), strike ", (e),".

(15) In SECTION 19.09 of the bill, amended Section 223.208, Transportation Code (page 84, lines 6 through 22), strike amended Subsection (e).

(16) In SECTION 26.07(a) of the bill (page 101, line 42), strike "Act" and substitute "article".

(17) In SECTION 26.07(b) of the bill (page 102, line 7), strike "Act" and substitute "article".

(18) In SECTION 26.08 of the bill (page 102, lines 9, 11, and 13), strike "Act" and substitute "article".

(19) Immediately after SECTION 26.08 of the bill (page 102, between lines 14 and 15), insert the following:

SECTION 26.09. 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, 2009.

(20) In SECTION 27.08 of the bill (page 109, lines 36, 38, and 40), strike "Act" and substitute "article".

(21) Immediately after SECTION 27.08 of the bill (page 109, between lines 41 and 42), insert the following:

SECTION 27.09. 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, 2009.

(22) In SECTION 28.02(a) of the bill (page 110, line 6), strike "Act" and substitute "article".

(23) In Section 28.02(b) of the bill (page 110, line 24), strike "Act" and substitute "article".

(24) Immediately after SECTION 28.02 of the bill (page 110, between lines 25 and 26), insert the following:

SECTION 28.03. 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, 2009.

(25) Immediately after SECTION 30.01 of the bill (page 113, between lines 23 and 24), insert the following:

SECTION 30.02. 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, 2009.

(26) In SECTION 31.03 of the bill (page 114, lines 18, 20, and 21), strike "Act" and substitute "article".

(27) Immediately after SECTION 31.03 of the bill (page 114, between lines 22 and 23), insert the following:

SECTION 31.04. 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, 2009.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

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

Senator Hegar offered the following amendment to the bill:

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

Amend **CSHB 300** (Senate committee printing) as follows:

(1) In ARTICLE 2 of the bill, add the following SECTIONS, appropriately numbered, and renumber existing SECTIONS of that article accordingly:

SECTION 2. \_\_. Section 201.710(c), Transportation Code, is amended to read as follows:

(c) The department shall include projects related to ports of entry in its project development program, or its successor document [~~unified transportation program or any successor to that program~~].

SECTION 2. \_\_. Section 227.034(a), Transportation Code, is amended to read as follows:

(a) A contract for the acquisition, construction, maintenance, or operation of a facility on the Trans-Texas Corridor may not contain a provision that limits or prohibits construction or operation of a highway or other transportation project that is:

(1) included in the project development program, or its successor document, [~~unified transportation program~~] of the department in effect at the time the contract is executed;

(2) a project of a local government; or

(3) constructed or operated for the safety of pedestrian or vehicular traffic.

SECTION 2. \_\_. Section 228.0055(c), Transportation Code, is amended to read as follows:

(c) The commission or the department may not:

(1) revise the formula as provided in the department's project development [~~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.

SECTION 2. \_\_. Section 228.006(b), Transportation Code, is amended to read as follows:

(b) The commission may not revise the formula as provided in the department's project development [~~unified transportation~~] program, or its successor document, in a manner that results in a decrease of a district's allocation because of a payment under Subsection (a).

SECTION 2. \_\_. Section 228.117, Transportation Code, is amended to read as follows:

Sec. 228.117. FUNDING FOR DEPARTMENT DISTRICT. The commission may not revise the formula as provided in the department's project development [~~unified transportation~~] program, or its successor document, in a manner that results in a decrease of a district's allocation because revenue bonds are issued for a toll project located within the department district.

SECTION 2. \_\_. Section 362.902, Transportation Code, is amended to read as follows:

Sec. 362.902. INCLUSION OF TOLL PROJECTS IN PROJECT DEVELOPMENT [~~UNIFIED TRANSPORTATION~~] PROGRAM. The department shall adopt and include in the project development [~~unified transportation~~] program, or its successor document, of the department a list of transportation projects in each department district that the department considers to be eligible and feasible for tolling. A transportation project that is included in the list is not required to be operated as a toll project.

SECTION 2. \_\_. Section 366.407(c), Transportation Code, is amended to read as follows:

(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 project development [~~unified transportation~~] program, or its successor document, or is located on a transportation corridor identified in the statewide transportation plan.

(2) In SECTION 19.04 of the bill, amended Section 201.616(a), Transportation Code (page 83, line 2), strike "unified transportation program" and substitute "project development program, or its successor document, [~~unified transportation program~~]".

(3) In SECTION 19.09 of the bill, amended Section 223.208(c), Transportation Code (page 84, line 3), strike "unified transportation program" and substitute "project development program, or its successor document, [~~unified transportation program~~]".

(4) In SECTION 31.02 of the bill, amended Section 228.012(d), Transportation Code (page 114, line 5), strike "unified transportation program" and substitute "project development [~~unified transportation~~]".

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Hegar offered the following amendment to the bill:

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

Amend **CSHB 300** (Senate committee printing) in Article 1 of the bill by adding the following SECTION to that article, appropriately numbered, and renumbering subsequent SECTIONS of that article accordingly.

SECTION 1. \_\_. Section 21.042, Property Code, is amended by adding Subsection (h) to read as follows:

(h) This subsection applies only in connection with a portion of a tract or parcel of real property that is condemned in connection with a highway or other transportation project of the Texas Department of Transportation. In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location or locations where the remaining property adjoins that road, street, or highway.

The amendment to **CSHB 300** was read.

Senator Estes offered the following amendment to Floor Amendment No. 3:

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

Amend Hegar Floor Amendment No. 3 to **CSHB 300** by adding the following to the amendment:

Amend **CSHB 300** (Senate committee printing) in Article 1 of the bill by adding the following SECTION to that article, appropriately numbered, and renumbering subsequent SECTIONS of that article accordingly.

SECTION 1. \_\_. Section 21.042, Property Code, is amended by adding Subsection (i) to read as follows:

(i) This subsection applies only in connection with a portion of a tract or parcel of real property that is condemned in connection with a highway or other transportation project of a political subdivision or governmental entity of this state other than the Texas Department of Transportation. In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the

market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuitry of travel and diversion of traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location or locations where the remaining property adjoins that road, street, or highway.

DUNCAN  
ESTES

The amendment to Floor Amendment No. 3 to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Question recurring on the adoption of Floor Amendment No. 3 to **CSHB 300**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 as amended.

Senator Wentworth offered the following amendment to the bill:

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

Amend **CSHB 300** (Senate committee printing) by striking SECTION 1.11 of the bill (page 4, lines 8-14) and renumbering subsequent SECTIONS of that article accordingly.

The amendment to **CSHB 300** was read.

Senator Wentworth temporarily withdrew Floor Amendment No. 5.

Senator Hinojosa offered the following amendment to the bill:

#### **Floor Amendment No. 6**

Amend **CSHB 300** as follows:

(1) In the recital to SECTION 10.01 of the bill (page 158, line 11), strike "Section 544.013" and substitute "Sections 544.013 and 544.014".

(2) In SECTION 10.01 of the bill (page 158, between lines 21 and 22), insert the following:

Sec. 544.014. EMERGENCY INFORMATION NETWORK. (a) In this section:

(1) "Department" means the Texas Department of Transportation.

(2) "Digital display sign" means an electronic display sign that complies with applicable federal law and is capable of displaying dynamic messages.

(3) "Emergency information network" means a system of digital display signs capable of broadcasting dynamic messages that are controlled remotely from a centralized location.

(b) The department shall implement an emergency information network using digital display signs erected under Section 391.272 and at no cost to the state, along designated evacuation routes and highways in major metropolitan areas located within 50 miles of a designated evacuation route. A digital display sign that is part of an emergency information network may display:

(1) messages for which a statewide alert system authorized by Subchapter L, Chapter 411, Government Code, or a silver alert authorized by Subchapter M, Chapter 411, Government Code, has been activated;

(2) public service messages to the traveling public during an evacuation ordered or following declaration of a disaster pursuant to Chapter 418, Government Code, including information regarding the availability of gas, food, lodging, or pharmacy services; and

(3) messages regarding severe weather.

(c) The department may adopt rules to implement this section.

(3) Add the following appropriately numbered SECTION to ARTICLE 10 of the bill, and renumber subsequent SECTIONS of that ARTICLE accordingly:

SECTION 10. Chapter 391, Transportation Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DIGITAL DISPLAY SIGNS

Sec. 391.271. DEFINITIONS. In this subchapter, "digital display sign" means an electronic display sign that complies with applicable federal law and is capable of displaying dynamic messages.

Sec. 391.272. DIGITAL DISPLAY SIGNS. (a) To the extent allowed by federal law, a person may erect a digital display sign located along a route or highway described by Section 544.014(b) for a commercial advertising purpose if the sign has the capacity to timely display, in place of advertising, information required by Section 544.014.

(b) When a digital display sign is not being used to display messages described by Section 544.014, the department shall allow the owner of the digital display sign to display commercial digital messages and charge and retain the prevailing market rate to display those messages.

(c) Each year, from the net revenue collected by the owner pursuant to Subsection (b), the owner shall pay for each digital display maintained by the owner:

(1) \$5,000 to the comptroller for deposit in the general revenue fund; and

(2) if the digital display is located within the boundaries of a municipality, \$5,000 to the municipality.

(d) The department may adopt rules to implement this section.

(e) This section prevails to the extent another provision of this chapter or an ordinance adopted under Chapter 216, Local Government Code, conflicts with this section.

The amendment to **CSHB 300** was read.

Senator Hinojosa withdrew Floor Amendment No. 6.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 300**, Article 27, Section 27.08, page 94, by striking 27.08 and substituting the following:

Section 27.08. The repeal of Section 228.0111, Transportation Code, by this Act does not affect any project described in Section 373.002(b), Transportation Code, as added by this Act. A project described in that subsection is governed by Section

228.0111, Transportation Code, as it existed immediately before the effective date of this Act, except for the substitution of "40 years" for "30 years" in subsection 228.0111(p)(3), Transportation Code, and that law, as hereby amended, is continued in effect for that purpose.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7.

Senator Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 300** (Senate committee printing) by adding the following ARTICLE to the bill, appropriately numbered, and renumbering subsequent ARTICLES accordingly:

#### ARTICLE \_\_\_. RELOCATION OF UTILITY FACILITIES

SECTION \_\_\_.01. Subchapter E, Chapter 203, Transportation Code, is amended by adding Section 203.0923 to read as follows:

Sec. 203.0923. SPECIAL FUNDS FOR RELOCATION OF UTILITY FACILITIES. (a) In this section, "utility" means a utility as defined by Section 203.091.

(b) If the construction, reconstruction, maintenance, improvement, or repair of a road, highway, or bridge that is funded in any part by federal funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) requires the relocation of a utility facility, the department shall:

(1) reimburse the utility owning or operating the facility for the expense of the relocation in the proportions described by Sections 203.092 and 227.029 using funds provided under the American Recovery and Reinvestment Act; or

(2) if Sections 203.092 and 227.029 do not provide for reimbursement to the utility, subject to Subsection (b-1), from federal funds provided under the American Recovery and Reinvestment Act, share the expense of that relocation equally with the utility that owns and operates the facility.

(b-1) The maximum amount of federal funds the department may spend for the relocation of utility facilities under Subsection (b)(2) is \$25 million.

(c) The amount of a reimbursement for a relocation of a utility facility may not exceed the actual expense incurred by the utility in the complete or partial relocation of the facility less any salvage value of the existing facility.

(d) The department by rule shall establish a procedure for making reimbursements under this section and shall notify affected utilities of that procedure.

(e) This section expires December 31, 2012.

The amendment to **CSHB 300** was read.

Senator Hegar moved to table Floor Amendment No. 8.

The motion to table was lost by the following vote: Yeas 12, Nays 18.

Yeas: Averitt, Davis, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Patrick, Seliger, Shapleigh, Williams.

Nays: Carona, Deuell, Duncan, Ellis, Eltife, Gallegos, Lucio, Nelson, Nichols, Ogden, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Absent: Jackson.

Question recurring on the adoption of Floor Amendment No. 8 to **CSHB 300**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8 except as follows:

Nays: Seliger.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **CSHB 300** (Senate committee printing) by adding the following ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

ARTICLE \_\_. CHOOSE LIFE LICENSE PLATES; CHOOSE LIFE ACCOUNT; CHOOSE LIFE ADVISORY COMMITTEE

SECTION \_\_.01. Subchapter G, Chapter 504, Transportation Code, is amended by adding Section 504.659 to read as follows:

Sec. 504.659. CHOOSE LIFE LICENSE PLATES. (a) The department shall issue specially designed license plates that include the words "Choose Life." The department shall design the license plates in consultation with the attorney general.

(b) After deduction of the department's administrative costs, the department shall deposit the remainder of the fee for issuance of license plates under this section in the state treasury to the credit of the Choose Life account established by Section 402.035, Government Code.

SECTION \_\_.02. Subchapter B, Chapter 402, Government Code, is amended by adding Sections 402.035 and 402.036 to read as follows:

Sec. 402.035. CHOOSE LIFE ACCOUNT. (a) The Choose Life account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.659, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The attorney general administers the Choose Life account. The attorney general may spend money credited to the account only to:

(1) make grants to an eligible organization; and

(2) defray the cost of administering the account.

(c) The attorney general may not discriminate against an eligible organization because it is a religious or nonreligious organization.

(d) The attorney general may accept gifts, donations, and grants from any source for the benefit of the account.

(e) The attorney general by rule shall establish:

(1) guidelines for the expenditure of money credited to the Choose Life account; and

(2) reporting and other mechanisms necessary to ensure that the money is spent in accordance with this section.

(f) Money received by an eligible organization under this section may be spent only to provide for the material needs of pregnant women who are considering placing their children for adoption, including the provision of clothing, housing, prenatal care, food, utilities, and transportation, to provide for the needs of infants who are awaiting placement with adoptive parents, to provide training and advertising relating to adoption, and to provide pregnancy testing or preadoption or postadoption counseling, but may not be used to pay an administrative, legal, or capital expense.

(g) In this section, "eligible organization" means an organization in this state that:

(1) qualifies as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986;

(2) provides counseling and material assistance to pregnant women who are considering placing their children for adoption;

(3) does not charge for services provided;

(4) does not provide abortions or abortion-related services or make referrals to abortion providers;

(5) is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and

(6) does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

Sec. 402.036. CHOOSE LIFE ADVISORY COMMITTEE. (a) The attorney general shall appoint a seven-member Choose Life advisory committee.

(b) The committee shall:

(1) meet at least twice a year or as called by the attorney general;

(2) assist the attorney general in developing rules under Section 402.035(e);

and

(3) review and make recommendations to the attorney general on applications submitted to the attorney general for grants funded with money credited to the Choose Life account.

(c) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Each member serves a term of four years, with the terms of three or four members expiring on January 31 of each odd-numbered year.

The amendment to **CSHB 300** was read and was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Averitt, Carona, Deuell, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, West, Williams, Zaffirini.

Nays: Davis, Duncan, Ellis, Gallegos, Hinojosa, Shapleigh, Watson, Wentworth, Whitmire.

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 10**

Amend **CSHB 300** (Senate committee printing) by striking ARTICLE 41 of the bill (page 210, line 52, through page 243, line 22), and renumber subsequent ARTICLES and correct cross-references accordingly.

The amendment to **CSHB 300** was read and failed of adoption by the following vote: Yeas 7, Nays 24.

Yeas: Fraser, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick.

Nays: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Senator Carona offered the following amendment to the bill:

### **Floor Amendment No. 11**

Amend **CSHB 300** (Senate committee printing) as follows:

(1) Strike SECTIONS 9.01, 9.02, and 9.03 of the bill (page 63, line 64, through page 64, line 38), substitute the following, and renumber the remaining SECTIONS of ARTICLE 9 accordingly:

SECTION 9.01. Subtitle A, Title 5, Transportation Code, is amended by adding Chapter 92 to read as follows:

#### CHAPTER 92. STATEWIDE RAIL PLANNING AND COORDINATION

Sec. 92.001. In this chapter:

(1) "Department" means the Texas Department of Transportation.

(2) "Division" means the rail division of the department.

Sec. 92.002. DUTIES OF RAIL DIVISION. In addition to any other duty imposed on the division, the division shall:

(1) assure that rail is an integral part of the department's transportation planning process;

(2) coordinate and oversee rail projects that are financed with money distributed by the department, including money from the Texas rail relocation and improvement fund;

(3) develop and plan for improved passenger and freight rail facilities and services in this state; and

(4) coordinate the efforts of the department, the federal government, political subdivisions, and private entities to continue the development of rail facilities and services in this state.

Sec. 92.003. COORDINATION OF STATEWIDE PASSENGER RAIL SYSTEM. To facilitate the development and interconnectivity of rail systems in this state, the department shall coordinate activities regarding the planning, construction, operation, and maintenance of a statewide passenger rail system. The department shall coordinate with other entities involved with passenger rail systems, including governmental entities, private entities, and nonprofit corporations.

Sec. 92.004. LONG-TERM PLAN FOR STATEWIDE PASSENGER RAIL SYSTEM. The department shall prepare and update annually a long-term plan for a statewide passenger rail system. Information contained in the plan must include:

(1) a description of existing and proposed passenger rail systems;

(2) information regarding the status of passenger rail systems under construction;

(3) an analysis of potential interconnectivity difficulties;

(4) ridership projections for proposed passenger rail projects; and

(5) ridership statistics for existing passenger rail systems.

(2) In SECTION 41.01 of the bill, strike the heading to added Chapter 92, Transportation Code (page 210, line 55), and substitute "CHAPTER 92. DEPARTMENT ROLE IN URBAN PASSENGER RAIL DEMONSTRATION PROGRAM".

(3) In SECTION 41.01 of the bill, added Chapter 92, Transportation Code (page 210, between lines 55 and 56), insert:

Sec. 92.0001. DEFINITIONS. In this chapter, "department" means the Texas Department of Transportation.

(4) In SECTION 41.01 of the bill, the heading to added Section 92.001, Transportation Code (page 210, line 56), strike "STATEWIDE PASSENGER RAIL SYSTEM;".

(5) In SECTION 41.01 of the bill, strike added Section 92.001(a), Transportation Code (page 210, lines 57-64), substitute the following, and reletter subsequent subsections of Section 92.001 accordingly:

(a) In addition to other duties of the department under this subtitle, the department shall designate urban passenger rail demonstration programs. The purpose of the urban passenger rail demonstration programs under this chapter is to allow the department to select appropriate urban areas in this state that are challenged by severe traffic congestion and poor air quality and authorize those selected areas to demonstrate improvements by constructing mobility improvement projects using the election process and methods of finance under Chapter 180.

(b) This chapter does not grant regulatory control or authority over the operations or financing of local transit authorities or local transportation authorities.

(6) In SECTION 41.01 of the bill, added Section 92.001(b), Transportation Code (page 210, line 68), strike "project" and substitute "program".

(7) In SECTION 41.01 of the bill, added Section 92.001(b), Transportation Code (page 211, line 1), strike "demonstration programs" and substitute "metropolitan planning organizations to implement an urban passenger rail demonstration program".

(8) In SECTION 41.01 of the bill, added Section 92.001(c), Transportation Code (page 211, line 4), strike "urban" and substitute "urban passenger".

(9) In SECTION 41.01 of the bill, strike added Section 92.002, Transportation Code (page 211, lines 6-28), and substitute:

Sec. 92.002. ANNUAL REPORT ON URBAN PASSENGER RAIL DEMONSTRATION PROGRAM. (a) The department shall prepare and annually submit, by December 31 each year, a report relating to the urban passenger rail demonstration program to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives; and

(4) the standing committee of each house of the legislature that has primary jurisdiction over rail transportation issues.

(b) The report must include:

(1) a description of and general information about any urban passenger rail demonstration program selected by the department for implementation, including a description of all road and rail mobility improvements under construction;

(2) the results of any election conducted under Chapter 180, the construction or operation status of any passenger rail system constructed under an urban passenger rail demonstration program, and the methods of finance used to construct and operate any mobility improvement project;

(3) an analysis of any difficulties a demonstration program is experiencing;

(4) current and future projections for ridership on any passenger rail system constructed under an urban passenger rail demonstration program selected under this chapter; and

(5) an analysis of the impact the mobility improvement projects and passenger rail systems constructed under an urban passenger rail demonstration program have had on congestion and air quality.

(10) In SECTION 41.01 of the bill, added Section 92.003(a), Transportation Code (page 211, line 34), strike "and".

(11) In SECTION 41.01 of the bill, added Section 92.003(a)(3), Transportation Code (page 211, line 36), strike the period and substitute the following:

; and

(4) reduce traffic congestion on roadways.

(12) In SECTION 41.01 of the bill, added Section 92.004(a), Transportation Code (page 211, line 41), strike "project" and substitute "program".

(13) In SECTION 41.01 of the bill, added Section 92.004(b)(1), Transportation Code (page 211, line 44), between "court" and "located", insert "of a county with a population of more than 300,000".

(14) In SECTION 41.01 of the bill, added Section 92.004(b)(3), Transportation Code (page 211, line 49), strike "system" and substitute "system and mobility improvement projects".

(15) In SECTION 41.01 of the bill, added Section 92.004(b)(3), Transportation Code (page 211, line 50), between "system" and "on", insert "and projects".

(16) In SECTION 41.01 of the bill, added Section 92.004(b)(4), Transportation Code (page 211, line 55), strike "and".

(17) In SECTION 41.01 of the bill, added Section 92.004(b)(5), Transportation Code (page 211, line 57), strike "system." and substitute the following:

rail system and mobility improvement projects; and

(6) evidence showing the passenger rail system meets the requirements described in Section 92.003.

(18) In SECTION 41.01 of the bill, added Section 92.004(c), Transportation Code (page 211, line 61), strike "section" and substitute "chapter".

(19) In SECTION 41.01 of the bill, added Section 92.004(c), Transportation Code (page 211, line 63), between "region" and the period, insert "or the federal census bureau".

(20) In SECTION 41.01 of the bill, added Section 92.004(d), Transportation Code (page 211, line 64), strike "2009, the department shall designate" and substitute "2010, the department shall designate and select".

(21) In SECTION 41.01 of the bill, added Section 92.004(d), Transportation Code (page 211, line 66), strike "project" and substitute "program".

(22) In SECTION 41.01 of the bill, added Section 92.004(e), Transportation Code (page 212, line 1), strike "project" and substitute "program".

(23) In SECTION 41.01 of the bill, added Section 92.004(e)(1), Transportation Code (page 212, line 3), between "application" and the underlined semicolon, insert "described by this section and whether the system described in the application meets the requirements of Section 92.003".

(24) In SECTION 41.01 of the bill, added Section 92.005(a), Transportation Code (page 212, line 18), strike "project" and substitute "program".

(25) In SECTION 41.01 of the bill, added Section 92.005, Transportation Code (page 212, lines 20-22), strike added Subsection (b) and substitute the following:

(b) A county described by Subsection (a) is expressly granted the powers described by Chapter 180. A county that is located in a metropolitan planning organization that is not selected as an urban passenger rail demonstration program does not have the authority to implement an urban passenger rail demonstration program under Chapter 180.

(26) In SECTION 41.01 of the bill, redesignate added Chapter 92, Transportation Code, as Chapter 93, Transportation Code, and make conforming changes throughout ARTICLE 41.

(27) In SECTION 41.02 of the bill, added Section 180.002, Transportation Code (page 212, line 34), between "DEFINITIONS." and "In this chapter", insert the following:

(a) The definitions in Chapter 162, Tax Code, apply to this chapter.

(b)

(28) In SECTION 41.02 of the bill, strike added Section 180.002(1), Transportation Code (page 212, lines 35-37), and renumber subsequent added subdivisions of that section accordingly.

(29) In SECTION 41.02 of the bill, added Section 180.002(4), Transportation Code (page 212, line 43), strike ", Transportation Code".

(30) In SECTION 41.02 of the bill, added Section 180.002(5), Transportation Code (page 212, line 46), strike "the improvements" and substitute "an existing or new improvement".

(31) In SECTION 41.02 of the bill, added Section 180.002(7), Transportation Code (page 212, lines 62 and 63), strike "Texas Department of Transportation as described in Chapter 92, Transportation Code" and substitute "department as described in Chapter 93".

(32) In SECTION 41.02 of the bill, added Section 180.0025, Transportation Code (page 212, line 67), strike "92" and substitute "93".

(33) In SECTION 41.02 of the bill, added Section 180.003(a), Transportation Code (page 213, line 6), strike "92" and substitute "93".

(34) In SECTION 41.02 of the bill, added Section 180.003(b), Transportation Code (page 213, line 9), strike "county motor fuels tax" and substitute "method of finance".

(35) In SECTION 41.02 of the bill, added Section 180.004(a), Transportation Code (page 213, lines 14 and 15), strike "with the powers, duties, and provision granted" and substitute "under Chapter 93 the powers and authority authorized".

(36) In SECTION 41.02 of the bill, immediately after added Section 180.008(c), Transportation Code (page 213, between lines 36 and 37), insert the following:

Sec. 180.009. EXPIRATION OR REPEAL OF CHAPTER. The expiration or repeal of this chapter does not affect:

(1) the enforcement of bonds, obligations, covenants, or other legal instruments issued or executed under this chapter before its expiration;

(2) the continued imposition and collection of a method of finance authorized at an election held under this chapter necessary to fulfill an obligation or other instrument described by Subdivision (1) before its expiration or repeal;

(3) the performance of any mobility improvement project, including maintenance and operation of a project; or

(4) the administration of a county mobility improvement fund established under this chapter for revenue from a method of finance.

(37) In SECTION 41.02 of the bill, added Section 180.051(a), Transportation Code (page 213, line 43), strike "92" and substitute "93".

(38) In SECTION 41.02 of the bill, added Section 180.051(a), Transportation Code (page 213, line 45), strike "240" and substitute "180".

(39) In SECTION 41.02 of the bill, strike added Section 180.052(a), Transportation Code (page 213, lines 56-59), and reletter subsequent added subsections of Section 180.052 accordingly.

(40) In SECTION 41.02 of the bill, added Section 180.053(a)(1), Transportation Code (page 214, line 1), between "constructed" and the underlined semicolon, insert "as determined and selected under Section 180.054 or 180.0545".

(41) In SECTION 41.02 of the bill, added Section 180.053(a)(1), Transportation Code (page 214, line 5), between "rate" and "proposed", insert "or amount".

(42) In SECTION 41.02 of the bill, added Section 180.053(a)(3), Transportation Code (page 214, line 6), strike "project" and substitute "projects".

(43) In SECTION 41.02 of the bill, strike added Section 180.053(b), Transportation Code (page 214, lines 7-22), and substitute the following:

(b) The ballot at an election held under this subchapter must be printed as follows: "Authorizing \_\_\_\_\_ (insert name of county) to undertake the following mobility improvement projects: \_\_\_\_\_ (insert, on four separate lines, the following items: a name or brief description of each proposed mobility improvement project; an estimated total cost of each project; an estimated date any necessary and related bonds will expire; and an estimated date the project will be operational to the public)." Below the listing of each project and the required items, the ballot must read: "The capital construction of each project listed above will be funded with the following: \_\_\_\_\_ (insert each method of finance, including the appropriate rate or amount of the method of finance, and, if applicable, insert, on a separate line, each method of finance, including the appropriate rate or amount of the method of finance, to be used for proposed maintenance and operations of a mobility improvement project. State parenthetically after each method of finance whether the method will expire when bonds are retired)." As the last statement at the bottom of the ballot, the ballot must read: "Do you authorize the construction of the mobility improvement project or projects listed above and the collection of the (insert method of finance, as applicable) in \_\_\_\_\_ County?"

(44) In SECTION 41.02 of the bill, added Section 180.054(b), Transportation Code (page 214, line 46), strike "92" and substitute "93".

(45) In SECTION 41.02 of the bill, added Section 180.054(c), Transportation Code (page 214, lines 51 and 52), strike "On or before the 30th day before the date described in Section 180.051" and substitute "Not later than the 30th day after the date the department selects a metropolitan planning organization for the urban rail demonstration program described in Chapter 93".

(46) In SECTION 41.02 of the bill, added Section 180.054(d), Transportation Code (page 214, line 56), strike "180th" and substitute "240th".

(47) In SECTION 41.02 of the bill, immediately after added Section 180.054(d), Transportation Code (page 214, between lines 62 and 63), insert the following:

(e) A county may not propose for inclusion on the ballot a mobility improvement project for which the county does not intend to initiate construction. The county may not propose more mobility improvement projects than the proposed methods of finance can immediately support.

(48) In SECTION 41.02 of the bill, strike added Section 180.0545(a), Transportation Code (page 214, line 64, through page 215, line 1), and substitute the following:

(a) This section applies only to a county that is located in a metropolitan planning organization that serves two adjacent counties that each have a population of one million or more.

(a-1) Not later than the 30th day after the date the department selects a metropolitan planning organization described by Subsection (a) for the urban passenger rail demonstration program described in Chapter 93, the commissioners courts of those counties with a population of 300,000 or more shall jointly establish with the governing bodies of the municipalities located in those counties a project selection committee as described by this section.

(49) In SECTION 41.02 of the bill, strike added Sections 180.0545(g)(1) and (2), Transportation Code (page 215, lines 53-57), and substitute the following:

(1) instead of the appointments under Subsection (f)(4), the governing body of the most populous municipality located in the county shall appoint three members who are elected officials of the municipality; and

(2) instead of the appointments under Subsection (f)(5), the governing bodies of the next three most populous municipalities located in the county shall each appoint one member who is an elected official of the municipality.

(50) In SECTION 41.02 of the bill, added Section 180.0545(e), Transportation Code (page 215, line 23), strike "180" and substitute "210".

(51) In SECTION 41.02 of the bill, added Section 180.0545(i), Transportation Code (page 215, line 64), strike "appoint" and substitute "for the appointment of".

(52) In SECTION 41.02 of the bill, added Section 180.055(a), Transportation Code (page 216, line 10), strike "tax revenue" and substitute "revenue from a method of finance".

(53) In SECTION 41.02 of the bill, added Section 180.055(c), Transportation Code (page 216, line 17), strike "Tax revenue" and substitute "Revenue from a method of finance".

(54) In SECTION 41.02 of the bill, added Section 180.101(a), Transportation Code (page 216, line 38), strike "the county" and substitute "the commissioners court of the county by order".

(55) In SECTION 41.02 of the bill, added Section 180.101(a)(1), Transportation Code (page 216, line 40), strike "2, 4, 6, 8, or 10" and substitute "5 or 10".

(56) In SECTION 41.02 of the bill, added Section 180.101(a)(1), Transportation Code (page 216, lines 41 and 42), strike "sale of gasoline and diesel fuel that is sold in the county by" and substitute "sale, delivery, or use of gasoline and diesel fuel that is sold in the county outside the bulk transfer/terminal system by".

(57) In SECTION 41.02 of the bill, added Section 180.101(a)(2), Transportation Code (page 216, line 50), strike "501.0234, Transportation Code;" and substitute "501.0234; and".

(58) In SECTION 41.02 of the bill, added Section 180.101(a)(3), Transportation Code (page 216, line 52), strike "; and" and substitute ".".

(59) In SECTION 41.02 of the bill, immediately after added Section 180.101(a), Transportation Code (page 216, between lines 52 and 53), insert the following:

(a-1) A county may not impose the tax authorized under this chapter on the removal of gasoline or diesel fuel from the bulk transfer/terminal system at a terminal rack or on gasoline or diesel fuel exempted from motor fuel tax by Section 162.104 or 162.204, Tax Code.

(60) In SECTION 41.02 of the bill, added Section 180.101(b), Transportation Code (page 216, line 55), strike "automobile registration fees" and substitute "an automobile registration fee".

(61) In SECTION 41.02 of the bill, added Section 180.101(e), Transportation Code (page 216, line 65), strike "tax" and substitute "tax or fee".

(62) In SECTION 41.02 of the bill, added Section 180.101, Transportation Code, reletter added Subsections (d), (e), and (f) as added Subsections (c), (d), and (e), respectively.

(63) In SECTION 41.02 of the bill, the heading to added Section 180.1012, Transportation Code (page 217, line 2), strike "FUNDING" and substitute "FINANCE".

(64) In SECTION 41.02 of the bill, added Section 180.1012(a), Transportation Code (page 217, lines 2 and 3), strike "local option funding" and substitute "finance".

(65) In SECTION 41.02 of the bill, added Section 180.1012(a), Transportation Code (page 217, line 5), strike "agreement as provided by Section 446.058" and substitute "contract or agreement as provided by Section 180.008".

(66) In SECTION 41.02 of the bill, the heading to added Section 180.1014, Transportation Code (page 217, lines 23 and 24), strike "LOCAL OPTION FUNDING" and substitute "FINANCE".

(67) In SECTION 41.02 of the bill, added Section 180.1014(a), Transportation Code (page 217, line 26), strike "local option funding" and substitute "finance".

(68) In SECTION 41.02 of the bill, added Section 180.1014(a), Transportation Code (page 217, line 29), strike "funding" and substitute "finance".

(69) In SECTION 41.02 of the bill, added Section 180.1014(b), Transportation Code (page 217, line 31), strike "local option funding" and substitute "finance".

(70) In SECTION 41.02 of the bill, immediately after added Section 180.1014(c), Transportation Code (page 217, between lines 37 and 38), insert the following:

(d) A method of finance implemented under this chapter:

(1) may not be used to raise funds in excess of the amount required to fund approved mobility improvement projects; and

(2) must expire when the approved mobility improvement projects are accepted by the governmental entity that contracted for the projects or when the bonds are paid off, whichever is later, unless continued funding for maintenance and operation of a project, including the impact to an existing system as specified by an interlocal agreement, was authorized at an election held under this chapter.

(71) In SECTION 41.02 of the bill, added Section 180.1015(a), Transportation Code (page 217, line 40), strike "Transportation Code".

(72) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, lines 43 and 44), strike "Transportation Code".

(73) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, line 45), strike "Transportation Code".

(74) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, line 47), strike "Transportation Code".

(75) In SECTION 41.02 of the bill, added Section 180.1015(d), Transportation Code (page 217, lines 55 and 56), strike "payable to a municipality within the county".

(76) In SECTION 41.02 of the bill, added Section 180.1015(e), Transportation Code (page 217, lines 59 and 60), strike "the municipality's share of the fees collected for the municipality" and substitute "the fees collected".

(77) In SECTION 41.02 of the bill, strike added Sections 180.1015(i), (j), and (k), Transportation Code (page 218, lines 8-25).

(78) In SECTION 41.02 of the bill, the heading to added Section 180.102, Transportation Code (page 218, line 26), strike "IMPOSITION OF COUNTY MOTOR FUELS TAX" and substitute "ADMINISTRATION, COLLECTION, ENFORCEMENT, AND PROSECUTION OF MOTOR FUEL TAX".

(79) In SECTION 41.02 of the bill, strike added Section 180.102(a), Local Government Code (page 218, lines 26-34) and substitute the following:

(a) A motor fuel tax imposed under this chapter shall be administered, collected, and enforced exclusively by the comptroller strictly in conformance with Chapters 111, 112, 113, and 162, Tax Code, and other law that applies to a tax imposed by Chapter 162, Tax Code. Venue for criminal prosecution for a motor fuel tax imposed under this chapter is governed by Section 162.407, Tax Code. A county does not have any authority regarding a motor fuel tax imposed under this chapter that is not explicitly granted by this chapter or Chapter 162, Tax Code.

(80) In SECTION 41.02 of the bill, strike added Section 180.102(b), Transportation Code (page 218, lines 35 and 36) and substitute the following:

(b) The definitions in Section 162.001, Tax Code, apply to a motor fuel tax imposed under this chapter.

(81) In SECTION 41.02 of the bill, in added Section 180.102(c), Transportation Code (page 218, line 38), strike "apply to the tax authorized by this section" and substitute "apply to a motor fuel tax imposed under this chapter".

(82) In SECTION 41.02 of the bill, immediately after added Section 180.102(c), Transportation Code (page 218, between lines 38 and 39), insert the following:

(c-1) A person has the same rights in relation to a tax imposed under this chapter that a person has in relation to a tax imposed by Chapter 162, Tax Code, including the right to claim a refund, petition for redetermination, file suit, or take other action authorized by Chapter 111, 112, or 113, Tax Code, or by other law that applies to a tax imposed under Chapter 162, Tax Code.

(83) In SECTION 41.02 of the bill, added Section 180.102(d), Transportation Code (page 218, line 39), strike "Subject to Section 180.1025, the comptroller" and substitute "The comptroller".

(84) In SECTION 41.02 of the bill, at the end of added Section 180.102(e), Transportation Code (page 218, line 47), after the underlined period, add "The order imposing the tax or discontinuing the imposition of the tax shall state the date that the tax is imposed or discontinued."

(85) In SECTION 41.02 of the bill, strike added Sections 180.102(g), (h), and (i), Transportation Code (page 218, lines 54-65), and substitute the following:

(g) The county motor fuels tax is added to the selling price of the gasoline or diesel fuel and is part of the gasoline or diesel fuel price, is a debt owed to the seller, and is recoverable at law in the same manner as the fuel charge for gasoline or diesel fuel.

(h) The tax described by Sections 162.1011, 162.1035, 162.2011, and 162.2035, Tax Code, is the tax imposed under this chapter and is not an additional tax.

(i) The comptroller may assign to a county the comptroller's authority under Section 111.202, Tax Code, to bring suit for the collection of a motor fuel tax imposed by this chapter that has become delinquent, plus penalties and interest.

(86) In SECTION 41.02 of the bill, strike added Section 180.1025, Transportation Code (page 219, lines 10-37).

(87) In SECTION 41.03 of the bill, added Section 791.034(a), Government Code (page 221, line 56), strike "political subdivisions to" and substitute "political subdivisions for the comptroller to".

(88) In SECTION 41.04 of the bill, added Section 162.001(57-a), Tax Code (page 222, lines 4-5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(89) In SECTION 41.05 of the bill, strike amended Section 162.004(e)(4), Tax Code (page 222, lines 29-32), and substitute the following:

(4) if delivering the motor fuel into this state, denote on the shipping document the physical delivery address to which the motor fuel will be delivered, or in the case of a split load, each physical delivery address to which a portion of the motor fuel will be delivered; and

(90) In SECTION 41.05 of the bill, amended Section 162.004(g), Tax Code (page 222, lines 42 and 43), strike "listing the county in this state in which" and substitute "listing the physical delivery address in this state at which".

(91) In SECTION 41.05 of the bill, amended Section 162.004(g), Tax Code (page 222, lines 45 and 46), strike "and the county in this state is the county in which" and substitute "and the physical delivery address in this state is the physical delivery address at which".

(92) In SECTION 41.06 of the bill, amended Section 162.005(e)(2), Tax Code (page 222, line 60), strike "taxing county in which" and substitute "physical delivery address at which".

(93) In SECTION 41.07 of the bill, added Section 162.012(c), Tax Code (page 223, line 15), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(94) In SECTION 41.07 of the bill, immediately after added Section 162.012(c), Tax Code (page 223, between lines 15 and 16), insert the following:

(c-1) The presumption under Subsection (a) or (c) or under any other provision of this chapter regarding county motor fuel tax may be rebutted by an invoice, delivery receipt, or shipping document accepted by the purchaser showing the street address to which the motor fuel was delivered or by any other documentation prescribed by the comptroller. An invoice is considered to have been accepted by the purchaser if the invoice was paid.

(95) Strike SECTION 41.09 of the bill (page 223, line 64, through page 224, line 36), and renumber subsequent SECTIONS accordingly.

(96) In SECTION 41.12 of the bill, amended Section 162.1011(a), Tax Code (page 225, line 5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(97) In SECTION 41.13 of the bill, added Section 162.102(b), Tax Code (page 225, line 22), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(98) In SECTION 41.16 of the bill, added Section 162.1035(a)(1), Tax Code (page 225, line 47), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(99) In SECTION 41.16 of the bill, added Section 162.1035(a)(2), Tax Code (page 225, line 58), strike "616, Local Government Code" and substitute "180, Transportation Code".

(100) In SECTION 41.20 of the bill, added Section 162.108(a-1)(2), Tax Code (page 227, line 43), strike "terminal operator" and substitute "distributor".

(101) In SECTION 41.20 of the bill, added Section 162.108(a-1)(3), Tax Code (page 227, lines 46-48), strike "that is not licensed as a supplier, permissive supplier, or terminal operator and is not wholly owned by an entity that is licensed as a supplier, permissive supplier, or terminal operator" and substitute "that is not licensed as a supplier, permissive supplier, or distributor".

(102) Strike SECTION 41.25 of the bill (page 228, lines 46-52) and substitute the following:

SECTION 41.25. Section 162.114, Tax Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsections (a-2) and [Subsection] (b), each person who is liable for a [the] tax imposed by this subchapter~~[, a terminal operator, and a licensed distributor]~~ shall file a return on or before the 25th day of the month following the end of each calendar month.

(a-1) Except as provided by Subsection (a-2), a supplier, permissive supplier, terminal operator, importer, exporter, distributor, blender, or dealer shall file a return on or before the 25th day of the month following the end of each calendar month regardless of whether the person has tax liability for a tax imposed by this subchapter that accrued in the calendar month.

(a-2) Unless a supplier or permissive supplier is a party directly involved in a transaction subject to the tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035, the supplier or permissive supplier:

(1) is not required to file a return or a supplement to a return in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035; and

(2) may not be requested or compelled to provide information to an agency or a political subdivision of this state in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035.

(103) In SECTION 41.26 of the bill, amended Section 162.115(b)(1)(D)(i), Tax Code (page 228, line 64), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(104) In SECTION 41.26 of the bill, amended Section 162.115(b)(2)(B)(i), Tax Code (page 229, line 9), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(105) In SECTION 41.26 of the bill, amended Section 162.115(b)(2)(B)(ii), Tax Code (page 229, line 10), strike "or counties".

(106) In SECTION 41.26 of the bill, amended Section 162.115(c)(2)(B), Tax Code (page 229, line 40), strike "or counties".

(107) Insert the following appropriately numbered SECTION to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41. \_\_\_\_. Sections 162.125(a), (c), (e), and (f), Tax Code, are amended to read as follows:

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid taxes [~~tax~~] on the purchase of gasoline and subsequently resells the gasoline without collecting the taxes [~~tax~~] to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline exclusively to provide those services.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid taxes ~~[tax]~~ on gasoline and the license holder or person:

(1) is the United States government and the gasoline is for its exclusive use, provided that a credit or refund is not allowed for gasoline used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the gasoline is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the gasoline is used exclusively to provide those services;

(4) uses the gasoline in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways;

(5) uses the gasoline in a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, provided that a credit or refund may not be allowed for the portion used in the incidental highway travel; or

(6) is a licensed aviation fuel dealer who delivers the gasoline into the fuel supply tanks of aircraft or aircraft servicing equipment.

(e) A license holder may take credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid taxes ~~[tax]~~ on gasoline and the gasoline is used in this state by auxiliary power units or power take-off equipment on any motor vehicle, if that use can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel or idle the motor vehicle. The comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund may not be allowed for the gasoline taxes ~~[tax]~~ paid on any portion of the gasoline that is used for that purpose. A credit or refund may not be allowed for the gasoline taxes ~~[tax]~~ paid on that portion of the gasoline used for idling.

(f) A person who paid taxes ~~[tax]~~ on the purchase of gasoline may claim a credit or seek a refund with the comptroller if 100 or more gallons of gasoline is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(108) In SECTION 41.34 of the bill, added Section 162.2011, Tax Code (page 232, line 5), strike "Chapter 616, Local Government Code", and substitute "Chapter 180, Transportation Code".

(109) In SECTION 41.35 of the bill, amended Section 162.202(b), Tax Code (page 232, line 22), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(110) In SECTION 41.38 of the bill, added Section 162.2035(a)(1), Tax Code (page 232, line 47), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(111) In SECTION 41.38 of the bill, added Section 162.2035(a)(2), Tax Code (page 232, line 58), strike "616, Local Government Code" and substitute "180, Transportation Code".

(112) In SECTION 41.43 of the bill, added Section 162.209(a-1)(2), Tax Code (page 235, line 18), strike "terminal operator" and substitute "distributor".

(113) In SECTION 41.43 of the bill, added Section 162.209(a-1)(3), Tax Code (page 235, lines 21-23), strike "that is not licensed as a supplier, permissive supplier, or terminal operator and is not wholly owned by an entity that is licensed as a supplier, permissive supplier, or terminal operator" and substitute "that is not licensed as a supplier, permissive supplier, or distributor".

(114) In SECTION 41.44 of the bill, amended Section 162.211(a), Tax Code (page 235, line 33), strike "terminal supplier" and substitute "terminal operator [supplier]".

(115) Strike SECTION 41.48 of the bill (page 236, lines 11-17) and substitute the following:

SECTION 41.48. Section 162.215, Tax Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsections (a-2) and [Subsection] (b), each person who is liable for a [the] tax imposed by this subchapter~~[, a terminal operator, and a licensed distributor]~~ shall file a return on or before the 25th day of the month following the end of each calendar month.

(a-1) Except as provided by Subsection (a-2), a supplier, permissive supplier, terminal operator, importer, exporter, distributor, blender, or dealer shall file a return on or before the 25th day of the month following the end of each calendar month regardless of whether the person has tax liability for a tax imposed by this subchapter that accrued in the calendar month.

(a-2) Unless a supplier or permissive supplier is a party directly involved in a transaction subject to the tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035, the supplier or permissive supplier:

(1) is not required to file a return or a supplement to a return in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035; and

(2) may not be requested or compelled to provide information to an agency or a political subdivision of this state in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035.

(116) In SECTION 41.49 of the bill, amended Section 162.216(b)(1)(D)(i), Tax Code (page 236, line 30), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(117) In SECTION 41.49 of the bill, amended Section 162.216(b)(1)(D)(ii), Tax Code (page 236, line 31), strike "or counties".

(118) In SECTION 41.49 of the bill, amended Section 162.216(b)(2)(B)(i), Tax Code (page 236, line 43), strike "name of the purchaser" and substitute "name and physical delivery address of the purchaser".

(119) In SECTION 41.49 of the bill, amended Section 162.216(b)(2)(B)(ii), Tax Code (page 236, line 44), strike "destination county or counties" and substitute "county".

(120) In SECTION 41.49 of the bill, amended Section 162.216(c)(2)(B), Tax Code (page 237, line 7), strike "or counties".

(121) In SECTION 41.50 of the bill, amended Section 162.217(c), Tax Code (page 237, line 53), strike "state gasoline tax" and substitute "state diesel fuel tax".

(122) Insert the following appropriately numbered SECTIONS to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41. \_\_\_\_. Sections 162.227(a), (c), and (e), Tax Code, are amended to read as follows:

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid taxes [~~tax~~] on the purchase of diesel fuel and subsequently resells the diesel fuel without collecting the taxes [~~tax~~] to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under a contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the diesel fuel to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel exclusively to provide those services.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid taxes [~~tax~~] on diesel fuel and the license holder or person:

(1) is the United States government and the diesel fuel is for its exclusive use, provided that a credit or refund is not allowed for diesel fuel used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the diesel fuel is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the diesel fuel is used exclusively to provide those services; or

(4) is a licensed aviation fuel dealer who delivers the diesel fuel into the fuel supply tanks of aircraft or aircraft servicing equipment.

(e) A person who paid taxes [~~tax~~] on the purchase of diesel fuel may claim a credit or seek a refund with the comptroller if 100 or more gallons of diesel fuel is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitations period provided by Section 162.230.

SECTION 41. \_\_\_\_. Section 162.227(c-1), Tax Code, as added by Chapter 220 (H.B. 1332), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter may file a refund claim with the comptroller, if the license holder or person paid taxes [~~tax~~] on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock in the manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in a medium for the removal of drill cuttings from a well bore in the production of oil or gas.

SECTION 41. \_\_\_\_. Section 162.227(c-1), Tax Code, as added by Chapter 911 (H.B. 2982), Acts of the 80th Legislature, Regular Session, 2007, is relettered as Subsection (c-2) and amended to read as follows:

(c-2) [~~(c-1)~~] A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid taxes [~~tax~~] on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

(123) In SECTION 41.55 of the bill, added Section 162.402(a)(16), Tax Code (page 240, lines 2 and 3), strike "county in this state other than the county" and substitute "physical delivery address in this state other than the physical delivery address".

(124) In SECTION 41.56 of the bill, added Section 162.403(18-a), Tax Code (page 241, lines 17 and 18), strike "county in this state other than the county" and substitute "physical delivery address in this state other than the physical delivery address".

(125) Add the following appropriately numbered SECTION to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41. \_\_\_\_. (a) If any provision of this Act conflicts with a provision of S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, relating to the taxation of motor fuels, the provision in S.B. No. 1495 controls, regardless of relative dates of enactment.

(b) This section applies only if S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, relating to the taxation of motor fuels, is enacted and becomes law. If S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, is not enacted or does not become law, this section has no effect.

(126) In SECTION 41.61(b) of the bill (page 243, line 5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

The amendment to **CSHB 300** was read.

Senator Carona temporarily withdrew Floor Amendment No. 11.

Senator Averitt offered the following amendment to the bill:

#### **Floor Amendment No. 12**

Amend **CSHB 300** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

Page 211, line 36 after "300,000" add or a county with a population greater than 200,000 and less than 230,000. and

Page 211, line 39 after "population" add or a county with a population greater than 200,000 and less than 230,000.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 12 except as follows:

Nays: Fraser.

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

#### **Floor Amendment No. 13**

Amend **CSHB 300** (Senate committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION 1.\_\_. (a) Subchapter I, Chapter 201, Transportation Code, is amended by adding Section 201.713 to read as follows:

Sec. 201.713. USE OF RECYCLED MATERIALS. The department may use, or enter into a contract to use, recycled materials as a replacement for traditional road materials, if the recycled materials:

(1) meet the department's standards and specifications; and

(2) are commercially available, are comparably priced to traditional materials, and have received approval by the department.

(b) Section 201.713, Transportation Code, as added by this Act, applies only to a request for bids, proposals, or other offers by or on behalf of the Texas Department of Transportation that is published on or after the effective date of this Act.

The amendment to **CSHB 300** was read.

Senator Van de Putte withdrew Floor Amendment No. 13.

Senator Jackson offered the following amendment to the bill:

#### **Floor Amendment No. 14**

Amend **CSHB 300** by adding the following ARTICLE, appropriately numbered, to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT  
SYSTEMS

SECTION \_\_\_\_ .01. (a) Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.215 to read as follows:

Sec. 201.215. DEPARTMENT APPROVAL. (a) The department has jurisdiction regarding photographic traffic signal enforcement systems in this state and shall adopt rules regarding photographic traffic signal enforcement systems, including:

- (1) the specifications for the systems;
- (2) the identification of intersections where a system may be installed; and
- (3) the operation and maintenance of the systems.

(b) The department may not approve the implementation or operation of a photographic traffic signal enforcement system that was not in operation on June 1, 2009, or for which a contract for the administration or enforcement of the system had not been entered into by a local authority on or before that date.

(c) A local authority may not enter into a contract for the administration or enforcement of a photographic traffic signal enforcement system after June 1, 2009. A contract for the administration or enforcement of such a system entered into by a local authority on or before June 1, 2009, may not be renewed or the term of the contract extended.

(d) The department by rule shall require that the change interval in a light equipped with a photographic traffic signal enforcement system must be at least one second longer than the minimum change interval established in accordance with the Texas Manual on Uniform Traffic Control Devices.

(b) This subsection and Subsection (a) of this section take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this subsection and Subsection (a) of this section take effect September 1, 2009.

The amendment to **CSHB 300** was read.

Senator Seliger moved to table Floor Amendment No. 14.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Averitt, Carona, Davis, Ellis, Eltife, Lucio, Ogden, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Zaffirini.

Nays: Deuell, Duncan, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Uresti, Van de Putte, Whitmire, Williams.

Senator Lucio offered the following amendment to Floor Amendment No. 14:

**Floor Amendment No. 15**

Amend the proposed Floor Amendment No. 14 to **CSHB 300** by striking the subsections (a), (b), (c) of the proposed Sec. 201.215 and renaming the subsequent subsections appropriately.

The amendment to Floor Amendment No. 14 to **CSHB 300** was read.

On motion of Senator Jackson, Floor Amendment No. 15 was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Deuell, Duncan, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Uresti, Van de Putte, Whitmire, Williams.

Nays: Averitt, Carona, Davis, Ellis, Eltife, Lucio, Ogden, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 14 to **CSHB 300**, the amendment was adopted by the following vote: Yeas 16, Nays 15.

Yeas: Duncan, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Uresti, Van de Putte, Whitmire, Williams.

Nays: Averitt, Carona, Davis, Deuell, Ellis, Eltife, Lucio, Ogden, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Zaffirini.

Senator Watson offered the following amendment to the bill:

### **Floor Amendment No. 16**

Amend **CSHB 300** (committee printing) by adding the following SECTIONs to read as follows:

SECTION 20.02. Sections 451.0611(e) and (f), Transportation Code, are amended to read as follows:

(e) The notice required by Subsection (d)(2) may be included in a citation issued to the person under Article 14.06, Code of Criminal Procedure, or under Section 451.0612, in connection with an offense relating to the nonpayment of the appropriate fare or charge for the use of the public transportation system.

(f) An offense under Subsection (d) is:

- (1) a Class C misdemeanor; and
- (2) not a crime of moral turpitude.

SECTION 20.03. Subchapter B, Chapter 451, Transportation Code, is amended by adding Section 451.0612 to read as follows:

Sec. 451.0612. FARE ENFORCEMENT OFFICERS IN CERTAIN AUTHORITIES. (a) An authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000 may employ persons to serve as fare enforcement officers to enforce the payment of fares for use of the public transportation system by:

(1) requesting and inspecting evidence showing payment of the appropriate fare from a person using the public transportation system; and

(2) issuing a citation to a person described by Section 451.0611(d)(1).

(b) Before commencing duties as a fare enforcement officer a person must complete a 40-hour training course approved by the authority that is appropriate to the duties required of a fare enforcement officer.

(c) While performing duties, a fare enforcement officer shall:

(1) wear a distinctive uniform that identifies the officer as a fare enforcement officer; and

(2) work under the direction of the authority's manager of safety and security.

(d) A fare enforcement officer may:

(1) request evidence showing payment of the appropriate fare from passengers of the public transportation system;

(2) request personal identification from a passenger who does not produce evidence showing payment of the appropriate fare on request by the officer;

(3) request that a passenger leave the public transportation system if the passenger does not possess evidence of payment of the appropriate fare; and

(4) file a complaint in the appropriate court that charges the person with an offense under Section 451.0611(d).

(e) A fare enforcement officer may not carry a weapon while performing duties under this section.

(f) A fare enforcement officer is not a peace officer and has no authority to enforce a criminal law, other than the authority possessed by any other person who is not a peace officer.

SECTION 20.04. Section 451.108(c), Transportation Code, is amended to read as follows:

(c) A peace officer commissioned under this section, except as provided by Subsections (d) and (e), or a peace officer contracted for employment by an authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000, may:

(1) make an arrest in any county in which the transit authority system is located as necessary to prevent or abate the commission of an offense against the law of this state or a political subdivision of this state if the offense or threatened offense occurs on or involves the transit authority system;

(2) make an arrest for an offense involving injury or detriment to the transit authority system;

(3) enforce traffic laws and investigate traffic accidents that involve or occur in the transit authority system; and

(4) provide emergency and public safety services to the transit authority system or users of the transit authority system.

SECTION 20.05. Section 451.061, Transportation Code, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

(d) Except as provided by Subsection (d-1), the [The] fares, tolls, charges, rents, and other compensation established by an authority in which the principal municipality has a population of less than 1.2 million may not take effect until approved by a majority vote of a committee composed of:

(1) five members of the governing body of the principal municipality, selected by that governing body;

(2) three members of the commissioners court of the county having the largest portion of the incorporated territory of the principal municipality, selected by that commissioners court; and

(3) three mayors of municipalities, other than the principal municipality, located in the authority, selected by:

(A) the mayors of all the municipalities, except the principal municipality, located in the authority; or

(B) the mayor of the most populous municipality, other than the principal municipality, in the case of an authority in which the principal municipality has a population of less than 300,000.

(d-1) The establishment of or a change to fares, tolls, charges, rents, and other compensation by an authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000, takes effect immediately on approval by a majority vote of the board, except that the establishment of or a change to a single-ride base fare takes effect on the 60th day after the date the board approves the fare or change to the fare, unless the policy board of the metropolitan planning organization that serves the area of the authority disapproves the fare or change to the fare by a majority vote.

SECTION 20.06. Section 451.071, Transportation Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) This section does not require the authority to hold a referendum on a proposal to enter into a contract or interlocal agreement to build, operate, or maintain a fixed rail transit system for another entity. Notwithstanding Subsection (d) the authority may spend funds of the authority to enter into a contract and operate under that contract to build, operate, or maintain a fixed rail transit system if the other entity will reimburse the authority for the funds.

(h) A referendum held by a political subdivision, the authority or an entity other than the authority at which funding is approved for a fixed rail transit system is considered to meet the requirements of Subsections (d) and (e) and Section 451.3625 if the notice for the election called by the political subdivision, the authority or other entity contains the description required by Subsection (c). The referendum may allow for financial participation of more than one political subdivision or entity. The authority may only spend funds of the authority if the referendum authorizes that expenditure.

SECTION 20.07. Subchapter J, Chapter 451, Transportation Code, is amended by adding Sections 451.458, 451.459, and 451.460 to read as follows:

Sec. 451.458. INTERNAL AUDITOR. (a) This section applies only to an authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000.

(b) The board shall appoint a qualified individual to perform internal auditing services for a term of five years. The board may remove the auditor only on the affirmative vote of at least three-fourths of the members of the board.

(c) The auditor shall report directly to the board.

Sec. 451.459. SUNSET REVIEW. (a) An authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000 is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2011. In addition, another review shall be conducted as if the authority were scheduled to be abolished September 1, 2017. The reviews conducted under this section must include

an assessment of the governance, management, and operating structure of the authority and the authority's compliance with the duties and requirements placed on it by the legislature.

(b) The authority shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the authority under this section. The Sunset Advisory Commission shall determine the cost, and the authority shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

Sec. 451.460. ANNUAL REPORT. (a) This section applies only to an authority confirmed before July 1, 1985, in which the principal municipality has a population of less than 750,000.

(b) The authority shall provide an annual report to each governing body of a municipality or county in the authority regarding the status of any financial obligation of the authority to the municipality or county.

SECTION 20.08. Section 451.5021, Transportation Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (b-1), (d-1), (d-2), (d-3), and (e-1) to read as follows:

(a) This section applies only to the board of an authority created before July 1, 1985, in which the principal municipality has a population of less than 750,000 [~~in which each member of the governing body of the principal municipality is elected at large~~].

(b) Members of the [The] board [~~is composed of seven members who~~] are appointed as follows:

(1) one member, who is an elected official, [~~two members representing the general public~~] appointed by the metropolitan planning organization designated by the governor that serves the area of the authority;

(2) one member, who is an elected official, [~~two members~~] appointed by the governing body of the principal municipality;

(3) one member jointly appointed by:

(A) the governing body of the principal municipality; and

(B) the commissioners court of the principal county;

(4) one member jointly appointed by:

(A) the governing body of the principal municipality; and

(B) the commissioners court of the county, excluding the principal county, that has the largest population of the counties in the authority [~~a panel composed of the mayors of all the municipalities in the authority located in the principal county of the authority, excluding the mayor of the principal municipality]; [~~and~~]~~

(5) one member, who is an elected official, appointed by a panel composed of:

[~~(A)~~] the mayors of all municipalities in the authority [~~located outside the principal county of the authority~~], excluding the mayor of the principal municipality;

(6) one member, who has at least 10 years of experience as a financial or accounting professional, appointed by the metropolitan planning organization that serves the area in which the authority is located;

(7) one member, who has at least 10 years of experience in an executive-level position in a public or private organization, including a governmental entity, appointed by the metropolitan planning organization that serves the area in which the authority is located; and

(8) two members appointed by the metropolitan planning organization that serves the area in which the authority is located, if according to the most recent federal decennial census more than 35 percent of the population in the territory of the authority resides outside the principal municipality

~~[(B) the county judges of the counties having unincorporated area in the authority, excluding the county judge of the principal county; and~~

~~[(C) the presiding officer of each municipal utility district that:~~

~~(i) has a majority of its territory located outside the principal county; and~~

~~[(ii) is located wholly or partly in the authority].~~

(b-1) Notwithstanding Section 451.505, members of the board serve staggered three-year terms, with the terms of two or three members, as applicable, expiring June 1 of each year.

(d) A person appointed under Subsection (b)(1), (2) [(b)(2), (3), (4)], or (5):

(1) must be a member of the governing body:

(A) of the political subdivision that is entitled to make the appointment;

or

(B) over which a member of the panel entitled to make an appointment

presides;

(2) vacates the office of board member if the person ceases to be a member of the governing body described by Subdivision (1);

(3) serves on the board as an additional duty of the office held on the governing body described by Subdivision (1); and

(4) is not entitled to compensation for serving as a member of the board.

(d-1) At least two members appointed under Subsections (b)(1), (6), and (7) must be qualified voters residing in the principal municipality.

(d-2) A person appointed under Subsection (b)(3) must:

(1) have the person's principal place of occupation or employment in:

(A) the principal municipality; or

(B) the portion of the authority's service area that is located in the principal county; or

(2) be a qualified voter of:

(A) the principal municipality; or

(B) the portion of the authority's service area that is located in the principal county.

(d-3) A person appointed under Subsection (b)(4) must:

(1) have the person's principal place of occupation or employment in:

(A) the principal municipality; or

(B) the portion of the authority's service area that is located in the county, other than the principal county, that has the largest population of the counties in the authority; or

(2) be a qualified voter of:

(A) the principal municipality; or  
(B) the portion of the authority's service area that is located in the county, other than the principal county, that has the largest population of the counties in the authority.

(e) A panel appointing a member under Subsection (b)(5) ~~[this section]~~ operates in the manner prescribed by Section 451.503.

(e-1) A joint appointment to fill a vacancy in a position under Subsection (b)(3) or (4) shall be made not later than the 60th day after the date a position becomes vacant.

SECTION 20.09. Section 451.505(b), Transportation Code, is amended to read as follows:

(b) The terms of members of a board are staggered if the authority was~~[-~~  
~~[(+)]~~ created before 1980 and has a principal municipality with a population of less than 1.2 million~~[-, or~~  
~~[(2) confirmed before July 1, 1985, and has a principal municipality with a population of less than 750,000].~~

SECTION 20.10. Subsections (g) and (h), Section 451.5021, Transportation Code, are repealed.

SECTION 20.11. (a) This section applies only to a member of the board of a metropolitan rapid transit authority created before July 1, 1985, in which the principal municipality has a population of 750,000 or less.

(b) The term of a board member that is scheduled, under the law as it existed before the effective date of this Act, to expire:

(1) after the effective date of this Act but before January 1, 2010, is extended to December 31, 2009; and

(2) on or after January 1, 2010, expires on the date the term was scheduled to expire under this law as it existed before the effective date of this Act.

(c) As soon as practicable on or after the effective date of this Act, but not later than December 31, 2009, the persons and entities specified in Section 451.5021, Transportation Code, as amended by this Act, shall appoint the members of the board in compliance with that section, as amended, to serve terms that begin, as applicable and as subject to Subsection (d) of this section:

(1) January 1, 2010; or

(2) the day after a term expires under Subsection (b)(2) of this section.

(d) A vacancy created because of the expiration of a term under Subsection (b) of this section is filled in the following manner:

(1) for a member appointed under Section 451.5021(b)(1), Transportation Code, under the law as it existed before the effective date of this Act:

(A) one vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(6), Transportation Code, as amended by this Act; and

(B) one vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(7), Transportation Code, as amended by this Act;

(2) for a member appointed under Section 451.5021(b)(2), Transportation Code, under the law as it existed before the effective date of this Act:

(A) one vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(1), Transportation Code, as amended by this Act; and

(B) one vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(2), Transportation Code, as amended by this Act;

(3) for a member appointed under Section 451.5021(b)(3), Transportation Code, under the law as it existed before the effective date of this Act, the vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(3), Transportation Code, as amended by this Act;

(4) for a member appointed under Section 451.5021(b)(4), Transportation Code, under the law as it existed before the effective date of this Act, the vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(5), Transportation Code, as amended by this Act; and

(5) for a member appointed under Section 451.5021(b)(5), Transportation Code, under the law as it existed before the effective date of this Act, the vacancy shall be filled by the appointing person or entity specified by Section 451.5021(b)(4), Transportation Code, as amended by this Act.

(e) The members of the board appointed under Subsection (c) of this section shall draw lots to determine which terms of two members expire June 1, 2011, which terms of two members expire June 1, 2012, and which terms of three members expire June 1, 2013.

(f) As soon as practicable after the metropolitan planning organization specified by Section 451.5021(b)(8), Transportation Code, as added by this Act, determines that that subdivision applies to the metropolitan rapid transit authority, the metropolitan planning organization shall appoint:

(1) one member of the board of the authority for a term to expire June 1, 2011, or, if that date has passed, the following six-year anniversary of that date; and

(2) one member of the board of the authority for a term to expire June 1, 2013, or, if that date has passed, the following six-year anniversary of that date.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 16.

Senator Ogden offered the following amendment to the bill:

#### **Floor Amendment No. 17**

Amend **CSHB 300** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. This Act does not make an appropriation. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 81st Legislature.

The amendment to **CSHB 300** was read and was adopted by the following vote: Yeas 19, Nays 12.

Yeas: Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Ogden, Patrick, Shapiro, Uresti, West, Whitmire, Williams.

Nays: Averitt, Carona, Davis, Hegar, Jackson, Nichols, Seliger, Shapleigh, Van de Putte, Watson, Wentworth, Zaffirini.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 18**

Amend **CSHB 300** (Senate committee printing) in Article 4 of the bill by striking SECTION 4.01 of that article (page 29, lines 21 through 43) and renumbering subsequent SECTIONS of that article accordingly.

The amendment to **CSHB 300** was read.

Senator Wentworth withdrew Floor Amendment No. 18.

Senator Wentworth again offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 300** (Senate committee printing) by striking SECTION 1.11 of the bill (page 4, lines 8-14) and renumbering subsequent SECTIONS of that article accordingly.

The amendment to **CSHB 300** was read.

**(Senator Estes in Chair)**

**(President in Chair)**

On motion of Senator Hegar, Floor Amendment No. 5 was tabled by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Nichols, Ogden, Wentworth.

Senator Carona again offered the following amendment to the bill:

**Floor Amendment No. 11**

Amend **CSHB 300** (Senate committee printing) as follows:

(1) Strike SECTIONS 9.01, 9.02, and 9.03 of the bill (page 63, line 64, through page 64, line 38), substitute the following, and renumber the remaining SECTIONS of ARTICLE 9 accordingly:

SECTION 9.01. Subtitle A, Title 5, Transportation Code, is amended by adding Chapter 92 to read as follows:

CHAPTER 92. STATEWIDE RAIL PLANNING AND COORDINATION

Sec. 92.001. In this chapter:

(1) "Department" means the Texas Department of Transportation.

(2) "Division" means the rail division of the department.

Sec. 92.002. DUTIES OF RAIL DIVISION. In addition to any other duty imposed on the division, the division shall:

(1) assure that rail is an integral part of the department's transportation planning process;

(2) coordinate and oversee rail projects that are financed with money distributed by the department, including money from the Texas rail relocation and improvement fund;

(3) develop and plan for improved passenger and freight rail facilities and services in this state; and

(4) coordinate the efforts of the department, the federal government, political subdivisions, and private entities to continue the development of rail facilities and services in this state.

Sec. 92.003. COORDINATION OF STATEWIDE PASSENGER RAIL SYSTEM. To facilitate the development and interconnectivity of rail systems in this state, the department shall coordinate activities regarding the planning, construction, operation, and maintenance of a statewide passenger rail system. The department shall coordinate with other entities involved with passenger rail systems, including governmental entities, private entities, and nonprofit corporations.

Sec. 92.004. LONG-TERM PLAN FOR STATEWIDE PASSENGER RAIL SYSTEM. The department shall prepare and update annually a long-term plan for a statewide passenger rail system. Information contained in the plan must include:

(1) a description of existing and proposed passenger rail systems;

(2) information regarding the status of passenger rail systems under construction;

(3) an analysis of potential interconnectivity difficulties;

(4) ridership projections for proposed passenger rail projects; and

(5) ridership statistics for existing passenger rail systems.

(2) In SECTION 41.01 of the bill, strike the heading to added Chapter 92, Transportation Code (page 210, line 55), and substitute "CHAPTER 92. DEPARTMENT ROLE IN URBAN PASSENGER RAIL DEMONSTRATION PROGRAM".

(3) In SECTION 41.01 of the bill, added Chapter 92, Transportation Code (page 210, between lines 55 and 56), insert:

Sec. 92.0001. DEFINITIONS. In this chapter, "department" means the Texas Department of Transportation.

(4) In SECTION 41.01 of the bill, the heading to added Section 92.001, Transportation Code (page 210, line 56), strike "STATEWIDE PASSENGER RAIL SYSTEM;".

(5) In SECTION 41.01 of the bill, strike added Section 92.001(a), Transportation Code (page 210, lines 57-64), substitute the following, and reletter subsequent subsections of Section 92.001 accordingly:

(a) In addition to other duties of the department under this subtitle, the department shall designate urban passenger rail demonstration programs. The purpose of the urban passenger rail demonstration programs under this chapter is to allow the department to select appropriate urban areas in this state that are challenged by severe traffic congestion and poor air quality and authorize those selected areas to demonstrate improvements by constructing mobility improvement projects using the election process and methods of finance under Chapter 180.

(b) This chapter does not grant regulatory control or authority over the operations or financing of local transit authorities or local transportation authorities.

(6) In SECTION 41.01 of the bill, added Section 92.001(b), Transportation Code (page 210, line 68), strike "project" and substitute "program".

(7) In SECTION 41.01 of the bill, added Section 92.001(b), Transportation Code (page 211, line 1), strike "demonstration programs" and substitute "metropolitan planning organizations to implement an urban passenger rail demonstration program".

(8) In SECTION 41.01 of the bill, added Section 92.001(c), Transportation Code (page 211, line 4), strike "urban" and substitute "urban passenger".

(9) In SECTION 41.01 of the bill, strike added Section 92.002, Transportation Code (page 211, lines 6-28), and substitute:

Sec. 92.002. ANNUAL REPORT ON URBAN PASSENGER RAIL DEMONSTRATION PROGRAM. (a) The department shall prepare and annually submit, by December 31 each year, a report relating to the urban passenger rail demonstration program to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives; and

(4) the standing committee of each house of the legislature that has primary jurisdiction over rail transportation issues.

(b) The report must include:

(1) a description of and general information about any urban passenger rail demonstration program selected by the department for implementation, including a description of all road and rail mobility improvements under construction;

(2) the results of any election conducted under Chapter 180, the construction or operation status of any passenger rail system constructed under an urban passenger rail demonstration program, and the methods of finance used to construct and operate any mobility improvement project;

(3) an analysis of any difficulties a demonstration program is experiencing;

(4) current and future projections for ridership on any passenger rail system constructed under an urban passenger rail demonstration program selected under this chapter; and

(5) an analysis of the impact the mobility improvement projects and passenger rail systems constructed under an urban passenger rail demonstration program have had on congestion and air quality.

(10) In SECTION 41.01 of the bill, added Section 92.003(a), Transportation Code (page 211, line 34), strike "and".

(11) In SECTION 41.01 of the bill, added Section 92.003(a)(3), Transportation Code (page 211, line 36), strike the period and substitute the following:

; and

(4) reduce traffic congestion on roadways.

(12) In SECTION 41.01 of the bill, added Section 92.004(a), Transportation Code (page 211, line 41), strike "project" and substitute "program".

(13) In SECTION 41.01 of the bill, added Section 92.004(b)(1), Transportation Code (page 211, line 44), between "court" and "located", insert "of a county with a population of more than 300,000".

(14) In SECTION 41.01 of the bill, added Section 92.004(b)(3), Transportation Code (page 211, line 49), strike "system" and substitute "system and mobility improvement projects".

(15) In SECTION 41.01 of the bill, added Section 92.004(b)(3), Transportation Code (page 211, line 50), between "system" and "on", insert "and projects".

(16) In SECTION 41.01 of the bill, added Section 92.004(b)(4), Transportation Code (page 211, line 55), strike "and".

(17) In SECTION 41.01 of the bill, added Section 92.004(b)(5), Transportation Code (page 211, line 57), strike "system." and substitute the following:  
rail system and mobility improvement projects; and

(6) evidence showing the passenger rail system meets the requirements described in Section 92.003.

(18) In SECTION 41.01 of the bill, added Section 92.004(c), Transportation Code (page 211, line 61), strike "section" and substitute "chapter".

(19) In SECTION 41.01 of the bill, added Section 92.004(c), Transportation Code (page 211, line 63), between "region" and the period, insert "or the federal census bureau".

(20) In SECTION 41.01 of the bill, added Section 92.004(d), Transportation Code (page 211, line 64), strike "2009, the department shall designate" and substitute "2010, the department shall designate and select".

(21) In SECTION 41.01 of the bill, added Section 92.004(d), Transportation Code (page 211, line 66), strike "project" and substitute "program".

(22) In SECTION 41.01 of the bill, added Section 92.004(e), Transportation Code (page 212, line 1), strike "project" and substitute "program".

(23) In SECTION 41.01 of the bill, added Section 92.004(e)(1), Transportation Code (page 212, line 3), between "application" and the underlined semicolon, insert "described by this section and whether the system described in the application meets the requirements of Section 92.003".

(24) In SECTION 41.01 of the bill, added Section 92.005(a), Transportation Code (page 212, line 18), strike "project" and substitute "program".

(25) In SECTION 41.01 of the bill, added Section 92.005, Transportation Code (page 212, lines 20-22), strike added Subsection (b) and substitute the following:

(b) A county described by Subsection (a) is expressly granted the powers described by Chapter 180. A county that is located in a metropolitan planning organization that is not selected as an urban passenger rail demonstration program does not have the authority to implement an urban passenger rail demonstration program under Chapter 180.

(26) In SECTION 41.01 of the bill, redesignate added Chapter 92, Transportation Code, as Chapter 93, Transportation Code, and make conforming changes throughout ARTICLE 41.

(27) In SECTION 41.02 of the bill, added Section 180.002, Transportation Code (page 212, line 34), between "DEFINITIONS." and "In this chapter", insert the following:

(a) The definitions in Chapter 162, Tax Code, apply to this chapter.

(b)

(28) In SECTION 41.02 of the bill, strike added Section 180.002(1), Transportation Code (page 212, lines 35-37), and renumber subsequent added subdivisions of that section accordingly.

(29) In SECTION 41.02 of the bill, added Section 180.002(4), Transportation Code (page 212, line 43), strike "Transportation Code".

(30) In SECTION 41.02 of the bill, added Section 180.002(5), Transportation Code (page 212, line 46), strike "the improvements" and substitute "an existing or new improvement".

(31) In SECTION 41.02 of the bill, added Section 180.002(7), Transportation Code (page 212, lines 62 and 63), strike "Texas Department of Transportation as described in Chapter 92, Transportation Code" and substitute "department as described in Chapter 93".

(32) In SECTION 41.02 of the bill, added Section 180.0025, Transportation Code (page 212, line 67), strike "92" and substitute "93".

(33) In SECTION 41.02 of the bill, added Section 180.003(a), Transportation Code (page 213, line 6), strike "92" and substitute "93".

(34) In SECTION 41.02 of the bill, added Section 180.003(b), Transportation Code (page 213, line 9), strike "county motor fuels tax" and substitute "method of finance".

(35) In SECTION 41.02 of the bill, added Section 180.004(a), Transportation Code (page 213, lines 14 and 15), strike "with the powers, duties, and provision granted" and substitute "under Chapter 93 the powers and authority authorized".

(36) In SECTION 41.02 of the bill, immediately after added Section 180.008(c), Transportation Code (page 213, between lines 36 and 37), insert the following:

Sec. 180.009. EXPIRATION OR REPEAL OF CHAPTER. The expiration or repeal of this chapter does not affect:

(1) the enforcement of bonds, obligations, covenants, or other legal instruments issued or executed under this chapter before its expiration;

(2) the continued imposition and collection of a method of finance authorized at an election held under this chapter necessary to fulfill an obligation or other instrument described by Subdivision (1) before its expiration or repeal;

(3) the performance of any mobility improvement project, including maintenance and operation of a project; or

(4) the administration of a county mobility improvement fund established under this chapter for revenue from a method of finance.

(37) In SECTION 41.02 of the bill, added Section 180.051(a), Transportation Code (page 213, line 43), strike "92" and substitute "93".

(38) In SECTION 41.02 of the bill, added Section 180.051(a), Transportation Code (page 213, line 45), strike "240" and substitute "180".

(39) In SECTION 41.02 of the bill, strike added Section 180.052(a), Transportation Code (page 213, lines 56-59), and reletter subsequent added subsections of Section 180.052 accordingly.

(40) In SECTION 41.02 of the bill, added Section 180.053(a)(1), Transportation Code (page 214, line 1), between "constructed" and the underlined semicolon, insert "as determined and selected under Section 180.054 or 180.0545".

(41) In SECTION 41.02 of the bill, added Section 180.053(a)(1), Transportation Code (page 214, line 5), between "rate" and "proposed", insert "or amount".

(42) In SECTION 41.02 of the bill, added Section 180.053(a)(3), Transportation Code (page 214, line 6), strike "project" and substitute "projects".

(43) In SECTION 41.02 of the bill, strike added Section 180.053(b), Transportation Code (page 214, lines 7-22), and substitute the following:

(b) The ballot at an election held under this subchapter must be printed as follows: "Authorizing \_\_\_\_\_ (insert name of county) to undertake the following mobility improvement projects: \_\_\_\_\_ (insert, on four separate lines, the following items: a name or brief description of each proposed mobility improvement project; an estimated total cost of each project; an estimated date any necessary and related bonds will expire; and an estimated date the project will be operational to the public)." Below the listing of each project and the required items, the ballot must read: "The capital construction of each project listed above will be funded with the following: \_\_\_\_\_ (insert each method of finance, including the appropriate rate or amount of the method of finance, and, if applicable, insert, on a separate line, each method of finance, including the appropriate rate or amount of the method of finance, to be used for proposed maintenance and operations of a mobility improvement project. State parenthetically after each method of finance whether the method will expire when bonds are retired)." As the last statement at the bottom of the ballot, the ballot must read: "Do you authorize the construction of the mobility improvement project or projects listed above and the collection of the (insert method of finance, as applicable) in \_\_\_\_\_ County?"

(44) In SECTION 41.02 of the bill, added Section 180.054(b), Transportation Code (page 214, line 46), strike "92" and substitute "93".

(45) In SECTION 41.02 of the bill, added Section 180.054(c), Transportation Code (page 214, lines 51 and 52), strike "On or before the 30th day before the date described in Section 180.051" and substitute "Not later than the 30th day after the date the department selects a metropolitan planning organization for the urban rail demonstration program described in Chapter 93".

(46) In SECTION 41.02 of the bill, added Section 180.054(d), Transportation Code (page 214, line 56), strike "180th" and substitute "240th".

(47) In SECTION 41.02 of the bill, immediately after added Section 180.054(d), Transportation Code (page 214, between lines 62 and 63), insert the following:

(e) A county may not propose for inclusion on the ballot a mobility improvement project for which the county does not intend to initiate construction. The county may not propose more mobility improvement projects than the proposed methods of finance can immediately support.

(48) In SECTION 41.02 of the bill, strike added Section 180.0545(a), Transportation Code (page 214, line 64, through page 215, line 1), and substitute the following:

(a) This section applies only to a county that is located in a metropolitan planning organization that serves two adjacent counties that each have a population of one million or more.

(a-1) Not later than the 30th day after the date the department selects a metropolitan planning organization described by Subsection (a) for the urban passenger rail demonstration program described in Chapter 93, the commissioners courts of those counties with a population of 300,000 or more shall jointly establish with the governing bodies of the municipalities located in those counties a project selection committee as described by this section.

(49) In SECTION 41.02 of the bill, strike added Sections 180.0545(g)(1) and (2), Transportation Code (page 215, lines 53-57), and substitute the following:

(1) instead of the appointments under Subsection (f)(4), the governing body of the most populous municipality located in the county shall appoint three members who are elected officials of the municipality; and

(2) instead of the appointments under Subsection (f)(5), the governing bodies of the next three most populous municipalities located in the county shall each appoint one member who is an elected official of the municipality.

(50) In SECTION 41.02 of the bill, added Section 180.0545(e), Transportation Code (page 215, line 23), strike "180" and substitute "210".

(51) In SECTION 41.02 of the bill, added Section 180.0545(i), Transportation Code (page 215, line 64), strike "appoint" and substitute "for the appointment of".

(52) In SECTION 41.02 of the bill, added Section 180.055(a), Transportation Code (page 216, line 10), strike "tax revenue" and substitute "revenue from a method of finance".

(53) In SECTION 41.02 of the bill, added Section 180.055(c), Transportation Code (page 216, line 17), strike "Tax revenue" and substitute "Revenue from a method of finance".

(54) In SECTION 41.02 of the bill, added Section 180.101(a), Transportation Code (page 216, line 38), strike "the county" and substitute "the commissioners court of the county by order".

(55) In SECTION 41.02 of the bill, added Section 180.101(a)(1), Transportation Code (page 216, line 40), strike "2, 4, 6, 8, or 10" and substitute "5 or 10".

(56) In SECTION 41.02 of the bill, added Section 180.101(a)(1), Transportation Code (page 216, lines 41 and 42), strike "sale of gasoline and diesel fuel that is sold in the county by" and substitute "sale, delivery, or use of gasoline and diesel fuel that is sold in the county outside the bulk transfer/terminal system by".

(57) In SECTION 41.02 of the bill, added Section 180.101(a)(2), Transportation Code (page 216, line 50), strike "501.0234, Transportation Code;" and substitute "501.0234; and".

(58) In SECTION 41.02 of the bill, added Section 180.101(a)(3), Transportation Code (page 216, line 52), strike "; and" and substitute ".".

(59) In SECTION 41.02 of the bill, immediately after added Section 180.101(a), Transportation Code (page 216, between lines 52 and 53), insert the following:

(a-1) A county may not impose the tax authorized under this chapter on the removal of gasoline or diesel fuel from the bulk transfer/terminal system at a terminal rack or on gasoline or diesel fuel exempted from motor fuel tax by Section 162.104 or 162.204, Tax Code.

(60) In SECTION 41.02 of the bill, added Section 180.101(b), Transportation Code (page 216, line 55), strike "automobile registration fees" and substitute "an automobile registration fee".

(61) In SECTION 41.02 of the bill, added Section 180.101(e), Transportation Code (page 216, line 65), strike "tax" and substitute "tax or fee".

(62) In SECTION 41.02 of the bill, added Section 180.101, Transportation Code, reletter added Subsections (d), (e), and (f) as added Subsections (c), (d), and (e), respectively.

(63) In SECTION 41.02 of the bill, the heading to added Section 180.1012, Transportation Code (page 217, line 2), strike "FUNDING" and substitute "FINANCE".

(64) In SECTION 41.02 of the bill, added Section 180.1012(a), Transportation Code (page 217, lines 2 and 3), strike "local option funding" and substitute "finance".

(65) In SECTION 41.02 of the bill, added Section 180.1012(a), Transportation Code (page 217, line 5), strike "agreement as provided by Section 446.058" and substitute "contract or agreement as provided by Section 180.008".

(66) In SECTION 41.02 of the bill, the heading to added Section 180.1014, Transportation Code (page 217, lines 23 and 24), strike "LOCAL OPTION FUNDING" and substitute "FINANCE".

(67) In SECTION 41.02 of the bill, added Section 180.1014(a), Transportation Code (page 217, line 26), strike "local option funding" and substitute "finance".

(68) In SECTION 41.02 of the bill, added Section 180.1014(a), Transportation Code (page 217, line 29), strike "funding" and substitute "finance".

(69) In SECTION 41.02 of the bill, added Section 180.1014(b), Transportation Code (page 217, line 31), strike "local option funding" and substitute "finance".

(70) In SECTION 41.02 of the bill, immediately after added Section 180.1014(c), Transportation Code (page 217, between lines 37 and 38), insert the following:

(d) A method of finance implemented under this chapter:

(1) may not be used to raise funds in excess of the amount required to fund approved mobility improvement projects; and

(2) must expire when the approved mobility improvement projects are accepted by the governmental entity that contracted for the projects or when the bonds are paid off, whichever is later, unless continued funding for maintenance and operation of a project, including the impact to an existing system as specified by an interlocal agreement, was authorized at an election held under this chapter.

(71) In SECTION 41.02 of the bill, added Section 180.1015(a), Transportation Code (page 217, line 40), strike ", Transportation Code".

(72) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, lines 43 and 44), strike ", Transportation Code,".

(73) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, line 45), strike ", Transportation Code".

(74) In SECTION 41.02 of the bill, added Section 180.1015(b), Transportation Code (page 217, line 47), strike ", Transportation Code".

(75) In SECTION 41.02 of the bill, added Section 180.1015(d), Transportation Code (page 217, lines 55 and 56), strike "payable to a municipality within the county".

(76) In SECTION 41.02 of the bill, added Section 180.1015(e), Transportation Code (page 217, lines 59 and 60), strike "the municipality's share of the fees collected for the municipality" and substitute "the fees collected".

(77) In SECTION 41.02 of the bill, strike added Sections 180.1015(i), (j), and (k), Transportation Code (page 218, lines 8-25).

(78) In SECTION 41.02 of the bill, the heading to added Section 180.102, Transportation Code (page 218, line 26), strike "IMPOSITION OF COUNTY MOTOR FUELS TAX" and substitute "ADMINISTRATION, COLLECTION, ENFORCEMENT, AND PROSECUTION OF MOTOR FUEL TAX".

(79) In SECTION 41.02 of the bill, strike added Section 180.102(a), Local Government Code (page 218, lines 26-34) and substitute the following:

(a) A motor fuel tax imposed under this chapter shall be administered, collected, and enforced exclusively by the comptroller strictly in conformance with Chapters 111, 112, 113, and 162, Tax Code, and other law that applies to a tax imposed by Chapter 162, Tax Code. Venue for criminal prosecution for a motor fuel tax imposed under this chapter is governed by Section 162.407, Tax Code. A county does not have any authority regarding a motor fuel tax imposed under this chapter that is not explicitly granted by this chapter or Chapter 162, Tax Code.

(80) In SECTION 41.02 of the bill, strike added Section 180.102(b), Transportation Code (page 218, lines 35 and 36) and substitute the following:

(b) The definitions in Section 162.001, Tax Code, apply to a motor fuel tax imposed under this chapter.

(81) In SECTION 41.02 of the bill, in added Section 180.102(c), Transportation Code (page 218, line 38), strike "apply to the tax authorized by this section" and substitute "apply to a motor fuel tax imposed under this chapter".

(82) In SECTION 41.02 of the bill, immediately after added Section 180.102(c), Transportation Code (page 218, between lines 38 and 39), insert the following:

(c-1) A person has the same rights in relation to a tax imposed under this chapter that a person has in relation to a tax imposed by Chapter 162, Tax Code, including the right to claim a refund, petition for redetermination, file suit, or take other action authorized by Chapter 111, 112, or 113, Tax Code, or by other law that applies to a tax imposed under Chapter 162, Tax Code.

(83) In SECTION 41.02 of the bill, added Section 180.102(d), Transportation Code (page 218, line 39), strike "Subject to Section 180.1025, the comptroller" and substitute "The comptroller".

(84) In SECTION 41.02 of the bill, at the end of added Section 180.102(e), Transportation Code (page 218, line 47), after the underlined period, add "The order imposing the tax or discontinuing the imposition of the tax shall state the date that the tax is imposed or discontinued."

(85) In SECTION 41.02 of the bill, strike added Sections 180.102(g), (h), and (i), Transportation Code (page 218, lines 54-65), and substitute the following:

(g) The county motor fuels tax is added to the selling price of the gasoline or diesel fuel and is part of the gasoline or diesel fuel price, is a debt owed to the seller, and is recoverable at law in the same manner as the fuel charge for gasoline or diesel fuel.

(h) The tax described by Sections 162.1011, 162.1035, 162.2011, and 162.2035, Tax Code, is the tax imposed under this chapter and is not an additional tax.

(i) The comptroller may assign to a county the comptroller's authority under Section 111.202, Tax Code, to bring suit for the collection of a motor fuel tax imposed by this chapter that has become delinquent, plus penalties and interest.

(86) In SECTION 41.02 of the bill, strike added Section 180.1025, Transportation Code (page 219, lines 10-37).

(87) In SECTION 41.03 of the bill, added Section 791.034(a), Government Code (page 221, line 56), strike "political subdivisions to" and substitute "political subdivisions for the comptroller to".

(88) In SECTION 41.04 of the bill, added Section 162.001(57-a), Tax Code (page 222, lines 4-5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(89) In SECTION 41.05 of the bill, strike amended Section 162.004(e)(4), Tax Code (page 222, lines 29-32), and substitute the following:

(4) if delivering the motor fuel into this state, denote on the shipping document the physical delivery address to which the motor fuel will be delivered, or in the case of a split load, each physical delivery address to which a portion of the motor fuel will be delivered; and

(90) In SECTION 41.05 of the bill, amended Section 162.004(g), Tax Code (page 222, lines 42 and 43), strike "listing the county in this state in which" and substitute "listing the physical delivery address in this state at which".

(91) In SECTION 41.05 of the bill, amended Section 162.004(g), Tax Code (page 222, lines 45 and 46), strike "and the county in this state is the county in which" and substitute "and the physical delivery address in this state is the physical delivery address at which".

(92) In SECTION 41.06 of the bill, amended Section 162.005(e)(2), Tax Code (page 222, line 60), strike "taxing county in which" and substitute "physical delivery address at which".

(93) In SECTION 41.07 of the bill, added Section 162.012(c), Tax Code (page 223, line 15), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(94) In SECTION 41.07 of the bill, immediately after added Section 162.012(c), Tax Code (page 223, between lines 15 and 16), insert the following:

(c-1) The presumption under Subsection (a) or (c) or under any other provision of this chapter regarding county motor fuel tax may be rebutted by an invoice, delivery receipt, or shipping document accepted by the purchaser showing the street address to which the motor fuel was delivered or by any other documentation prescribed by the comptroller. An invoice is considered to have been accepted by the purchaser if the invoice was paid.

(95) Strike SECTION 41.09 of the bill (page 223, line 64, through page 224, line 36), and renumber subsequent SECTIONS accordingly.

(96) In SECTION 41.12 of the bill, amended Section 162.1011(a), Tax Code (page 225, line 5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(97) In SECTION 41.13 of the bill, added Section 162.102(b), Tax Code (page 225, line 22), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(98) In SECTION 41.16 of the bill, added Section 162.1035(a)(1), Tax Code (page 225, line 47), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(99) In SECTION 41.16 of the bill, added Section 162.1035(a)(2), Tax Code (page 225, line 58), strike "616, Local Government Code" and substitute "180, Transportation Code".

(100) In SECTION 41.20 of the bill, added Section 162.108(a-1)(2), Tax Code (page 227, line 43), strike "terminal operator" and substitute "distributor".

(101) In SECTION 41.20 of the bill, added Section 162.108(a-1)(3), Tax Code (page 227, lines 46-48), strike "that is not licensed as a supplier, permissive supplier, or terminal operator and is not wholly owned by an entity that is licensed as a supplier, permissive supplier, or terminal operator" and substitute "that is not licensed as a supplier, permissive supplier, or distributor".

(102) Strike SECTION 41.25 of the bill (page 228, lines 46-52) and substitute the following:

SECTION 41.25. Section 162.114, Tax Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsections (a-2) and [Subsection (b)], each person who is liable for a [the] tax imposed by this subchapter~~[, a terminal operator, and a licensed distributor]~~ shall file a return on or before the 25th day of the month following the end of each calendar month.

(a-1) Except as provided by Subsection (a-2), a supplier, permissive supplier, terminal operator, importer, exporter, distributor, blender, or dealer shall file a return on or before the 25th day of the month following the end of each calendar month regardless of whether the person has tax liability for a tax imposed by this subchapter that accrued in the calendar month.

(a-2) Unless a supplier or permissive supplier is a party directly involved in a transaction subject to the tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035, the supplier or permissive supplier:

(1) is not required to file a return or a supplement to a return in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035; and

(2) may not be requested or compelled to provide information to an agency or a political subdivision of this state in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035.

(103) In SECTION 41.26 of the bill, amended Section 162.115(b)(1)(D)(i), Tax Code (page 228, line 64), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(104) In SECTION 41.26 of the bill, amended Section 162.115(b)(2)(B)(i), Tax Code (page 229, line 9), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(105) In SECTION 41.26 of the bill, amended Section 162.115(b)(2)(B)(ii), Tax Code (page 229, line 10), strike "or counties".

(106) In SECTION 41.26 of the bill, amended Section 162.115(c)(2)(B), Tax Code (page 229, line 40), strike "or counties".

(107) Insert the following appropriately numbered SECTION to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41. \_\_\_\_ . Sections 162.125(a), (c), (e), and (f), Tax Code, are amended to read as follows:

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid taxes [~~tax~~] on the purchase of gasoline and subsequently resells the gasoline without collecting the taxes [~~tax~~] to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline exclusively to provide those services.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid taxes [~~tax~~] on gasoline and the license holder or person:

(1) is the United States government and the gasoline is for its exclusive use, provided that a credit or refund is not allowed for gasoline used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the gasoline is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the gasoline is used exclusively to provide those services;

(4) uses the gasoline in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways;

(5) uses the gasoline in a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, provided that a credit or refund may not be allowed for the portion used in the incidental highway travel; or

(6) is a licensed aviation fuel dealer who delivers the gasoline into the fuel supply tanks of aircraft or aircraft servicing equipment.

(e) A license holder may take credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid taxes ~~[tax]~~ on gasoline and the gasoline is used in this state by auxiliary power units or power take-off equipment on any motor vehicle, if that use can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel or idle the motor vehicle. The comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund may not be allowed for the gasoline taxes ~~[tax]~~ paid on any portion of the gasoline that is used for that purpose. A credit or refund may not be allowed for the gasoline taxes ~~[tax]~~ paid on that portion of the gasoline used for idling.

(f) A person who paid taxes ~~[tax]~~ on the purchase of gasoline may claim a credit or seek a refund with the comptroller if 100 or more gallons of gasoline is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(108) In SECTION 41.34 of the bill, added Section 162.2011, Tax Code (page 232, line 5), strike "Chapter 616, Local Government Code", and substitute "Chapter 180, Transportation Code".

(109) In SECTION 41.35 of the bill, amended Section 162.202(b), Tax Code (page 232, line 22), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(110) In SECTION 41.38 of the bill, added Section 162.2035(a)(1), Tax Code (page 232, line 47), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

(111) In SECTION 41.38 of the bill, added Section 162.2035(a)(2), Tax Code (page 232, line 58), strike "616, Local Government Code" and substitute "180, Transportation Code".

(112) In SECTION 41.43 of the bill, added Section 162.209(a-1)(2), Tax Code (page 235, line 18), strike "terminal operator" and substitute "distributor".

(113) In SECTION 41.43 of the bill, added Section 162.209(a-1)(3), Tax Code (page 235, lines 21-23), strike "that is not licensed as a supplier, permissive supplier, or terminal operator and is not wholly owned by an entity that is licensed as a supplier, permissive supplier, or terminal operator" and substitute "that is not licensed as a supplier, permissive supplier, or distributor".

(114) In SECTION 41.44 of the bill, amended Section 162.211(a), Tax Code (page 235, line 33), strike "terminal supplier" and substitute "terminal operator [supplier]".

(115) Strike SECTION 41.48 of the bill (page 236, lines 11-17) and substitute the following:

SECTION 41.48. Section 162.215, Tax Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsections (a-2) and [Subsection] (b), each person who is liable for a ~~[the]~~ tax imposed by this subchapter~~[, a terminal operator, and a licensed distributor]~~ shall file a return on or before the 25th day of the month following the end of each calendar month.

(a-1) Except as provided by Subsection (a-2), a supplier, permissive supplier, terminal operator, importer, exporter, distributor, blender, or dealer shall file a return on or before the 25th day of the month following the end of each calendar month regardless of whether the person has tax liability for a tax imposed by this subchapter that accrued in the calendar month.

(a-2) Unless a supplier or permissive supplier is a party directly involved in a transaction subject to the tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035, the supplier or permissive supplier:

(1) is not required to file a return or a supplement to a return in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035; and

(2) may not be requested or compelled to provide information to an agency or a political subdivision of this state in regard to a tax imposed by Section 162.1011, 162.1035, 162.2011, or 162.2035.

(116) In SECTION 41.49 of the bill, amended Section 162.216(b)(1)(D)(i), Tax Code (page 236, line 30), strike "the name of the purchaser" and substitute "the name and physical delivery address of the purchaser".

(117) In SECTION 41.49 of the bill, amended Section 162.216(b)(1)(D)(ii), Tax Code (page 236, line 31), strike "or counties".

(118) In SECTION 41.49 of the bill, amended Section 162.216(b)(2)(B)(i), Tax Code (page 236, line 43), strike "name of the purchaser" and substitute "name and physical delivery address of the purchaser".

(119) In SECTION 41.49 of the bill, amended Section 162.216(b)(2)(B)(ii), Tax Code (page 236, line 44), strike "destination county or counties" and substitute "county".

(120) In SECTION 41.49 of the bill, amended Section 162.216(c)(2)(B), Tax Code (page 237, line 7), strike "or counties".

(121) In SECTION 41.50 of the bill, amended Section 162.217(c), Tax Code (page 237, line 53), strike "state gasoline tax" and substitute "state diesel fuel tax".

(122) Insert the following appropriately numbered SECTIONS to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41.\_\_\_\_. Sections 162.227(a), (c), and (e), Tax Code, are amended to read as follows:

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid taxes [~~tax~~] on the purchase of diesel fuel and subsequently resells the diesel fuel without collecting the taxes [~~tax~~] to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under a contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the diesel fuel to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel exclusively to provide those services.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid taxes [~~tax~~] on diesel fuel and the license holder or person:

(1) is the United States government and the diesel fuel is for its exclusive use, provided that a credit or refund is not allowed for diesel fuel used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the diesel fuel is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the diesel fuel is used exclusively to provide those services; or

(4) is a licensed aviation fuel dealer who delivers the diesel fuel into the fuel supply tanks of aircraft or aircraft servicing equipment.

(e) A person who paid taxes [~~tax~~] on the purchase of diesel fuel may claim a credit or seek a refund with the comptroller if 100 or more gallons of diesel fuel is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitations period provided by Section 162.230.

SECTION 41. \_\_\_\_. Section 162.227(c-1), Tax Code, as added by Chapter 220 (H.B. 1332), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter may file a refund claim with the comptroller, if the license holder or person paid taxes [~~tax~~] on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock in the manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in a medium for the removal of drill cuttings from a well bore in the production of oil or gas.

SECTION 41. \_\_\_\_. Section 162.227(c-1), Tax Code, as added by Chapter 911 (H.B. 2982), Acts of the 80th Legislature, Regular Session, 2007, is relettered as Subsection (c-2) and amended to read as follows:

(c-2) [~~(c-1)~~] A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid taxes [~~tax~~] on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

(123) In SECTION 41.55 of the bill, added Section 162.402(a)(16), Tax Code (page 240, lines 2 and 3), strike "county in this state other than the county" and substitute "physical delivery address in this state other than the physical delivery address".

(124) In SECTION 41.56 of the bill, added Section 162.403(18-a), Tax Code (page 241, lines 17 and 18), strike "county in this state other than the county" and substitute "physical delivery address in this state other than the physical delivery address".

(125) Add the following appropriately numbered SECTION to ARTICLE 41 of the bill to read as follows and renumber subsequent SECTIONS accordingly:

SECTION 41.\_\_\_\_. (a) If any provision of this Act conflicts with a provision of S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, relating to the taxation of motor fuels, the provision in S.B. No. 1495 controls, regardless of relative dates of enactment.

(b) This section applies only if S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, relating to the taxation of motor fuels, is enacted and becomes law. If S.B. No. 1495, Acts of the 81st Legislature, Regular Session, 2009, is not enacted or does not become law, this section has no effect.

(126) In SECTION 41.61(b) of the bill (page 243, line 5), strike "Chapter 616, Local Government Code" and substitute "Chapter 180, Transportation Code".

The amendment to **CSHB 300** was again read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11 except as follows:

Nays: Fraser, Patrick.

### VOTE RECONSIDERED

Senator Uresti moved that the vote by which Floor Amendment No. 14 was adopted be reconsidered.

The motion prevailed by the following vote: Yeas 17, Nays 14.

Yeas: Averitt, Carona, Davis, Ellis, Eltife, Estes, Lucio, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Zaffirini.

Nays: Deuell, Duncan, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Whitmire, Williams.

Question — Shall Floor Amendment No. 14 to **CSHB 300** be adopted?

Senator Jackson withdrew Floor Amendment No. 14.

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

**CSHB 300** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Deuell, Duncan, Fraser, Harris, Huffman, Jackson, Nelson, Ogden, Patrick.

**MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
HOUSE BILL 300 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 300** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 23, Nays 8. (Not receiving four-fifths vote of Members present)

Yeas: Averitt, Carona, Davis, Deuell, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Duncan, Fraser, Harris, Huffman, Jackson, Nelson, Ogden, Patrick.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 300 ON THIRD READING**

Senator Hegar again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 300** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Duncan, Fraser, Harris, Jackson, Nelson, Ogden.

The bill was read third time.

Senator Nelson offered the following amendment to the bill:

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

Amend **CSHB 300** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Chapter 325, Government Code, is amended by adding Section 325.0125 to read as follows:

Sec. 325.0125. Legislation drafted under Section 325.012 may be amended in either the house or the senate only if the proposed amendment directly relates to a provision recommended by the commission, or deliberated by the commission in the discharge of its duties under Section 325.011.

(b) This section takes effect September 1, 2010.

The amendment to **CSHB 300** was read.

**POINT OF ORDER**

Senator Hegar raised a point of order that Floor Amendment No. 1 on Third Reading was not germane to the body of the bill.

**POINT OF ORDER WITHDRAWN**

Senator Hegar withdrew the point of order.

Senator Nelson withdrew Floor Amendment No. 1 on Third Reading.

**CSHB 300** was finally passed by the following vote: Yeas 22, Nays 9.

Yeas: Averitt, Carona, Davis, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Duncan, Fraser, Harris, Huffman, Jackson, Nelson, Ogden, Patrick.

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

On motion of Senator Williams and by unanimous consent, Senate Rule 5.14(a), requiring bills to be posted on the Intent Calendar by 3:00 p.m., was again suspended and the time was extended to 11:00 p.m. today for the Tuesday, May 26, 2009, Intent Calendar.

**RECESS**

On motion of Senator Whitmire, the Senate at 9:49 p.m. recessed until 10:15 p.m. today.

**AFTER RECESS**

The Senate met at 10:24 p.m. and was called to order by the President.

**BILL SIGNED**

The President announced the signing of the following enrolled bill in the presence of the Senate after the caption had been read: **HB 2983**.

**HOUSE BILL 2805 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2805** at this time on its second reading:

**HB 2805**, Relating to the administration, powers, duties, operation, and financing of the East Williamson County Multi-Institution Teaching Center.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2805 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2805** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1801 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1801** at this time on its second reading:

**HB 1801**, Relating to exemptions from the sales tax for a limited period for certain backpacks and school supplies specified by the Streamlined Sales and Use Tax Agreement.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 1801 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1801** be placed on its third reading and final passage.

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

The bill was read third time.

Senator Seliger offered the following amendment to the bill:

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

Amend **HB 1801** (Senate committee printing) on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (c), Section 151.027, Tax Code, is amended to read as follows:

(c) This section does not prohibit:

(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, by a tax official of the United Mexican States, or by an official of the United States if a reciprocal agreement exists;

(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information;

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected;

(6) the delivery of information to a municipality, county, or other local governmental entity [~~an eligible municipality~~] in accordance with Section 321.3022, 322.2022, or 323.3022; or

(7) the release of information in or derived from a record, report, or other instrument required to be furnished under this chapter by a governmental body, as that term is defined in Section 552.003, Government Code.

SECTION \_\_\_\_\_. Section 321.3022, Tax Code, is amended by amending Subsections (a), (a-1), (b), (d), (e), (f), (g), (h), and (i) and adding Subsection (a-2) to read as follows:

(a) In this section, "other local governmental entity" has the meaning assigned by Section 321.107.

(a-1) Except as otherwise provided by this section, the comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(a-2) [~~(a-1)~~] The comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter and that does not impose an ad valorem tax information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$500.

(b) The comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the municipality or other local governmental entity, that is part of:

- (1) an interlocal agreement;
- (2) a tax abatement agreement;
- (3) a reinvestment zone;
- (4) a tax increment financing district;
- (5) a revenue sharing agreement;
- (6) an enterprise zone;

(7) a neighborhood empowerment zone;

(8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or

(9) any area defined by the municipality or other local governmental entity for the purpose of economic forecasting.

(d) If the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the municipality or other local governmental entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality or other local governmental entity as requested.

(e) A separate request for information under this section must be made in writing by the municipality's mayor or chief administrative officer or by the governing body of the other local governmental entity each year.

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality or other local governmental entity under this chapter, or for the purpose described in Subsection (g).

(g) Information received by a municipality or other local governmental entity under Subsection (b) may be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(h) The comptroller may set and collect from a municipality or other local governmental entity reasonable fees to cover the expense of compiling and providing information under this section.

(i) Notwithstanding Chapter 551, Government Code, the governing body of a municipality or other local governmental entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the municipality or other local governmental entity under this section.

SECTION \_\_\_\_\_. Subchapter C, Chapter 322, Tax Code, is amended by adding Section 322.2022 to read as follows:

Sec. 322.2022. TAX INFORMATION. (a) Except as otherwise provided by this section, the comptroller on request shall provide to a taxing entity:

(1) information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in the area included in the entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(b) The comptroller on request shall provide to a taxing entity information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in an area included in the entity, as defined by the entity, that is part of:

(1) an interlocal agreement;

(2) a revenue sharing agreement;

(3) any other agreement similar to those listed in Subdivisions (1) and (2);

or

(4) any area defined by the entity for the purpose of economic forecasting.

(c) The comptroller shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(d) If the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the taxing entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the entity as requested.

(e) A separate request for information under this section must be made in writing by the governing body of the taxing entity each year.

(f) Information received by a taxing entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the entity under this chapter, or for the purpose described by Subsection (g).

(g) Information received by a taxing entity under Subsection (b) may be used by the entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(h) The comptroller may set and collect from a taxing entity reasonable fees to cover the expense of compiling and providing information under this section.

(i) Notwithstanding Chapter 551, Government Code, the governing body of a taxing entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the entity under this section.

SECTION \_\_\_\_\_. Subchapter D, Chapter 323, Tax Code, is amended by adding Section 323.3022 to read as follows:

Sec. 323.3022. TAX INFORMATION. (a) In this section, "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax the imposition, computation, administration, enforcement, and collection of which is governed by this chapter.

(b) Except as otherwise provided by this section, the comptroller on request shall provide to a county or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the county or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the county or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(c) The comptroller on request shall provide to a county or other local governmental entity that has adopted a tax under this chapter information relating to the amount of tax paid to the county or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the county or other local governmental entity, that is part of:

(1) an interlocal agreement;

(2) a tax abatement agreement;

(3) a reinvestment zone;

(4) a tax increment financing district;

(5) a revenue sharing agreement;

(6) an enterprise zone;

(7) any other agreement, zone, or district similar to those listed in

Subdivisions (1)-(6); or

(8) any area defined by the county or other local governmental entity for the purpose of economic forecasting.

(d) The comptroller shall provide the information under Subsection (c) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(e) If the request for information under Subsection (c) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the county or other local governmental entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the county or other local governmental entity as requested.

(f) A separate request for information under this section must be made in writing each year by the county judge or the governing body of the other local governmental entity.

(g) Information received by a county or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the county or other local governmental entity under this chapter, or for the purpose described by Subsection (h).

(h) Information received by a county or other local governmental entity under Subsection (c) may be used by the county or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(i) The comptroller may set and collect from a county or other local governmental entity reasonable fees to cover the expense of compiling and providing information under this section.

(j) Notwithstanding Chapter 551, Government Code, the commissioners court of a county or the governing body of the other local governmental entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the county or other local governmental entity under this section.

The amendment to **HB 1801** was read and was adopted by a viva voce vote.

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

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

**HB 1801** as amended was finally passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 3653 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3653** at this time on its second reading:

**HB 3653**, Relating to the use of restraints to control the movement of pregnant women and female children confined in certain correctional facilities in this state.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

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

Amend **HB 3653** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 592, Health and Safety Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.101. DEFINITION. In this subchapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a restraint is not administered to a resident of a state school unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates;

(3) a restraint is not administered to a resident of a state school as punishment; and

(4) a restraint is not administered as part of a behavior plan to change behavior but only to provide immediate protection from imminent harm.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state school except as transitional holds.

Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) A person may not order or administer a mechanical or physical restraint for a resident of a state school on a pro re nata basis.

(b) A person may not order or administer an injection of a psychoactive medication to a resident of a state school on a pro re nata basis.

(c) An injection of a psychoactive medication may be administered only under a court order or an order issued by a physician pursuant to a psychiatric emergency.

Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not use a straitjacket to restrain a resident of a state school.

Sec. 592.105. DUTY TO REPORT. A state school shall report to the executive commissioner each incident in which a restraint is administered to a resident of a state school. The report must contain information and be in the form required by rules of the executive commissioner.

Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

(b) Subchapter B, Chapter 161, Human Resources Code, is amended by adding Section 161.0315 to read as follows:

Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS. (a) The commissioner shall submit annually to the Senate Committee on Health and Human Services a report that summarizes the use of restraints by each state school.

(b) The report must contain a self-evaluation performed by each state school related to the use of restraints and must include an analysis of the data that identifies any trends or patterns in the use of restraints.

(c) Subchapter C, Chapter 161, Human Resources Code, is amended by adding Section 161.058 to read as follows:

Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION. (a) The department shall implement a training and certification program for staff members of a state school who may administer restraints in the performance of official duties.

(b) The department shall ensure that training related to reducing the use of restraints:

- (1) is competency based; and
- (2) provides for routine quality assurance reviews.

(c) The training and certification program implemented under this section must include instruction concerning:

- (1) the needs of residents of state schools;
- (2) typical behaviors of residents of state schools;
- (3) relationship building between staff members and residents;
- (4) alternatives to the use of restraints;
- (5) methods for managing a situation to eliminate the need for restraints;
- (6) avoiding power struggles between a staff member and a resident;
- (7) the potential for causing negative physiological and psychological consequences by the use of restraints;
- (8) monitoring physical signs of distress and obtaining medical assistance;
- (9) legal issues involved in the use of restraints;
- (10) position asphyxia;
- (11) escape and evasion techniques;
- (12) proper time limits on the duration of application of restraints;
- (13) procedures to address problematic restraints;
- (14) documentation of each use of restraints;

- (15) administration of restraints on children;
- (16) debriefings of staff members who administer restraints; and
- (17) investigation of injuries and complaints relating to the use of restraints.

(d) Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.090, 161.091, 161.092, and 161.093 to read as follows:

Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT ADMISSION.

(a) The department shall develop a format for collecting information at the time a person is admitted to a state school.

The department shall collect the information from the person or the person's legally authorized representative.

(b) The format must provide for the collection of information relating to:

(1) the person's treatment history; and

(2) any advance directives issued for the person that provide information regarding restraint history and restraint preferences of the person.

Sec. 161.091. RESTRAINT REDUCTION PLAN. (a) The department shall establish a restraint reduction plan that ensures that the department's policies and procedures incorporate a vision, values, and a philosophy that the use of restraints should be reduced.

(b) The department shall, with stakeholder input, develop a performance improvement plan and make further recommendations for implementation of the restraint reduction plan.

(c) The department shall develop debriefing procedures for staff and residents of a state school to be performed after each use of a restraint. The department shall use the information obtained in a debriefing to determine which restraint practices are workable and which practices should be avoided. In making a determination, the department shall consider the potential traumatic effect a restraint has on a staff member, a resident, or a witness and determine what course of action may have mitigated any traumatic effect.

(d) The department shall collect data from each state school that relates to the use of restraints by facility, by shift, and by staff member to identify trends and patterns in the use of restraints by a state school and to set goals to implement the restraint reduction plan at a state school.

(e) A state school:

(1) shall incorporate the restraint reduction plan and emphasize the importance of the plan in the hiring, orientation, training, continuing education, and performance evaluation of staff members of the state school;

(2) shall train and educate staff members about:

(A) the use of nonphysical intervention options to avoid the use of restraints; and

(B) the rights of residents regarding the use of restraints; and

(3) may seek and implement innovative clinical approaches to employ at the admission of a person and during the treatment of a person that further the philosophy of the restraint reduction plan.

Sec. 161.092. POSITIVE BEHAVIOR SUPPORT PLAN. The department shall develop a positive behavior support plan for residents of a state school. The plan must describe a protocol for reducing the frequency and duration of behaviors that require restraints for immediate protection from imminent harm by substituting positive behaviors.

Sec. 161.093. DISEASE MANAGEMENT PROGRAM. (a) The department shall develop a disease management program for residents of a state school who have a dual diagnosis of mental retardation and mental illness.

(b) The program established under this section must employ disease management practices to ensure that persons with a dual diagnosis of mental retardation and mental illness receive treatment services for the mental illness that are appropriate to a diagnosis of that illness and are consistent with clinical approaches to the treatment of that illness by other agencies and private providers of treatment services.

(e) Not later than January 1, 2010, the executive commissioner of the Health and Human Services Commission shall:

(1) adopt rules required under Sections 592.102 and 592.105, Health and Safety Code, as added by this Section;

(2) by rule define the term "restraint" in a manner consistent with the definition of that term provided by 42 U.S.C. Section 290ii(d)(1); and

(3) adopt rules necessary to regulate the use of protective and supportive devices, including those used in medical and dental procedures.

(f) Not later than January 1, 2010, the commissioner of the Department of Aging and Disability Services shall:

(1) implement a restraint training and certification program required by Section 161.058, Human Resources Code, as added by this Section;

(2) develop the format for collecting information at the admission of a person to a state school required by Section 161.090, Human Resources Code, as added by this Section;

(3) develop the restraint reduction plan required under Section 161.091, Human Resources Code, as added by this Section;

(4) develop the positive behavior support plan required by Section 161.092, Human Resources Code, as added by this Section; and

(5) develop the disease management program required by Section 161.093, Human Resources Code, as added by this Section.

(g) Not later than September 1, 2010, the commissioner of the Department of Aging and Disability Services shall submit to the Senate Committee on Health and Human Services the first annual report on the use of restraints required by Section 161.0315, Human Resources Code, as added by this Section.

The amendment to **HB 3653** was read and was adopted by a viva voce vote.

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

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

**HB 3653** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 3653 ON THIRD READING

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3653** be placed on its third reading and final passage.

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

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

### HOUSE BILL 3287 ON SECOND READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3287** at this time on its second reading:

**HB 3287**, Relating to the amendment of restrictions affecting real property in certain subdivisions.

The bill was read second time.

Senator Whitmire, on behalf of Senator Hegar, offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 3287** on page \_\_\_\_ at line \_\_\_\_ by adding Section 2 to read as follows and renumbering the subsequent sections.

Section 2. Section 5.017, Property Code is amended as follows:

(c) This section does not apply to a deed restriction, a deed restriction amended according to Section 211.002, Property Code or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable:

(1) to:

(A) [~~(1)~~] a property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one platted lot;

(B) [~~(2)~~] an entity organized under Section 501(c)(3), Internal Revenue Code of 1986; [~~or~~]

~~[(3) a governmental entity]; or~~

(C) an entity other than a property owners' association that operates a golf course and country club in or adjacent to the subdivision if property owners in the subdivision are required by deed restriction to obtain and maintain a membership in the golf course and country club; or

(2) for the benefit or in consideration of a conservation easement created under Chapter 183, Natural Resources Code, located in a county with a population of at least 500,000 and not more than one million.

The amendment to **HB 3287** was read and was adopted by a viva voce vote.

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

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

**HB 3287** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 3287 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3287** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 2348 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2348** at this time on its second reading:

**HB 2348**, Relating to a contract between a water district and a municipality for the provision of fire-fighting services in certain counties.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent: Williams.

#### **HOUSE BILL 2348 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2348** be placed on its third reading and final passage.

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

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1041 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1041** at this time on its second reading:

**CSHB 1041**, Relating to school district policies addressing sexual abuse of children.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1041** (Senate committee printing) in SECTION 2 of the bill, in added Section 38.0041(a), Education Code (page 1, line 19), between "11.252" and the period, by inserting "and any informational handbook provided to students and parents".

The amendment to **CSHB 1041** was read and was adopted by a viva voce vote.

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

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1041** 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) The task force shall elect a presiding officer by a majority vote of the membership of the task force.

(e) The task force shall meet at the call of the presiding officer.

(f) Chapter 2110, Government Code, does not apply to the task force.

(g) 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.

(h) The strategic plan submitted under Subsection (g) 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.

(i) 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.

(j) The task force may cooperate as necessary with any other appropriate state agency.

(k) The governor, lieutenant governor, and speaker of the house of representatives shall appoint the members of the task force not later than October 1, 2009.

(l) Not later than November 1, 2010, the task force shall submit the strategic plan required by Subsection (g) of this section to the governor, lieutenant governor, and speaker of the house of representatives.

(m) The task force is abolished and this section expires on September 1, 2011.

The amendment to **CSHB 1041** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

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

**CSHB 1041** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1041 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1041** be placed on its third reading and final passage.

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

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

### **HOUSE BILL 4067 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4067** at this time on its second reading:

**HB 4067**, Relating to the creation of the Bureau for Economic Development of the Border Region.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 4067** (Senate committee printing) by striking SECTION 3 of the bill (page 2, line 57) and adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_. Section 487.001, Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Rural area" means an area that is predominately rural in character as defined by the office.

SECTION \_\_. Subchapter C, Chapter 487, Government Code, is amended by adding Section 487.062 to read as follows:

Sec. 487.062. TRAINING. (a) The office may develop and administer a training program related to the programs and activities established under Subchapters S, T, U, V, W, and X.

(b) The office may contract with a public or private entity to develop and provide the training under this section.

SECTION \_\_. Chapter 487, Government Code, is amended by adding Subchapters R through X to read as follows:

SUBCHAPTER R. TEXAS RURAL DEVELOPMENT FUND

Sec. 487.801. TEXAS RURAL DEVELOPMENT FUND. (a) The Texas Rural Development Fund is an account in the general revenue fund. The account is composed of:

(1) legislative appropriations;

(2) gifts, donations, grants, and matching funds received under Subsection

(b); and

(3) other money required by law to be deposited in the account.

(b) The office may solicit and accept gifts, donations, grants, and matching funds of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of Subchapters S, T, U, V, W, and X.

(c) Income from money in the account shall be credited to the account.

(d) Money in the development fund may be used only for the purpose of implementing and maintaining the programs established under Subchapters S, T, U, V, W, and X.

SUBCHAPTER S. RURAL ENTREPRENEURSHIP AND BUSINESS INNOVATION PROGRAM

Sec. 487.851. DEFINITIONS. In this subchapter:

(1) "Microenterprise" means a business in a rural area with not more than five employees.

(2) "Minimum wage" means the minimum wage set by federal law as of January 1, 2009.

(3) "Program" means the rural entrepreneurship and business innovation program established under this subchapter.

(4) "Small business" means a business in a rural area with not more than 200 employees.

Sec. 487.852. PROGRAM. The office shall create a rural entrepreneurship and business innovation program to:

- (1) assist in the development and expansion of businesses in rural areas;
- (2) assist entrepreneurs in rural areas; and
- (3) recruit out-of-state businesses to locate and transact business in rural areas.

Sec. 487.853. INCENTIVES; LOANS. (a) The program shall offer incentives in the form of loans to entrepreneurs and businesses for purposes of the creation or retention of jobs in rural areas.

(b) An eligible business or entrepreneur may apply for a loan under the program on an application form prescribed by the office.

Sec. 487.854. ELIGIBLE BUSINESS OR ENTREPRENEUR; BORROWING REQUIREMENTS. (a) The office may make a loan under the program to any of the following eligible businesses or entrepreneurs:

- (1) microenterprises;
- (2) small businesses;
- (3) businesses dependent on natural resources in developing value-added products;
- (4) tourism or recreation businesses;
- (5) entrepreneurs and small businesses that provide broadband service access to underserved rural areas; and
- (6) projects to develop infrastructure for the benefit of entrepreneurs and businesses in rural areas.

(b) To be eligible to receive a loan under this subchapter, the applicant must:

(1) be in good standing under the laws of the state in which the entity was formed or organized, as evidenced by a certificate issued by the secretary of state or the state official having custody of the records pertaining to entities or other organizations formed under the laws of that state; and

(2) owe no delinquent taxes to a taxing unit of this state.

(c) The office may require a commercial bank letter of credit. The office may determine and require other terms and conditions, including insurance or a bank guarantee, for the making of a loan under the program.

Sec. 487.855. MAXIMUM LOAN AMOUNT. (a) The maximum loan amount to be made by the program is \$35,000 for each eligible employee position retained or created.

(b) A loan made by the program may be based on the following schedule:

(1) up to \$14,000 for each eligible employee position retained or created with wages greater than or equal to 170 percent and less than 200 percent of the minimum wage;

(2) up to \$21,000 for each eligible employee position retained or created with wages greater than or equal to 200 percent and less than 250 percent of the minimum wage;

(3) up to \$28,000 for each eligible employee position retained or created with wages greater than or equal to 250 percent and less than 300 percent of the minimum wage; and

(4) up to \$35,000 for each eligible employee position retained or created with wages greater than or equal to 300 percent of the minimum wage.

Sec. 487.856. RESTRICTION ON USE OF LOAN. A loan may not be used to attract a business from another location in this state, unless the office determines that the business would otherwise leave the state.

Sec. 487.857. LOAN TERMS. (a) Loan interest rates must be based on the capacity of the borrower and the risk of the project, as determined by the office.

(b) Loan interest rates may be as low as one percent.

Sec. 487.858. WRITTEN AGREEMENT. (a) Before awarding a loan under this subchapter, the office shall enter into a written agreement with the entity to be awarded the loan money specifying that:

(1) if the office finds that the loan recipient has not met each of the performance targets specified in the agreement as of a date certain provided in the agreement:

(A) the recipient shall repay the loan and any related interest to the state at the agreed rate and on the agreed terms;

(B) the office will not distribute to the recipient any loan money that remains to be awarded under the agreement; and

(C) the office may assess specified penalties for noncompliance against the recipient;

(2) if all or any portion of the amount of the loan is used to build a capital improvement, the state may:

(A) retain a lien or other interest in the capital improvement in proportion to the percentage of the loan amount used to pay for the capital improvement; and

(B) require the recipient of the loan, if the capital improvement is sold, to:

(i) repay to the state the loan money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the agreement; and

(ii) share with the state a proportionate amount of any profit realized from the sale; and

(3) if, as of a date certain provided in the agreement, the loan recipient has not used loan money awarded under this subchapter for the purposes for which the loan was intended, the recipient shall repay that amount and any related interest to the state at the agreed rate and on the agreed terms.

(b) The loan agreement may include a provision providing that a reasonable percentage of the total amount of the loan will be withheld until specified performance targets are met by the entity as of the date described by Subsection (a)(1).

(c) The office shall determine:

(1) the performance targets and date required to be contained in the loan agreement as provided by Subsection (a)(1); and

(2) if the loan agreement includes the provision authorized by Subsection (b), the percentage of loan money required to be withheld.

Sec. 487.859. ANNUAL PROGRESS REPORT. An entity entering into a loan agreement under Section 487.858 shall submit to the office an annual progress report containing the information compiled during the previous calendar year regarding the attainment of each of the performance targets specified in the agreement.

Sec. 487.860. REPAYMENT OF LOAN. (a) Repayment of a loan under Section 487.858(a)(1)(A) may be prorated to reflect a partial attainment of performance targets.

(b) After repayment of a loan, the office may rebate to the borrower an amount to cover fees associated with a commercial bank letter of credit and all, or a portion of, the borrower's incidental borrowing costs.

(c) The office may use interest earned on any loans to repay any indebtedness related to the program.

Sec. 487.861. SUPPORT SERVICES. The office may contract to provide services to entrepreneurs or businesses for purposes of implementing the program.

Sec. 487.862. CHALLENGE GRANTS. The office may award challenge grants under the program to promote the establishment of community-based organizations to work in partnership with communities in rural areas to assist entrepreneurs through economic development efforts in existence at the time of the organization's establishment.

#### SUBCHAPTER T. RURAL AREA REGIONAL PLANNING AND IMPLEMENTATION MATCHING GRANT PROGRAM

Sec. 487.901. DEFINITION. In this subchapter, "program" means the rural area regional planning and implementation matching grant program established under this subchapter.

Sec. 487.902. RURAL AREA REGIONAL PLANNING AND IMPLEMENTATION MATCHING GRANT PROGRAM. (a) The office shall create the rural area regional planning and implementation matching grant program to foster regional collaboration for community and economic development in rural areas.

(b) The office may award matching grants for the planning and implementation of regionally identified objectives in a rural area.

Sec. 487.903. ELIGIBLE ENTITIES. (a) To be awarded a matching grant under the program for a proposed project, an application, including a description of the project proposal, must be jointly submitted by two or more of the following entities in the form prescribed by the office:

(1) a municipality;

(2) a county;

(3) an economic development corporation;

(4) a community foundation;

(5) a faith-based organization;

(6) a hospital or clinic;

(7) an institution of higher education, as defined by Section 61.003, Education Code; or

(8) a commission, as defined by Section 391.002, Local Government Code.

(b) Entities that jointly submit an application under Subsection (a) must be physically located in at least:

(1) two or more adjacent rural counties; or

(2) two or more municipalities or census-designated places in a rural county.

Sec. 487.904. GRANT AWARDS. The office shall give preference to eligible applicants that demonstrate an inclusive planning and implementation process over other eligible applicants for an award of a matching grant under the program.

SUBCHAPTER U. RURAL CAPACITY AND LEADERSHIP ENHANCEMENT PROGRAM

Sec. 487.951. DEFINITION. In this subchapter, "program" means the rural capacity and leadership enhancement program.

Sec. 487.952. PROGRAM. The office shall create the rural capacity and leadership enhancement program to assist municipalities and unincorporated communities in rural areas to:

- (1) develop leadership capacity;
- (2) improve the business practices of municipal government;
- (3) increase awareness of the benefits of renewable energy;
- (4) identify community assets that can be used to enhance community and economic development; and
- (5) provide assistance for emergency services districts.

Sec. 487.953. RURAL LEADERSHIP CURRICULUM. The office may coordinate with an interested public junior college or public technical institute, as those terms are defined by Section 61.003, Education Code, that is located in a rural area or a consortium of those colleges or institutes, the Texas Rural Leadership Program, or another appropriate leadership program to develop and maintain a rural leadership curriculum to implement the program.

Sec. 487.954. LEADERSHIP TRAINING. The office may award a stipend under the program to an individual who completes training based on the curriculum developed under Section 487.953.

SUBCHAPTER V. RURAL COMMUNITY ASSET STUDY MATCHING GRANT PROGRAM

Sec. 487.1001. DEFINITION. In this subchapter, "program" means the rural community asset study matching grant program.

Sec. 487.1002. RURAL COMMUNITY ASSET STUDY MATCHING GRANT PROGRAM. (a) The office shall create the rural community asset study matching grant program to assist communities in rural areas in identifying community assets.

(b) The office may issue matching grants to fund community asset studies in accordance with criteria established by the office.

Sec. 487.1003. ELIGIBLE ENTITIES. (a) To be awarded a matching grant under the program for a proposed project, an application, including a description of the project proposal, must be jointly submitted by two or more of the following entities in the form prescribed by the office:

- (1) a municipality;
- (2) a county;
- (3) an economic development corporation;
- (4) a community foundation;
- (5) a faith-based organization;
- (6) a hospital or clinic;
- (7) an institution of higher education, as defined by Section 61.003, Education Code; or
- (8) a commission, as defined by Section 391.002, Local Government Code.

(b) The office shall give preference to eligible applicants that demonstrate an inclusive planning and implementation process over other eligible applicants for an award of a matching grant under the program.

(c) The office shall develop criteria for eligible projects and for the awarding of matching grants under the program.

#### SUBCHAPTER W. TEXAS RURAL YOUTH CORPS PROGRAM

Sec. 487.1051. DEFINITIONS. In this subchapter:

(1) "Executive director" means the executive director of the Office of Rural Community Affairs.

(2) "Program" means the Texas rural youth corps program.

Sec. 487.1052. TEXAS RURAL YOUTH CORPS PROGRAM. (a) The office shall create the Texas rural youth corps program to encourage youth participation in civic improvement activities in rural areas. The program shall:

(1) provide youth in rural areas with opportunities to acquire job skills while participating in community service activities; and

(2) create opportunities for youth that allow rural communities to enhance existing community resources and improve economic conditions.

(b) The office may designate personnel as necessary to administer the program.

Sec. 487.1053. GRANTS. The executive director may award grants under the program to eligible entities for projects that meet the requirements of this subchapter.

Sec. 487.1054. ELIGIBLE ENTITIES. (a) Except as provided by Subsection (b), the following entities are eligible to submit an application as provided by Section 487.1056 to receive a grant for a proposed project under this subchapter:

(1) a nonprofit organization;

(2) a public agency that operates a community-based youth employment training program;

(3) a community housing development organization certified by this state;

(4) a youth organization;

(5) a corps-based community service organization; or

(6) another entity authorized by the office.

(b) Each eligible applicant that submits an application under Subsection (a) must demonstrate that the applicant has at least three years of successful experience operating programs for the benefit of youth, in particular disadvantaged or at-risk youth populations.

Sec. 487.1055. ELIGIBLE PROJECTS. To receive a grant under the program, a proposed project of an eligible applicant must provide, by using the services and skills of youth participants who are at least 12 years of age but younger than 19 years of age, at least one of the following services to the rural community in which the project is located:

(1) rehabilitation or construction of energy-efficient, affordable housing for:

(A) elderly individuals;

(B) veterans of the United States armed forces; or

(C) low-income individuals and families;

(2) sustainable construction or rehabilitation of:

(A) historic properties;

(B) community facilities;

(C) business incubators;

(D) health care facilities;

(E) cultural districts; or

(F) parks or cemeteries owned or supported by funds of public or nonprofit entities;

(3) increased access to information on new technology and technological advances, including communications or renewable energy technologies;

(4) documentation of community history;

(5) identification and analysis of community assets through a community asset study; and

(6) marketing services of community assets, amenities, and history identified in a community history documentation or community asset study.

Sec. 487.1056. GRANT APPLICATION. A grant application for a proposed project must be filed with the office in a form prescribed by the office. Each application must include:

(1) the amount of grant money requested;

(2) a description of the proposed project;

(3) a description of the applicant's qualifications, including the applicant's experience with youth, educational groups, and community groups;

(4) a list of proposed sites for construction or rehabilitation of housing or other buildings, if applicable;

(5) a description of proposed sustainable construction or rehabilitation activities, including an implementation schedule, if applicable;

(6) a description of the applicant's proposed procedures for recruiting and selecting participants in the project;

(7) a proposed budget;

(8) a description of proposed financing, if applicable;

(9) a list of relevant contracts or other arrangements between the applicant and public agencies to facilitate project implementation;

(10) a list of prospective donations, grants, or in-kind contributions that will supplement grant money received under the program; and

(11) other criteria as considered necessary by the office.

Sec. 487.1057. PROJECT SELECTION; CRITERIA. (a) The office shall establish criteria for selecting projects for the awarding of a grant under this subchapter.

(b) In establishing criteria under Subsection (a), the office shall:

(1) give preference to an applicant who can document the existence of matching contributions from other sources and support from local organizations, community leaders, and elected officials; and

(2) give preference to projects that provide participants with an opportunity to earn scholarship awards toward college tuition expenses.

(c) In establishing criteria under Subsection (a), the office may:

(1) give preference to an applicant who has experience in providing the services proposed to be provided under the project; and

(2) give preference to projects that assist youths who are at least 12 years of age but younger than 19 years of age who:

(A) are not attending high school and have not received a high school diploma or high school equivalency certificate; or

(B) attend high school or a program leading to a high school equivalency certificate, but have been identified as being at risk of dropping out of high school or the program leading to a high school equivalency certificate.

Sec. 487.1058. ADVISORY BOARD; PARTICIPANT COUNCIL. On receipt of a grant under the program, the successful grantees shall establish:

(1) an advisory board for the project that includes:

(A) senior staff that manage and operate the project;

(B) employers and business and community leaders of the community;

and

(C) project participants; and

(2) a project participant council to provide comments and suggestions regarding project policies.

Sec. 487.1059. ASSISTANCE FOR GRANTEEES. The office shall provide grantees awarded a grant under the program access to curriculum materials created under Section 487.953, in particular materials that are designed to develop:

(1) leadership ethics;

(2) active citizenship;

(3) a sense of personal responsibility;

(4) critical thinking skills;

(5) decision-making skills;

(6) problem-solving skills; and

(7) negotiation skills.

Sec. 487.1060. OTHER FUNDING SOURCES REQUIRED. Up to 50 percent of a proposed project's budget must be derived from a source other than the award of a grant or other incentive from the office, as determined by the office.

Sec. 487.1061. LIMIT ON ADMINISTRATIVE EXPENSES. A grantee may not spend grant money for more than eight percent of a proposed project's administrative costs.

Sec. 487.1062. REPORTING REQUIREMENT. The office must include the following information regarding the program in its biennial report to the legislature under Section 487.056:

(1) the total number of grants and the total amount of grant money awarded under the program;

(2) the geographical distribution of grants awarded; and

(3) the number of youth and other persons participating in program-funded projects.

#### SUBCHAPTER X. RURAL WEALTH CREATION AND RETENTION PROGRAM

Sec. 487.1101. DEFINITION. In this subchapter, "program" means the rural wealth creation and retention program.

Sec. 487.1102. RURAL WEALTH CREATION AND RETENTION PROGRAM. The office shall create a rural wealth creation and retention program to assist rural communities in:

(1) identifying community wealth;

(2) educating residents about the benefits of charitable giving; and

(3) encouraging the creation of community foundations in those areas to build sustainable local wealth and decrease long-term dependence on state and federal resources.

Sec. 487.1103. CONTRACT FOR SERVICES. (a) The office may contract with other entities to provide services under the program.

(b) In making a decision to contract with an entity under Subsection (a), the office shall give preference to an entity with a proven history of providing assistance to community foundations.

Sec. 487.1104. SUPPORT SERVICES. The office, or a contracting entity under Section 487.1103, may provide support services for the implementation of the program, including financial management, strategic development, and education training.

Sec. 487.1105. FEE. The office, or a contracting entity under Section 487.1103, may charge a fee for services provided under the program. The amount of the fee shall be determined by the office.

SECTION \_\_. Not later than March 1, 2010, the board of the Office of Rural Community Affairs shall adopt any necessary rules for the fund established under Subchapter R, Chapter 487, Government Code, as added by this Act, and the programs established under Subchapters S through X, Chapter 487, Government Code, as added by this Act.

SECTION \_\_. Implementation of the programs established under Subchapters S through X, Chapter 487, Government Code, as added by this Act, is contingent on appropriation of funding by the legislature.

SECTION \_\_. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

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, 2009.

The amendment to **HB 4067** was read and was adopted by a viva voce vote.

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

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

**HB 4067** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 4067 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 4067** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Carona, Davis, Deuell, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Duncan, Fraser, Jackson.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 339 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 339** at this time on its second reading:

**CSHB 339**, Relating to driver education and driver's licensing requirements for minors.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 339** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 1001, Education Code, is amended by adding Section 1001.110 to read as follows:

Sec. 1001.110. INFORMATION RELATING TO DRIVING DISTRACTIONS.

(a) The commissioner by rule shall require that information relating to the effect of using a wireless communication device or engaging in other actions that may distract a driver on the safe or effective operation of a motor vehicle be included in the curriculum of each driver education course or driving safety course.

(b) In developing rules under this section, the commissioner shall consult with the department.

SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act, the commissioner of education shall adopt the rules required by Section 1001.110, Education Code, as added by this Act.

The amendment to **CSHB 339** was read and was adopted by a viva voce vote.

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

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 339** (Senate committee printing) as follows:

(1) In SECTION 3 of the bill, strike the heading of Section 1001.101, Education Code, (page 1, lines 28 and 29) and substitute:

Sec. 1001.101. ADULT AND MINOR DRIVER EDUCATION COURSE CURRICULUM AND TEXTBOOKS.

(2) In SECTION 3 of the bill, in added Subsection (a), Section 1001.101, Education Code, between "course" and the comma (page 1, line 31) insert "for minors and adults".

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

SECTION \_\_\_\_\_. Subsection (d), Section 521.142, Transportation Code, is amended to read as follows:

(d) If the applicant is under 21 [~~25~~] years of age, the application must state whether the applicant has completed a driver education course required by Section 521.1601 [~~approved by the department~~].

SECTION \_\_\_\_\_. The heading to Subchapter H, Chapter 521, Transportation Code, is amended to read as follows:

SUBCHAPTER H. EDUCATION AND EXAMINATION REQUIREMENTS

SECTION \_\_\_\_\_. Subchapter H, Chapter 521, Transportation Code, is amended by adding Sections 521.1601 and 521.167 to read as follows:

Sec. 521.1601. DRIVER EDUCATION REQUIRED. The department may not issue a driver's license to a person who is younger than 21 years of age unless the person submits to the department a driver education certificate issued under Chapter 1001, Education Code, that states that the person has completed and passed:

(1) a driver education and traffic safety course approved by the Texas Education Agency under Section 29.902, Education Code, or a driver education course approved by that agency under Section 1001.101 of that code or approved by the department under Section 521.205; or

(2) if the person is 18 years of age or older, a driver education course approved by the Texas Education Agency under Section 1001.101 or 1001.1015, Education Code.

Sec. 521.167. WAIVER OF CERTAIN EDUCATION AND EXAMINATION REQUIREMENTS. A person who has completed and passed a driver education course approved by the Texas Education Agency under Section 1001.1015, Education Code, is not required to take the highway sign and traffic law parts of the examination required under Section 521.161 if those parts have been successfully completed as determined by a licensed driver education instructor.

SECTION \_\_\_\_\_. Section 1001.004, Education Code, is amended to read as follows:

Sec. 1001.004. COST OF ADMINISTERING CHAPTER. (a) Except as provided by Subsection (b), the [~~The~~] cost of administering this chapter shall be included in the state budget allowance for the agency.

(b) The commissioner may charge a fee to each driver education school in an amount not to exceed the actual expense incurred in the regulation of driver education courses established under Section 1001.1015.

SECTION \_\_\_\_\_. Subsection (a), Section 1001.055, Education Code, is amended to read as follows:

(a) The agency shall print and supply to each licensed or exempt driver education school driver education certificates to be used for certifying completion of an approved driver education course to satisfy the requirements of Sections [Section] 521.204(a)(2) and 521.1601, Transportation Code. The certificates must be numbered serially.

SECTION \_\_\_\_\_. Subchapter C, Chapter 1001, Education Code, is amended by adding Section 1001.1015 to read as follows:

Sec. 1001.1015. ADULT DRIVER EDUCATION COURSE CURRICULUM AND EDUCATIONAL MATERIALS. (a) The commissioner by rule shall establish the curriculum and designate the educational materials to be used in a driver education course exclusively for adults.

(b) A driver education course under Subsection (a) must:

(1) be a six-hour course; and

(2) include instruction in:

(A) alcohol and drug awareness;

(B) the traffic laws of this state;

(C) highway signs, signals, and markings that regulate, warn, or direct

traffic; and

(D) the issues commonly associated with motor vehicle accidents, including poor decision-making, risk taking, impaired driving, distraction, speed, failure to use a safety belt, driving at night, failure to yield the right-of-way, and using a wireless communication device while operating a vehicle.

(c) A course approved under Subsection (a) may be offered as an online course.

(d) A driving safety course or a drug and alcohol driving awareness program may not be approved as a driver education course under Subsection (a).

SECTION \_\_\_\_\_. The changes in law made by Section 521.142, Transportation Code, as amended by this Act, and Sections 521.1601 and 521.167, Transportation Code, as added by this Act, apply to an application for the issuance of a driver's license filed on or after the effective date of this Act. An application for the issuance of a driver's license filed before the effective date of this Act is governed by the law in effect on the date of the filing, and that law is continued in effect for that purpose.

The amendment to **CSHB 339** was read and was adopted by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Jackson, Shapiro.

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

**CSHB 339** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 339 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 339** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2914 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2914** at this time on its second reading:

**HB 2914**, Relating to the establishment of a fuel mitigation pilot grant program for fire departments.

The bill was read second time.

Senator Nichols offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2914** by adding the following appropriately numbered section to the bill and renumbering subsequent sections of the bill as appropriate:

SECTION \_\_\_\_\_. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

The amendment to **HB 2914** was read and was adopted by a viva voce vote.

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

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

**HB 2914** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2914 ON THIRD READING**

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2914** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1030 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1030** at this time on its second reading:

**CSHB 1030**, Relating to the scheduling of hearings before appraisal review boards on property tax protests.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1030** (Senate committee report) as follows:

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

SECTION \_\_\_\_\_. Section 1.111, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) An individual exempt from registration as a property tax consultant under Section 1152.002, Occupations Code, who files a protest with the appraisal review board on behalf of the property owner is entitled to receive all notices from the appraisal district regarding the property subject to the protest until the authority is revoked by the property owner as provided by this section.

SECTION \_\_\_\_\_. Section 42.29(a), Tax Code, is amended to read as follows:

(a) A property owner who prevails in an appeal to the court under Section 42.25 or 42.26 or in an appeal to the court of a determination of an appraisal review board on a motion filed under Section 25.25 may be awarded reasonable attorney's fees. The amount of the award may not exceed the greater of:

(1) \$15,000; or

(2) 20 percent of the total amount by which the property owner's tax liability is reduced as a result of the appeal.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 42.29, Tax Code, applies only to an appeal under Chapter 42, Tax Code, of a determination of an appraisal review board that is filed on or after the effective date of this Act. An appeal under Chapter 42, Tax Code, of a determination of an appraisal review board that was filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and the former law is continued in effect for that purpose.

(2) In SECTION 2 of the bill, between "this Act" and "applies" (page 1, line 56), insert "to Section 41.45, Tax Code,".

The amendment to **CSHB 1030** was read and was adopted by a viva voce vote.

**(Senator Eltife in Chair)**

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

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1030** (Senate committee printing) as follows:

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

SECTION \_\_\_\_\_. (a) Subchapter C, Chapter 41, Tax Code, is amended by adding Section 41.415 to read as follows:

Sec. 41.415. ELECTRONIC FILING OF NOTICE OF PROTEST. (a) This section applies only to an appraisal district established for a county having a population of 500,000 or more.

(b) The appraisal district shall implement a system that allows the owner of a property that for the current tax year has been granted a residence homestead exemption under Section 11.13, in connection with the property, to electronically:

(1) file a notice of protest under Section 41.41(a)(1) or (2) with the appraisal review board;

(2) receive and review comparable sales data and other evidence that the chief appraiser intends to use at the protest hearing before the board;

(3) receive, as applicable:

(A) a settlement offer from the district to correct the appraisal records by changing the market value and, if applicable, the appraised value of the property to the value as redetermined by the district; or

(B) a notice from the district that a settlement offer will not be made;

and

(4) accept or reject a settlement offer received from the appraisal district under Subdivision (3)(A).

(c) With each notice sent under Section 25.19 to an eligible property owner, the chief appraiser shall include information about the system required by this section, including instructions for accessing and using the system.

(d) A notice of protest filed electronically under this section must include, at a minimum:

(1) a statement as to whether the protest is brought under Section 41.41(a)(1) or under Section 41.41(a)(2);

(2) a statement of the property owner's good faith estimate of the value of the property; and

(3) an electronic mail address that the district may use to communicate electronically with the property owner in connection with the protest.

(e) If the property owner accepts a settlement offer made by the appraisal district, the chief appraiser shall enter the settlement in the appraisal records as an agreement made under Section 1.111(e).

(f) If the property owner rejects a settlement offer, the appraisal review board shall hear and determine the property owner's protest in the manner otherwise provided by this subchapter and Subchapter D.

(g) An appraisal district is not required to make the system required by this section available to an owner of a residence homestead located in an area in which the chief appraiser determines that the factors affecting the market value of real property are unusually complex.

(h) An electronic mail address provided by a property owner to an appraisal district under Subsection (d)(3) is confidential and may not be disclosed by the district.

(b) Section 41.415, Tax Code, as added by this section, applies only to a tax year that begins on or after the effective date of this Act.

(2) In SECTION 2 of the bill (page 1, line 56), between "in law" and "made by", insert "to Section 41.45, Tax Code,".

(3) Strike SECTION 3 of the bill (page 1, line 62, through page 2, line 3) and substitute the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section:

(1) 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; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

(b) Section 41.415, Tax Code, as added by this Act, takes effect January 1, 2010.

The amendment to **CSHB 1030** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Huffman offered the following amendment to the bill:

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

Amend **CSHB 1030** (Senate committee report) by adding the following SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_. (a) Sections 6.41(d), (e), and (f), Tax Code, are amended to read as follows:

(d) Members of the board are appointed by resolution of a majority of the appraisal district board of directors, except that the members of the board of an appraisal district established in a county with a population of 3.3 million or more or a county with a population of 350,000 or more that is adjacent to a county with a population of 3.3 million or more are appointed by the county commissioners court in the county in which the appraisal district is established. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial or subsequent appointments, the board of directors or the county commissioners court, shall designate those members who serve terms of one year as needed to comply with this subsection.

(f) A member of the board may be removed from the board by a majority vote of the appraisal district board of directors that, or by the county commissioners court who, appointed the member. Grounds for removal are:

(1) a violation of Section 6.412, 6.413, 41.66(f), or 41.69; or

(2) good cause relating to the attendance of members at called meetings of the board as established by written policy adopted by a majority of the appraisal district board of directors.

(b) As soon as practicable on or after January 1, 2010, the local county commissioners court in each county with a population of 3.3 million or more and in each county with a population of 350,000 or more that is adjacent to a county with a population of 3.3 million or more, in the manner provided by Section 6.41, Tax Code, as amended by this Act, shall appoint the members of the appraisal review board for the appraisal district established in the county. In making the initial appointments, the county commissioners court shall designate those members who serve terms of one year as necessary to comply with Section 6.41(e), Tax Code, as amended by this Act.

(c) The term of a member if an appraisal review board established in a county with a population of 3.3 million or more and in each county with a population of 350,000 or more that is adjacent to a county with a population of 3.3 million or more serving on December 31, 2009, expires January 1, 2010.

(d) Notwithstanding the other provisions of this Act, this section takes effect January 1, 2010.

The amendment to **CSHB 1030** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

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

**CSHB 1030** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1030 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1030** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 93 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 93** at this time on its second reading:

**CSHB 93**, Relating to the reinstatement of good conduct time suspended during a term of imprisonment.

The motion prevailed.

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

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Nelson, Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 93 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 93** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Patrick, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Nelson, Shapiro.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1924 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1924** at this time on its second reading:

**CSHB 1924**, Relating to the performance of pharmacy services in certain rural areas.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 1924** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 556.053, Occupations Code, is amended to read as follows:

Sec. 556.053. EXTENT OF INSPECTION; CONFIDENTIALITY. (a) Except as otherwise provided in an inspection warrant, the person authorized to represent the board may:

(1) inspect and copy documents, including records or reports, required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws;

(2) inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, prescription drugs or devices, components used in compounding, finished and unfinished products, or records; or

(3) perform an inventory of any stock of prescription drugs or devices, components used in compounding, or finished and unfinished products in a facility and obtain samples of those substances.

(b) Reports, records, formulas, and test results of samples of products compounded by pharmacies obtained by the board may be provided to the pharmacy that compounded the product but otherwise are confidential and do not constitute public information for purposes of Chapter 552, Government Code. The board may create, use, or disclose statistical information from the test results of samples of compounded products.

(c) The board may disclose information confidential under Subsection (b):

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

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction; or

(3) under a court order.

(d) The board shall require a pharmacy to recall a compounded product and may release the results of the tests of the samples of the compounded product if the board determines that:

(1) the test results indicate a patient safety problem that may involve potential harm to a patient; and

(2) the release of the test results is necessary to protect the public.

(e) The board shall release the test results described by Subsection (d) if a pharmacy is unable to or does not recall the compounded product within 48 hours after the board's request under that subsection.

The amendment to **CSHB 1924** was read and was adopted by a viva voce vote.

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

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

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

Amend **CSHB 1924** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 568.003, Occupations Code, is amended to read as follows:

Sec. 568.003. GROUND FOR DISCIPLINARY ACTION. (a) The board may take disciplinary action under Section 568.0035 if the board determines that the applicant or registrant has:

(1) violated this subtitle or a rule adopted under this subtitle;

(2) engaged in gross immorality, as that term is defined by the rules of the board;

(3) engaged in any fraud, deceit, or misrepresentation, as those terms are defined by the rules of the board, in seeking a registration to act as a pharmacy technician;

(4) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(5) developed an incapacity that prevents the applicant or registrant from practicing as a pharmacy technician or pharmacy technician trainee with reasonable skill, competence, and safety to the public [a drug or alcohol dependency];

(6) violated:

(A) Chapter 481 or 483, Health and Safety Code, or rules relating to those chapters;

(B) Sections 485.031-485.035, Health and Safety Code; or

(C) a rule adopted under Section 485.011, Health and Safety Code;

(7) violated the pharmacy or drug laws or rules of this state, another state, or the United States; ~~or~~

(8) performed duties in a pharmacy that only a pharmacist may perform, as defined by the rules of the board;

(9) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(10) engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;

(11) violated a disciplinary order;

(12) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or

(13) been disciplined by a pharmacy or other health regulatory board of this state or another state [had a registration as a pharmacy technician issued by another state revoked, surrendered, or suspended] for conduct substantially equivalent to conduct described by this subsection [Subdivisions (1) - (6)].

(b) A certified copy of the record of a state taking action described by Subsection (a)(13) ~~(a)(8)~~ is conclusive evidence of the action taken by the state.

SECTION \_\_\_\_\_. Section 568.0035, Occupations Code, is amended to read as follows:

Sec. 568.0035. DISCIPLINE AUTHORIZED; EFFECT ON TRAINEE. (a) On a determination that a ground for discipline exists under Section 568.003, the board may:

(1) suspend the person's registration;

(2) revoke the person's registration;

(3) restrict the person's registration to prohibit the person from performing certain acts or from practicing as a pharmacy technician in a particular manner for a term and under conditions determined by the board;

(4) impose an administrative penalty under Chapter 566;  
 (5) refuse to issue or renew the person's registration;  
 (6) place the offender's registration on probation and supervision by the board for a period determined by the board and impose a requirement that the registrant:

(A) report regularly to the board on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the board;

(C) continue or review professional education until the registrant attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or

(D) pay the board a probation fee to defray the costs of monitoring the registrant during the period of probation;

(7) reprimand the person;

(8) retire the person's registration as provided by board rule; or

(9) impose more than one of the sanctions listed in this section.

(b) A disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician.

SECTION \_\_\_\_\_. Chapter 568, Occupations Code, is amended by adding Section 568.0036 to read as follows:

Sec. 568.0036. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) This section applies to a pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant.

(b) In enforcing Section 568.003(a)(5), the board, on probable cause, may request a person subject to this section to submit to a mental or physical examination by a physician or other health care professional designated by the board.

(c) If the person refuses to submit to the examination, the board shall:

(1) issue an order requiring the person to show cause why the person will not submit to the examination; and

(2) schedule a hearing on the order not later than the 30th day after the date notice of the order is served on the person under Subsection (d).

(d) The person shall be notified by either personal service or certified mail, return receipt requested.

(e) At the hearing, the person and the person's counsel may present testimony or other evidence to show why the person should not be required to submit to the examination.

(f) After the hearing, the board shall, by order:

(1) require the person to submit to the examination; or

(2) withdraw the request for examination.

SECTION \_\_\_\_\_. The changes in law made by this Act apply only to conduct occurring on or after the effective date of this Act. Conduct occurring before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_\_. 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, 2009.

The amendment to **CSHB 1924** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

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

**CSHB 1924** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1924 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1924** be placed on its third reading and final passage.

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

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 459 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSHB 459** at this time on its second reading:

**CSHB 459**, Relating to county abatement and regulation of nuisances.

The motion prevailed.

Senators Huffman, Jackson, Nichols, Patrick, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

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

Amend **CSHB 459** (Senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1127 to read as follows:

Sec. 361.1127. LAND RECLAMATION PROJECTS USING TIRES. (a) In this section:

(1) "Land reclamation" means the process of restoring an area of excavated, deteriorated, or disturbed land to its approximate natural grade and to prepare or reclaim the land for reuse.

(2) "Scrap tire" has the meaning assigned by Section 361.112.

(b) A person may not begin a land reclamation project using scrap tires without a permit issued by the commission under this chapter.

(c) A person may not use scrap tires for a land reclamation project unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception.

(d) The commission may not grant a permit for a land reclamation project using scrap tires before:

(1) the commission receives comments or suggestions from the commissioners court of each county in which the proposed project is located; or

(2) the expiration of a time period, established by commission rule, in which the entities described by this subsection may offer comments.

(e) The application to request a permit for a land reclamation project using scrap tires must include at a minimum:

(1) a legal description of the area to be reclaimed;

(2) a map clearly identifying the area to be reclaimed and the topography of the area;

(3) an affidavit from the property owner certifying that the reclamation project complies with this section and the rules adopted under this section; and

(4) an analysis and evaluation of the environmental impacts on the soil and groundwater in the area of the proposed project that compare the impact of using scrap tires for the proposed reclamation project to the impact of at least one reasonable alternative method of land reclamation for the proposed project.

(f) The commission by rule shall:

(1) prescribe minimum standards to protect the soil and water for a land reclamation project using scrap tires; and

(2) adopt application forms and procedures for the permitting process under this section.

(g) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(h) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(i) The commission may, for good cause, deny, revoke, or amend a permit under this section for reasons concerning public health and safety, air or water pollution, land use, or a violation of this section as provided by Section 361.089.

SECTION \_\_\_\_\_. (a) Before September 1, 2010, the Texas Commission on Environmental Quality shall adopt any rules required to implement Section 361.1127, Health and Safety Code, as added by this Act.

(b) On or after the effective date of this Act, any person responsible for an ongoing or pending land reclamation project using scrap tires that has not yet placed the tires below ground may not place the tires below ground until the person has obtained a permit under Section 361.1127, Health and Safety Code, as added by this Act.

(c) To the extent that a land reclamation project using scrap tires has placed tires below ground before the effective date of this Act, the project is subject to the law in effect on the date the tires were placed below ground, and that law is continued in effect for that purpose.

The amendment to **CSHB 459** was read and was adopted by a viva voce vote.

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

Senator Gallegos offered the following amendment to the bill:

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

Amend **CSHB 459** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. Chapter 240, Local Government Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. REGULATION OF NOISE AND SOUND LEVELS

Sec. 240.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county with a population of more than 3.3 million.

Sec. 240.062. AUTHORITY TO REGULATE. (a) The commissioners court of the county by order shall prohibit the production of sound from a loudspeaker or sound amplifier the level of which exceeds 85 decibels at a distance of 50 feet from the property line of the property on which the loudspeaker or sound amplifier is operated.

(b) A regulation adopted under this subchapter applies only to the unincorporated area of the county.

Sec. 240.063. PERMIT FOR CERTAIN EVENTS; PERMIT FEES. (a) The commissioners court by order may authorize the holding of events at which loudspeakers or sound amplifiers that produce sounds exceeding the levels specified by Section 240.062 will be used, if the person holding an event obtains a permit from the county for the event.

(b) In determining whether to grant a permit under this section, the commissioners court shall consider whether the sound is recurrent, intermittent, or constant.

(c) A person must apply for the permit in accordance with regulations adopted by the county.

(d) The regulations adopted under this section may provide for the denial, suspension, or revocation of a permit by the county.

(e) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a permit by the county.

(f) A county may impose fees on an applicant for a permit under this section. The fees must be based on the administrative costs of issuing the permit. A county that imposes a permit fee shall establish procedures to reduce the fee amount if the applicant is unable to pay the full permit fee.

Sec. 240.064. METHOD OF SOUND MEASUREMENT. The commissioners court shall by rule adopt a procedure to measure noise and sound levels under this subchapter.

Sec. 240.065. INJUNCTION. A county may sue in the district court for an injunction to prohibit the violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Sec. 240.066. CRIMINAL PENALTY. (a) A person commits an offense if the person violates a prohibition or other regulation adopted under this subchapter.

(b) An offense under this section is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

The amendment to **CSHB 459** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Fraser, Williams.

Senator Uresti offered the following amendment to the bill:

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

Amend **CSHB 459** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. Chapter 234, Local Government Code, is amended by adding Subchapter C to read as follows:

#### SUBCHAPTER C. BUSINESSES RELATED TO AUTOMOBILE TIRES

Sec. 234.051. DEFINITIONS. In this subchapter:

(1) "Mobile tire repair business" means a business that repairs tires at any temporary location, including a roadway, alley, parking lot, or residence.

(2) "Used tire business" means a business or establishment at which used tires are collected, repaired, processed, recycled, scrapped, sold, bought, or stored, including a mobile tire repair business or a salvage yard.

Sec. 234.052. APPLICABILITY. This subchapter applies only to the unincorporated area of a county:

(1) with a population greater than 45,000 and less than 50,000; and

(2) that is adjacent to an international border.

Sec. 234.053. LICENSE OR PERMIT REQUIRED. The commissioners court of a county by order may require that the owner or operator of a mobile tire repair business or used tire business obtain a license or permit from the county before engaging in business in the county. The commissioners court by order may establish a fee to be paid for a license or permit.

Sec. 234.054. SCRAP TIRE DISPOSAL FEE. The commissioners court of a county by order may:

(1) establish a fee to be imposed on the purchase of an automobile tire in the county; and

(2) require a retailer of automobile tires to collect the fee and use the fee to comply with requirements associated with the disposal of scrap tires.

Sec. 234.055. RULES. The commissioners court of a county may adopt rules as necessary to administer this subchapter.

Sec. 234.056. INJUNCTION. A district or county attorney may bring suit to enjoin the operations of a mobile tire repair business, used tire business, or tire retailer in violation of an order or rule adopted under this subchapter.

Sec. 234.057. OFFENSE. A person commits an offense if the person violates an order adopted under this subchapter. An offense under this section is a Class C misdemeanor.

The amendment to **CSHB 459** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

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

**CSHB 459** as amended was passed to third reading by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Lucio, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Huffman, Jackson, Nichols, Patrick, Williams.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 459 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 459** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Lucio, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Huffman, Jackson, Nichols, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

#### **HOUSE BILL 3552 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **HB 3552** at this time on its second reading:

**HB 3552**, Relating to the evaluation of certain regional planning commissions.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Eltife, Hegar, Jackson, Patrick, Williams.

The bill was read second time.

Senator Gallegos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3552** (Senate committee printing) as follows:

(1) In SECTION 1(b) of the bill (page 1, between lines 19 and 20), insert the following:

(1) the commissioners court of a county with a population of 3.3 million or more, according to the most recent federal decennial census, that is a member of a regional planning commission described by Subsection (a) of this section;

(2) In SECTION 1(b) of the bill, in Subdivision (1) of that section (page 1, line 20), strike "(1)" and substitute "(2)".

(3) In SECTION 1(b) of the bill, in Subdivision (2) of that section (page 1, line 25), strike "(2)" and substitute "(3)".

The amendment to **HB 3552** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Williams.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 2**

Add a new Section 2 to **HB 3552** (Senate committee report) and renumber existing sections accordingly:

SECTION 2: (a) The state auditor shall audit the Lower Colorado River Authority.

(b) A river authority audited under this section shall cooperate and provide assistance and access to all necessary records, confidential or nonconfidential, to the state auditor in conducting the audit under this section.

(c) Not later than January 1, 2011, the state auditor shall prepare a written report for the audit conducted under this section and file the report in accordance with Section 321.014, Government Code.

(d) A river authority audited under this section shall reimburse the state auditor for the cost of performing the audit.

(e) This section expires January 1, 2011.

The amendment to **HB 3552** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

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

**HB 3552** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Eltife, Hegar, Jackson, Patrick, Williams.

(Tuesday, May 26, 2009)

**HOUSE BILL 3552 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3552** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Eltife, Hegar, Jackson, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4338 ON SECOND READING**

The President laid before the Senate **CSHB 4338** by Senator Fraser on its second reading. The bill had been read second time and further consideration postponed to a time certain of 7:00 p.m. yesterday:

**CSHB 4338**, Relating to title insurance agents and title insurance companies.

Question — Shall **CSHB 4338** be passed to third reading?

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 4338** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 2501.004(b), Insurance Code, is amended to read as follows:

(b) To provide for the safety and protection of policyholders, the department shall require that an abstract plant ~~[be]~~:

(1) be geographically arranged;

(2) cover a period beginning not later than January 1, 1979, and be kept current; and

(3) be adequate for use in insuring titles, as determined by the department.

SECTION 2. Section 2602.002(a), Insurance Code, is amended to read as follows:

(a) This chapter is for:

(1) the purposes and findings stated in Sections 441.001, 441.003, 441.005, and 441.006; ~~[and]~~

(2) the protection of holders of covered claims; and

(3) the protection of consumers served by impaired agents.

SECTION 3. Sections 2602.003(5) and (6), Insurance Code, are amended to read as follows:

(5) "Impaired agent" means a title [an] agent or direct operation that is~~[-~~

~~[(A) placed in:~~

~~[(i) temporary or permanent receivership under a court order based on a finding of insolvency; or~~

~~[(ii) conservatorship after the commissioner determines that the agent is insolvent; and~~

~~[(B)] designated by the commissioner as an impaired agent and is:~~

(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;

(B) placed under an order of supervision or conservatorship under Chapter 441;

(C) placed under an order of rehabilitation or liquidation under Chapter 443; or

(D) otherwise found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due.

(6) "Impaired title insurance company" means a title insurance company that is[~~]~~

~~[(A) placed in:~~

~~[(i) temporary or permanent receivership under a court order based on a finding of insolvency; or~~

~~[(ii) conservatorship after the commissioner determines that the company is insolvent; and~~

[(B)] designated by the commissioner as an impaired title insurance company and is:

(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;

(B) placed under an order of supervision or conservatorship under Chapter 441;

(C) placed under an order of rehabilitation or liquidation under Chapter 443; or

(D) otherwise found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due.

SECTION 4. Section 2602.011(a), Insurance Code, is amended to read as follows:

(a) The commissioner shall notify the association of the existence of an impaired title insurance company or impaired agent not later than the third day after the date on which the commissioner gives notice of the designation of impairment to the impaired agent or impaired title insurance company. The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a title insurance company at the time the complaint is filed with a court.

SECTION 5. Section 2602.107, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) The association shall pay from the guaranty fee account fees and reasonable and necessary expenses that the department incurs in an examination or audit of a title agent or direct operation under this chapter and Chapter 2651.

SECTION 6. Section 2602.110, Insurance Code, is amended to read as follows:

Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER OR IMPAIRED AGENT ~~[RECEIVERSHIP OR CONSERVATORSHIP]~~. The association may advance money necessary to pay the expenses of administering the supervision, rehabilitation, receivership, ~~[or]~~ conservatorship, or, as determined by a court of competent jurisdiction, other insolvency ~~[estate]~~ of an impaired title insurance company or impaired agent, on terms the association negotiates, if the company's or agent's assets are insufficient to pay those expenses.

SECTION 7. Section 2602.152, Insurance Code, is amended to read as follows:

Sec. 2602.152. AMOUNT OF FEE. Annually or more frequently, the board shall determine the amount of the guaranty fee~~[, not to exceed \$5]~~, considering the amount of money to be maintained in the guaranty fee account that is reasonably necessary for efficient future operation under this chapter.

SECTION 8. Sections 2602.153(b) and (d), Insurance Code, are amended to read as follows:

(b) The following ~~[covered]~~ claims shall be paid from guaranty fees only and may not be paid from assessments:

(1) covered claims against trust funds or an escrow account of an impaired agent under Section 2602.252; ~~[and]~~

(2) expenses incurred in complying with Subchapter J;

(3) conservator and receiver expenses under Section 2602.254; and

(4) administrative expenses with respect to the estate of an impaired agent under Section 2602.110.

(d) Guaranty fees may be used only for payment of:

(1) ~~[covered]~~ expenses described by Subsection (b) ~~[or (c)]~~; and

(2) expenses related to:

(A) an audit or an examination conducted by the department or the association under this chapter;

(B) the supervision and coordination of such an audit or examination;  
and

(C) an action under Section 2602.452 ~~[and review expenses under Section 2602.103(b)].~~

SECTION 9. Sections 2602.401(a) and (b), Insurance Code, are amended to read as follows:

(a) If an assessment has been made under this chapter for an impaired title insurance company or association funds have been provided for the company, the company, on release from the supervision, rehabilitation, conservatorship, ~~[or]~~ receivership, or other proceeding in which the company was found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due, may not issue a new or renewal insurance policy until the company:

(1) has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assignee; and

(2) has repaid in full the amount of guaranty fees paid by the association.

(b) If an assessment has been made under this chapter for an impaired agent or guaranty fees have been provided for the impaired agent, the agent, on release from the supervision, conservatorship, rehabilitation, ~~[or]~~ receivership, or other proceeding in which the agent was found by a court of competent jurisdiction to be insolvent or

otherwise unable to pay obligations as they come due, subject to dischargeability, may not act as an agent [issue a new or renewal insurance policy] until the agent has repaid in full the amount of guaranty fees paid by the association.

SECTION 10. Chapter 2602, Insurance Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

Sec. 2602.451. APPLICABILITY. This subchapter applies, at the commissioner's discretion and regardless of whether there are covered claims against an agent, to any agent that is designated by the commissioner as an impaired agent.

Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. (a) The commissioner may direct the association, at the association's expense and on behalf of an impaired agent, to:

- (1) close real estate transactions;
- (2) disburse escrow funds;
- (3) record documents; and
- (4) issue final title insurance policies.

(b) The association may employ or retain a person in accordance with Section 2602.103(a).

Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the commissioner under Section 2602.452, the association may implement any direction made by the commissioner and may access all books, records, accounts, networks, and electronic document storage and management systems as necessary to implement the commissioner's direction.

(b) Any present or former officer, manager, director, trustee, owner, employee, or agent of the agent, or any other person with authority over or in charge of any segment of the agent's affairs, shall cooperate with the association. For purposes of this subsection:

(1) "Person" includes a person who exercised or exercises control directly or indirectly over activities of the agent through a holding company or other affiliate of the agent.

(2) "Cooperate" means:

(A) replying promptly in writing to any request for information from the association within the period established in the request; and

(B) making available to the association any books, accounts, documents, or other records or information of, or relating to, the agent within the period set in the request.

(c) A person who fails to cooperate as required under Subsection (b) is subject to sanctions under Chapter 82, in addition to all other sanctions available under law.

SECTION 11. Section 2651.002, Insurance Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The completed application must state that:

(1) the proposed agent is:

- (A) an individual who is a bona fide resident of this state;
- (B) an association or firm composed only of Texas residents; or

(C) a Texas corporation or a foreign corporation authorized to engage in business in this state;

(2) the proposed agent has unencumbered assets in excess of liabilities, exclusive of the value of abstract plants, as required by Section 2651.012;

(3) [~~2~~] the proposed agent, including a corporation's managerial personnel, if applicable, has reasonable experience or instruction in the field of title insurance;

(4) [~~3~~] the title insurance company:

(A) knows that the proposed agent has a good business reputation and is worthy of the public trust; and

(B) is unaware of any fact or condition that disqualifies the proposed agent from receiving a license; and

(5) [~~4~~] the proposed agent qualifies as a title insurance agent under this chapter.

(d) Except as provided by Section 2651.0021(e), an agent applying for an initial license under this subchapter must provide evidence that the agent and its management personnel have successfully completed a professional training program that complies with Section 2651.0021. The program must have been completed within one year preceding the date of application.

SECTION 12. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Section 2651.0021 to read as follows:

Sec. 2651.0021. PROFESSIONAL TRAINING PROGRAM. (a) The commissioner shall adopt by rule a professional training program for a title insurance agent and the management personnel of the title insurance agent.

(b) The professional training program must be designed to provide information regarding:

(1) the basic principles and coverages related to title insurance;

(2) recent and prospective changes in those principles and coverages;

(3) applicable rules and laws;

(4) proper conduct of the license holder's title insurance business;

(5) accounting principles and practices and financial responsibilities and practices relevant to title insurance; and

(6) the duties and responsibilities of a title insurance agent.

(c) Professional training program hours may be used to satisfy the continuing education requirements established under Section 2651.204.

(d) A professional training program course must be offered by:

(1) a statewide title insurance association, statewide title agents' association or professional association, or local chapter of a statewide title insurance or title agents' association or professional association;

(2) an accredited college or university;

(3) a career school or college as defined by Section 132.001, Education

Code;

(4) the State Bar of Texas;

(5) an educational publisher;

(6) a title insurance company authorized to engage in business in this state;

(7) a company that owns one or more title insurance companies authorized to engage in business in this state;

(8) a public school system in this state; or

(9) an individual accredited as an instructor by an entity described by Subdivisions (1)-(8).

(e) An individual is exempt from the professional training requirement of this section if the individual has held in this state for at least five years a position as management personnel with a title insurance agent, or a comparable position, as determined under rules adopted by the commissioner.

SECTION 13. Section 2651.011, Insurance Code, is amended to read as follows:

Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL INFORMATION. (a) Any information, including a document, record, or statement, and including information provided to or received from the commissioner under Subsection (b) or (c), or any other information required or permitted to be made or disclosed to or by the department under this subchapter, other than Section 2651.001, is not public information subject to Chapter 552, Government Code, except to the extent described by Subsection (b), and is a privileged communication and may not be disclosed to the public except as evidence in an administrative hearing or proceeding. This subsection does not apply to a document, record, or statement required to be made or disclosed to the department under Chapter 36[-

(1) a privileged communication; and

(2) not admissible in evidence in a court action or proceeding except under a subpoena issued by a court of record].

(b) A title insurance company may provide information to the commissioner about a financial matter that would reasonably call into question the solvency of a title agent that the title insurance company appointed. Each title insurance company shall provide annually to the department a list of officers authorized to provide to the department the information under this subsection. Information provided under this subsection is not subject to Chapter 552, Government Code, except that the commissioner may release information that the commissioner received under this subsection to a title insurance company that has appointed, or that is considering appointing, the title agent. The commissioner may also release information that the commissioner received under this subsection to a title agent under Section 2651.206, Insurance Code, if the information is evidence on which an audit report or examination report relies. A title insurance company that receives information under this subsection may not release the information except under a subpoena issued by a court of competent jurisdiction.

(c) Each title insurance agent shall provide the department, on a quarterly basis, with a copy of the agent's quarterly withholding tax report furnished by the agent to the United States Internal Revenue Service. The title insurance agent must also provide to the department proof of the payment of the tax. An agent that does not have employees shall certify to the department on a quarterly basis that there has not been a material change in the agent's financial condition.

(d) The commissioner by rule may prescribe the types of information under Subsections (b) and (c) that are privileged under Subsection (a).

SECTION 14. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Sections 2651.012 and 2651.013 to read as follows:

Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section:

(1) "Principal office" means a principal office of the business organization, unincorporated association, sole proprietorship, or partnership in this state in which the decision makers for the organization conduct the daily affairs of the organization.

The presence of an agency or representative does not establish a principal office.

(2) "Unencumbered assets" means:

(A) cash or cash equivalents;

(B) liquid assets that have a readily determinable market value and that do not have any lien against them;

(C) real estate, in excess of any encumbrances;

(D) investments, such as mutual funds, certificates of deposit, and stocks and bonds;

(E) a surety bond, the form and content of which shall be prescribed by the commissioner in accordance with this code;

(F) a deposit made in accordance with Section 2651.102; and

(G) a letter of credit that meets the requirements of Section 493.104(b)(2)(C).

(b) The unencumbered assets required under this section are reserves for contingencies. The reserves must be deducted from premiums for purposes of proceedings conducted under Subchapter D, Chapter 2703. The reserves may only be spent or released:

(1) as permitted by the commissioner if the agent is declared impaired;

(2) if the agent merges or consolidates with another agent who maintains the amount of unencumbered assets that would be required for the survivor of the merger or consolidation;

(3) if the agent surrenders the agent's license under Section 2651.201 and the rules adopted under that section; or

(4) if the agent is liquidated.

(c) Except as provided by Subsection (d), an agent must maintain unencumbered assets with a market value in excess of liabilities, exclusive of the value of abstract plants, in the following amounts unless the commissioner establishes lesser amounts by rule:

(1) if the agent maintains its principal office in a county with a population of 10,000 or more but less than 50,000: \$25,000;

(2) if the agent maintains its principal office in a county with a population of 50,000 or more but less than 200,000: \$50,000;

(3) if the agent maintains its principal office in a county with a population of 200,000 or more but less than one million: \$100,000; and

(4) if the agent maintains its principal office in a county with a population of one million or more: \$150,000.

(d) Except as provided by the commissioner by rule, an agent that maintains its principal office in a county with a population of less than 10,000 is exempt from this section.

(e) An agent that maintains a principal office in more than one county must meet the asset standards for the largest county for which the agent will hold a license.

(f) An agent may elect to:

(1) maintain unencumbered assets as required by this section; or

(2) place a deposit with the department as authorized by Section 2652.102.

(g) An agent that holds a license on September 1, 2009, and that has held the license for at least three years as of that date is not required to comply with Subsection (c) on September 1, 2009, but shall increase the unencumbered assets held by the agent, or make and increase the required deposit, until the agent is in compliance with the required capitalization amounts in accordance with the schedule established under this subsection. The agent must hold unencumbered assets, or make a deposit in an amount, such that:

(1) if the agent has been licensed at least three years but less than four years:

(A) the agent has at least 33 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 66 percent of the required capitalization amount on September 1, 2011; and

(C) the agent has at least 100 percent of the required capitalization amount on September 1, 2012;

(2) if the agent has been licensed at least four years but less than five years:

(A) the agent has at least 25 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 50 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 75 percent of the required capitalization amount on September 1, 2012; and

(D) the agent has at least 100 percent of the required capitalization amount on September 1, 2013;

(3) if the agent has been licensed at least five years but less than six years:

(A) the agent has at least 20 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 40 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 60 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 80 percent of the required capitalization amount on September 1, 2013; and

(E) the agent has at least 100 percent of the required capitalization amount on September 1, 2014;

(4) if the agent has been licensed at least six years but less than seven years:

(A) the agent has at least 16.66 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 33.32 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 49.98 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 66.64 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 83.3 percent of the required capitalization amount on September 1, 2014; and

(F) the agent has at least 100 percent of the required capitalization amount on September 1, 2015;

(5) if the agent has been licensed at least seven years but less than eight years:

(A) the agent has at least 14.29 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 28.58 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 42.87 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 57.16 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 71.45 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 85.74 percent of the required capitalization amount on September 1, 2015; and

(G) the agent has at least 100 percent of the required capitalization amount on September 1, 2016;

(6) if the agent has been licensed at least eight years but less than nine years:

(A) the agent has at least 12.5 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 25 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 37.5 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 50 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 62.5 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 75 percent of the required capitalization amount on September 1, 2015;

(G) the agent has at least 87.5 percent of the required capitalization amount on September 1, 2016; and

(H) the agent has at least 100 percent of the required capitalization amount on September 1, 2017; and

(7) if the agent has been licensed at least nine years:

(A) the agent has at least 11.11 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 22.22 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 33.33 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 44.44 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 55.55 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 66.66 percent of the required capitalization amount on September 1, 2015;

(G) the agent has at least 77.77 percent of the required capitalization amount on September 1, 2016;

(H) the agent has at least 88.88 percent of the required capitalization amount on September 1, 2017; and

(I) the agent has at least 100 percent of the required capitalization amount on September 1, 2018.

(h) If the agent has been licensed less than three years as of September 1, 2009, the agent must have:

(1) at least 50 percent of the required capitalization amount required under Subsection (c) on September 1, 2010; and

(2) 100 percent of that required capitalization amount on September 1, 2011.

(i) This subsection and Subsection (g) expire September 2, 2018.

(j) Notwithstanding any other provision of this section, this section takes effect only after the commissioner adopts the form, content, and procedures for use of the surety bond authorized under Subsection (a). The commissioner by rule shall establish the procedures for making, filing, using, and paying for the surety bond. Notwithstanding Subsections (g) and (h), the commissioner by rule may extend the dates established under those subsections as necessary to comply with this subsection.

Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES. (a) The funds held by a title insurance agent that are owed to a title insurance company, another title insurance agent, or a direct operation arising from a division of premium, whether as determined under rules adopted by the commissioner or by agreement among the parties, are considered to be held in trust for the title insurance company, other title insurance agent, or direct operation.

(b) This section does not require, and the commissioner may not require by rule, that funds described by Subsection (a) be held in a separate account subject to an external audit. This section does not affect the department's or association's authority to examine or audit a title agent or direct operation.

SECTION 15. Subchapter D, Chapter 2651, Insurance Code, is amended by adding Section 2651.158 to read as follows:

Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a) Unless the agent has elected to make a deposit with the department under Section 2651.012(f), the annual audit of escrow accounts must be accompanied by a certification by a certified public accountant that the title insurance agent has the appropriate unencumbered assets in excess of liabilities, exclusive of the value of its abstract plants, as required by Section 2651.012.

(b) The commissioner by rule shall establish:

(1) a procedure to be used to determine the value of categories of assets; and  
(2) the method by which the certification required by this section must be made which shall not include an audit of operating accounts.

SECTION 16. Subchapter E, Chapter 2651, Insurance Code, is amended by adding Sections 2651.205 and 2651.206 to read as follows:

Sec. 2651.205. TITLE AGENT RECORDS. (a) A landlord or storage facility, including electronic storage, that accepts possession of an agent's guaranty file or other records takes possession subject to:

(1) the right of access of the title insurance company involved in the transaction that the file documents, during customary business hours, for the purpose of copying the guaranty file; and

(2) the obligation to maintain the confidentiality of nonpublic information in the title insurance agent's records according to state and federal laws that govern the title insurance agent.

(b) If the title insurance agent has been designated impaired, the Texas Title Insurance Guaranty Association has the right to access the guaranty files and other records of the title insurance agent, including electronic records, for 60 days from the date of impairment, during customary business hours, for purposes of copying those records.

(c) Except for the right of access granted under Subsections (a) and (b), a lien created in favor of the landlord by contract or otherwise is not impaired.

(d) For purposes of this section, "title insurance agent" includes an agent owned wholly or partly by a title insurance company and includes a direct operation.

Sec. 2651.206. EXAMINATION REPORTS. (a) An audit, review, or examination conducted under this chapter or Chapter 2602 must be conducted in accordance with rules adopted by the commissioner. The rules must provide:

(1) that before a report from an examination, review, or audit becomes final, the department will furnish to the title agent or direct operation a copy of the report and any evidence on which the report relies;

(2) a reasonable period of not less than 10 days after the title agent or direct operation receives the report and evidence from the department for the title agent or direct operation to respond;

(3) an opportunity for an appeal under a process similar to the process under Title 28, Part 1, Chapter 7, Subchapter A, Texas Administrative Code; and

(4) procedures to ensure that the report and any evidence regarding the report remain confidential and are transmitted only to designated representatives of the title agent or direct operation.

(b) The commissioner shall furnish the title agent or direct operation with a draft of the report and a copy of any evidence not later than the 10th day before the scheduled date of a meeting requested by the department regarding a report.

(c) This section does not require the department to turn over work papers. For purposes of this subsection, work papers are the records of an auditor or examiner of the procedures followed, the tests performed, the information obtained, and the conclusions reached that are pertinent to the audit or examination. Work papers include work programs, analyses, memoranda, letters of confirmation and

representation, abstracts of company documents and schedules, and commentaries prepared or obtained by the auditor or examiner that support the opinions of the auditor or examiner.

SECTION 17. Section 2703.202, Insurance Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Except as provided by Subsection (d), a public hearing held under Subsection (a) or under Section 2703.206 shall be conducted by the commissioner as a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

(d) Notwithstanding Subsection (c), at the request of a title insurance company or the public insurance counsel, a public hearing held under Subsection (a) or under Section 2703.206 must be conducted by the commissioner as a contested case hearing under Subchapters C through H and Subchapter Z, Chapter 2001, Government Code.

(e) Information received or requested by the commissioner as part of an individual audit or examination under Chapters 2602 and 2651 may not be used for rate setting under Subchapter D, Chapter 2703. Nothing in this section prohibits a party from conducting discovery in a ratemaking or other proceeding or producing other information requested by the department, or verifying the data reported under a statistical plan or report promulgated by the commissioner.

(f) Subsections (c) through (e) apply only to a public hearing held on or after January 1, 2009.

SECTION 18. Section 2602.056 and Section 2602.153(c), Insurance Code, are repealed.

SECTION 19. An abstract plant that exists on September 1, 2009, but that does not, on that date, cover a period beginning not later than January 1, 1979, as required by Section 2501.004, Insurance Code, as amended by this Act, is not required to comply with that section before January 1, 2014.

SECTION 20. Section 2651.158, Insurance Code, as added by this Act, applies beginning with annual audits conducted under Subchapter D, Chapter 2651, Insurance Code, for the 2011 calendar year.

SECTION 21. The commissioner of insurance shall hold a hearing not later than the 120th day after the effective date of this Act. Not later than the 90th day after the date of that hearing, the commissioner shall issue an order prescribing the rules to be used in connection with Section 2651.206, Insurance Code, as added by this Act.

SECTION 22. This Act takes effect September 1, 2009.

The amendment to **CSHB 4338** was read and was adopted by a viva voce vote.

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

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

**CSHB 4338** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4338 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 4338** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3737 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3737** at this time on its second reading:

**HB 3737**, Relating to criminal history checks for employees of, and applicants for employment at, special care facilities.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3737** (Senate committee printing) as follows:

(1) Strike SECTION 3 of the bill (page 1, line 45) and substitute the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Subsections (e), (f), and (g), Section 161.076, Human Resources Code, as added by this Act, take effect September 1, 2011.

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

SECTION \_\_\_\_\_. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.076 to read as follows:

Sec. 161.076. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES. (a) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a facility or agency licensed by the department shall submit to the Department of Public Safety for use in conducting background and criminal history checks:

(1) when applying for a license from the department, the name of each person who will provide direct care or who has direct access to residents or clients of the facility or agency and who is:

(A) a director, owner, or operator of the facility or agency;

(B) a person employed at the facility or by the agency; or

(C) a person 14 years of age or older, other than a resident or client in care, who will regularly or frequently be staying or working at the facility or agency while residents or clients are being provided care; and

(2) at the time specified by the rules adopted by the executive commissioner, the name of each person who will provide direct care or who will have direct access to residents or clients of the facility or agency and who is a prospective:

- (A) employee of the facility or agency; or
- (B) volunteer at the facility or with the agency.

(b) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a facility or agency licensed by the department shall submit a complete set of fingerprints of each employee or prospective employee whose name is required to be submitted under Subsection (a) and who will provide direct care or have direct access to a resident or client in the facility or of the agency, unless the person:

(1) is a person for whom fingerprints have previously been submitted on behalf of the facility or agency under this section; or

(2) is precluded from providing direct care or having direct access to a resident or client in the facility or of the agency based on the information resulting from a completed state criminal history check.

(c) The director, owner, or operator of a facility or agency licensed by the department shall ensure that the facility or agency complies with this section and that the facility or agency immediately terminates the employment of a person who, as a result of a background check completed under this section, is precluded from providing direct care or having direct access to a resident or client in the facility or of the agency.

(d) The rules adopted under Subsections (a) and (b):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) shall require a facility or agency licensed by the department to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in processing background and criminal history checks conducted under this section.

(e) A director, owner, or operator of a facility or agency licensed by the department commits an offense if the director, owner, or operator knowingly:

(1) fails to submit information about a person as required by this section or rules adopted by the executive commissioner to conduct background and criminal history checks with respect to the person; and

(2) employs the person at the facility or agency or otherwise allows the person to regularly or frequently stay or work at the facility or agency while residents or clients are being provided care.

(f) A director, owner, or operator of a facility or agency licensed by the department commits an offense if, after the date the director, owner, or operator discovers that, based on the results of a person's background or criminal history check, the person is precluded from providing direct care or having direct access to a resident or client in the facility or of the agency, the director, owner, or operator knowingly:

(1) employs the person at the facility or agency; or

(2) otherwise allows the person to regularly or frequently stay or work at the facility or agency while residents or clients are being provided care.

(g) An offense under Subsection (e) or (f) is a Class B misdemeanor.

SECTION \_\_\_\_. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1146 to read as follows:

Sec. 411.1146. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES LICENSEES. (a) The Department of Aging and Disability Services 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 license issued by the Department of Aging and Disability Services;

(2) an employee or an applicant for employment at a facility or agency licensed by the Department of Aging and Disability Services;

(3) a volunteer or applicant to be a volunteer at a facility or agency licensed by the Department of Aging and Disability Services; or

(4) at least 14 years of age, other than a person who is a resident or client of a licensed facility or licensed agency, who will regularly or frequently be staying or working at a licensed facility or working with residents or clients of a licensed agency, other than a person who is a resident or client of a licensed facility or licensed agency.

(b) Criminal history record information obtained by the Department of Aging and Disability Services under Subsection (a) may not be released or disclosed to any person except:

(1) on court order;

(2) with the consent of the person who is the subject of the criminal history record information;

(3) for purposes of an administrative hearing held by the Department of Aging and Disability Services concerning the person who is the subject of the criminal history record information; or

(4) as provided by Subsection (c).

(c) The Department of Aging and Disability Services is not prohibited from releasing criminal history record information obtained under this section to:

(1) the person who is the subject of the criminal history record information;  
or

(2) a facility or agency:

(A) that employs or is considering employing the person who is the subject of the criminal history record information; or

(B) at which the person regularly stays or works.

(d) Subject to Section 411.087, the Department of Aging and Disability Services is entitled to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

(e) The Department of Aging and Disability Services shall collect and destroy criminal history record information that relates to a person immediately after providing the information to a facility or agency making an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information.

SECTION \_\_\_\_\_. (a) The change in law made by this Act to Section 161.076(e), (f), and (g), Human Resources Code, relating to background and criminal history checks applies only to background and criminal history checks performed on or after September 1, 2011.

(b) Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules as required by Section 161.076, Human Resources Code, as added by this Act.

The amendment to **HB 3737** was read and was adopted by a viva voce vote.

**(President in Chair)**

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

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

**HB 3737** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3737 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3737** be placed on its third reading and final passage.

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

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

**HOUSE BILL 635 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 635** at this time on its second reading:

**HB 635**, Relating to the authority of the Texas Education Agency to seek, accept, determine eligibility for, and distribute grants available for the benefit of public education.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 635** (Senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter J, Chapter 21, Education Code, is amended by adding Section 21.461 to read as follows:

Sec. 21.461. PROFESSIONAL DEVELOPMENT GRANTS REGARDING EDUCATION OF STUDENTS WITH DISABILITIES. (a) From funds appropriated for the purpose, as well as other available sources, the commissioner shall award a grant to each teacher or paraprofessional who completes a professional development institute developed under Subsection (c). The commissioner shall determine the amount of the grant awarded under this subsection.

(b) The commissioner shall, for each teacher or paraprofessional who completes training in an applied behavior analysis training program developed under Subsection (e), pay to the provider the cost of providing the program to the teacher or paraprofessional. The commissioner may determine a maximum amount that may be paid to provide the program under this subsection.

(c) The commissioner shall develop and make available professional development institutes for teachers and paraprofessionals relating to research-based instructional services for students with disabilities, including autism spectrum disorders.

(d) A professional development institute developed under this section must address:

(1) disability-specific information necessary to enable a teacher or paraprofessional to work effectively in the classroom with students with disabilities;

(2) instructional techniques proven by scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801), to be effective in teaching the curriculum required under Section 28.002 to students with disabilities; and

(3) appropriate management of behaviors related to a student's disability that may affect the student's performance.

(e) The commissioner shall develop one or more professional development institutes that offer applied behavior analysis training programs provided by or supervised by a person certified as a behavior analyst by the Behavior Analyst Certification Board. A training program under this subsection must provide:

(1) public access to lectures and training on the agency's Internet website and the appropriate regional education service center's Internet website;

(2) individual consultation in the classroom with students for at least six one-hour sessions;

(3) telephone or in-person video review for at least three one-hour sessions; and

(4) access to the teacher's mentor through telephone or videoconference consultation during the program.

(f) The commissioner shall develop a list of providers approved to conduct an applied behavior analysis training program under Subsection (e). A training program may be provided by a regional education service center, district specialist, university, private entity, private consultant, or other entity that provides training.

(g) The commissioner shall adopt criteria for selection of teachers and paraprofessionals authorized to attend a professional development institute, including an applied behavior analysis training program, developed under this section. The commissioner must give priority to teachers and paraprofessionals who have a significant level of professional contact with students with autism spectrum disorders.

(h) Not later than January 1 of each odd-numbered year, the commissioner shall submit a report regarding the success of the institutes developed under this section, including recommendations for changes, to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each legislative committee with primary jurisdiction over public education.

SECTION \_\_\_\_\_. Section 21.461, Education Code, as added by this Act, does not make an appropriation. Section 21.461, Education Code, as added by this Act, takes effect only if a specific appropriation for the implementation of the section is provided in a general appropriations act of the 81st Legislature.

The amendment to **HB 635** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Fraser.

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

## **Floor Amendment No. 2**

Amend **HB 635** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. (a) Chapter 73, Education Code, is amended by adding Subchapter I to read as follows:

### SUBCHAPTER I. COMPETITIVE GRANT PROGRAM TO PROMOTE EARLY LITERACY

Sec. 73.601. DEFINITIONS. In this subchapter:

(1) "Competitive grant program" means the competitive grant program to promote early literacy established under this subchapter.

(2) "Health care practitioner" has the meaning assigned by Section 112.001, Occupations Code.

(3) "Health science center" means The University of Texas Health Science Center at Houston.

(4) "Literacy program" means a program to promote early literacy.

Sec. 73.602. ESTABLISHMENT OF COMPETITIVE GRANT PROGRAM TO PROMOTE EARLY LITERACY. (a) The University of Texas Health Science Center at Houston shall establish a competitive grant program to promote early literacy through which the health science center will award grants for the implementation of literacy programs, or the expansion of existing programs, and for the operation of those programs for a period of not less than two years.

(b) The health science center shall award grants under the program to applicants, including applicants operating existing programs, in a manner that ensures that the literacy programs collectively:

(1) operate in multiple communities that are geographically distributed throughout this state; and

(2) provide program services to approximately 50,000 children.

Sec. 73.603. LITERACY PROGRAM REQUIREMENTS. (a) A literacy program funded through a grant awarded under this subchapter must:

(1) strictly adhere to the program model developed by the Reach Out and Read National Center, including any clinical, programmatic, and data collection requirements of that model;

(2) provide matching funds in an amount equal to the amount of the grant funds awarded under this subchapter;

(3) require that health care practitioners volunteer to:

(A) in conjunction with performing well-child examinations, provide books to children and encourage parents to read to their children to develop preliteracy skills;

(B) maintain waiting rooms that encourage children to read; and

(C) provide services designed to increase the school readiness of children receiving program services; and

(4) partner with local adult literacy providers to encourage parent literacy in appropriate circumstances.

(b) Matching funds under Subsection (a)(2) may include in-kind contributions.

Sec. 73.604. APPLICATION. (a) A public or private entity, including a county, municipality, or other political subdivision of this state, may apply for a grant under this subchapter.

(b) To apply for a grant, an applicant must submit a written application to the health science center on a form prescribed by the health science center in consultation with the Reach Out and Read National Center.

Sec. 73.605. ADDITIONAL CONSIDERATIONS IN AWARDING GRANTS. In addition to the factors described by Sections 73.602(b) and 73.603, in determining whether to award a grant to an applicant under this subchapter, the health science center may consider:

(1) the demonstrated need for a literacy program in the community in which the applicant proposes to operate or expand the program, which the health science center shall determine by considering:

(A) the poverty rate, the crime rate, the number of births to Medicaid recipients, the rate of poor birth outcomes, and the incidence of referrals of elementary school students for remedial instruction or special education services, and of child abuse and neglect, during a prescribed period in the community; and

(B) the need to enhance school readiness in the community;

(2) the applicant's ability to participate in ongoing monitoring and performance evaluations under Section 73.608, including the applicant's ability to collect and provide information requested by the health science center under Section 73.608(d);

(3) the applicant's ability to adhere to the literacy program guidelines published under Section 73.606;

(4) the applicant's ability to develop broad-based community support for implementing or expanding a literacy program, as applicable; and

(5) the applicant's history of developing and sustaining innovative, high-quality programs that meet the needs of families and communities.

Sec. 73.606. LITERACY PROGRAM GUIDELINES. The health science center, with the assistance of the Reach Out and Read National Center, shall publish guidelines for the literacy programs funded under this subchapter. The guidelines must adhere to the Reach Out and Read national program model standards and guidelines that have been tested and replicated in multiple communities.

Sec. 73.607. USE OF PROGRAM FUNDS. (a) In addition to awarding grants under this subchapter, the health science center may use program funds to:

(1) administer the competitive grant program; and

(2) purchase or contract to purchase discounted books for use by grant recipients.

(b) A grant recipient may use grant funds awarded under this subchapter only to cover costs related to implementing or expanding and operating a literacy program, including costs related to:

(1) administering the literacy program;

(2) training and managing health care practitioners who volunteer to participate in the literacy program; and

(3) purchasing or contracting to purchase discounted books for use in the literacy program.

Sec. 73.608. PROGRAM MONITORING AND EVALUATION; ANNUAL COMMITTEE REPORTS. (a) The health science center, with the assistance of the Reach Out and Read National Center, shall publish performance indicators that are designed to measure a grant recipient's performance with respect to the literacy program guidelines published under Section 73.606.

(b) The health science center shall:

(1) use the performance indicators published under Subsection (a) to continuously monitor and formally evaluate on an annual basis the performance of each grant recipient; and

(2) prepare and submit an annual report, not later than December 1 of each year, to the Senate Committee on Education, or its successor, and the House Public Education Committee, or its successor, regarding the performance of each grant recipient during the preceding state fiscal year with respect to providing literacy program services.

(c) The report required under Subsection (b)(2) must include:

(1) the number of low-income children receiving literacy program services;

(2) the number of health care practitioners who participate in the program and the estimated value of the services provided by those practitioners under the program; and

(3) the extent to which each grant recipient adhered to the Reach Out and Read national program model.

(d) On request, each grant recipient shall timely collect and provide data and any other information required by the health science center to monitor and evaluate the recipient or to prepare the report required by this section.

Sec. 73.609. COMPETITIVE GRANT PROGRAM FUNDING. (a) The health science center shall actively seek and apply for any available federal funds to assist in financing the competitive grant program established under this subchapter.

(b) The health science center may use appropriated funds from the state government and may accept gifts, donations, grants of money, and in-kind contributions from the federal government, local governments, private corporations, or other persons to assist in financing the competitive grant program.

(b) The University of Texas Health Science Center at Houston shall:

(1) as soon as practicable, apply for any available federal funds to assist in financing the competitive grant program under Subchapter I, Chapter 73, Education Code, as added by this section, as required by Section 73.609, Education Code, as added by this section;

(2) not later than December 1, 2009, submit a report to the Senate Committee on Education, or its successor, and the House Public Education Committee, or its successor, regarding the implementation and status of the competitive grant program required by Subchapter I, Chapter 73, Education Code, as added by this section;

(3) not later than September 1, 2010, establish and implement the competitive grant program required by Subchapter I, Chapter 73, Education Code, as added by this section, and, with the assistance of the Reach Out and Read National Center, publish the guidelines required by Section 73.606, Education Code, as added by this section; and

(4) not later than December 1, 2011, submit the initial annual report required by Subdivision (2), Subsection (b), Section 73.608, Education Code, as added by this section.

(c) This section does not make an appropriation. A provision in this section that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

The amendment to **HB 635** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

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

**HB 635** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 635 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 635** be placed on its third reading and final passage.

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

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

### HOUSE BILL 4412 ON SECOND READING

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4412** at this time on its second reading:

**HB 4412**, Relating to the arbitration deposit required for an appeal through binding arbitration of appraisal review board orders involving multiple tracts of land.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 4412 ON THIRD READING

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 4412** be placed on its third reading and final passage.

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

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

### HOUSE BILL 1218 ON SECOND READING

Senator Watson moved to suspend the regular order of business to take up for consideration **HB 1218** at this time on its second reading:

**HB 1218**, Relating to a pilot project to exchange secure electronic health information between the Health and Human Services Commission and local or regional health information exchanges.

The motion prevailed.

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

The bill was read second time.

Senator Watson at 12:20 a.m. moved to postpone further consideration of the bill to a time certain of 10:30 a.m. today.

The motion prevailed.

Question — Shall **HB 1218** be passed to third reading?

### SENATE BILL 1016 WITH HOUSE AMENDMENTS

Senator Estes called **SB 1016** 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 1016** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Department of Agriculture and the Prescribed Burning Board and the abolition of the Texas-Israel Exchange Fund Board; providing penalties.

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

ARTICLE 1. TEXAS AGRICULTURAL FINANCE AUTHORITY

SECTION 1.01. Subdivisions (1) and (2), Section 44.001, Agriculture Code, are amended to read as follows:

(1) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in the interest rate reduction [~~linked deposit~~] program and to provide collateral equal to the amount of linked deposits placed with it.

(2) "Eligible borrower" means a person who proposes to use the proceeds of a loan under this chapter in a manner that will help accomplish the state's goal of fostering the creation and expansion of enterprises based on agriculture in this state [~~is in the business or entering the business of:~~

~~[(A) processing and marketing agricultural crops in this state;~~

~~[(B) producing alternative agricultural crops in this state;~~

~~[(C) producing agricultural crops in this state the production of which has declined because of natural disasters;~~

~~[(D) producing agricultural crops in this state using water conservation equipment for agricultural production purposes; or~~

~~[(E) providing nonagricultural goods or services that provide an economic benefit to a municipality or county in a rural area].~~

SECTION 1.02. The heading to Section 44.007, Agriculture Code, is amended to read as follows:

Sec. 44.007. INTEREST RATE REDUCTION [~~LINKED DEPOSIT~~] PROGRAM.

SECTION 1.03. Subsections (a), (c), (d), (k), and (l), Section 44.007, Agriculture Code, are amended to read as follows:

(a) The board shall establish an interest rate reduction [~~a linked deposit~~] program to foster the creation and expansion of enterprises based on agriculture in this state[-

~~[(1) encourage commercial lending for the enhanced production, processing, and marketing of certain agricultural crops;~~

~~[(2) encourage the development or expansion of businesses in rural areas of this state; and~~

~~[(3) finance water conservation projects or equipment for agricultural production purposes].~~

(c) The board shall promulgate rules for the loan portion of the interest rate reduction [~~linked deposit~~] program. [~~The rules must include:~~

~~[(1) a list of the categories of crops customarily grown in Texas, with consideration given to the Texas Agricultural Statistics Service information available and relevant to this determination;~~

~~[(2) a list of crops that are alternative agricultural crops, with consideration given to the Texas Agricultural Statistics Service information available and relevant to this determination;~~

~~[(3) identification of criteria for a project eligible for natural disaster assistance; and~~

~~[(4) identification of projects and types of equipment considered as water conservation projects or equipment for agricultural production purposes.]~~

(d) In order to participate in the interest rate reduction [linked deposit] program, an eligible lending institution may solicit loan applications from eligible borrowers.

(k) The board may adopt rules that create a procedure for determining priorities for loans granted under this chapter. Each rule adopted must state the policy objective of the rule. ~~[The policy objectives of the rules may include preferences to:~~

~~[(1) achieve adequate geographic distribution of loans;~~

~~[(2) assist certain industries;~~

~~[(3) encourage certain practices including water conservation; and~~

~~[(4) encourage value added processing of agricultural products.]~~

(l) A lending institution is not ineligible to participate in the interest rate reduction [linked deposit] program solely because a member of the board is also an officer, director, or employee of the lending institution, provided that a board member shall recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

SECTION 1.04. Subsections (a) and (b), Section 44.010, Agriculture Code, are amended to read as follows:

(a) At any one time, not more than \$30 million~~[- \$10 million of which may be used only to finance water conservation projects and \$5 million of which may be used only to finance the economic development of businesses in rural areas;]~~ may be placed in linked deposits under this chapter.

(b) The maximum amount of a loan under this chapter ~~[to process and market Texas agricultural crops]~~ is \$500,000. ~~[The maximum amount of a loan under this chapter to produce alternative agricultural crops in this state is \$250,000. The maximum amount of a loan under this chapter to finance water conservation projects or equipment for agricultural production purposes is \$250,000. The maximum amount of a loan under this chapter to finance production of a crop declared eligible for natural disaster relief, as defined by board rule, is \$250,000. The maximum amount of a loan under this chapter to finance a business in a rural area is \$250,000.]~~

SECTION 1.05. Section 58.012, Agriculture Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (g) to read as follows:

(a) The authority is governed by a board of directors composed of the commissioner of agriculture, the director of the Institute for International Agribusiness Studies at Prairie View A&M University, and nine ~~[seven]~~ members appointed by the commissioner ~~[governor with the advice and consent of the senate]~~. Members of the board must be appointed in the numbers specified and from the following categories:

(1) one person who is an elected or appointed official of a municipality or county;

(2) four persons who are knowledgeable about agricultural lending practices;

(3) one person who is a representative of agricultural businesses; ~~[and]~~

(4) one person who is a representative of agriculture related entities, including rural chambers of commerce, foundations, trade associations, institutions of higher education, or other entities involved in agricultural matters; and

(5) two persons who represent young farmers and the interests of young farmers.

(b) The appointed members of the board serve staggered terms of two years, with the terms of four [~~three~~] members expiring on January 1 of each even-numbered year and the terms of five [~~four~~] members expiring on January 1 of each odd-numbered year.

(c) Any vacancy occurring in an appointed position on the board shall be filled by the commissioner [~~governor~~] for the unexpired term.

(g) Notwithstanding Subsection (f), age may be considered by the commissioner in making appointments under Subsection (a)(5).

SECTION 1.06. Subsection (a), Section 58.013, Agriculture Code, is amended to read as follows:

(a) The commissioner [~~governor~~] shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the commissioner [~~governor~~]. The board shall elect a vice-chairman biennially from its members and shall elect a secretary, a treasurer, and other officers it considers necessary.

SECTION 1.07. Subsection (a), Section 58.0176, Agriculture Code, is amended to read as follows:

(a) Before a member of the board may assume the member's duties [~~and before the member may be confirmed by the senate~~], the member must complete at least one course of the training program established under this section.

SECTION 1.08. Subsections (c) and (d), Section 58.023, Agriculture Code, are amended to read as follows:

(c) Eligible agricultural businesses or lenders participating in the authority's programs shall pay the costs of applying for, participating in, and administering and servicing the program, in amounts the board considers reasonable and necessary. The board shall charge an administrative fee for guaranteeing a loan under Subchapter E that may not be less than one percent of the amount of the guaranteed loan. Any costs not paid by the eligible agricultural businesses or lenders shall be paid from the funds of the authority, including those funds established from bond proceeds.

(d) The board by rule shall adopt an agreement to be used between a lender and an approved applicant under which the authority makes a payment from the Texas agricultural fund for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower [~~under this subchapter~~]. The agreement must require the borrower to use the proceeds of the loan for the purposes of the program under which the payment is made. The board shall adopt rules to implement this subsection.

SECTION 1.09. Subchapter D, Chapter 58, Agriculture Code, is amended by adding Section 58.041 to read as follows:

Sec. 58.041. ISSUANCE OF DEBT BY TEXAS PUBLIC FINANCE AUTHORITY. (a) In this section, "debt instrument" means a note, debenture, bond, or other evidence of indebtedness.

(b) The Texas Public Finance Authority has the exclusive authority to act on behalf of the authority in issuing debt instruments authorized to be issued by the authority. A reference in law to a debt instrument issued by the authority, in the context of a debt instrument issued on or after September 1, 2009, means a debt instrument issued by the Texas Public Finance Authority on behalf of the authority.

(c) Notwithstanding Section 58.034(e), the authority shall pay all costs incurred by the Texas Public Finance Authority for issuing debt instruments on behalf of the authority and associated fees and expenses.

(d) When the board authorizes the issuance of debt instruments to fund a loan, the authority shall notify the Texas Public Finance Authority of the amount of the loan and the recipient of the loan and request the Texas Public Finance Authority to issue debt instruments in an amount necessary to fund the loan. The authority and the Texas Public Finance Authority shall determine the amount and time of a debt instrument issue to best provide funds for one or multiple loans.

(e) The Texas Public Finance Authority, at the request of the authority, may issue debt instruments to provide money to the Texas agricultural fund.

(f) The Texas Public Finance Authority may sell debt instruments in any manner it determines to be in the best interest of the authority, except that it may not sell a debt instrument that has not been approved by the attorney general and registered with the comptroller.

(g) The board, in consultation with the Texas Public Finance Authority, shall adopt rules containing criteria for evaluating the creditworthiness of loan applicants and the financial feasibility of projects to be funded with debt instruments issued by the Texas Public Finance Authority on behalf of the authority.

(h) The Texas Public Finance Authority may enter into a credit agreement for a debt instrument issued by the Texas Public Finance Authority on behalf of the authority for a period and on conditions approved by the Texas Public Finance Authority.

(i) This subsection applies only in relation to general obligation debt instruments. To the extent other sources of revenue available for payment of the authority's debts are insufficient and in accordance with the Texas Constitution, general revenue is to be appropriated to the Texas Public Finance Authority in an amount determined by the Texas Public Finance Authority to be necessary to pay the principal, premium if any, and interest on general obligation debt instruments issued by the Texas Public Finance Authority on behalf of the authority, and that amount shall be specified in the biennial appropriations acts.

SECTION 1.10. The heading to Subchapter E, Chapter 58, Agriculture Code, is amended to read as follows:

SUBCHAPTER E. AGRICULTURAL [~~YOUNG FARMER~~] LOAN GUARANTEE PROGRAM

SECTION 1.11. Subdivision (2), Section 58.051, Agriculture Code, is amended to read as follows:

(2) "Eligible applicant" means a person applying for a loan guarantee under this subchapter who[-

~~(A) is at least 18 years of age but younger than 40 years of age; and~~

~~(B) complies with the application procedures prescribed by this subchapter.~~

SECTION 1.12. The heading to Section 58.052, Agriculture Code, is amended to read as follows:

Sec. 58.052. AGRICULTURAL [~~YOUNG FARMER~~] LOAN GUARANTEE PROGRAM.

SECTION 1.13. Section 58.052, Agriculture Code, is amended by amending Subsections (b), (c), and (e) and adding Subsection (f) to read as follows:

(b) The board, either directly or through authority delegated to the commissioner, may grant to an eligible applicant a guarantee of a loan made by a commercial lender for the purposes prescribed by this subchapter. The board by rule shall establish tiered loan guarantee limits. To be eligible to be guaranteed under this subchapter, a loan with a term of more than one year must have a fixed interest rate [guarantee amount may not exceed the lesser of \$250,000 or 90 percent of the loan amount].

(c) The ~~[aggregate]~~ amount that may be used to guarantee loans [guaranteed] under this subchapter may not exceed three-fourths of [twice] the amount contained in the ~~[young farmer loan guarantee account within the]~~ Texas agricultural fund.

(e) The board shall adopt an agreement, to be used between a commercial lender and an approved eligible applicant, under which the program provides a payment from money in the Texas agricultural fund [young farmer loan guarantee account] for the purpose of providing a reduced interest rate on a loan guaranteed to a borrower under this subchapter. The board shall adopt rules to implement this subsection. The maximum rate reduction under this subsection per year for each borrower may [shall] not exceed three percentage points or an amount that results in \$10,000 in interest savings for the borrower for the year.

(f) The board by rule shall establish a certified lender program under which the board may certify commercial lenders to participate in the agricultural loan guarantee program in order to expedite the processing of loan guarantee applications by the board.

SECTION 1.14. Section 58.056, Agriculture Code, is amended to read as follows:

Sec. 58.056. MONEY FOR LOAN GUARANTEE PROGRAM. The authority may accept gifts and grants of money from the federal government, local governments, private corporations, or other persons for use in the agricultural [young farmer] loan guarantee program. The legislature may appropriate money for the program.

SECTION 1.15. Subsections (b) and (d), Section 58.057, Agriculture Code, are transferred to Section 58.032, Agriculture Code, relettered as Subsections (g) and (h) of that section, and amended to read as follows:

(g) [(b)] The fund includes [account consists of funds and transfers made to the account,] grants and donations made for the purposes of the programs administered by the Texas Agricultural Finance Authority [the young farmer loan guarantee program, income earned on money in the account,] and any other money received under this chapter [subchapter]. Notwithstanding Section 404.071, Government Code, income and interest earned on money in the fund [account] shall be deposited to the credit of the fund [account]. [At the end of each state fiscal year the authority shall transfer to the general credit of the Texas agricultural fund any interest earned on the account that remains after payment of any administrative expenses of the program.] The fund [account] is exempt from the application of Section 403.095, Government Code.

(h) ~~(e)~~ The board shall attempt to administer the fund in a manner that makes private donations to the fund an eligible itemized deduction for federal income taxation purposes.

SECTION 1.16. Chapter 58, Agriculture Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. YOUNG FARMER INTEREST RATE REDUCTION  
PROGRAM

Sec. 58.071. DEFINITIONS. In this subchapter:

(1) "Eligible lending institution" means a financial institution that makes commercial loans, is either a depository of state funds or an institution of the Farm Credit System headquartered in this state, and agrees to participate in the young farmer interest rate reduction program and to provide collateral equal to the amount of linked deposits placed with it.

(2) "Linked deposit" means a time deposit governed by a written deposit agreement between the state and an eligible lending institution that provides:

(A) that the eligible lending institution pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate of a United States treasury bill or note of comparable maturity minus three percent; or

(ii) 0.5 percent;

(B) that the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) that the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the linked deposit rate plus a maximum of four percent.

Sec. 58.072. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM. (a) The board shall establish a young farmer interest rate reduction program to promote the creation and expansion of agricultural businesses by young people in this state.

(b) To be eligible to participate in the young farmer interest rate reduction program, an applicant must be at least 18 years of age but younger than 46 years of age.

(c) The board shall approve or disapprove any and all applications under this subchapter, provided that the board may delegate this authority to the commissioner.

(d) The board shall adopt rules for the loan portion of the young farmer interest rate reduction program.

(e) In order to participate in the young farmer interest rate reduction program, an eligible lending institution may solicit loan applications from eligible applicants.

(f) After reviewing an application and determining that the applicant is eligible and creditworthy, the eligible lending institution shall send the application for a linked deposit loan to the administrator of the authority.

(g) The eligible lending institution shall certify the interest rate applicable to the specific eligible applicant and attach it to the application sent to the administrator of the authority.

(h) After reviewing each loan application under this subchapter, the board or the commissioner shall recommend to the comptroller the acceptance or rejection of the application.

(i) After acceptance of the application, the comptroller shall place a linked deposit with the applicable eligible lending institution for the period the comptroller considers appropriate. The comptroller may not place a deposit for a period extending beyond the state fiscal biennium in which it is placed. Subject to the limitation described by Section 58.075, the comptroller may place time deposits at an interest rate described by Section 58.071(2).

(j) Before the placing of a linked deposit, the eligible lending institution and the state, represented by the comptroller, shall enter into a written deposit agreement containing the conditions on which the linked deposit is made.

(k) If a lending institution holding linked deposits ceases to be either a state depository or a Farm Credit System institution headquartered in this state, the comptroller may withdraw the linked deposits.

(l) The board may adopt rules that create a procedure for determining priorities for loans granted under this subchapter. Each rule adopted must state the policy objective of the rule.

(m) A lending institution is not ineligible to participate in the young farmer interest rate reduction program solely because a member of the board is also an officer, director, or employee of the lending institution, provided that a board member shall recuse himself or herself from any action taken by the board on an application involving a lending institution by which the board member is employed or for which the board member serves as an officer or director.

(n) Linked deposits under the young farmer interest rate reduction program shall be funded from the Texas agricultural fund.

Sec. 58.073. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must loan money to eligible applicants in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the board.

(b) The board shall monitor compliance with this subchapter and inform the comptroller of noncompliance on the part of an eligible lending institution.

Sec. 58.074. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made under this subchapter. A delay in payment or default on a loan by a borrower does not affect the validity of the deposit agreement. Linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 58.075. LIMITATIONS IN PROGRAM. (a) The maximum amount of a loan under this subchapter is \$500,000.

(b) A loan granted under this subchapter may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed assets acquisition or improvement, as identified in the application.

SECTION 1.17. Chapter 58, Agriculture Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. YOUNG FARMER GRANT PROGRAM

Sec. 58.091. GRANT PROGRAM. (a) The authority shall administer a young farmer grant program. A grant must be for the purpose of fostering the creation and expansion of agricultural businesses by young people in this state.

(b) The board shall adopt rules governing the operation of the program and selection criteria for grant recipients.

(c) The board shall select grant recipients.

Sec. 58.092. ELIGIBILITY. To be eligible to receive a grant under this subchapter, a person must:

(1) be an agricultural producer who is at least 18 years of age but younger than 46 years of age; and

(2) provide matching funds in the amount of not less than one dollar for each dollar of grant money received.

Sec. 58.093. AMOUNT OF GRANTS. A grant under the young farmer grant program may not be less than \$5,000 or more than \$20,000.

Sec. 58.094. APPLICATIONS. (a) The authority shall accept grant applications during two application periods each year.

(b) Applicants shall submit an application on a form approved by the board or the board's designee.

Sec. 58.095. FUNDING. The source of funds for the young farmer grant program is the Texas agricultural fund.

SECTION 1.18. Section 1232.101, Government Code, is amended to read as follows:

Sec. 1232.101. ISSUANCE OF BONDS FOR CERTAIN STATE AGENCIES. With respect to all bonds authorized to be issued by or on behalf of the adjutant general's department, Parks and Wildlife Department, Texas Agricultural Finance Authority, Texas Low-Level Radioactive Waste Disposal Authority, Stephen F. Austin State University, Midwestern State University, and Texas Southern University, the authority has the exclusive authority to act on behalf of those entities in issuing bonds on their behalf. In connection with those issuances and with the issuance of refunding bonds on behalf of those entities, the authority is subject to all rights, duties, and conditions surrounding issuance previously applicable to the issuing entity under the statute authorizing the issuance. A reference in an authorizing statute to the entity on whose behalf the bonds are being issued applies equally to the authority in its capacity as issuer on behalf of the entity.

SECTION 1.19. Subsection (d), Section 1372.028, Government Code, is amended to read as follows:

(d) An issuer is not required to provide the statement required by Subsection (c)(3)(F) if the issuer:

(1) is an issuer of a state-voted issue;

(2) is the Texas Department of Housing and Community Affairs~~], the Texas Agricultural Finance Authority,~~ or the Texas State Affordable Housing Corporation;  
or

(3) provides evidence that one or more binding contracts have been entered into, or other evidence acceptable to the board as described by program rule, to spend the unexpended proceeds by the later of:

- (A) 12 months after the date the board receives the application; or
- (B) December 31 of the program year for which the application is filed.

SECTION 1.20. Subsection (b), Section 502.174, Transportation Code, is amended to read as follows:

(b) The county assessor-collector shall send an assessment collected under this section to the comptroller, at the time and in the manner prescribed by the Texas Agricultural Finance Authority, for deposit in the Texas agricultural fund [~~to the credit of the young farmer loan guarantee account~~].

SECTION 1.21. The following provisions are repealed:

- (1) Subdivision (3), Section 44.001, Agriculture Code;
- (2) Subsection (c), Section 58.0173, Agriculture Code;
- (3) Subsection (b), Section 58.0211, Agriculture Code;
- (4) Subsections (a), (c), and (e), Section 58.057, Agriculture Code; and
- (5) Section 1372.0235, Government Code.

SECTION 1.22. On the effective date of this Act:

- (1) the young farmer loan guarantee program under Subchapter E, Chapter 58, Agriculture Code, as that subchapter existed before amendment by this Act, is abolished; and
- (2) the agricultural loan guarantee program under Subchapter E, Chapter 58, Agriculture Code, as amended by this Act, is established.

SECTION 1.23. On the effective date of this Act, the young farmer loan guarantee account is abolished. All money in the account on that date remains in the Texas agricultural fund. All deposits purportedly made to the account on or after that date shall be deposited in the Texas agricultural fund. All references in law or rule to the young farmer loan guarantee account mean the Texas agricultural fund.

SECTION 1.24. (a) As soon as practicable on or after the effective date of this Act, the commissioner of agriculture shall appoint two members to the board of directors of the Texas Agricultural Finance Authority who represent young farmers and the interests of young farmers. In appointing those members, the commissioner shall appoint one person to a term expiring January 1, 2010, and one to a term expiring January 1, 2011.

(b) The changes in law made by this Act by the amendment of Section 58.012, Agriculture Code, do not affect the entitlement of a member of the board of directors of the Texas Agricultural Finance Authority serving on the board immediately before the effective date of this Act to continue to serve on the board and carry out the board's functions for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under Section 58.012, Agriculture Code, as amended by this Act.

SECTION 1.25. Subsection (b), Section 58.041, Agriculture Code, as added by this Act, does not apply to the extension, renewal, or renegotiation of debt issued by the Texas Agricultural Finance Authority before the effective date of this Act. The extension, renewal, or renegotiation of debt issued by the Texas Agricultural Finance

Authority before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

## ARTICLE 2. PRESCRIBED BURNING BOARD

SECTION 2.01. Section 153.001, Natural Resources Code, is amended to read as follows:

Sec. 153.001. ~~DEFINITIONS~~ [DEFINITION]. In this chapter:

- (1) "Board"~~["board"]~~ means the Prescribed Burning Board.
- (2) "Department" means the Department of Agriculture.

SECTION 2.02. Subchapter A, Chapter 153, Natural Resources Code, is amended by adding Section 153.004 to read as follows:

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

SECTION 2.03. Subsection (a), Section 153.041, Natural Resources Code, is amended to read as follows:

(a) The Prescribed Burning Board is established within the department [~~Department of Agriculture~~] and is composed of:

- (1) an employee of the Texas Forest Service designated by the director of the Texas Forest Service;
- (2) an employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department;
- (3) an employee of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] appointed by the executive director of the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];
- (4) an employee of the Texas AgriLife [~~Agricultural~~] Extension Service appointed by the executive director of the Texas AgriLife [~~Agricultural~~] Extension Service;
- (5) an employee of [~~the~~] Texas AgriLife Research [~~Agricultural Experiment Station~~] appointed by the director of [~~the~~] Texas AgriLife Research [~~Agricultural Experiment Station~~];
- (6) an employee of the Texas Tech University Range and Wildlife Department appointed by the dean of the Texas Tech University College of Agricultural Sciences and Natural Resources;
- (7) an employee of the department [~~Department of Agriculture~~] appointed by the commissioner of agriculture;
- (8) an employee of the State Soil and Water Conservation Board appointed by the executive director of the State Soil and Water Conservation Board; and
- (9) five persons who are:
  - (A) owners of agricultural land, as that term is defined by Section 153.081;
  - (B) self-employed or employed by a person other than a governmental entity; and

(C) appointed by the commissioner of agriculture.

SECTION 2.04. Section 153.044, Natural Resources Code, is amended to read as follows:

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). The board shall be reviewed during the period in which the Department of Agriculture is reviewed ~~[Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2009].~~

SECTION 2.05. Section 153.046, Natural Resources Code, is amended to read as follows:

Sec. 153.046. DUTIES. The board shall:

- (1) establish standards for prescribed burning;
- (2) develop a comprehensive training curriculum for certified and insured prescribed burn managers;
- (3) establish standards for certification, recertification, and training for certified and insured prescribed burn managers;
- (4) establish minimum education and professional requirements for instructors for the approved curriculum; and
- (5) establish minimum insurance requirements for certified and insured prescribed burn managers.

SECTION 2.06. Section 153.047, Natural Resources Code, is amended to read as follows:

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum standards established by the board for prescribed burning must:

- (1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:
  - (A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and
  - (B) that conforms to the standards established under this section;
- (2) require that at least one certified and insured prescribed burn manager is present on site during the conduct of the prescribed burn;
- (3) establish appropriate guidelines for size of burning crews sufficient to:
  - (A) conduct the burn in accordance with the prescription plan; and
  - (B) provide adequate protection for the safety of persons and of adjacent property;
- (4) include standards for notification to adjacent land owners, the Texas Commission on Environmental Quality ~~[Natural Resource Conservation Commission]~~, and local fire authorities; and
- (5) include minimum insurance requirements for certified and insured prescribed burn managers.

SECTION 2.07. Subsections (c) and (e), Section 153.048, Natural Resources Code, are amended to read as follows:

- (c) The certification is for two ~~[five]~~ years.
- (e) The board shall maintain a register of certified and insured prescribed burn managers and dates of completion of initial and continuing training.

SECTION 2.08. Subsections (a) and (b), Section 153.081, Natural Resources Code, are amended to read as follows:

(a) Subject to Section 153.082, an owner, lessee, or occupant of agricultural land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the supervision of a certified and insured prescribed burn manager.

(b) This section does not apply to an owner, lessee, or occupant of agricultural land who is a certified and insured prescribed burn manager and conducts a burn on that land.

SECTION 2.09. Section 153.082, Natural Resources Code, is amended to read as follows:

Sec. 153.082. INSURANCE. The limitation on liability under Section 153.081 does not apply to an owner, lessee, or occupant of agricultural land unless the certified and insured prescribed burn manager conducting a burn on the land has liability insurance coverage:

(1) of at least \$1 million for each single occurrence of bodily injury or death, or injury to or destruction of property; and

(2) with a policy period minimum aggregate limit of at least \$2 million.

SECTION 2.10. Chapter 153, Natural Resources Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

Sec. 153.101. COMPLAINTS. The department shall receive and process complaints concerning certified and insured prescribed burn managers in the manner described by Section 12.026, Agriculture Code, and rules adopted under that section.

Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) The department may impose an administrative sanction, including an administrative penalty, as provided by Sections 12.020, 12.0201, 12.0202, and 12.0261, Agriculture Code, for a violation of this chapter.

(b) The department by rule shall adopt a schedule of the disciplinary sanctions that the department may impose under this chapter. In adopting the schedule of sanctions, the department shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(c) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the department shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the department under this chapter and has previously complied with department rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

Sec. 153.103. INJUNCTION. (a) The department may apply to a district court in any county for an injunction to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.

(b) At the request of the department, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Sec. 153.104. EMERGENCY SUSPENSION. (a) On determining that a certification holder is engaged in or about to engage in a violation of this chapter and that the certification holder's continued practice constitutes an immediate threat to the public welfare, the department may issue an order suspending the certification holder's certification without notice or a hearing. The department shall immediately serve notice of the suspension on the certification holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the certification holder or be sent by registered or certified mail, return receipt requested, to the certification holder's last known address according to the department's records;

(2) state the grounds for the suspension; and

(3) inform the certification holder of the right to a hearing on the suspension order.

(c) A certification holder whose certification is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the department shall issue a notice of hearing.

(d) A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the department whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the department. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the department shall determine whether to vacate the order not later than the second day after the date of the recommendation.

SECTION 2.11. (a) Subsection (c), Section 153.048, Natural Resources Code, as amended by this Act, applies to a certification issued or renewed after the effective date of this Act. A certification issued or renewed before the effective date of this Act is governed by the law in effect on the date the certification was issued or renewed, and the former law is continued in effect for that purpose.

(b) Sections 153.102, 153.103, and 153.104, Natural Resources Code, as added 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 occurred, and the former law is continued in effect for that purpose.

### ARTICLE 3. TEXAS-ISRAEL EXCHANGE FUND BOARD

SECTION 3.01. The heading to Chapter 45, Agriculture Code, is amended to read as follows:

CHAPTER 45. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM ~~[FUND]~~

SECTION 3.02. Section 45.001, Agriculture Code, is amended to read as follows:

Sec. 45.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that Texas and Israel have many interests in common. They face many of the same difficulties in agriculture; the geography of both areas produces semiarid climatic conditions; there is present in both areas a rising demand for a limited supply of water coupled with increasing pressures to minimize the use of energy in all aspects of agriculture. Scientific and technological cooperatives already produce close ties between the two areas while engaging in binational projects for scientific and industrial research and development.

A program ~~[fund]~~ to support joint agricultural research and development by, and the development of trade and business relations between, Texas and Israel will address common problems and make substantial contributions to the development of agriculture, trade, and business in both areas. Since Texas has long emphasized broad-based agricultural research and Israel has originated and developed agricultural technologies designed to maximize production with minimal use of resources such as water and labor, each of the two areas will benefit by sharing information and expertise.

(b) The purpose of this chapter is to:

(1) establish a program ~~[fund]~~ to promote and support practical and applied agricultural research and development that will result in mutual benefit to Texas and Israel and will help to provide solutions to food and fiber production problems wherever they exist, particularly those relating to water conservation; and

(2) establish a program of mutual cooperation that will foster the development of trade, mutual assistance, and business relations between Texas and Israel.

SECTION 3.03. Section 45.002, Agriculture Code, is amended to read as follows:

Sec. 45.002. DEFINITION ~~[DEFINITIONS]~~. In this chapter, ~~[-~~

~~(1) "applied~~ ~~[Applied]~~ research" means the process of assembling knowledge gained by careful and diligent search and studious inquiry and examination and using that knowledge to solve practical, real-world problems.

~~(2) "Board" means the Texas Israel Exchange Fund Board.~~

~~(3) "Fund" means the Texas Israel Exchange Fund.~~

SECTION 3.04. Section 45.005, Agriculture Code, is amended to read as follows:

Sec. 45.005. GENERAL FUNCTIONS, POWERS, AND DUTIES. (a) The department may establish a binational program to support joint agricultural research and development with Israel. The scope of agricultural research and development which the program ~~[fund]~~ may promote and support encompasses all scientific activities related to agriculture, including production, processing, marketing, and agricultural services, with emphasis on the support of applied research to improve water, labor, and energy utilization in agriculture.

(b) The program ~~[fund]~~ shall support applied research in areas of potential mutual interest, including:

- (1) water conservation;
- (2) water management and use;
- (3) soil management and conservation;
- (4) innovative sources of energy for agricultural production;
- (5) environmental aspects of agricultural technology;
- (6) intensive crop production; and
- (7) agricultural engineering and processing.

(c) The program [~~fund~~] may undertake agricultural research and development projects of mutual benefit that are located in Texas, Israel, or any other location considered advisable by the department or suggested by the advisory committee [~~boards~~].

(d) The department [~~fund~~] may make research or development grants or loans to public or private entities who intend to carry out the stated objectives of the program [~~fund~~].

(e) The program [~~fund~~] shall encourage or support the exchange of agricultural producers, scientists, teachers, students, or other types of agricultural experts between the two cooperating areas of Texas and Israel.

(f) The program [~~fund~~] shall encourage and support [~~a program of~~] mutual cooperation that will foster the development of trade, mutual assistance, and business relations between Texas and Israel.

SECTION 3.05. Subsections (b) and (d), Section 45.007, Agriculture Code, are amended to read as follows:

(b) The department [~~board~~] may accept gifts and grants from the federal government, state government, and private sources, as well as legislative appropriations to carry out the purposes of this chapter. The use of gifts and grants other than legislative appropriation is subject only to limitations contained in the gift or grant.

(d) The department [~~board~~] shall make an annual accounting of all money received, awarded, and expended during the year under this chapter to the legislative committees responsible for agricultural issues.

SECTION 3.06. Chapter 45, Agriculture Code, is amended by adding Section 45.009 to read as follows:

Sec. 45.009. TEXAS-ISRAEL EXCHANGE ADVISORY COMMITTEE. The department may establish a binational agricultural research advisory committee to provide guidance and direction on activities conducted under this chapter and the expenditure of money appropriated for the purposes of this chapter.

SECTION 3.07. (a) The Texas-Israel Exchange Fund Board and the Texas-Israel Exchange Fund are abolished.

(b) The following provisions of the Agriculture Code are repealed:

- (1) Section 45.003;
- (2) Section 45.004;
- (3) Section 45.006;
- (4) Subsections (a) and (c), Section 45.007; and
- (5) Section 45.008.

ARTICLE 4. STRUCTURE OF CERTAIN BOARDS AND ADVISORY COMMITTEES

SECTION 4.01. Chapter 50B, Agriculture Code, is amended by adding Section 50B.0015 to read as follows:

Sec. 50B.0015. DEFINITION. In this chapter, "committee" means the wine industry development and marketing advisory committee.

SECTION 4.02. Section 50B.002, Agriculture Code, is amended to read as follows:

Sec. 50B.002. WINE INDUSTRY DEVELOPMENT AND MARKETING[?] ADVISORY COMMITTEE. (a) The commissioner shall ~~may~~ appoint a wine industry development and marketing advisory committee to:

(1) develop a long-term vision and marketable identity for the wine industry in the state that take into consideration future industry development, funding, research, educational programming, risk management, and marketing; and

(2) assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Chapter 110, Alcoholic Beverage Code.

(b) The committee consists of members appointed by the commissioner who represent a diverse cross-section of the wine industry, including representatives of:

(1) grape growers;

(2) wineries;

(3) wholesalers;

(4) package stores;

(5) retailers;

(6) researchers;

(7) consumers;

(8) the department; and

(9) the Texas Alcoholic Beverage Commission.

(c) The members of the committee serve without compensation.

(d) A member of the committee serves at the pleasure of the commissioner for a term of two years. The commissioner may reappoint a member to the committee.

(e) The commissioner shall select a presiding officer from among the members and adopt rules governing the operation of the committee.

(f) The committee shall meet as necessary to provide guidance to the commissioner.

SECTION 4.03. Subsections (a) and (d), Section 62.002, Agriculture Code, are amended to read as follows:

(a) The State Seed and Plant Board is an agency of the state. The board is composed of ~~[six members appointed by the governor with the advice and consent of the senate. Membership must include]:~~

(1) one individual, appointed by the president of Texas A&M University, from the Soils and Crop Sciences Department, Texas Agricultural Experiment Station, Texas A&M [A & M] University;

(2) one individual, appointed by the president of Texas Tech University, from the Department of Plant and Soil Sciences, Texas Tech University;

(3) one individual, appointed by the commissioner, licensed as a Texas Foundation, Registered, or Certified seed or plant producer who is not employed by a public institution;

(4) one individual, appointed by the commissioner, who sells Texas Foundation, Registered, or Certified seed or plants;

(5) one individual, appointed by the commissioner, actively engaged in farming but not a producer or seller of Texas Foundation, Registered, or Certified seed or plants; and

(6) the head of the seed division of the department.

(d) The commissioner [~~governor~~] shall designate a member of the board as the chairman to serve in that capacity at the pleasure of the commissioner [~~governor~~]. The board annually shall elect a vice-chairman and secretary. The board shall meet at times and places determined by the chairman.

SECTION 4.04. Subsection (a), Section 62.0027, Agriculture Code, is amended to read as follows:

(a) Before a member of the board may assume the member's duties [~~and before the member may be confirmed by the senate~~], the member must complete at least one course of the training program established under this section.

SECTION 4.05. Subsections (a) and (f), Section 103.003, Agriculture Code, are amended to read as follows:

(a) The Produce Recovery Fund Board is composed of five members appointed by the commissioner [~~governor with the advice and consent of the senate~~]. Two members must be producers, one must be a license holder licensed under Chapter 101, and two must be members of the general public.

(f) The commissioner [~~governor~~] shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the commissioner [~~governor~~].

SECTION 4.06. Subsection (a), Section 103.019, Agriculture Code, is amended to read as follows:

(a) Before a member of the board may assume the member's duties [~~and before the member may be confirmed by the senate~~], the member must complete at least one course of the training program established under this section.

SECTION 4.07. Subsection (b), Section 110.002, Alcoholic Beverage Code, is amended to read as follows:

(b) The commissioner, in consultation with the advisory committee established under Section 50B.002, Agriculture Code [~~110.003~~], shall adopt rules as necessary to implement the program.

SECTION 4.08. The following statutes are repealed:

(1) Subsection (c), Section 62.0023, Agriculture Code;

(2) Subsection (b), Section 103.003 and Subsection (c), Section 103.017, Agriculture Code; and

(3) Section 110.003, Alcoholic Beverage Code.

SECTION 4.09. On the effective date of this Act, the Texas Wine Marketing Assistance Program advisory committee and the wine industry development advisory committee are abolished. The commissioner of agriculture may appoint a person who

previously served on either of those committees to the wine industry development and marketing advisory committee established under Section 50B.002, Agriculture Code, as amended by this Act.

SECTION 4.10. The changes in law made by this Act by the amendment of Sections 62.002 and 103.003, Agriculture Code, do not affect the entitlement of a member serving on the State Seed and Plant Board or Produce Recovery Fund Board immediately before the effective date of this Act to continue to serve as a board member for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act.

#### ARTICLE 5. CERTAIN AGRICULTURAL REGULATORY PROGRAMS

SECTION 5.01. Section 13.251, Agriculture Code, is amended to read as follows:

Sec. 13.251. DEFINITION. In this subchapter, "public weigher" means a business certified under this subchapter ~~[person who is elected or appointed]~~ to issue an official certificate declaring the accurate weight or measure of a commodity that the business ~~[person]~~ is requested to weigh.

SECTION 5.02. Section 13.255, Agriculture Code, is amended to read as follows:

Sec. 13.255. CERTIFICATE. (a) A public weigher~~[, whether elected or appointed, or deputy public weigher]~~ may not officially weigh a commodity unless the weigher has obtained from the department a certificate of authority.

(b) A ~~[state public weigher must submit a nonrefundable fee, as provided by department rule, with the application for a certificate of authority. A county public weigher or a deputy]~~ public weigher must submit a fee, as provided by department rule, with the application for a certificate of authority.

SECTION 5.03. Section 13.2555, Agriculture Code, is amended to read as follows:

Sec. 13.2555. REVOCATION, MODIFICATION, OR SUSPENSION OF CERTIFICATE. (a) The department shall revoke, modify, or suspend the certificate of authority of a ~~[an appointed public weigher or a deputy of an appointed county]~~ public weigher, assess an administrative penalty, place on probation the public weigher ~~[person]~~ whose certificate has been suspended, or reprimand a ~~[an appointed public weigher or a deputy of an appointed county]~~ public weigher for a violation of this subchapter or a rule adopted by the department under this subchapter.

(b) If a certificate suspension is probated, the department may require the public weigher ~~[person]~~ to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or renew professional education until the public weigher ~~[person]~~ attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) If the department proposes to revoke, modify, or suspend a public weigher's ~~[person's]~~ certificate, the public weigher ~~[person]~~ is entitled to a hearing conducted under Section 12.032. The decision of the department is appealable in the same manner as provided for contested cases under Chapter 2001, Government Code.

SECTION 5.04. Section 13.256, Agriculture Code, is amended to read as follows:

Sec. 13.256. BOND. ~~[(a)] Each [county public weigher, whether elected or appointed, and each deputy] public weigher shall execute [for the full term of office] a bond in accordance with rules adopted [that is in the amount of \$2,500, approved] by the department[, and made payable to the county judge of the county for which the weigher is elected or appointed]. The bond must be conditioned on the accurate weight or measure of a commodity being reflected on the certificate issued by the public weigher [or deputy], on the protection of a commodity that the public weigher [or deputy] is requested to weigh or measure, and on compliance with all laws and rules governing public weighers. [The bond shall be filed with the county clerk's office in the county for which the public weigher or deputy is appointed or elected.]~~ The bond is not void on first recovery. A person injured by the public weigher may sue on the bond.

~~[(b) Each state public weigher shall execute a bond similar to the bond required under Subsection (a) of this section, except that the bond is for \$10,000, made payable to the State of Texas, and filed with the department.]~~

SECTION 5.05. Subsection (a), Section 13.257, Agriculture Code, is amended to read as follows:

(a) On each certificate of weight or measure that a public weigher ~~[or deputy public weigher]~~ issues, the public weigher ~~[or deputy public weigher]~~ shall include the:

- (1) time and date that the weight or measurement was taken;
- (2) signature and license number of the public weigher ~~[or deputy public weigher]~~; and
- (3) seal of the department.

SECTION 5.06. Subsection (a), Section 13.259, Agriculture Code, is amended to read as follows:

(a) A public weigher ~~[or deputy public weigher]~~ who intentionally or knowingly issues a certificate of weight or measure giving a false weight or measure for a commodity weighed or measured commits an offense.

SECTION 5.07. Section 13.261, Agriculture Code, is amended to read as follows:

Sec. 13.261. ~~[POWER OF DEPARTMENT;]~~ RULES. The department shall ~~[may]~~ adopt rules governing the bond requirements and [procedures to be followed in administering the] fees imposed under this subchapter.

SECTION 5.08. Section 52.038, Agriculture Code, is amended to read as follows:

Sec. 52.038. EXISTING CORPORATIONS AND ASSOCIATIONS. ~~[(a)]~~ Any corporation or association organized under prior law before March 1, 1921, may elect, by a majority vote of its members or stockholders, to adopt this chapter and become subject to it by:

- (1) adopting the restrictions provided by this chapter; and

(2) executing, in duplicate on forms supplied by the secretary of state, an instrument, signed and acknowledged by its directors, stating that the entity, by a majority vote of its members or stockholders, has decided to accept the benefits of and be bound by this chapter~~;~~<sup>and</sup>

~~[(3) filing articles of incorporation in accordance with the requirements of Section 52.035 of this code except that the entity's directors shall sign the articles].~~

~~[(b) The filing fee for the articles filed under Subsection (a) of this section is equal to the filing fee for an amendment to the articles of incorporation as provided by Section 52.151 of this code.]~~

SECTION 5.09. Section 52.151, Agriculture Code, is amended to read as follows:

Sec. 52.151. TAX EXEMPTIONS [FEES]. ~~[(a) The fee for filing articles of incorporation under this chapter is \$10.~~

~~[(b) The fee for filing an amendment to the articles of incorporation under this chapter is \$2.50.~~

~~[(c) Each marketing association shall pay to the department an annual license fee, as provided by department rule.]~~ A marketing association is exempt from all ~~[other]~~ franchise or license taxes, except that a marketing association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if exempted by that chapter.

SECTION 5.10. Section 101.003, Agriculture Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) This section does not apply to:

(1) a retailer, unless the retailer:

(A) has annual sales of perishable commodities that comprise 50 percent or more of the retailer's total sales; or

(B) employs a buying agent who buys directly from a producer;

(2) a producer who handles or deals exclusively in the producer's own products;

(3) a person shipping less than six standard boxes of citrus fruit in any one separate shipment; ~~[or]~~

(4) a person who ships a noncommercial shipment of perishable commodities; or

(5) a person who purchases perishable commodities and pays for the perishable commodities in United States currency before or at the time of delivery or taking possession.

(c) A person who purchases perishable commodities without a license, as owner, agent, or otherwise, does not violate this section if the person obtains a license not later than the 30th day after the date the person first purchases perishable commodities.

SECTION 5.11. Section 101.004, Agriculture Code, is amended to read as follows:

Sec. 101.004. LICENSE OR REGISTRATION CATEGORIES. ~~[(a)]~~ A person shall apply for a license if the person:

(1) purchases perishable commodities on credit;

(2) takes possession of perishable commodities for consignment or handling on behalf of the producer or owner of the perishable commodities; or

(3) takes possession of perishable commodities for consignment or handling in a manner or under a contract that does not require or result in payment to the producer, seller, or consignor of the full amount of the purchase price in United States currency at the time of delivery or at the time that the perishable commodities pass from the producer, seller, or consignor to the person.

~~[(b) A person shall register as a cash dealer if the person purchases perishable commodities and pays for the perishable commodities in United States currency before or at the time of delivery or taking possession.]~~

SECTION 5.12. Subsections (b) and (c), Section 101.007, Agriculture Code, are amended to read as follows:

(b) If ~~[an applicant for a license indicates on the application that]~~ a previous license of the applicant has been or is suspended or has been revoked, the department may not issue or renew a license to the applicant until the department is furnished with satisfactory proof that the applicant is, on the date of application, qualified to receive the license for which the applicant applied as provided by department rule.

(c) The department may refuse to issue or renew a license under this section if the department determines that a license previously issued to the applicant was revoked or suspended or that the applicant has engaged in conduct for which a license could have been revoked or suspended. In determining whether to refuse to issue or renew a license under this section, the department may consider:

(1) the facts and circumstances pertaining to a prior suspension or revocation;

(2) the financial condition of the applicant as of the date of the application;

(3) any judgment by a court of this state that is outstanding against the applicant and is due and owing to a licensee, grower, or producer of perishable commodities; and

(4) any certified claim against the applicant by a licensee, grower, or producer of perishable commodities that is under consideration by the department.

SECTION 5.13. Section 101.009, Agriculture Code, is amended to read as follows:

Sec. 101.009. LICENSEE LIST. The department may publish as often as it considers necessary a list in pamphlet form or on the department's Internet website of all persons licensed under this chapter.

SECTION 5.14. Subsections (a) and (b), Section 101.013, Agriculture Code, are amended to read as follows:

(a) If a licensee or a person required to be licensed causes a producer, seller, or owner, or an agent of a producer, seller, or owner, to part with control or possession of all or any part of the person's perishable commodities and agrees by contract of purchase to pay the purchase price on demand following delivery, the licensee or person required to be licensed shall make payment immediately on demand.

(b) If a person makes demand for the purchase price in writing, the mailing of a registered letter that makes the demand and is addressed to the licensee or person required to be licensed at their ~~[the licensee's]~~ business address is prima facie evidence that demand was made at the time the letter was mailed.

SECTION 5.15. Section 101.014, Agriculture Code, is amended to read as follows:

Sec. 101.014. COMMISSION OR SERVICE CHARGE IN CONTRACT. If a licensee or a person required to be licensed handles perishable commodities by guaranteeing a producer or owner a minimum price and handles the perishable commodities on the account of the producer or owner, the licensee or person required to be licensed shall include in the contract with the producer or owner the maximum amount that the licensee or person required to be licensed will charge for commission, service, or both, in connection with the perishable commodities handled.

SECTION 5.16. Subsections (a) and (b), Section 101.015, Agriculture Code, are amended to read as follows:

(a) Except as otherwise provided by this section, a licensee or a person required to be licensed shall settle with the producer or seller of perishable commodities on the basis of the grade and quality that is referred to in the contract under which the licensee or person required to be licensed obtained possession or control of the perishable commodities.

(b) If the perishable commodities have been inspected by a state or federal inspector in this state and found to be of a different grade or quality than that referred to in the contract, the licensee or person required to be licensed shall settle with the producer or seller of the perishable commodities on the basis of the grade and quality determined by the inspector.

SECTION 5.17. Section 101.0151, Agriculture Code, is amended to read as follows:

Sec. 101.0151. BUYING OR SELLING BY WEIGHT. A licensee or a person required to be licensed who buys or sells perishable commodities by weight shall weigh or have the perishable commodities weighed on scales that meet state requirements.

SECTION 5.18. Section 101.016, Agriculture Code, is amended to read as follows:

Sec. 101.016. RECORDS OF PURCHASE. (a) A licensee or a person required to be licensed or a packer, processor, or warehouseman may not receive or handle perishable commodities without requiring the person from whom the perishable commodities are purchased or received to furnish a statement in writing showing:

- (1) the owner of the perishable commodities;
- (2) the grower of the perishable commodities;
- (3) the approximate location of the land on which the perishable commodities were grown;
- (4) the date the perishable commodities were gathered; and
- (5) by whose authority the perishable commodities were gathered.

(b) The licensee or person required to be licensed, packer, processor, or warehouseman shall keep records of statements furnished under Subsection (a) in a permanent book or folder for a minimum of three years from the date of the transaction and shall make the records available for inspection by any interested party.

(c) The licensee or person required to be licensed, packer, handler, or warehouseman shall:

- (1) prepare a receipt detailing the quantity of perishable commodities received from the producer or owner at the time of receipt of the commodities; and
- (2) on request, provide the receipt to the producer or owner.

(d) The department periodically may investigate licensees, persons required to be licensed, or persons alleged to be selling or purchasing perishable commodities in violation of this chapter and, without notice, may require evidence of purchase of any perishable commodities in a person's possession or past possession.

SECTION 5.19. Section 101.017, Agriculture Code, is amended to read as follows:

Sec. 101.017. RECORD OF SALE. (a) Except for a retailer, a licensee or a person required to be licensed shall maintain for each sale a complete and accurate record showing:

- (1) the date of sale of the perishable commodities;
- (2) the person to whom the perishable commodities were sold;
- (3) the grade and selling price of the perishable commodities; and
- (4) an itemized statement of expenses of any kind or character incurred in the sale or handling of the perishable commodities, including the amount of the commission to the licensee or person required to be licensed.

(b) On demand of the department or of an owner, seller, or agent of the owner or seller, the licensee or person required to be licensed shall furnish the information demanded before the 11th day following the date of demand.

(c) A licensee or a person required to be licensed shall maintain the information required to be kept by this section for at least three years after the date of sale.

SECTION 5.20. Subsection (a), Section 101.020, Agriculture Code, is amended to read as follows:

(a) A person commits an offense if the person:

- (1) acts in violation of Section 101.003 by not obtaining a license or registration or after receiving notice of cancellation of a license or registration;
- (2) acts or assumes to act as a transporting agent or buying agent:
  - (A) without first obtaining an identification card; or
  - (B) after receiving notice of cancellation of an identification card;
- (3) as a transporting agent or buying agent, fails and refuses to turn over to the department an identification card in accordance with Section 101.010(e);
- (4) as a license holder or a person required to be licensed, fails to furnish information under Section 101.017 before the 11th day following the date of demand;
- (5) as a license holder or a person required to be licensed, fails to settle with a producer or seller on the grade and quality of perishable commodities in the manner provided by Section 101.015;
- (6) ~~[as a cash dealer, pays for perishable commodities by a means other than United States currency;~~

~~(7)~~ as a license holder or a person required to be licensed, transporting agent, or buying agent, violates a provision of this chapter;

~~(7)~~ ~~[(8) acts or assumes to act as a cash dealer without first registering as a cash dealer;~~

~~(9)~~ as a license holder or a person required to be licensed, buys or sells perishable commodities by weight and does not have the perishable commodities weighed on scales that meet state requirements;

~~(8)~~ ~~(10)~~ fails to prepare and maintain records required by Sections 101.016, 101.017, and 101.018; or

~~(9)~~ ~~(11)~~ fails to provide records as required by Sections 101.016 and 101.018.

SECTION 5.21. Subsection (a), Section 103.002, Agriculture Code, is amended to read as follows:

(a) The produce recovery fund is a special trust fund with the comptroller administered by the department, without appropriation, for the payment of claims against license holders, ~~and~~ retailers, and persons required to be licensed under Chapter 101.

SECTION 5.22. Section 103.005, Agriculture Code, is amended to read as follows:

Sec. 103.005. INITIATION OF CLAIM. (a) A person who deals with a license holder or a person required to be licensed under Chapter 101 in the purchasing, handling, selling, and accounting for sales of perishable commodities and who is aggrieved by an action of the license holder or person required to be licensed as a result of a violation of terms or conditions of a contract made by the license holder or person required to be licensed for the sale of Texas-grown produce may initiate a claim against the fund by filing with the department:

(1) a sworn complaint against the license holder or person required to be licensed; and

(2) a filing fee, as provided by department rule.

(b) A complaint and the fee under Subsection (a) ~~[of this section]~~ must be filed on or before the second ~~[first]~~ anniversary of the date that payment was due ~~[of the violation]~~, or recovery from the fund is barred.

SECTION 5.23. Section 103.0055, Agriculture Code, is amended to read as follows:

Sec. 103.0055. BANKRUPTCY OF MERCHANT OR RETAILER. For purposes of this chapter, the amount due an aggrieved party by a license holder or a person required to be licensed is not affected by a final judgment of a bankruptcy court that releases the license holder or person required to be licensed from the legal duty to satisfy the claim.

SECTION 5.24. Subsection (a), Section 103.006, Agriculture Code, is amended to read as follows:

(a) After a claim is initiated, the department shall investigate the complaint and determine the amount due the aggrieved party. If the amount determined by the department is disputed by the license holder, a person required to be licensed, or the aggrieved party, the board shall conduct a hearing on the claim and determine the amount due the aggrieved party.

SECTION 5.25. Subsection (a), Section 103.007, Agriculture Code, is amended to read as follows:

(a) If the amount determined by the department's investigation to be due the aggrieved party is not disputed by the license holder, a person required to be licensed, or the aggrieved party, the department shall pay the claim within the limits prescribed by this chapter.

SECTION 5.26. Subsections (a), (b), (d), and (f), Section 103.008, Agriculture Code, are amended to read as follows:

(a) In making payments from the fund the department may ~~can~~ pay the aggrieved party the full value of their validated claim, subject to Subsections (b) and (d) [all of the first \$2,000 of any claim and no more than 70 percent of the claim above \$2,000].

(b) The total payment of all claims arising from the same contract with a license holder or a person required to be licensed may not exceed \$50,000 ~~[\$35,000]~~.

(d) Payment of a claim filed against a person who is not licensed in violation of Chapter 101 shall be limited to 80 percent of the recovery prescribed under this section ~~[The department may not pay a claim against:~~

~~(1) a person who was not licensed on the date the contract on which the claim is based was entered into; or~~

~~(2) a cash dealer registered under Chapter 101].~~

(f) If a license holder or a person required to be licensed owes money to the produce recovery fund at the time the license holder or person required to be licensed makes a claim against the fund, the department shall offset the amount owed to the fund from the amount dispensed.

SECTION 5.27. Section 103.009, Agriculture Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (e) to read as follows:

(a) If the department pays a claim against a license holder or a person required to be licensed, the license holder or person required to be licensed shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the department; and

(2) immediately pay the aggrieved party any amount due that party or agree in writing to pay the aggrieved party on a schedule to be determined by rule of the department.

(c) If the license holder or person required to be licensed does not reimburse the fund or pay the aggrieved party, or does not agree to do so, in accordance with this section, the department shall issue an order canceling the license and may not issue a new license to or renew the license of that person for four years from the date of cancellation. If the license holder or person required to be licensed is a corporation, an officer or director of the corporation or a person owning more than 25 percent of the stock in the corporation may not be licensed under Chapter 101 during the four-year period in which the corporation is ineligible for licensing.

(d) Subsections (a) and (b) do ~~[This section does]~~ not apply to a license holder or a person required to be licensed who is released by a final judgment of a bankruptcy court from the legal duty to satisfy the claim paid by the department.

(e) The amount to be reimbursed under this section shall be one and one-half times the amount of the claim paid if the person required to reimburse the department was not licensed on the date on which the transaction forming the base of the claim occurred.

SECTION 5.28. Section 103.010, Agriculture Code, is amended to read as follows:

Sec. 103.010. SUBROGATION OF RIGHTS. If the department pays a claim against a license holder or a person required to be licensed, the department is subrogated to all rights of the aggrieved party against the license holder or person required to be licensed to the extent of the amount paid to the aggrieved party.

SECTION 5.29. Subsection (b), Section 103.011, Agriculture Code, is amended to read as follows:

(b) A person registered as a ~~[cash dealer or a]~~ marketing association organized under Chapter 52 that handles citrus fruit only for its members is exempt from payment of the fee under this section.

SECTION 5.30. Subsections (a) and (b), Section 103.013, Agriculture Code, are amended to read as follows:

(a) A person commits an offense if the person acts or assumes to act as a license holder under Chapter 101 without first paying the annual fee required by Section 103.11 ~~[this chapter]~~.

(b) An offense under this section is a Class B misdemeanor ~~[punishable by a fine of not more than \$500]~~.

SECTION 5.31. Subsection (a), Section 121.005, Agriculture Code, is amended to read as follows:

(a) Each rose plant or shipment of rose plants shall be labeled with ~~[-~~ ~~[(+)]~~ the proper grade ~~[-and~~ ~~[(2) the number of the certificate of authority of the person selling or offering for sale the plant or shipment]~~.

SECTION 5.32. Subsection (f), Section 52.092, Election Code, is amended to read as follows:

(f) Precinct offices shall be listed in the following order:

- (1) county commissioner;
- (2) justice of the peace;
- (3) constable~~;~~
- ~~[(4) public weigher].~~

SECTION 5.33. Subsection (a), Section 172.024, Election Code, is amended to read as follows:

(a) The filing fee for a candidate for nomination in the general primary election is as follows:

- (1) United States senator \$5,000
- (2) office elected statewide, except United States senator 3,750
- (3) United States representative 3,125
- (4) state senator 1,250
- (5) state representative 750
- (6) member, State Board of Education 300
- (7) chief justice or justice, court of appeals, other than a justice specified by Subdivision (8) 1,875
- (8) chief justice or justice of a court of appeals that serves a court of appeals district in which a county with a population of more than 750,000 is wholly or partly situated 2,500

(9) district judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee 1,500

(10) district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 850,000 2,500

(11) judge, statutory county court, other than a judge specified by Subdivision (12) 1,500

(12) judge of a statutory county court in a county with a population of more than 850,000 2,500

(13) district attorney, criminal district attorney, or county attorney performing the duties of a district attorney 1,250

(14) county commissioner, district clerk, county clerk, sheriff, county tax assessor-collector, county treasurer, or judge, constitutional county court:

(A) county with a population of 200,000 or more 1,250

(B) county with a population of under 200,000 750

(15) justice of the peace or constable:

(A) county with a population of 200,000 or more 1,000

(B) county with a population of under 200,000 375

(16) county surveyor or inspector of hides and animals ~~or public weigher~~ 75

(17) office of the county government for which this schedule does not otherwise prescribe a fee 750

SECTION 5.34. Subsection (b), Section 62.160, Labor Code, is amended to read as follows:

(b) Sections 62.051-62.054 ~~and Subchapter C~~ do not apply to an agricultural employer with respect to an employee engaged in the production of livestock.

SECTION 5.35. The following statutes are repealed:

(1) Section 13.252, Agriculture Code;

(2) Section 13.253, Agriculture Code;

(3) Section 13.2535, Agriculture Code;

(4) Section 13.254, Agriculture Code;

(5) Subsection (b), Section 52.035, Agriculture Code;

(6) Section 52.152, Agriculture Code;

(7) Subsection (b), Section 101.006, Agriculture Code;

(8) Subsection (c), Section 103.008, Agriculture Code;

(9) Section 121.004, Agriculture Code;

(10) Subdivision (1), Section 62.002, Labor Code; and

(11) Subchapter C, Chapter 62, Labor Code.

SECTION 5.36. (a) The changes in law made by this Act to Subchapter E, Chapter 13, Agriculture Code, do not affect the entitlement of a public weigher or deputy public weigher elected or appointed before the effective date of this Act to serve as a public weigher or deputy public weigher for the remainder of the public weigher's or deputy public weigher's term. A public weigher or deputy public weigher elected or appointed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Section 103.008, Agriculture Code, apply only to a claim for payment filed on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

#### ARTICLE 6. GENERAL LICENSING PROVISIONS

SECTION 6.01. Subsections (a) and (c), Section 12.020, Agriculture Code, are amended to read as follows:

(a) If a person violates a provision of law ~~[this code]~~ described by Subsection (c) ~~[of this section]~~ or a rule or order adopted by the department under a provision of law ~~[this code]~~ described by Subsection (c) ~~[of this section]~~, the department may assess an administrative penalty against the person as provided by this section.

(c) The provisions of law ~~[this code]~~ subject to this section and the applicable penalty amounts are as follows:

Provision	Amount of Penalty
Chapter 41	<u>not more than \$5,000</u> [ <del>\$1,000</del> ]
Chapters 13, 14A, 18, 46, 61, 94, 95, 101, 102, 103, 121, 125, 132, and 134	not more than <u>\$5,000</u> [ <del>\$500</del> ]
Subchapter B, Chapter 71	
Chapter 19	
Chapter 76	not more than <u>\$5,000</u> [ <del>\$2,000</del> ]
Subchapters A and C, Chapter 71	
Chapters 72, 73, and 74	not more than \$5,000
Chapter 14	not more than \$10,000
<u>Chapter 1951, Occupations Code</u>	<u>not more than \$5,000</u>
<u>Chapter 153, Natural Resources Code</u>	<u>not more than \$5,000.</u>

SECTION 6.02. Section 12.023, Agriculture Code, is amended to read as follows:

Sec. 12.023. EXPIRATION OF REGISTRATION OR LICENSES. The department by rule shall ~~[may]~~ adopt a system under which registrations or licenses required by the department, including licenses issued under Chapter 1951, Occupations Code, expire on various dates during the year. The department may increase or decrease the term of an initial or renewal license or registration so that all licenses held by a person or a group of license holders expire on the same date. For the period ~~[year]~~ in which the registration or license expiration date is changed, registration or license fees shall be prorated on a monthly basis so that each registrant or licensee pays only that portion of the fee that is allocable to the number of months during which the registration or license is valid. On the next renewal of the registration or license ~~[on the new expiration date]~~, the total renewal fee is payable.

SECTION 6.03. Title 2, Agriculture Code, is amended by adding Chapter 12A to read as follows:

CHAPTER 12A. GENERAL LICENSING PROVISIONS  
SUBCHAPTER A. POWERS AND DUTIES OF DEPARTMENT RELATED TO  
LICENSING

Sec. 12A.001. APPLICABILITY OF PROVISIONS. The general licensing, regulatory, and enforcement provisions of Chapter 12 and this chapter apply to licensing and regulatory programs administered by the department under any law.

Sec. 12A.002. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed by the department is violating a statute or rule that requires the person to hold a license issued by the department or a statute or rule relating to an activity regulated by the department, the commissioner after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

Sec. 12A.003. RISK-BASED INSPECTIONS. For each person licensed or regulated by the department that the department may inspect:

(1) the department may conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(A) the type and nature of the person;

(B) whether there has been a prior violation by the person;

(C) the inspection history of the person;

(D) any history of complaints involving the person; and

(E) any other risk-based factor identified by the department; and

(2) the department may waive any inspection requirement under law if an emergency arises or to accommodate complaint investigation or risk-based inspection schedules.

[Sections 12A.004-12A.050 reserved for expansion]

SUBCHAPTER B. PUBLIC INTEREST INFORMATION AND COMPLAINT  
PROCEDURES

Sec. 12A.051. INFORMATION REGARDING COMPLAINTS AND ENFORCEMENT PROCESS. (a) The department shall:

(1) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process, including each step in the complaint investigation and resolution process, from initial filing through final appeal, and the opportunity to request an informal settlement conference; and

(2) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(b) Except as provided by Subsection (d), the department shall provide to a license holder against whom a complaint has been filed:

(1) the allegations made against the license holder in the complaint; and

(2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(c) The department shall provide the information required under Subsection (b) in a timely manner to allow the license holder time to respond to the complaint.

(d) The department is not required to provide the following information to a license holder:

- (1) the name of a confidential informant whose testimony will not be used in any hearing as evidence against the license holder;
- (2) attorney-client communications;
- (3) attorney work product; or
- (4) any other information that is confidential or not subject to disclosure under law, rule of evidence, or rule of civil procedure.

Sec. 12A.052. COMPLAINT AND VIOLATION ANALYSIS. The department shall analyze complaints filed with and violations discovered by the department to identify any trends or issues related to certain violations, including:

- (1) the reason for each complaint or violation;
- (2) how each complaint or violation was resolved; and
- (3) the subject matter of each complaint or violation that was not within the jurisdiction of the department and how the department responded to the complaint or violation.

[Sections 12A.053-12A.100 reserved for expansion]

#### SUBCHAPTER C. ISSUANCE AND RENEWAL OF LICENSES

Sec. 12A.101. REPLACEMENT LICENSE; FEE. The department shall issue to a license holder whose license has been lost or destroyed or whose name has been changed a replacement license if the license holder submits to the department:

- (1) an appropriate application; and
- (2) a fee in an amount established by department rule.

[Sections 12A.102-12A.150 reserved for expansion]

#### SUBCHAPTER D. EXAMINATIONS

Sec. 12A.151. EXAMINATION PROCEDURES. For each licensing examination administered by the department, the department shall:

- (1) adopt policies and guidelines detailing the procedures for the testing process, including test admission and internal test administration procedures; and
- (2) post on the department's Internet website the policies that reference the testing procedures.

Sec. 12A.152. EVALUATION OF EXAMINATION QUESTIONS. For each licensing examination administered by the department, the department shall periodically evaluate the effectiveness of examination questions in objectively assessing an applicant's knowledge.

[Sections 12A.153-12A.200 reserved for expansion]

#### SUBCHAPTER E. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 12A.201. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The department shall offer the opportunity to conduct an informal settlement conference by telephone.

(c) The department shall:

(1) provide a license holder sufficient opportunity to indicate whether the terms of a proposed order are acceptable to the license holder;

(2) indicate in the notice of violation that the license holder has the opportunity described by Subdivision (1); and

(3) allow a license holder who does not agree with a proposed order to request an informal settlement conference.

SECTION 6.04. The heading to Section 76.113, Agriculture Code, is amended to read as follows:

Sec. 76.113. TERM [EXPIRATION] AND RENEWAL OF LICENSES.

SECTION 6.05. Subsections (a) and (b), Section 76.113, Agriculture Code, are amended to read as follows:

(a) Each pesticide [commercial applicator or noncommercial] applicator license issued under this chapter, other than a private applicator license, expires at the end of the license period established by department rule [on the first anniversary of the date on which it was issued or renewed].

(b) Each private applicator license is valid for five years [expires on the fifth anniversary of the date on which it was issued or renewed].

SECTION 6.06. Section 76.151, Agriculture Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The [For the purpose of inspection, examination, or sampling, the] department, at any time and without notice during regular business hours, may:

(1) [is entitled to] enter and inspect a [at reasonable hours any] building or place owned, controlled, or operated by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code; and

(2) inspect and review any record maintained by a person engaged in any activity regulated under this chapter or Chapter 1951, Occupations Code [registrant or dealer if from probable cause it appears that the building or place contains a pesticide].

(a-1) The department may enter and inspect a building or place or inspect and review any record under Subsection (a) as necessary to:

(1) ensure compliance with this chapter or Chapter 1951, Occupations Code; or

(2) investigate a complaint made to the department.

SECTION 6.07. Subsection (a), Section 76.1555, Agriculture Code, is amended to read as follows:

(a) If a person violates a provision of this chapter or Chapter 1951, Occupations Code, or a rule or order adopted by the department under this chapter or Chapter 1951, Occupations Code, the department may assess an administrative penalty against the person as provided by Section 12.020, except that the penalty for each violation may [shall] not exceed \$5,000 [\$4,000 for all violations related to a single incident]. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

SECTION 6.08. Section 132.024, Agriculture Code, is amended to read as follows:

Sec. 132.024. LICENSE TERM ~~[EXPIRATION]~~. A license issued or renewed under this chapter is valid for one year ~~[expires on the first anniversary of the date of issuance or renewal]~~.

SECTION 6.09. The changes in law made by this article to Subsection (c), Section 12.020 and Subsection (a), Section 76.1555, Agriculture Code, apply only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

#### ARTICLE 7. STRUCTURAL PEST CONTROL

SECTION 7.01. Section 12.0201, Agriculture Code, is amended to read as follows:

Sec. 12.0201. LICENSE SANCTIONS. (a) In addition to other sanctions provided by law, the department may revoke, modify, suspend, or refuse to issue or renew a license, assess an administrative penalty, place on probation a person whose license has been suspended, or reprimand a license holder if the department finds that the practitioner:

- (1) violated a provision of this code or Chapter 1951, Occupations Code;
- (2) violated a rule adopted by the department under this code or Chapter 1951, Occupations Code; or
- (3) after appropriate notice, failed to comply with an order of the department.

(b) In addition to any other actions permitted under this code or Chapter 1951, Occupations Code, if a license suspension is probated, the department may require the practitioner:

- (1) to maintain additional information in the practitioner's records;
- (2) to report regularly to the department on matters that are the basis of the probation;
- (3) to limit practice to the areas prescribed by the department; or
- (4) to continue or review professional education until the practitioner attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

SECTION 7.02. Subchapter A, Chapter 1951, Occupations Code, is amended by adding Section 1951.007 to read as follows:

Sec. 1951.007. APPLICABILITY OF AGRICULTURE CODE LICENSING PROVISIONS. A provision of the Agriculture Code that applies generally to licensing or regulatory programs administered by the department, including a provision that refers generally to licensing or regulatory programs under the Agriculture Code, applies to this chapter.

SECTION 7.03. Subsection (a), Section 1951.053, Occupations Code, is amended to read as follows:

(a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to:

- (1) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person[±

~~[(A) holds a florist or nursery registration certificate from the department under Section 71.043, Agriculture Code, other than a registration certificate that permits the sale, lease, or distribution of nursery products or floral items only at a temporary market; and~~

~~[(B) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers the pest control work; or~~

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) is employed by a political subdivision or a cemetery;

(B) is engaged in pest control work or vegetation management for the political subdivision or cemetery;

(C) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work or is under the direct supervision of a person who holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work; and

(D) complies with annual continuing education required by the department.

SECTION 7.04. Subsection (a), Section 1951.207, Occupations Code, is amended to read as follows:

(a) The department by rule shall adopt a policy that[:

~~[(+) requires a business holding a structural pest control business license to be inspected by a field inspector at least once:~~

~~(1) [(A)] in the business's first year of operation; and~~

~~(2) [(B)] every four years after the first year of operation[;~~

~~[(2) provides for additional inspections based on a schedule of risk based inspections using the following criteria:~~

~~[(A) the type and nature of the business;~~

~~[(B) whether there has been a prior violation by the business;~~

~~[(C) the inspection history of the business;~~

~~[(D) any history of complaints involving the business; and~~

~~[(E) any other factor determined by the department by rule; and~~

~~[(3) provides that the department may waive the inspection requirement on a case by case basis if an emergency arises or to accommodate complaint investigation schedules].~~

SECTION 7.05. Subsection (f), Section 1951.254, Occupations Code, as amended by Chapters 885 (H.B. 2278) and 890 (H.B. 2458), Acts of the 80th Legislature, Regular Session, 2007, is reenacted to read as follows:

(f) The information sheet must include:

(1) the names and telephone numbers of the department and the Department of State Health Services;

(2) the telephone number of any pesticide hotline established by a state or federal agency or by a state university;

(3) a statement of a consumer's rights under Chapter 601, Business & Commerce Code, to cancel a home solicitation transaction; and

(4) information concerning the availability of any pretreatment inspection service that may be provided by the department under Section 1951.210.

SECTION 7.06. Subsection (a), Section 1951.306, Occupations Code, is amended to read as follows:

(a) The department may waive any license requirement under this chapter for an applicant who holds a license issued by another state that has license requirements substantially equivalent to those of this state. The department may enter into reciprocal licensing agreements with other states that have license requirements substantially equivalent to those of this state.

SECTION 7.07. The following provisions of the Occupations Code are repealed:

- (1) Section 1951.202;
- (2) Section 1951.310;
- (3) Section 1951.311;
- (4) Subsections (c) and (d), Section 1951.501;
- (5) Subchapter L, Chapter 1951;
- (6) Section 1951.604; and
- (7) Section 1951.605.

SECTION 7.08. The changes in law made by this Act by the repeal of Subsections (c) and (d), Section 1951.501, Occupations Code, apply only to a violation of Chapter 1951, Occupations Code, committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. A violation committed on or after the effective date of this Act is governed by Section 12.0201, Agriculture Code, as amended by this Act, and other applicable law.

SECTION 7.09. The change in law made by this Act by the repeal of Section 1951.310, Occupations Code, applies only to the renewal of a license under Chapter 1951, Occupations Code, that expires on or after the effective date of this Act. The renewal of a license that expires before the effective date of this Act is governed by the law in effect on the date the license expired, and the former law is continued in effect for that purpose. An application submitted on or after the effective date of this Act is governed by Section 12.024, Agriculture Code, and other applicable law.

SECTION 7.10. The change in law made by this Act by the repeal of Section 1951.311, Occupations Code, applies only to an application for a replacement license issued under Chapter 1951, Occupations Code, submitted on or after the effective date of this Act. An application submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose. An application submitted on or after the effective date of this Act is governed by Section 12A.101, Agriculture Code, as added by this Act, and other applicable law.

SECTION 7.11. The change in law made by this Act by the repeal of Subchapter L, Chapter 1951, Occupations Code, applies only to a violation committed on or after the effective date of this Act. A violation committed before that date is governed by the law in effect on the date the violation occurred, and the former law is

continued in effect for that purpose. A violation committed on or after the effective date of this Act is governed by Section 12.020, Agriculture Code, as amended by this Act, and other applicable law.

ARTICLE 8. SUNSET DATE AND ACROSS-THE-BOARD  
RECOMMENDATIONS

SECTION 8.01. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2021 ~~[2009]~~.

SECTION 8.02. Section 12.0135, Agriculture Code, is amended to read as follows:

Sec. 12.0135. CONFLICT PROVISIONS. (a) A person may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

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

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

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

(c) In [(b) An officer, employee, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

[(e) A person who is the spouse of an officer, manager, or paid consultant of a statewide Texas trade association or an affiliate of a national trade association in the field of agriculture may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

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

SECTION 8.03. Chapter 12, Agriculture Code, is amended by adding Section 12.0203 to read as follows:

Sec. 12.0203. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commissioner shall develop and implement a policy to encourage the use of:

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

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

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

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

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

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

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

SECTION 8.04. Chapter 12, Agriculture Code, is amended by adding Section 12.047 to read as follows:

Sec. 12.047. USE OF TECHNOLOGY. The commissioner shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

#### ARTICLE 9. ADDITIONAL PROVISIONS

SECTION 9.01. Section 12.022, Agriculture Code, is amended to read as follows:

Sec. 12.022. AUTHORITY TO SOLICIT AND ACCEPT GIFTS, GRANTS, AND DONATIONS. The department may solicit and ~~[is authorized to]~~ accept gifts, grants, and donations of money, services, or property from any person. Money received by the department under this section may be expended or distributed for any public purpose related to the department's duties ~~[and shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the department during the preceding fiscal year. This report shall be included in the annual report required by Section 12.014 of this chapter].~~

SECTION 9.02. Chapter 12, Agriculture Code, is amended by adding Section 12.0027 to read as follows:

Sec. 12.0027. NUTRITION OUTREACH PROGRAM. (a) The department may develop an outreach program to promote better health and nutrition programs and prevent obesity among children in this state.

(b) The department may solicit and accept gifts, grants, and donations from any public or private sources for the purposes of this section.

(c) The department may adopt rules as necessary to administer an outreach program established under this section.

SECTION 9.03. Chapter 12, Agriculture Code, is amended by adding Section 12.048 to read as follows:

Sec. 12.048. OBTAINING CRIMINAL HISTORY RECORD INFORMATION.

(a) The department is authorized to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person who:

(1) applies for a license issued by the department;

(2) holds a license issued by the department;

(3) requests a determination of eligibility for a license issued by the department;

(4) is an employee, volunteer, or intern of the department, or an applicant to be an employee, volunteer, or intern of the department; or

(5) is appointed to a board or committee that is administered or governed by the department.

(b) In addition to the information the department is authorized to obtain under Sections 411.122 and 411.1405, Government Code, and this section, the department is authorized to request and obtain criminal history record information through the Federal Bureau of Investigation as provided by Section 411.087, Government Code.

(c) Information provided to the department under this section and Chapter 411, Government Code, is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be disclosed to any person other than as required by a court order.

SECTION 9.04. Subsection (a), Section 19.012, Agriculture Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) sells or offers to sell citrus budwood or a citrus nursery tree falsely claiming that it is certified or that it comes from a designated foundation grove; ~~or~~

(2) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove; or

(3) fails to comply with an order of the department issued under this chapter.

SECTION 9.05. Section 19.014, Agriculture Code, is amended to read as follows:

Sec. 19.014. ADMINISTRATIVE PENALTIES. The department may assess an administrative penalty under Chapter 12 for a violation of this chapter if the department finds that a person:

(1) sells or offers to sell citrus budwood or a citrus nursery tree falsely claiming that it is certified or that it comes from a designated foundation grove under this chapter;

(2) uses citrus budwood in violation of rules adopted under this chapter; ~~or~~

(3) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove; or

(4) fails to comply with an order of the department issued under this chapter.

SECTION 9.06. Section 41.151, Agriculture Code, is amended to read as follows:

Sec. 41.151. DEFINITIONS. In this subchapter:

(1) "Beef products" means products produced in whole or in part from beef. The term does not include milk or products made from milk.

(2) [~~"Board" means the board of directors of the Texas Beef Council.~~

~~(3)] "Council" means the Texas Beef Council.~~

(3) [(4)] "Producer" means a person who owns or acquires ownership of cattle, except that a person is not a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

SECTION 9.07. Subsection (b), Section 41.152, Agriculture Code, is amended to read as follows:

(b) The council shall be the certified organization [~~recognized as the entity~~] to plan, implement, and operate research, education, promotion, and marketing programs under this subchapter. The council is the state beef council qualified to collect the proceeds of and administer in this state the beef check off program established by federal law.

SECTION 9.08. Section 41.156, Agriculture Code, is amended to read as follows:

Sec. 41.156. COUNCIL [~~BOARD~~] MEMBERS. (a) The council [~~board~~] is composed of 20 [~~24~~] members nominated by the council and appointed by the commissioner as follows:

(1) three representatives of the Texas and Southwestern Cattle Raisers Association;

(2) three representatives of the Texas Cattle Feeders Association;

(3) three representatives of the Texas Farm Bureau;

(4) two representatives of the Independent Cattlemen's Association of Texas;

(5) two representatives of the Texas purebred cattle industry;

(6) two representatives of the Texas dairy industry;

(7) one representative [~~two representatives~~] of the Livestock Marketing Association of Texas;

(8) one representative of meat packer and exporter associations;

(9) one representative of Texas CattleWomen; and

(10) two at-large directors.

(b) A council [~~board~~] member serves a one-year term or until his or her successor is appointed. A council member may serve not more than six consecutive one-year terms, except that a council member who is elected to serve as an officer during the member's sixth consecutive one-year term may serve as chairman or past chairman for not more than two additional consecutive one-year terms.

(c) The commissioner, on recommendation of the council, shall fill a vacancy on the council [~~board~~] by appointment for the unexpired term.

SECTION 9.09. Section 41.157, Agriculture Code, is amended to read as follows:

Sec. 41.157. GENERAL POWERS OF COUNCIL. The council may take action or exercise other authority as necessary to execute any act authorized by this chapter [~~subchapter~~] or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

SECTION 9.10. Subsections (b), (c), and (e), Section 41.160, Agriculture Code, are amended to read as follows:

(b) If an assessment referendum is approved, the council shall recommend to the commissioner an assessment amount not greater than the maximum amount approved in the referendum. After the assessment is approved by the commissioner, the council shall collect the assessment.

(c) An assessment levied on producers shall [~~may~~] be applied by the council to efforts relating to the marketing, education, research, and promotion of beef and beef products in Texas, the United States, and international markets, including administrative costs of conducting an assessment referendum.

(e) Section 41.083 applies to an assessment collected by the council under this subchapter. Section 41.082 does not apply to an assessment collected under this subchapter. The commissioner, on the council's recommendation, may exempt from the assessment certain producers who are exempt under federal law.

SECTION 9.11. Subsection (a), Section 41.161, Agriculture Code, is amended to read as follows:

(a) The commissioner shall annually review and approve the council's operating budget for the funds collected under this subchapter.

SECTION 9.12. Subsection (g), Section 41.162, Agriculture Code, is amended to read as follows:

(g) The council shall pay all expenses incurred in conducting a referendum with funds collected from the beef industry.

SECTION 9.13. Subsection (d), Section 71.004, Agriculture Code, is amended to read as follows:

(d) An emergency quarantine shall be established in accordance with the provisions related to emergency rulemaking in Chapter 2001, Government Code [~~expires 30 days following the date on which it was established unless reestablished following notice and hearing as provided by this subchapter~~].

SECTION 9.14. Subsection (b), Section 72.002, Agriculture Code, is amended to read as follows:

(b) The department may adopt rules [~~to be proclaimed by the governor,~~] as necessary for the administration of this chapter.

SECTION 9.15. Subsections (a) and (b), Section 72.011, Agriculture Code, are amended to read as follows:

(a) When advised of the existence of Mexican fruit fly within a county or part of a county in this state, the department shall certify that fact and [~~to the governor, and the governor shall~~] proclaim the county or part of a county quarantined under this chapter.

(b) If the department determines that the exigencies of the situation require a modified quarantine, the department may designate a modified quarantined area [~~to be certified to the governor for proclamation~~].

SECTION 9.16. Section 72.012, Agriculture Code, is amended to read as follows:

Sec. 72.012. PERSONS AND PREMISES SUBJECT. The premises of each individual, whether an owner, lessee, renter, tenant, or occupant, within the area named in the quarantine [~~proclamation~~] are subject to the quarantine, even though not specifically named.

SECTION 9.17. Subsection (a), Section 72.015, Agriculture Code, is amended to read as follows:

(a) A person may not haul, truck, or otherwise move citrus fruit from any premises or area that is under quarantine for Mexican fruit fly infestation by this chapter or [5] by order of the department [~~or by proclamation of the governor~~] in violation of the quarantine without a written permit or certificate issued by the department or an inspector of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, United States Department of Agriculture.

SECTION 9.18. Subsection (a), Section 76.004, Agriculture Code, is amended to read as follows:

(a) ~~The [Except as provided by Subchapter G, after notice, the department shall conduct at least five regional hearings throughout the state before the adoption of any rule for carrying out the provisions of this chapter. Thereafter, the] department may adopt rules for carrying out the provisions of this chapter, including rules providing for:~~

- (1) the collection, examination, and reporting of records, devices, and samples of pesticides;
- (2) the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers;
- (3) labeling requirements for pesticides and devices required to be registered under this chapter; and
- (4) compliance with federal pesticide rules and regulations.

SECTION 9.19. Section 144.041, Agriculture Code, is amended by adding Subsection (g) to read as follows:

(g) The recording of brands at a point of sale for use by an association authorized to inspect livestock under 7 U.S.C. Section 217a does not serve as a record under this subchapter. An association authorized to inspect livestock under 7 U.S.C. Section 217a has no duty to verify ownership.

SECTION 9.20. The following provisions are repealed:

- (1) Section 12.017, Agriculture Code;
- (2) Section 72.003, Agriculture Code;
- (3) Subsection (c), Section 72.011, Agriculture Code; and
- (4) Section 76.005, Agriculture Code.

SECTION 9.21. (a) The change in law made by this Act to Section 19.012, Agriculture Code, 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 covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b) The change in law made by this Act to Section 19.014, Agriculture Code, applies only to conduct that occurred on or after the effective date of this Act. Conduct that occurred before the effective date of this Act is governed by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Section 41.156, Agriculture Code, does not affect the entitlement of a member of the board of directors of the Texas Beef Council to serve for the remainder of the member's term. A board member appointed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) The change in law made by this Act to Section 41.160, Agriculture Code, applies only to an assessment approved on or after the effective date of this Act. An assessment approved before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) The change in law made by this Act to Section 41.162, Agriculture Code, applies only to an assessment referendum conducted on or after the effective date of this Act. An assessment referendum conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(f) The changes in law made by this Act by the amendment of Section 76.004, Agriculture Code, and the repeal of Section 76.005, Agriculture Code, apply only to a public hearing held on or after the effective date of this Act. A public hearing held before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

#### ARTICLE 10. EFFECTIVE DATE

SECTION 10.01. This Act takes effect September 1, 2009.

#### Floor Amendment No. 1

Amend **CSSB 1016** as follows:

On page 73, between line 13 and 14, insert the following, and renumber the subsequent sections appropriately:

SECTION 9.02. Chapter 12, Agriculture Code, is amended by adding Section 12.046 to read as follows:

Sec. 12.046. TEXAS RURAL INVESTMENT FUND. (a) In this section:

(1) "Fund" means the Texas Rural Investment Fund.

(2) "Rural community" means a municipality with a population of less than 50,000 or a county with a population of less than 200,000.

(b) The fund is a dedicated account in the general revenue fund and consists of:

(1) appropriations of money to the fund by the legislature;

(2) gifts, grants, including federal grants, and other donations received for the fund; and

(3) interest earned on the investment of money in the fund.

(c) The fund may be used by the department only to:

(1) pay for grants or loans to public or private entities for projects in rural communities that have strong local support, provide positive return on the state's investment, and stimulate one or more of the following:

(A) local entrepreneurship;

(B) job creation or retention;

(C) new capital investment;

(D) strategic economic development planning;

(E) individual economic and community development leadership

training;

(F) housing development; or

(G) innovative workforce education; and

(2) administer the grant and loan program under this section.

(d) In awarding a grant or loan of money from the fund for a project, the department shall consider:

(1) the project's effect on job creation and wages;

(2) the financial strength of the applicant;

(3) the applicant's business history;

(4) an analysis of the relevant business sector;

(5) whether there is public or private sector financial support for the project;

and

(6) whether there is local support for the project.

(e) The fund is exempt from the application of Sections 403.095 and 404.071, Government Code.

(f) The department may accept grants, gifts, or donations from any source that are made for the purposes of this section. Money received under this subsection shall be deposited in the fund.

(g) The department shall adopt rules to administer this section.

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

Amend Amendment No. 1 to **CSSB 1016** by Chisum on page 1, between lines 19 and 20 of the amendment, by inserting the following:

(b-1) The department shall administer the fund and select recipients of grants and loans from the fund.

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

Amend **CSSB 1016** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Chapter 12, Agriculture Code, is amended by adding Section 12.0271 to read as follows:

Sec. 12.0271. RURAL ECONOMIC DEVELOPMENT AND INVESTMENT PROGRAM. (a) From funds appropriated for that purpose, the commissioner shall establish and administer a financial assistance program to encourage private economic development in rural areas. Financial assistance under the program may be provided only to:

(1) a county with a population of not more than 75,000;

(2) a municipality with a population of not more than 50,000; or

(3) an economic development corporation that primarily represents a county or municipality described by this subsection.

(b) Financial assistance under Subsection (a) may be used only for a project relating to:

(1) the acquisition or development of land, easements, or rights-of-way;

(2) attracting new private enterprises to the county or municipality,

including:

(A) manufacturing facilities;

(B) freight storage facilities;

(C) distribution warehouse centers; and

(D) other nonretail private enterprises;

(3) the construction, extension, or other improvement of:

(A) water or waste disposal facilities; or

(B) transportation infrastructure; or

(4) any other activity relating to private economic development that the commissioner determines will encourage economic and infrastructure development in a rural area.

(c) To further a purpose described by Subsection (b), the commissioner may provide financial assistance to an eligible county, municipality, or economic development corporation by:

(1) extending credit by direct loan, based on the credit of the county, municipality, or economic development corporation;

(2) providing a credit enhancement;

(3) effectively lowering interest rates;

(4) financing a purchase or lease agreement in connection with an economic or infrastructure development project; or

(5) providing methods of leveraging money from sources other than this state that are related to the project for which the assistance is provided.

(d) A county, municipality, or economic development corporation that receives funds under Subsection (c) shall segregate the funds from other funds under the control of the county, municipality, or economic development corporation and use the funds only for a purpose described by this section. Any funds disbursed through the program must be repaid on terms determined by the department.

(e) The department shall adopt rules necessary to implement this section.

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

Amend Amendment No. 3 to **CSSB 1016** by Gattis as follows:

(1) On page 1, line 16 of the amendment, between "corporation" and "that", insert "or community development financial institution".

(2) On page 2, line 8 of the amendment, between "municipality," and "or", insert "community development financial institution,".

(3) On page 2, line 10 of the amendment, between "municipality," and "or", insert "community development financial institution,".

(4) On page 2, line 20 of the amendment, between "municipality," and "or", insert "community development financial institution,".

**Floor Amendment No. 6**

Amend **CSSB 1016** (House committee printing) by adding the following appropriately numbered SECTIONS to Article 4 of the bill and renumbering subsequent SECTIONS of that Article accordingly:

SECTION 4.\_\_\_\_. Title 3, Agriculture Code, is amended by adding Chapter 50D to read as follows:

CHAPTER 50D. TEXAS BIOENERGY POLICY COUNCIL AND TEXAS  
BIOENERGY RESEARCH COMMITTEE  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 50D.001. PURPOSE. The purpose of the Texas Bioenergy Policy Council and the Texas Bioenergy Research Committee is to promote the goal of making biofuels a significant part of the energy industry in this state not later than January 1, 2019.

Sec. 50D.002. DEFINITIONS. In this chapter:

(1) "Alternative chemical feedstock" means a feedstock that is produced by a thermochemical process that converts alternative sources of fuel, including biomass, or other renewable sources, to a raw material to be used in the chemical manufacturing process.

(2) "Policy council" means the Texas Bioenergy Policy Council.

(3) "Research committee" means the Texas Bioenergy Research Committee.

Sec. 50D.003. ADMINISTRATIVE SUPPORT. The department:

(1) shall provide administrative support, including staff, to the policy council; and

(2) may allocate appropriate administrative support to the research committee.

[Sections 50D.004-50D.010 reserved for expansion]

SUBCHAPTER B. TEXAS BIOENERGY POLICY COUNCIL

Sec. 50D.011. COMPOSITION. (a) The policy council is composed of the following 18 members:

(1) the commissioner, who serves as chair of the policy council;

(2) one representative of the Railroad Commission of Texas;

(3) one representative of the Texas Commission on Environmental Quality;

(4) one representative of the Public Utility Commission of Texas;

(5) one representative of the Texas Water Development Board;

(6) the chancellor of The Texas A&M University System, or the person designated by the chancellor;

(7) the chancellor of the Texas Tech University System, or the person designated by the chancellor;

(8) the chancellor of The University of Texas System, or the person designated by the chancellor;

(9) one member of the senate appointed by the lieutenant governor;

(10) one member of the house of representatives appointed by the speaker of the house of representatives; and

(11) eight members appointed by the governor, with each of the following industries or groups represented by one member:

(A) research and development of feedstock and feedstock production;

(B) retail distribution of energy;

(C) transportation of biomass feedstock;

(D) agricultural production for bioenergy production or agricultural waste used for production of bioenergy;

(E) production of biodiesel from nonfood feedstocks;

(F) production of ethanol from nonfood feedstocks;

(G) bio-based electricity generation; and

(H) chemical manufacturing.

(b) The eight members of the policy council appointed by the governor serve at the governor's pleasure and have two-year staggered terms, with the terms of either three or four members expiring on January 1 of each year.

(c) The governor shall fill any vacancy in a position appointed by the governor for the remainder of the unexpired term.

(d) Appointments to the policy council must be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) The policy council is subject to Chapters 551 and 2001, Government Code.

Sec. 50D.012. REMOVAL OF POLICY COUNCIL MEMBERS. (a) A member of the policy council may be removed from the policy council if the member:

(1) is not able to devote the time necessary to perform the member's duties as a member;

(2) cannot because of illness or disability discharge the member's duties or cannot discharge those duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled policy council meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the policy council.

(b) An action of the policy council is not invalid because a ground for removal of a policy council member exists at the time the action is taken.

(c) If the commissioner has knowledge that a potential ground for removal of a policy council member exists, the commissioner shall notify the governor and attorney general of the potential ground for removal.

Sec. 50D.013. DUTIES OF POLICY COUNCIL. (a) The policy council shall:

(1) provide a vision for unifying this state's agricultural, energy, and research strengths in a successful launch of a cellulosic biofuel and bioenergy industry;

(2) foster development of cellulosic-based and bio-based fuels and build on the Texas emerging technology fund's investments in leading-edge energy research and efforts to commercialize the production of bioenergy;

(3) pursue the creation of a next-generation biofuels energy research program at a university in this state;

(4) work to procure federal and other funding to aid this state in becoming a bioenergy leader;

(5) study the feasibility and economic development effect of a blending requirement for biodiesel or cellulosic fuels;

(6) pursue the development and use of thermochemical process technologies to produce alternative chemical feedstocks;

(7) study the feasibility and economic development of the requirements for pipeline-quality, renewable natural gas; and

(8) perform other advisory duties as requested by the commissioner regarding the responsible development of bioenergy resources in this state.

(b) The policy council shall meet regularly as necessary at the call of the commissioner.

Sec. 50D.014. REIMBURSEMENT OF EXPENSES. A member of the policy council may not receive compensation for service on the council. Subject to availability of funds, a policy council member may receive reimbursement for the actual and necessary expenses incurred while conducting policy council business.

Sec. 50D.015. COORDINATION WITH FEDERAL GOVERNMENT ON BIOENERGY POLICY. (a) In this section, "state agency" has the meaning assigned by Section 315.002, Government Code.

(b) The policy council shall take reasonable steps to track the development of federal bioenergy policy and provide information relating to federal regulatory developments to each affected state agency.

(c) Not later than October 1, 2009, the Texas Commission on Environmental Quality shall request a determination by the United States Environmental Protection Agency that this state will not lose nitrogen oxide emission reduction credits currently recognized as part of the state implementation plan if:

(1) this state allows the use of biodiesel and biodiesel blends with no additives; and

(2) the final blend of fuel complies with state and federal standards for cetane and aromatic hydrocarbon content.

(d) If the Texas Commission on Environmental Quality receives a determination from the United States Environmental Protection Agency that this state will not lose nitrogen oxide emission reduction credits as a result of the use of biodiesel or biodiesel blends with no additives, or if the commission independently makes that determination, the commission may not adopt or implement rules that restrict the production or distribution of biodiesel or biodiesel blends in a manner more stringent than provided by federal law.

[Sections 50D.016-50D.020 reserved for expansion]

#### SUBCHAPTER C. TEXAS BIOENERGY RESEARCH COMMITTEE

Sec. 50D.021. COMPOSITION. (a) The research committee is composed of the following 16 members:

(1) the commissioner or the person designated by the commissioner, who serves as the chair of the research committee;

(2) one representative of the Railroad Commission of Texas;

(3) one representative of the Texas Commission on Environmental Quality;

(4) one representative of the Public Utility Commission of Texas;

(5) one representative of the Texas Water Development Board;

(6) one researcher or specialist in the bioenergy field from each of the following university systems, appointed by the chancellor of the system:

(A) The Texas A&M University System;

(B) the Texas Tech University System; and

(C) The University of Texas System; and

(7) eight members, with a member appointed by each policy council member appointed by the governor under Section 50D.011(a)(11).

(b) The eight members of the research committee appointed under Subsection (a)(7) serve at the governor's pleasure and have two-year staggered terms, with the terms of either three or four members expiring on January 1 of each year.

(c) The governor shall fill any vacancy in a position appointed under Subsection (a)(7) for the remainder of the unexpired term.

(d) Appointments to the research committee must be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) The research committee is subject to Chapters 551 and 2001, Government Code.

Sec. 50D.022. REMOVAL OF RESEARCH COMMITTEE MEMBERS. (a) A member of the research committee may be removed from the research committee if the member:

(1) is not able to devote the time necessary to perform the member's duties as a member;

(2) cannot because of illness or disability discharge the member's duties or cannot discharge those duties for a substantial part of the term for which the member is appointed; or

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the committee.

(b) An action of the research committee is not invalid because a ground for removal of a committee member exists at the time the action is taken.

(c) If the commissioner has knowledge that a potential ground for removal of a committee member exists, the commissioner shall notify the governor and attorney general of the potential ground for removal.

Sec. 50D.023. PURPOSES AND DUTY OF RESEARCH COMMITTEE. (a) The research committee is a research consortium among academic and technical research leadership, with active involvement by all sectors of the economy interested in bioenergy development.

(b) The research committee shall:

(1) identify and research appropriate and desirable biomass feedstock for each geographic region of this state;

(2) investigate logistical challenges to the planting, harvesting, and transporting of large volumes of biomass and provide recommendations to the policy council that will aid in overcoming barriers to the transportation, distribution, and marketing of bioenergy;

(3) identify strategies for and obstacles to the potential transition of the agriculture industry in western regions of this state to dryland bioenergy crops that are not dependent on groundwater resources;

(4) explore regions of this state, including coastal areas, that may contain available marginal land for use in growing bioenergy feedstocks;

(5) study the potential for producing oil from algae;

(6) study the potential for the advancement of thermochemical process technologies to produce alternative chemical feedstocks;

(7) study the potential for producing pipeline-quality natural gas from renewable sources; and

(8) perform other research duties as requested by the commissioner relating to the responsible development of bioenergy resources in this state.

(c) The research committee shall meet at the call of the commissioner.

Sec. 50D.024. REIMBURSEMENT OF EXPENSES. A member of the research committee may not receive compensation for service on the committee. Subject to availability of funds, a research committee member may receive reimbursement for the actual and necessary expenses incurred while conducting research committee business.

SECTION 4. \_\_\_\_\_. (a) As soon as practicable after the effective date of this Act, the appropriate persons shall appoint the members of the Texas Bioenergy Policy Council and the Texas Bioenergy Research Committee established by Sections 50D.011 and 50D.021, Agriculture Code, as added by this Act.

(b) Not later than the 30th day after the date the final member is appointed to the Texas Bioenergy Policy Council, the commissioner of agriculture shall call the first meeting of the policy council.

#### **Floor Amendment No. 8**

Amend the Hardcastle Amendment No. 6 to **CSSB 1016** (House committee printing) as follows:

(1) On page 6, line 7, between "Texas" and the semi-colon, insert "designated by the commission".

(2) On page 6, line 9, between "Quality" and the semi-colon, insert "designated by the commission".

(3) On page 6, line 11, between "Texas" and the semi-colon, insert "designated by the commission".

(4) On page 6, line 13, between "Board" and the semi-colon, insert "designated by the board".

#### **Floor Amendment No. 10**

Amend the Hardcastle Amendment No. 6 to **CSSB 1016** (House committee printing) as follows:

(1) On page 2, line 7, between "Texas" and the semi-colon, insert "designated by the commission".

(2) On page 2, line 9, between "Quality" and the semi-colon, insert "designated by the commission".

(3) On page 2, line 11, between "Texas" and the semi-colon, insert "designated by the commission".

(4) On page 2, line 13, between "Board" and the semi-colon, insert "designated by the board".

#### **Floor Amendment No. 11**

Amend **CSSB 1016** (House committee report) in SECTION 9.19 of the bill, by striking added Section 144.041(g), Agriculture Code (page 81, lines 5 through 9), and substituting the following:

(g) The recording of marks and brands at a point of sale for use by an association authorized to inspect livestock under 7 U.S.C. Section 217a does not serve as a record under this chapter. An association authorized to inspect livestock under 7 U.S.C. Section 217a has no duty to verify ownership at a point of sale.

### Floor Amendment No. 12

Amend **CSSB 1016** (House committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to ARTICLE 7 of bill and renumber subsequent SECTIONS of the ARTICLE accordingly:

SECTION 7.\_\_\_\_. Section 1951.002(16), Occupations Code, is amended to read as follows:

(16) "Technician" means a person who holds a license under this chapter and who, under [the] direct supervision of a certified noncommercial applicator or, as an employee of a holder of a structural pest control business license, performs supervised pesticide applications, maintains or uses structural pest control devices, makes sales presentations, or identifies pest infestation or damage. The term does not include a person whose duties are solely clerical or are otherwise completely disassociated with pest control.

SECTION 7.\_\_\_\_. Section 1951.003, Occupations Code, is amended to read as follows:

Sec. 1951.003. BUSINESS OF STRUCTURAL PEST CONTROL. (a) In this chapter, a person is engaged in the "business of structural pest control" if the person performs[~~-, offers to perform, or advertises for or solicits the person's performance of~~] any of the following services for compensation, including services performed as a part of the person's employment:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods, including insects, spiders, mites, ticks, and related pests, wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals that may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures or their contents; or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making oral or written inspection reports, recommendations, estimates, or bids with respect to an infestation described by Subdivision (1); or

(3) making contracts, or submitting bids based on an inspection for services or performing services designed to prevent, control, or eliminate an infestation described by Subdivision (1) by the use of insecticides, pesticides, rodenticides, fumigants, allied chemicals or substances, or mechanical devices.

(b) A person is not engaged in the business of structural pest control if the person is a clerical employee or a manual laborer and the person does not:

(1) identify pests;

(2) make inspections, recommendations, estimates, bids, or contracts;

(3) provide estimates, bids, or contracts based on an inspection; or

(4) apply insecticides, pesticides, rodenticides, fumigants, allied chemicals, or other related substances regulated by the department.

SECTION 7. \_\_\_\_\_. Section 1951.101(a), Occupations Code, is amended to read as follows:

(a) The committee consists of nine members appointed by the commissioner as follows:

- (1) two members who are experts in structural pest control application;
- (2) three members who represent the public;
- (3) one member from an institution of higher education who is knowledgeable in the science of pests and pest control;
- (4) one member who represents the interests of structural pest control operators and who is appointed based on recommendations provided by a trade association of operators;
- (5) one member who represents the interests of consumers ~~[and who is appointed based on recommendations provided by consumer advocacy groups or associations];~~ and
- (6) the commissioner of state health services or the commissioner's designee.

SECTION 7. \_\_\_\_\_. Section 1951.105, Occupations Code, is amended to read as follows:

Sec. 1951.105. RULES GOVERNING COMMITTEE; COMMITTEE MEETINGS. (a) The department shall adopt rules for the operation of the committee, including rules governing:

- (1) the purpose, role, responsibility, and goals of the committee;
- (2) the quorum requirements for the committee;
- (3) the qualifications required for members of the committee, which may include experience and geographic representation requirements;
- (4) the appointment process for the committee;
- (5) the members' terms;
- (6) the training requirements;
- (7) a process to regularly evaluate the effectiveness of the committee; and
- (8) a requirement that the committee comply with Chapter 551, Government Code.

(b) The committee shall:

- (1) meet quarterly;
- (2) operate under Robert's Rules of Order; and
- (3) record the minutes of each meeting.

SECTION 7. \_\_\_\_\_. Section 1951.205(a), Occupations Code, is amended to read as follows:

(a) The department, with the advice of the committee, shall adopt rules as authorized under this chapter governing the methods and practices of structural pest control that the department determines are necessary to protect the public's health and welfare and prevent adverse effects on human life and the environment. Each rule adopted must cite the section of this chapter that authorizes the rule.

SECTION 7.\_\_\_\_. Section 1951.212(b), Occupations Code, is amended to read as follows:

(b) The department shall use the structural pest control ~~[an existing]~~ advisory committee ~~[or create a new advisory committee]~~ to assist the department in developing the standards for the integrated pest management program. In developing the standards, the advisory committee shall consult with a person knowledgeable in the area of integrated pest management in schools.

SECTION 7.\_\_\_\_. Section 1951.301, Occupations Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) A person engaged in the business of structural pest control must hold a structural pest control business license for each place of business, including each branch office. A certified commercial applicator, certified noncommercial applicator, or licensed technician is not required to obtain a separate license for each branch office of an employer.

(f) A certified commercial applicator or technician license must be associated with a business license holder. The name of the employer of a licensed commercial applicator or technician must be printed on the face of the license issued to a commercial applicator or technician.

SECTION 7.\_\_\_\_. Section 1951.308, Occupations Code, is amended to read as follows:

Sec. 1951.308. LICENSE EXPIRATION. A license issued under this chapter expires at the end of the license period as determined by department rule. ~~[(a) The department by rule may adopt a system under which licenses expire on various dates during the year.]~~

~~[(b) For the year in which the license expiration date is changed, license fees payable on December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.]~~

SECTION 7.\_\_\_\_. Section 1951.453, Occupations Code, is amended to read as follows:

Sec. 1951.453. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: RESIDENTIAL PROPERTY. (a) For an indoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available~~[-~~

~~[(1) give]~~ a pest control information sheet developed under Section 1951.254 to the owner of the residence before each treatment begins~~[- or~~

~~[(2) if the owner is not available at the time treatment begins, leave the information sheet in a conspicuous place in the residence].~~

(b) For an indoor treatment at a residential rental property with fewer than five rental units, a certified applicator or technician shall make available ~~[leave]~~ a pest control information sheet developed under Section 1951.254 to the tenant of ~~[in]~~ each unit ~~[at the time of each treatment].~~

(c) For an indoor treatment at a residential rental property with five or more rental units, a certified applicator or technician shall make available ~~[provide]~~ a pest control information sheet developed under Section 1951.254 and a pest control sign

developed under that section to the owner or manager of the property. The owner or manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify residents who live in the direct area of the treatment or in an adjacent area by:

(1) posting the sign in an area of common access at least 48 hours before each planned treatment; or

(2) leaving the information sheet on the front door of each unit or in a conspicuous place inside each unit at least 48 hours before each planned treatment.

SECTION 7. \_\_\_\_\_. Section 1951.454, Occupations Code, is amended to read as follows:

Sec. 1951.454. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: WORKPLACE. For an indoor treatment at a workplace, a certified applicator or technician shall make available [~~provide~~] a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the employer or the building manager. The employer or building manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify the persons who work at the workplace of the date of the planned treatment by:

(1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and

(2) providing the information sheet to any person working in the building on a request made by the person during normal business hours.

SECTION 7. \_\_\_\_\_. Section 1951.455(a), Occupations Code, is amended to read as follows:

(a) For an indoor treatment at a building that is a hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school, or day-care center, a certified applicator or technician shall make available [~~provide~~] a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the chief administrator or building manager. The chief administrator or building manager shall notify the persons who work in the building of the treatment by:

(1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and

(2) providing the information sheet to a person working in the building on request of the person.

SECTION 7. \_\_\_\_\_. Sections 1951.457(a) and (b), Occupations Code, are amended to read as follows:

(a) For an outdoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available [~~leave~~] a pest control information sheet developed under Section 1951.254 at the residence before the treatment begins.

(b) For an outdoor treatment at a residential rental property with fewer than five rental units, a certified applicator or technician shall make available [~~leave~~] a pest control information sheet at each unit at the time of treatment.

(2) In SECTION 7.07 of the bill, between Subdivisions (3) and (4) of that SECTION (page 68, between lines 12 and 13), insert the following appropriately numbered subdivision and renumber subsequent subdivisions accordingly:

( ) Subsection (d), Section 1951.456;

### Floor Amendment No. 13

Amend Amendment No. 12 to **CSSB 1016** by Isett by adding the following to the end of the amendment:

(3) In SECTION 9.03 of the bill, strike added Sections 12.048(a)(3)-(5), Agriculture Code (page 74, lines 7-13), and substitute the following:

(3) requests a determination of eligibility for a license issued by the department; or

(4) is an employee, volunteer, or intern of the department, or an applicant to be an employee, volunteer, or intern of the department.

### Floor Amendment No. 14

Amend **CSSB 1016** (House committee report) by adding the following appropriately numbered SECTION to Article 9 of the bill and renumbering subsequent SECTIONS of that article accordingly:

SECTION 9.\_\_\_\_. Subsection (a), Section 11.005, Agriculture Code, is amended to read as follows:

(a) To be eligible for election as commissioner or appointment to fill a vacancy in the office of commissioner, a person must:

(1) have worked, for at least five years preceding the calendar year in which the person is elected or appointed to the person's initial term, in the livestock industry, in the grain industry, or for the Texas Agricultural Council or another agricultural producer association; and

(2) meet at least one of the following qualifications:

(A) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(B) [~~(2)~~] have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture; or

(C) [~~(3)~~] have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 23, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service.

### Floor Amendment No. 15

Amend Amendment No. 14 to **CSSB 1016** by Hilderbran (81r33127) by striking page 1, line 10, through page 2, line 1, of the amendment and substituting the following:

(1) have been engaged, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, in the business of agriculture;

(2) have worked, for the five-year period preceding the calendar year in which the person is elected or appointed to the person's initial term, for a state or federal agency in a position directly related to agriculture; ~~or~~

(3) have owned or operated, for at least five of the 10 years preceding the year in which the person is elected or appointed to the person's initial term, farm, ranch, or timber land that qualifies for agricultural use appraisal under Subchapter C, Chapter 23, Tax Code, and be participating, in the calendar year in which the person is elected or appointed to the person's initial term, in a farm program administered by the federal Agricultural Stabilization and Conservation Service; or

(4) have worked, for at least five years at any time before the calendar year in which the person is elected or appointed to the person's initial term, for the Texas Agricultural Council, an organization that is a member of the Texas Agricultural Council, or another agricultural producer association.

#### **Floor Amendment No. 17**

Amend **CSSB 1016** (House committee report) by adding the following appropriately numbered article to the bill and renumbering subsequent articles of the bill accordingly:

ARTICLE \_\_\_\_ . ESTABLISHMENT OF THE OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE MANAGEMENT CORPORATION

SECTION \_\_\_\_ .01. Subtitle B, Title 5, Agriculture Code, is amended by adding Chapter 80 to read as follows:

CHAPTER 80. OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE MANAGEMENT CORPORATION

Sec. 80.001. FINDINGS AND DECLARATION OF POLICY. (a) The legislature finds that:

(1) the insect known as the Asian citrus psyllid and the disease known as citrus greening are public nuisances and menaces to the citrus industry, and their control and suppression is a public necessity;

(2) because of the natural migration patterns of the Asian citrus psyllid, the control and suppression of the nuisance can best be accomplished by dividing the commercial citrus-growing areas into separate zones so that integrated pest management programs may be developed for each zone;

(3) there is a need for a quasi-governmental entity acting under the supervision and control of the commissioner whose members are actual citrus producers who would be represented on the board of the entity by directors elected by them to manage control and suppression programs and to furnish expertise in the field of insect control and suppression, because such an entity would enhance the interest and participation of citrus producers in the program;

(4) citrus producers, in partnership with the state and federal governments, have made significant investments toward the suppression of these pests and disease in this state; and

(5) it is essential to the well-being of the citrus industry and the agricultural economy of this state that the investments of the citrus producers and the state and federal governments be protected.

(b) It is the intent of the legislature that the program of control and suppression of the Asian citrus psyllid be carried out with the best available integrated pest management techniques.

(c) The department may recover costs for administration of this chapter.

Sec. 80.002. DESIGNATION OF ENTITY TO CARRY OUT ASIAN CITRUS PSYLLID AND CITRUS GREENING CONTROL AND SUPPRESSION. (a) The Texas Citrus Pest and Disease Management Corporation, Inc., a Texas nonprofit corporation, shall be recognized by the department as the entity to plan, carry out, and operate suppression programs to manage and control the Asian citrus psyllid and citrus greening in citrus plants in the state under the supervision of the department as provided by this chapter.

(b) The commissioner may terminate the corporation's designation as the entity recognized to carry out Asian citrus psyllid control and management by giving 45 days' written notice to the corporation and by designating a successor entity. If the commissioner designates a successor to the corporation, the successor has all the powers and duties of the corporation under this chapter. Any successor to the corporation shall assume and shall be responsible for all obligations and liabilities relating to any notes, security agreements, assignments, loan agreements, and any other contracts or other documents entered into by the corporation with or for the benefit of any financial institution or its predecessor, successor, or assignee.

Sec. 80.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Citrus Pest and Disease Management Corporation, Inc.

(2) "Asian citrus psyllid" means Diaphorina citri Kuwayama.

(3) "Commissioner" means the commissioner of agriculture.

(4) "Citrus" means:

(A) a citrus plant;

(B) a part of a citrus plant, including trees, limbs, flowers, roots, and

leaves; or

(C) citrus products.

(5) "Citrus greening" means the disease caused by the Asian citrus psyllid.

(6) "Citrus producer" means a person who grows citrus and receives income from the sale of citrus. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the citrus grown and available for marketing from a farm or to share in the proceeds from the sale of the citrus from the farm.

(7) "Suppression" means control of the numbers and migration of the Asian citrus psyllid to the extent that the commissioner does not consider further management of the Asian citrus psyllid necessary to prevent economic loss to citrus producers.

(8) "Pest management zone" means a geographic area designated by the commissioner in accordance with Section 80.005 in which citrus producers by referendum approve their participation in a citrus pest control program.

(9) "Corporation" means the Texas Citrus Pest and Disease Management Corporation, Inc., a Texas nonprofit corporation.

(10) "Host" means a plant or plant product in which the Asian citrus psyllid is capable of completing any portion of its life cycle.

(11) "Infested" means the presence of the Asian citrus psyllid in any life stage or the existence of generally accepted entomological evidence from which it may be concluded with reasonable certainty that the Asian citrus psyllid is present.

(12) "Integrated pest management" means the coordinated use of pest and environmental information with available pest control methods, including pesticides, natural predator controls, cultural farming practices, and climatic conditions, to prevent unacceptable levels of pest damage by the most economical means and with the least possible hazard to people, property, and the environment.

(13) "Regulated article" means an article carrying or capable of carrying the Asian citrus psyllid, including citrus plants, nursery plants, citrus rootstock, or other hosts.

Sec. 80.004. ADVISORY COMMITTEES. (a) The commissioner may appoint an advisory committee for an existing pest management zone or an area of the state that is to be considered by the commissioner for designation as or inclusion in a pest management zone. The committee shall gather advice, input, and guidance from citrus producers from the area represented by the committee concerning the interest in and concerns about the implementation of this chapter.

(b) Each advisory committee may consider and make recommendations to the commissioner and the corporation concerning:

(1) the geographic boundaries for a proposed pest management zone;

(2) the amount of local interest in operating a suppression program;

(3) the basis and amount of an assessment necessary to support a suppression program;

(4) ongoing implementation of a suppression program approved by growers in a pest management zone; and

(5) any other matter requested by the commissioner or the corporation.

(c) Each advisory committee appointed under this section must include a sufficient number of citrus producers to ensure adequate representation across the pest management zone and other persons as determined by the commissioner.

(d) An advisory committee established under this section is subject to Chapters 551 and 552, Government Code.

Sec. 80.005. CREATION OF PEST MANAGEMENT ZONES. (a) The commissioner by rule may designate an area of this state as a proposed pest management zone.

(b) The commissioner may hold a public hearing in the proposed pest management zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topic allowed under this chapter.

(c) After the adoption of a rule under Subsection (a), the commissioner shall conduct a referendum under Section 80.006.

Sec. 80.006. PEST MANAGEMENT ZONE REFERENDA. (a) The commissioner shall conduct a referendum in each proposed pest management zone to determine whether citrus producers want to establish a pest management zone.

(b) Pest management zone referenda shall be conducted under the procedures provided by Section 80.016.

(c) A proposed pest management zone referendum ballot must include or be accompanied by information about the proposed pest management zone, including:

(1) a statement of the purpose of the Asian citrus psyllid suppression program;

(2) the geographic area included in the proposed pest management zone;

(3) a general summary of rules adopted by the commissioner under Sections 80.016, 80.020, and 80.022, including a description of:

(A) citrus producer responsibilities; and

(B) penalties for noncompliance with rules adopted under this chapter;

and

(4) an address and toll-free telephone number that a citrus producer may use to request more information about the referendum or the Asian citrus psyllid suppression program.

(d) If a referendum to establish a pest management zone is not approved, the concurrent election of a board member from the proposed pest management zone under Section 80.007 has no effect, and the commissioner shall appoint a representative to the board from the area.

(e) The corporation may request the commissioner to call additional referenda in a proposed pest management zone in which a referendum has not been approved. An additional pest management zone referendum and concurrent board election may not be held before the first anniversary of the date of the preceding referendum.

(f) After the approval of any referendum, the eligible voters shall be allowed, by subsequent referenda, to vote on whether to continue their assessments. The requirements for an initial referendum must be complied with in a subsequent referendum.

Sec. 80.007. BOARD ELECTIONS. (a) The initial election for board members from a proposed pest management zone shall be held concurrently with a pest management zone referendum held under Section 80.006. Each pest management zone must be represented on the board and remain represented on the board until suppression operations are concluded and all debt of the pest management zone is paid.

(b) A board election shall be conducted under the procedures provided by this section and Section 80.016.

(c) A citrus producer who is eligible to vote in a referendum or election under this chapter is eligible to be a candidate for and member of the board if the person has at least seven years of experience as a citrus producer and otherwise meets the qualifications for the office.

(d) A citrus producer who wants to be a candidate for the board must meet the qualifications for board membership and file an application with the commissioner. The application must be:

(1) filed not later than the 30th day before the date set for the board election;

(2) on a form approved by the commissioner; and

(3) signed by at least 10 citrus producers who are eligible to vote in the board election.

(e) On receipt of an application and verification that the application meets the requirements of Subsection (d), an applicant's name shall be placed on the ballot for the board election.

(f) An eligible voter may vote for a citrus producer whose name does not appear on the official ballot by writing that person's name on the ballot.

(g) A board election must be preceded by at least 45 days' notice published in one or more newspapers published and distributed in the proposed or established pest management zone. The notice shall be published not less than once a week for three consecutive weeks. Not later than the 45th day before the date of the election, direct written notice of the election shall be given to each Texas AgriLife Extension Service agent in the pest management zone.

(h) Each board member shall be sworn into office by a representative of the commissioner by taking the oath of office required for elected officers of the state.

Sec. 80.008. COMPOSITION OF BOARD. (a) The board is composed of members elected from each pest management zone established by referendum, members appointed by the commissioner from other citrus-growing areas of the state, and members appointed by the commissioner under Subsection (b). The commissioner shall appoint an initial board composed of 15 members. Except as provided by Subsection (b), the term of each board position may not exceed four years.

(b) In making appointments under this section, the commissioner shall appoint the following board members, selected from a variety of citrus-growing regions of the state, for four-year terms:

(1) an agricultural lender;

(2) an independent entomologist who is an integrated pest management specialist;

(3) two representatives from industries allied with citrus production; and

(4) a representative from the pest control industry.

(c) The commissioner may change the number of board positions or the pest management zone representation on the board to accommodate changes in the number of pest management zones. A change under this subsection may not contravene another provision of this chapter.

(d) A vacancy on the board shall be filled by appointment by the commissioner for the unexpired term.

(e) On 30 days' notice and opportunity for hearing, the commissioner may replace any unelected board member of the corporation.

Sec. 80.009. POWERS OF BOARD AND COMMISSIONER. (a) The board may:

(1) conduct programs consistent with the declaration of policy stated in Section 80.001;

(2) accept, as necessary to implement this chapter, gifts and grants;

(3) borrow money, with the approval of the commissioner, as necessary to execute this chapter;

(4) take other action and exercise other authority as necessary to execute any act authorized by this chapter or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(5) form an advisory committee composed of individuals from this state, other states, or other countries and change membership on the committee, as necessary. Any advisory committee created under this subdivision for the purpose of establishing treatment methods shall include among its members persons with knowledge of the effects of different treatments on the health of agricultural workers, the local population, and the ecosystem, including but not limited to the effects of a particular method of treatment on beneficial organisms and wildlife, the potential for secondary infestations from nontarget pests, and the potential for pest resistance to particular methods of treatment.

(b) On petition of at least 30 percent of the citrus producers eligible to vote in the proposed area, the commissioner may, or at the commissioner's discretion, the commissioner by rule may add an area to a pest management zone or transfer an area or county from one zone to another zone if:

(1) citrus production has begun or could begin in the area;

(2) the area is adjacent to a pest management zone or is in an area with biological characteristics similar to the pest management zone; and

(3) the addition is approved in a referendum held in the area.

(c) The board must adopt a procurement policy, subject to approval by the commissioner, outlining the procedures to be used in purchasing.

(d) The commissioner at any time may inspect the books and other financial records of the corporation.

Sec. 80.010. BOARD DUTIES. (a) The board shall have an annual independent audit of the books, records of account, and minutes of proceedings maintained by the corporation prepared by an independent certified public accountant or a firm of independent certified public accountants. The audit must include information for each zone in which a suppression program has been conducted under this chapter. The audit shall be filed with the board, the commissioner, and the state auditor and be made available to the public by the corporation or the commissioner. The transactions of the corporation are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) Not later than the 45th day after the last day of the fiscal year, the board shall submit to the commissioner a report itemizing all income and expenditures and describing all activities of the corporation during the fiscal year.

(c) The corporation shall provide fidelity bonds in amounts determined by the board for employees or agents who handle money for the corporation.

(d) The corporation and the board are state agencies for the following purposes only:

(1) exemption from taxation, including exemption from sales and use taxes and taxes under Chapter 152, Tax Code; and

(2) exemption from vehicle registration fees.

(e) Funds collected by the corporation are not state funds and are not required to be deposited in the state treasury. The corporation shall deposit all money collected under this chapter in a bank or other depository approved by the commissioner.

(f) The board shall collect data on the type and quantity of pesticides used in accordance with this chapter. The data shall be filed with the commissioner.

(g) All money collected under this chapter shall be used solely to finance programs approved by the commissioner as consistent with this chapter.

(h) The corporation is subject to the requirements of:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the public information law, Chapter 552, Government Code.

(i) A board member may not vote on any matter in which the member has a direct pecuniary interest. A board member is subject to the same restrictions as a local public official under Chapter 171, Local Government Code.

Sec. 80.011. ADMINISTRATIVE REVIEW. (a) The commissioner by rule shall establish procedures for the informal review and resolution of a claim arising out of certain acts taken by the corporation under this chapter. Rules established under this section shall include a designation of the acts that are subject to review under this subsection and the appropriate remedial action, as authorized by this chapter.

(b) A person dissatisfied with the department's informal resolution of a claim under procedures adopted under Subsection (a) may appeal the department's decision to the commissioner.

(c) A decision issued by the commissioner on a claim appealed under Subsection (b) is the final administrative action of the department and is subject to judicial review under Chapter 2001, Government Code.

(d) This section does not constitute a waiver of the state's immunity from liability.

Sec. 80.012. CONTRACTING. (a) For a purchase of goods and services under this chapter, the corporation may purchase goods and services that provide the best value for the corporation.

(b) In determining the best value for the corporation, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the corporation may consider other relevant factors, including:

(1) the quality and reliability of the goods and services;

(2) the delivery terms;

(3) indicators of probable vendor performance under the contract, including:

(A) past vendor performance;

(B) the vendor's financial resources and ability to perform;

(C) the vendor's experience or demonstrated capability and

responsibility; and

(D) the vendor's ability to provide reliable maintenance agreements and

support;

(4) the cost of any employee training associated with a purchase; and

(5) other factors relevant to determining the best value for the corporation in

the context of a particular purchase.

Sec. 80.013. BOARD MEMBER COMPENSATION. Board members serve without compensation but are entitled to reimbursement for reasonable and necessary expenses incurred in the discharge of their duties.

Sec. 80.014. DISCONTINUATION OF PROGRAM AND CORPORATION AND DISPOSITION OF FUNDS ON DISCONTINUANCE. (a) On the determination by the corporation that the Asian citrus psyllid suppression program has

been completed in all pest management zones established under this chapter, the corporation shall provide notice of the completion to the commissioner along with a request for discontinuance of the control and suppression program and collection of the assessment. Any request under this subsection must include documentation supporting the fact that the Asian citrus psyllid is no longer a threat to the state's citrus industry and a plan for discontinuance of the program and assessment.

(b) The commissioner shall determine whether or not the further suppression of the Asian citrus psyllid is necessary in the pest management zones and approve or disapprove discontinuance of the corporation and the plan for dissolution.

(c) On completion of the dissolution, the corporation shall file a final report with the commissioner, including a financial report, and submit all remaining funds into the trust of the commissioner. Final books of the corporation shall be filed with the commissioner and are subject to audit by the department.

(d) The commissioner shall pay from the corporation's remaining funds all of the corporation's outstanding obligations.

(e) Funds remaining after payment under Subsection (d) shall be returned to contributing citrus producers on a pro rata basis.

(f) If 30 percent or more of the citrus producers eligible to vote within a zone participating in the program present to the commissioner a petition calling for a referendum of the qualified voters on the proposition of discontinuing the program, the commissioner shall conduct a referendum for that purpose.

(g) The commissioner shall give notice of the referendum, the referendum shall be conducted, and the results shall be declared in the manner provided by law for the original referendum and election, with any necessary exceptions provided by rule of the commissioner.

(h) The commissioner shall conduct the referendum before the 90th day after the date the petition was filed, except that a referendum may not be held before the second anniversary of any other referendum in the pest management zone pertaining to establishing or discontinuing the pest management zone.

(i) Approval of the proposition requires the same vote as required in a referendum under Section 80.016(g). If the proposition is approved, the suppression program is abolished and the pest management zone ceases to exist on payment of all debts of the pest management zone.

Sec. 80.015. ASSESSMENT REFERENDA. (a) The commissioner shall propose the assessment needed in each pest management zone to ensure the stability of the citrus industry by suppressing the public nuisance caused by the Asian citrus psyllid.

(b) The commissioner shall propose in a referendum the:

(1) maximum assessment to be paid by citrus producers having production in the pest management zone; and

(2) time for which the assessment will be made.

(c) With the commissioner's approval, the corporation may make an assessment in a pest management zone at a level less than the assessment approved by the referendum.

(d) The commissioner shall conduct an assessment referendum under the procedures provided by Section 80.016.

(e) If an assessment referendum is approved, the corporation may collect the assessment.

(f) An assessment levied on citrus producers in a pest management zone may be applied only to:

(1) pest control in that zone;

(2) the corporation's operating costs, including payments on debt incurred for a corporation activity, except that the funds of one zone may not be used to pay another zone's bank loans or debts; and

(3) the conducting of other programs consistent with the declaration of policy stated in Section 80.001.

(g) The assessment shall be adequate and necessary to achieve the goals of this chapter. The amount of the assessment shall be determined by criteria established by the commissioner, including:

(1) the extent of infestation;

(2) the amount of acreage planted;

(3) historical efforts to suppress;

(4) the growing season;

(5) epidemiology;

(6) historical weather conditions; and

(7) the costs and financing of the program.

(h) The commissioner shall give notice of and hold a public hearing in the pest management zone regarding the proposed assessment referendum. Before the referendum, the commissioner shall review and approve:

(1) the amount of the assessment;

(2) the basis for the assessment;

(3) the time for payment of the assessment;

(4) the method of allocation of the assessment among citrus producers;

(5) the restructuring and repayment schedule for any preexisting debt; and

(6) the amount of debt to be incurred in the pest management zone.

(i) The commissioner shall on a zone-by-zone basis set the date on which assessments are due and payable.

(j) Each year, the commissioner shall review and approve the corporation's operating budget.

(k) The corporation shall prepare and mail billing statements to each citrus producer subject to the assessment that state the amount due and the due date. The assessments shall be sent to the corporation.

Sec. 80.016. CONDUCT OF BOARD ELECTIONS AND REFERENDA; BALLOTING. (a) The commissioner shall conduct a referendum or board election authorized under this chapter.

(b) The corporation shall bear all expenses incurred in conducting a referendum or board election.

(c) The commissioner shall adopt rules for voting in board elections and referenda to establish pest management zones. Rules adopted under this subsection must include provisions for determining:

(1) who is a citrus producer eligible to vote in an election or referendum;

(2) whether a board member is elected by a plurality or a majority of the votes cast; and

(3) the area from which each board member is elected.

(d) A citrus producer having citrus production in a proposed or established pest management zone is entitled to:

(1) vote in a referendum concerning the pest management zone; and

(2) elect board members to represent the pest management zone.

(e) An eligible citrus producer may vote only once in a referendum or board election.

(f) Ballots in a referendum or board election shall be mailed directly to a central location, as determined by the commissioner. A citrus producer eligible to vote in a referendum or board election who has not received a ballot from the commissioner, corporation, or another source shall be offered the option of requesting a ballot by mail or obtaining a ballot at the office of the Texas AgriLife Extension Service or a government office distributing ballots in a county in the proposed or established zone in which the referendum or board election is conducted.

(g) A referendum is approved if:

(1) at least two-thirds of those voting vote in favor of the referendum; or

(2) those voting in favor of the referendum cultivate more than 50 percent, as determined by the commissioner, of the citrus acreage in the relevant pest management zone.

(h) If a referendum under this chapter is not approved, the commissioner may conduct another referendum. A referendum under this subsection may not be held before the first anniversary of the date on which the previous referendum on the same issue was held.

(i) A public hearing regarding the proposed suppression program, including information regarding regulations to be promulgated by the commissioner, may be held by the commissioner in each of several locations in each Asian citrus psyllid pest management zone.

(j) Individual voter information, including an individual's vote in a referendum or board election conducted under this section, is confidential and is not subject to disclosure under Chapter 552, Government Code.

Sec. 80.017. PAYMENT OF ASSESSMENTS; ASSESSMENT LIENS. (a) A citrus producer who fails to pay an assessment levied under this chapter when due may be subject, after reasonable notice and opportunity for hearing, to a penalty set by the commissioner. In determining the amount of the penalty to be assessed, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, and extent of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the economic situation of the citrus producer; and

(5) any other matter that justice may require.

(b) The corporation may develop a compliance certificate program to manage the payment and collection of an assessment levied under this chapter. Under the program the corporation, subject to department rules, may issue a compliance certificate for citrus for which an assessment has been paid.

(c) In addition to any other remedies for the collection of assessments and penalties, the commissioner may adopt rules relating to the compliance certificate program for suppression assessments. The rules may include:

(1) provisions establishing and relating to the obligations of growers, packers, and buyers in due course of citrus produced in active pest management zones to ensure that assessments are paid within a prescribed time period;

(2) provisions allowing incentives in the form of discounted assessments for growers who pay assessments within a prescribed time period;

(3) provisions establishing penalties and interest against growers who pay assessments after a prescribed time period; and

(4) other provisions the commissioner determines are proper.

(d) In addition to any other remedies for the collection of assessments and penalties, an assessment lien in favor of the corporation attaches and is perfected 60 days after the date the corporation mails notice of the assessment on citrus produced and harvested that year from the acreage that is subject to the assessment that is due and unpaid. An assessment lien is not an agricultural lien for the purposes of Chapter 9, Business & Commerce Code, and is not subject to the provisions of that chapter. An assessment lien is subject to and preempted by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.) and shall be treated under that Act in the same manner as a security interest created by the seller. A buyer of citrus takes free of the assessment lien if the buyer:

(1) receives a compliance certificate issued by the corporation when the buyer purchases the citrus that certifies that the assessment has been paid to the corporation;

(2) pays for the citrus by a check on which the department is named as a joint payee;

(3) does not receive notice of the assessment lien as required by the Food Security Act of 1985 (7 U.S.C. Section 1631 et seq.); or

(4) buys the citrus from a person other than the producer of the citrus.

(e) The corporation may assign, with the approval of the commissioner, assessments or liens in favor of the corporation as collateral for a loan to the corporation only if the proceeds of the loan are designated for use in the pest management zone from which the assessments or liens originated.

(f) If the department believes that a violation of this section or a rule adopted under this section has occurred, the department may investigate and, during normal business hours, audit and inspect the records of the person who is the subject of the investigation.

Sec. 80.018. EXEMPTION FROM ASSESSMENT PENALTIES. (a) The commissioner by rule shall adopt criteria to exempt from payment of an assessment penalty under Section 80.017 a citrus producer for whom payment would impose an undue financial burden.

(b) A citrus producer is not eligible for an exemption under this section for a year in which the amount computed by subtracting the assessments and penalties due under this chapter from the citrus producer's net income subject to federal income taxation in the previous year is greater than \$15,000.

(c) A citrus producer who applies for an exemption under this section must use a form prescribed by the commissioner. A citrus producer must file a separate application form for each year for which the citrus producer claims an exemption.

(d) The commissioner may establish a payment plan for a citrus producer applying for an exemption under this section.

(e) The commissioner shall promptly notify an applicant of the determination regarding the applicant's request for an exemption.

(f) If an exemption under this section is denied, assessments and penalties for the year for which the application is made are due on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial.

(g) In addition to the authority provided under Subsections (a)-(f), the commissioner may reduce or waive an assessment penalty as appropriate and necessary.

Sec. 80.019. ENTRY OF PREMISES; SUPPRESSION ACTIVITIES; INSPECTIONS. The department, the corporation, or a designated representative of either entity may enter citrus groves or other premises to carry out the purposes of this chapter, which include the treatment and monitoring of growing citrus or other host plants. The department, the corporation, or a designated representative of either entity may inspect groves or premises in this state for the purpose of determining whether the property is infested with the Asian citrus psyllid or citrus greening. An inspection must be conducted during reasonable daylight hours. The department shall give notice by publication of the planned schedule of dates for entry by the department, the corporation, or a designated representative of either entity, to the owner or occupant of the groves or premises to carry out the purposes of this chapter, including treatment, monitoring, or inspection functions. The department shall publish notice of the planned schedule to enter the groves or premises in a newspaper of general circulation in the pest management zone not less than once a week for two weeks immediately before the scheduled dates of entry. In addition to the notice published by the department, the corporation shall post notice of the planned schedule to enter groves or premises to carry out the purposes of this chapter at the county courthouse of each county in the pest management zone not later than the 15th day before the planned dates of entry.

Sec. 80.020. AUTHORITY TO PROHIBIT PLANTING OF CITRUS AND REQUIRE PARTICIPATION IN SUPPRESSION PROGRAM. (a) The commissioner may adopt reasonable rules regarding areas where citrus may not be planted in a pest management zone if there is reason to believe planting will jeopardize the success of the program or present a hazard to public health or safety.

(b) The commissioner may adopt rules requiring all growers of citrus in a pest management zone to participate in an Asian citrus psyllid suppression program and growers of commercial citrus to participate in pest and disease management programs that include cost sharing as required by the rules.

(c) Notice of a prohibition or requirement shall be given by publication for one day each week for three successive weeks in a newspaper having general circulation in the affected area.

(d) The commissioner may adopt a reasonable schedule of penalty fees to be assessed against growers in a designated pest management zone who do not meet the requirements of the rules issued by the commissioner relating to reporting of acreage and participation in cost sharing. A penalty fee may not exceed \$50 per acre.

Sec. 80.021. AUTHORITY FOR DESTRUCTION OR TREATMENT OF CITRUS IN PEST MANAGEMENT ZONES; COMPENSATION PAYABLE. The department may destroy or treat, and establish procedures for the purchase and destruction of, citrus plants or hosts in pest management zones if the department determines the action is necessary to carry out the purposes of this chapter. The department is not liable to the owner or lessee for the destruction of or injury to any citrus that was planted in a pest management zone after the date notice is published as required by this chapter. The corporation is liable for the destruction of citrus if the citrus was planted in a pest management zone before the date that notice is published.

Sec. 80.022. AUTHORITY TO ADOPT RULES. (a) The commissioner shall adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in a pest management zone on which citrus plants are being grown that have been or are being treated to control or suppress the Asian citrus psyllid and citrus greening.

(b) Rules adopted under this section shall establish the criteria by which the corporation develops its procedures and methods of treatment, which shall:

(1) establish a methodology for determining when Asian citrus psyllid population levels have reached economic significance or when citrus greening is present;

(2) establish an effective treatment regimen that seeks to provide the least possible risk to workers, the public, and the environment;

(3) minimize the effects of the use of pesticides on long-term control methods, including but not limited to the effect a particular pesticide may have on biological controls;

(4) establish methods for monitoring Asian citrus psyllids, citrus greening, and secondary pests;

(5) establish methods for verifying pesticide use reduction; and

(6) consider the acute and chronic toxicity of particular pesticides and the quantity of particular pesticides needed. Pest management zone treatment plans may take into account the potential for the use of smaller quantities of more toxic substances to result in fewer health and environmental risks than larger quantities of less toxic substances.

(c) The commissioner may adopt other reasonable rules necessary to carry out the purposes of this chapter. All rules issued under this chapter must be adopted and published in accordance with the laws of this state.

(d) An advisory committee may be established to assist the commissioner in the development of rules under this section. The advisory committee may be composed of:

(1) three citrus producers from the commercial citrus growing area of the state, appointed by the commissioner;

(2) three entomologists with knowledge of the principles of integrated pest management, at least one of whom has special knowledge of nonchemical or biological pest control, appointed by the commissioner;

(3) two individuals with experience representing the general interests of the environment, appointed by the chair of the Texas Commission on Environmental Quality;

(4) an environmental engineer with expert knowledge of ground and surface water protection from contamination, appointed by the chair of the Texas Commission on Environmental Quality; and

(5) a toxicologist, appointed by the commissioner of state health services.

Sec. 80.023. REPORTS. Each person in an active pest management zone growing citrus in this state shall furnish to the corporation on forms supplied by the corporation information that the corporation requires concerning the size and location of all commercial citrus orchards and of noncommercial citrus grown for ornamental or other purposes. The corporation may provide an incentive for early and timely reporting.

Sec. 80.024. DOCUMENTING REGULATED ARTICLES. To implement this chapter, the department may issue or authorize issuance of:

(1) a certificate that indicates that a regulated article is not infested with the Asian citrus psyllid; and

(2) a permit that provides for the movement of a regulated article to a restricted destination for limited handling, use, or processing.

Sec. 80.025. COOPERATIVE PROGRAMS AUTHORIZED. (a) The corporation may carry out programs to destroy and manage the Asian citrus psyllid and citrus greening in this state by cooperating through written agreements, as approved by the commissioner, with:

(1) an agency of the federal government;

(2) a state agency;

(3) an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law;

(4) a person who is engaged in growing, processing, marketing, or handling citrus;

(5) a group of persons in this state involved in similar programs to carry out the purposes of this chapter; or

(6) an appropriate state agency of another state contiguous to the affected area, to the extent allowed by federal law, the law of the contiguous state, and the law of this state.

(b) An agreement entered into under this section may provide for cost sharing and for division of duties and responsibilities under this chapter and may include other provisions to carry out the purposes of this chapter.

Sec. 80.026. ORGANIC CITRUS PRODUCERS. (a) The commissioner shall develop rules and procedures to:

(1) protect the eligibility of organic citrus producers to be certified by the commissioner;

(2) ensure that organic and transitional certifications by the commissioner continue to meet national certification standards in order for organic citrus to maintain international marketability; and

(3) in all events maintain the effectiveness of the Asian citrus psyllid suppression program and citrus greening management administered under this chapter.

(b) The board may not treat or require treatment of organic citrus groves with chemicals that are not approved for use on certified organic citrus. Rules adopted under Subsection (a) may provide indemnity for the organic citrus producers for reasonable losses that result from a prohibition of production of organic citrus or from any requirement of destruction of organic citrus.

Sec. 80.027. PENALTIES. (a) A person who violates this chapter or a rule adopted under this chapter or who alters, forges, counterfeits, or uses without authority a certificate, permit, or other document issued under this chapter or under a rule adopted under this chapter commits an offense.

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

(c) If the commissioner determines that a violation of this chapter or a rule adopted under this chapter has occurred, the commissioner may request that the attorney general or the county or district attorney of the county in which the alleged violation occurred or is occurring file suit for civil, injunctive, or other appropriate relief.

Sec. 80.028. SUNSET PROVISION. (a) The board of directors of the official citrus producers' pest and disease management corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2021.

(b) The commissioner may order the dissolution of the corporation at any time the commissioner determines that the purposes of this chapter have been fulfilled or that the corporation is inoperative and abandoned. Dissolution shall be conducted in accordance with Section 80.014.

(c) If the corporation is abolished or the suppression program discontinued for any reason, assessments approved, levied, or otherwise collectible on the date of abolishment remain valid as necessary to pay the financial obligations of the corporation.

Sec. 80.029. ANNUAL REPORT. The board shall issue to the commissioner and the appropriate oversight committee in the house of representatives an annual report detailing its efforts to carry out the purposes of this chapter.

Sec. 80.030. EXEMPTION TAXATION. All payments, contributions, funds, and assessments received or held by the corporation under this chapter are exempt from state or local taxation, levies, sales, and any other process and are unassignable.

Sec. 80.031. USE OF BIO-INTENSIVE CONTROLS. (a) The commissioner shall develop and adopt rules to allow a citrus producer in a suppression program to use biological, botanical, or other nonsynthetic pest control methods. In developing rules, the commissioner shall consider:

(1) scientific studies and field trials of the effectiveness of a proposed alternative control method;

(2) the feasibility of using a proposed alternative control technique within a particular region;

(3) the degree of monitoring necessary to establish the success of the use of a proposed alternative control; and

(4) methods to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(b) A citrus producer that chooses to use an alternative method of control as provided in Subsection (a) shall notify the board. The board and the citrus producer shall coordinate their actions to prevent the use of substances that would impede the use of alternative controls and the promotion of beneficial insect populations.

(c) The citrus producer shall pay any additional cost of bio-intensive control in addition to any assessment.

Sec. 80.032. VENUE. Venue for an action arising out of this chapter in which the corporation is a party is in Travis County.

### **Floor Amendment No. 18**

Amend **CSSB 1016** (House committee printing) on line 10, page 81, by adding a new SECTION 9.20 to the bill, and renumbering subsequent SECTIONS accordingly:

SECTION 9.20. Section 251.005, Agriculture Code, is amended by adding subsection (e) to read as follows:

(e) A governmental requirement of a political subdivision of the state does not apply to conduct on an agricultural operation described by Section 49.02(f), Penal Code.

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

Amend **CSSB 1016** (House committee printing) on line 10, page 81, by adding a new SECTION 9.20 to the bill, and renumbering subsequent SECTIONS accordingly:

SECTION 9.20. Section 251.005, Agriculture Code, is amended by adding subsection (e) to read as follows:

(e) A governmental requirement of a political subdivision of the state does not apply to conduct described by Section 42.09(f), Penal Code on an agricultural operation.

The amendments were read.

Senator Estes moved to concur in the House amendments to **SB 1016**.

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

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

On motion of Senator Zaffirini and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Higher Education might meet and consider **HB 999** today.

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

On motion of Senator Duncan and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on State Affairs might meet and consider **HB 3419** today.

**NOTICE GIVEN FOR**  
**LOCAL AND UNCONTESTED CALENDAR**

Senator Williams announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. today and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 12:25 a.m. agreed to adjourn, in memory of Anne Legendre Armstrong, upon conclusion of the Local and Uncontested Calendar Session, until 10:30 a.m. today.

**CONFERENCE COMMITTEE REPORT ON**  
**HOUSE BILL 2626**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 18, 2009

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2626** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
ELTIFE  
CARONA  
HINOJOSA  
OGDEN

On the part of the Senate

NAISHTAT  
MERRITT  
DRIVER  
BOLTON  
KENT

On the part of the House

The Conference Committee Report on **HB 2626** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 2298**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas  
May 20, 2009

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
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 2298** 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.

WATSON  
CARONA  
ELLIS  
ELTIFE  
WHITMIRE  
On the part of the Senate

FARABEE  
GALLEGO  
HARLESS  
HILDERBRAN  
MALDONADO  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to compensation of certain state employees.

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

SECTION 1. Section 51.962, Education Code, is amended by adding Subsection (f) to read as follows:

(f) This subsection applies to an employee employed by the institution of higher education for more than six months. The requirement that six months elapse between merit salary increases prescribed by Subsection (e) does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.

SECTION 2. The heading to Section 659.0125, Government Code, is amended to read as follows:

Sec. 659.0125. SALARY FOR DISTRICT JUDGE OR RETIRED JUDGE PRESIDING OVER MULTIDISTRICT LITIGATION.

SECTION 3. Section 659.0125, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A retired judge appointed to an MDL pretrial court, as defined by Section 90.001, Civil Practice and Remedies Code, is entitled to receive the same compensation and benefits to which a district judge is entitled.

SECTION 4. Section 659.015, Government Code, is amended by amending Subsection (g) and adding Subsections (i) and (j) to read as follows:

(g) Compensatory time off to which an employee is entitled under Subsection (f) must be taken during the 12-month period following the end of the workweek in which the compensatory time was accrued or it lapses. An employee may not be paid for that compensatory time, except as provided by this subsection and Subsections (i) and (j). An ~~[However, an]~~ employee of an institution of higher education as defined by Section 61.003, Education Code, or an employee engaged in a public safety activity, including highway construction and maintenance or an emergency response activity, may be paid at the employee's regular rate of pay for that compensatory time if the employer determines that taking the compensatory time off would disrupt normal teaching, research, or other critical functions.

(i) With authorization from the administrative head of the agency for which an employee works, or that person's designee, an employee may be paid for the hours of compensatory time the employee earns for work directly related to a disaster or emergency declared by the appropriate officer of the state or federal government.

(j) With authorization from the administrative head of the agency for which an employee works, or that person's designee, an employee employed by a state mental health or mental retardation facility may be paid for any unused compensatory time if the employing agency determines that taking the compensatory time off would disrupt the normal business functions of the agency.

SECTION 5. Section 659.016, Government Code, is amended by amending Subsection (i) and adding Subsection (j) to read as follows:

(i) Except as provided by this subsection and Subsection (j), an [An] employee covered by this section may not be paid for any unused compensatory time. With authorization from the administrative head of the agency for which a state employee works, or that person's designee, an employee may be paid for the hours of compensatory time the employee earns for work directly related to a disaster or emergency declared by the appropriate officer of the state or federal government.

(j) With authorization from the administrative head of the agency for which an employee works, or that person's designee, an employee employed by a state mental health or mental retardation facility may be paid for any unused compensatory time if the employing agency determines that taking the compensatory time off would disrupt the normal business functions of the agency.

SECTION 6. Section 659.018, Government Code, is amended to read as follows:

Sec. 659.018. COMPENSATORY TIME: PLACE WHERE WORK PERFORMED. (a) Except under circumstances specified in the General Appropriations Act or as provided by Subsection (b), an employee of a state agency as defined by Section 658.001 may not, for hours worked during any calendar week, accumulate compensatory time off under Section 659.015(f) or 659.016 to the extent that the hours are attributable to work performed at a location other than the employee's regular or temporarily assigned place of employment.

(b) An employee may accumulate compensatory time off for hours worked during any calendar week at the [The] employee's personal residence if the employee obtains the advance approval of the administrative head of the agency for which the employee works or that person's designee [may not be considered the employee's regular or temporarily assigned place of employment].

SECTION 7. Section 659.255, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The six-month limitations prescribed by Subsections (f)(2) and (5) do not apply if the administrative head of the agency determines in writing that the merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.

SECTION 8. 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, 2009.

The Conference Committee Report on **SB 2298** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2030

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2009

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2030** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL  
DAVIS  
NELSON  
WILLIAMS

ZERWAS  
J. DAVIS  
HOPSON  
D. HOWARD  
S. KING

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2030** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 727**

Senator Patrick submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2009

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
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 727** 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.

PATRICK  
WHITMIRE  
CARONA  
HEGAR  
SELIGER

On the part of the Senate

VAUGHT  
ANCHIA  
GEREN  
MOODY  
RIDDLE

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of DNA records for the DNA database system.

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

SECTION 1. The heading to Article 102.020, Code of Criminal Procedure, is amended to read as follows:

Art. 102.020. COSTS RELATED TO ~~[ON CONVICTION FOR OFFENSES REQUIRING]~~ DNA TESTING.

SECTION 2. Article 102.020, Code of Criminal Procedure, is amended by amending Subsections (a) and (h) and adding Subsections (h-1) and (j) to read as follows:

(a) A person shall pay as a cost of court:

(1) \$250 ~~[as a court cost]~~ on conviction of an offense listed in Section 411.1471(a)(1), Government Code;

(2) ~~[and]~~ \$50 ~~[as a court cost]~~ on conviction of an offense listed in Section 411.1471(a)(3) of that code; or

(3) \$34 on placement of the person on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Section 11(j), Article 42.12.

(h) Except as provided by Subsection (h-1), the [The] comptroller shall deposit 35 percent of the funds received under this article in the state treasury to the credit of the state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the general revenue fund.

(h-1) The clerk of the court shall transfer to the comptroller any funds received under Subsection (a)(3). The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by defendants who are required to pay a court cost under this article.

(j) The court may waive the imposition of a court cost under this article if the court determines that the defendant is indigent and unable to pay the cost.

SECTION 3. Chapter 54, Family Code, is amended by adding Section 54.0409 to read as follows:

Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY ADJUDICATIONS. (a) This section applies only to conduct constituting the commission of a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct.

(b) If a court or jury makes a disposition under Section 54.04 in which a child is adjudicated as having engaged in conduct constituting the commission of a felony to which this section applies and the child is placed on probation, the court shall require as a condition of probation that the child provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required sample under other state law.

SECTION 4. Chapter 54, Family Code, is amended by adding Section 54.0462 to read as follows:

Sec. 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA TESTING. (a) If a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required under Section 54.0409 or other law, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court:

(1) a \$50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission; and

(2) a \$34 fee if the disposition of the case does not include a commitment described by Subdivision (1) and the child is required to submit a DNA sample under Section 54.0409 or other law.

(b) The clerk of the court shall transfer to the comptroller any funds received under this section. The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by children with respect to whom a court cost is collected under this section.

(c) If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the fee required under Subsection (a), the court shall enter into the child's case records a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.

SECTION 5. Subsection (a), Section 61.002, Family Code, is amended to read as follows:

(a) Except as provided by Subsection (b), this chapter applies to a proceeding to enter a juvenile court order:

- (1) for payment of probation fees under Section 54.061;
- (2) for restitution under Sections 54.041(b) and 54.048;
- (3) for payment of graffiti eradication fees under Section 54.0461;
- (4) for community service under Section 54.044(b);
- (5) for payment of costs of court under Section 54.0411 or other provisions of law;
- (6) requiring the person to refrain from doing any act injurious to the welfare of the child under Section 54.041(a)(1);
- (7) enjoining contact between the person and the child who is the subject of a proceeding under Section 54.041(a)(2);
- (8) ordering a person living in the same household with the child to participate in counseling under Section 54.041(a)(3);
- (9) requiring a parent or guardian of a child found to be truant to participate in an available program addressing truancy under Section 54.041(f);
- (10) requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under Section 51.10(e);
- (11) requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under Section 51.10(j);
- (12) requiring payment of deferred prosecution supervision fees under Section 53.03(d);
- (13) requiring a parent or other eligible person to attend a court hearing under Section 51.115;
- (14) requiring a parent or other eligible person to act or refrain from acting to aid the child in complying with conditions of release from detention under Section 54.01(r); ~~or~~
- (15) requiring a parent or other eligible person to act or refrain from acting under any law imposing an obligation of action or omission on a parent or other eligible person because of the parent's or person's relation to the child who is the subject of a proceeding under this title; or

(16) for payment of fees under Section 54.0462.

SECTION 6. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (j) to read as follows:

(j) A judge granting community supervision to a defendant convicted of a felony shall require that the defendant, as a condition of community supervision, provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant, unless the defendant has already submitted the required sample under other state law.

SECTION 7. (a) Section 102.021, Government Code, is amended to conform to Chapter 1263 (H.B. 3060), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

(1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4;

(2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;

(3) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(B) executing or processing an issued arrest warrant, ~~or~~ capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . \$50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . \$5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . \$8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed \$5;

(4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;

(5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

(6) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(8) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure) . . . \$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . \$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1) [~~102.020~~], Code of Criminal Procedure) . . . \$250;

(14) court cost for DNA testing for the ~~[on an]~~ offense of public lewdness or indecent exposure (Art. 102.020(a)(2) [~~102.020~~], Code of Criminal Procedure) . . . \$50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure) . . . \$12; ~~and~~

(17) ~~(16)~~ if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; and

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 469, Health and Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50.

(b) Section 102.0215, Government Code, is repealed.

SECTION 8. Section 103.0212, Government Code, is amended to conform to Chapters 910 (H.B. 2949) and 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Family Code if ordered by the court or otherwise required:

(1) in family matters:

(A) issuing writ of withholding (Sec. 8.262, Family Code) . . . \$15;

(B) filing copy of writ of withholding to subsequent employer (Sec. 8.267, Family Code) . . . \$15;

(C) issuing and delivering modified writ of withholding or notice of termination (Sec. 8.302, Family Code) . . . \$15;

(D) issuing and delivering notice of termination of withholding (Sec. 8.303, Family Code) . . . \$15;

(E) issuance of change of name certificate (Sec. 45.106, Family Code) . . . \$10;

(F) protective order fee (Sec. 81.003, Family Code) . . . \$16;

(G) filing suit requesting adoption of child (Sec. 108.006, Family Code) . . . \$15;

(H) filing fees for suits affecting parent-child relationship (Sec. 110.002, Family Code):

- (i) suit or motion for modification (Sec. 110.002, Family Code) . . . \$15;
- (ii) motion for enforcement (Sec. 110.002, Family Code) . . . \$15;
- (iii) notice of application for judicial writ of withholding (Sec. 110.002, Family Code) . . . \$15;
- (iv) motion to transfer (Sec. 110.002, Family Code) . . . \$15;
- (v) petition for license suspension (Sec. 110.002, Family Code) . . . \$15;
- (vi) motion to revoke a stay of license suspension (Sec. 110.002, Family Code) . . . \$15; and
- (vii) motion for contempt (Sec. 110.002, Family Code) . . . \$15;
- (I) order or writ of income withholding to be delivered to employer (Sec. 110.004, Family Code) . . . not to exceed \$15;
- (J) filing fee for transferred case (Sec. 110.005, Family Code) . . . \$45;
- (K) filing a writ of withholding (Sec. 158.319, Family Code) . . . \$15;
- (L) filing a request for modified writ of withholding or notice of termination (Sec. 158.403, Family Code) . . . not to exceed \$15;
- (M) filing an administrative writ to employer (Sec. 158.503, Family Code) . . . not to exceed \$15; and
- (N) genetic testing fees in relation to a child born to a gestational mother (Sec. 160.762, Family Code) . . . as assessed by the court; and
- (2) in juvenile court:
- (A) fee schedule for deferred prosecution services (Sec. 53.03, Family Code) . . . maximum fee of \$15 a month;
- (B) a request fee for a teen court program [administration fee] (Sec. 54.032, Family Code) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;
- (C) court costs for juvenile probation diversion fund (Sec. 54.0411, Family Code) . . . \$20;
- (D) a juvenile delinquency prevention fee (Sec. 54.0461, Family Code) . . . \$50 [~~\$5~~]; ~~and~~
- (E) a court fee for child's probationary period (Sec. 54.061, Family Code) . . . not to exceed \$15 a month;
- (F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;
- (G) a fee for DNA testing on commitment to certain facilities (Sec. 54.0462, Family Code) . . . \$50; and
- (H) a fee for DNA testing after placement on probation or as otherwise required by law (Sec. 54.0462, Family Code) . . . \$34.

SECTION 9. Subdivision (3), Section 411.141, Government Code, is amended to read as follows:

(3) "Criminal justice agency" means:

(A) a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice;

(B) a secure correctional facility as defined by Section 1.07, Penal Code; or

(C) a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office [has the meaning assigned by Article 60.01, Code of Criminal Procedure].

SECTION 10. Subsections (a), (d), (f-1), (j), and (k), Section 411.148, Government Code, are amended to read as follows:

(a) This section applies to:

(1) an individual, other than a juvenile, who is:

(A) ordered by a magistrate or court to provide a DNA sample under Section 411.154 or other law, including as part of an order granting community supervision to the individual; or

(B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or

(2) a juvenile who ~~is~~, following ~~after~~ an adjudication for conduct constituting a felony, is:

(A) confined in a facility operated by or under contract with the Texas Youth Commission; or

(B) placed on probation, if the conduct constitutes a felony described by Section 54.0409, Family Code.

(d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that department shall collect the sample from the individual during the diagnostic process or at another time determined by the Texas Department of Criminal Justice. If an individual described by Subsection (a)(2)(A) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission. If an individual who is required under this section or other law to provide a DNA sample is in the custody or under the supervision of another criminal justice agency, such as a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office, that agency shall collect the sample from the individual at a time determined by the agency.

(f-1) The Texas Youth Commission shall notify the director that an individual described by Subsection (a)(2)(A) [~~(a)(2)~~] is to be released from custody not earlier than the 120th day before the individual's release date.

(j)(1) The Texas Youth Commission as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(2)(A) [~~(a)(2)~~] if:

(A) the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission; and

(B) the youth commission determines the individual is likely to be released before being admitted to the youth commission.

(2) The administrator of the other juvenile detention facility shall cooperate with the Texas Youth Commission as necessary to allow the youth commission to perform its duties under this subsection.

(k) When a criminal justice agency of this state agrees to accept custody or supervision of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the criminal justice agency that agrees to accept custody or supervision of the individual shall collect [~~acceptance is conditional on the individual providing~~] a DNA sample under this subchapter if the individual was convicted of or adjudicated as having engaged in conduct constituting a felony and is otherwise required to provide a DNA sample under this section.

SECTION 11. Subsection (e), Section 411.148, Government Code, is repealed.

SECTION 12. (a) The changes in law made by this Act in adding Subsection (j), Section 11, Article 42.12, Code of Criminal Procedure, and Section 54.0409, Family Code, apply only to a person who is granted community supervision or placed on juvenile probation on or after the effective date of this Act.

(b) The changes in law made by this Act in amending Article 102.020, Code of Criminal Procedure, and adding Section 54.0462, Family Code, apply only to an offense committed or conduct engaged in on or after the effective date of this Act. An offense committed or conduct engaged in before the effective date of this Act is covered by the law in effect at the time the offense was committed or the conduct was engaged in, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed or conduct was engaged in before the effective date of this Act if any element of the offense or conduct occurred before that date.

SECTION 13. To the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 14. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 15. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 727** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1237**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2009

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
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 1237** 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.

ESTES  
HEGAR  
DEUELL  
WHITMIRE  
SELIGER

HEFLIN  
DARBY  
HOPSON  
LEWIS

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 juvenile probation officers to carry firearms.

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

SECTION 1. The heading to Section 141.066, Human Resources Code, is amended to read as follows:

Sec. 141.066. ~~[PROHIBITION ON]~~ CARRYING OF FIREARM BY CERTAIN OFFICERS PROHIBITED.

SECTION 2. Subsection (b), Section 141.066, Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

(1) an employee of the Texas Youth Commission; or

(2) a juvenile probation officer authorized to carry a firearm under Section

142.006.

SECTION 3. Chapter 142, Human Resources Code, is amended by adding Section 142.006 to read as follows:

Sec. 142.006. AUTHORIZATION TO CARRY FIREARM. (a) A juvenile probation officer may carry a firearm in the course of the officer's official duties if:

(1) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 1701.258, Occupations Code;

(2) the chief juvenile probation officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(3) the juvenile probation officer has been employed for at least one year by the juvenile probation department described by Subdivision (2).

(b) A juvenile probation officer is disqualified from being authorized to carry a firearm under this section if the officer has been designated a perpetrator in a Texas Juvenile Probation Commission abuse, neglect, or exploitation investigation.

(c) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

SECTION 4. Subsection (a), Section 46.15, Penal Code, as amended by Chapters 1214 (H.B. 1889) and 1222 (H.B. 2300), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(B) is issued by a state or local law enforcement agency;

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

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) ~~(7)~~ a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION 5. Subchapter F, Chapter 1701, Occupations Code, is amended by adding Section 1701.258 to read as follows:

Sec. 1701.258. FIREARMS TRAINING PROGRAM FOR JUVENILE PROBATION OFFICERS. (a) The commission and the Texas Juvenile Probation Commission by rule shall adopt a memorandum of understanding that establishes a training program in the use of firearms by juvenile probation officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;

(2) range firing and procedure, and firearms safety and maintenance; and

(3) other topics determined by the commission and the Texas Juvenile Probation Commission to be necessary for the responsible use of firearms by juvenile probation officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each juvenile probation officer the commission determines has successfully completed the program described by Subsection (a).

(c) The commission may establish reasonable and necessary fees for the administration of this section.

(d) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

SECTION 6. The Commission on Law Enforcement Officer Standards and Education and the Texas Juvenile Probation Commission shall adopt the memorandum of understanding required by Section 1701.258, Occupations Code, as added by this Act, not later than January 1, 2010.

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, 2009.

The Conference Committee Report on **SB 1237** was filed with the Secretary of the Senate.

## **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

### **Memorial Resolution**

**SR 1009** by Ellis, In memory of John E. McAdams of Normangee.

### **Congratulatory Resolutions**

**SCR 79** by Deuell, Honoring the life of Alonzo John Wemple and his role in the history of this state and nation.

**SR 997** by Hinojosa, Recognizing the members of the Temple Emanuel in McAllen confirmation class of 2009 on the occasion of their confirmation.

**SR 999** by Shapiro, Recognizing Jack E. Singley on the occasion of his retirement as superintendent of the Irving Independent School District.

**SR 1000** by Zaffirini, Commending Andrew C. von Eschenbach for his accomplishments.

**SR 1001** by Lucio, Commending Betty Gayle Davis Corley for her accomplishments.

**SR 1002** by West, Recognizing Harvey L. Hollmon on the occasion of his 25th anniversary as pastor of the Alta Mesa Park Baptist Church in Dallas.

**SR 1004** by Van de Putte, Recognizing Palmira Rosales Sheffield on the occasion of her retirement from AT&T Advertising Solutions.

**SR 1005** by Van de Putte, Recognizing David Splitek on the occasion of his retirement as superintendent of the Lackland Independent School District.

**SR 1006** by Van de Putte, Congratulating Mark Vallejo for being named the Communities In Schools Board Member of the Year.

**SR 1007** by Van de Putte, Recognizing David Stewart on the occasion of his retirement as director of the Alamo.

**SR 1008** by Van de Putte, Recognizing Mamie's Restaurant for its service to the San Antonio community.

**SR 1010** by Hinojosa, Congratulating the girls' team of the Flour Bluff Independent School District Navy Junior Reserve Officers' Training Corps for winning the National High School Drill Team Championship.

### RECESS

On motion of Senator Whitmire, the Senate at 12:26 a.m. Tuesday, May 26, 2009, recessed until 8:00 a.m. today for the Local and Uncontested Calendar Session.

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## APPENDIX

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### COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 25, 2009

INTERGOVERNMENTAL RELATIONS — **HB 871**

JURISPRUDENCE — **HB 3002**

GOVERNMENT ORGANIZATION — **CSHB 2730, CSHB 3689**

STATE AFFAIRS — **CSHB 2559, HB 1657, HB 3480**

HIGHER EDUCATION — **CSHB 51, CSHB 708, CSHB 2347, CSHB 3790**

FINANCE — **HB 464, HB 1038, HB 1309, HB 2291, CSHB 4265, CSHB 4433**

INTERGOVERNMENTAL RELATIONS — **CSHB 1680, CSHB 3025**

EDUCATION — **CSHB 130**

INTERNATIONAL RELATIONS AND TRADE — **HB 3417, HB 4576**

JURISPRUDENCE — **HB 4742**

FINANCE — **HB 518, CSHB 4586**

EDUCATION — **CSHB 1375**

NATURAL RESOURCES — **CSHB 1526, CSHB 3550, CSHB 432**

FINANCE — **CSHB 770, CSHB 2154**

ECONOMIC DEVELOPMENT — **HB 3676** (Amended)

NATURAL RESOURCES — **CSHB 469**

ECONOMIC DEVELOPMENT — **CSHB 1277**

HIGHER EDUCATION — **HB 746** (Amended)

#### **RESOLUTIONS ENROLLED**

May 23, 2009

**SR 985, SR 986, SR 987, SR 988, SR 990, SR 991, SR 992, SR 993, SR 994, SR 995**

#### **SENT TO GOVERNOR**

May 25, 2009

**SCR 76**