

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-SEVENTH DAY**

(Tuesday, May 26, 2009)

The Senate met at 10:50 a.m. pursuant to adjournment and was called to order by the President.

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 announced that a quorum of the Senate was present.

The Reverend Jayme Mathias, Cristo Rey Catholic Church, Austin, offered the invocation as follows:

We ask You to bless us as we gather this morning as leaders and legislators representing persons of diverse perspectives and personalities. Enlighten us so that the laws we enact today may assist our state in progressing in justice and peace and civility and might speed the individuals we serve along the path toward self-actualization. We ask this in Your name for You live and reign for ever and ever. Amen.

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

The motion prevailed without objection.

## **CO-AUTHOR OF SENATE BILL 700**

On motion of Senator Patrick, Senator Estes will be shown as Co-author of **SB 700**.

## **CO-AUTHORS OF SENATE CONCURRENT RESOLUTION 54**

On motion of Senator Estes, Senators Lucio and Nichols will be shown as Co-authors of **SCR 54**.

## **CO-SPONSOR OF HOUSE BILL 130**

On motion of Senator Zaffirini, Senator Ellis will be shown as Co-sponsor of **HB 130**.

**CO-SPONSOR OF HOUSE BILL 1013**

On motion of Senator Wentworth, Senator Van de Putte will be shown as Co-sponsor of **HB 1013**.

**CO-SPONSOR OF HOUSE BILL 1182**

On motion of Senator Fraser, Senator Zaffirini will be shown as Co-sponsor of **HB 1182**.

**CO-SPONSOR OF HOUSE BILL 1850**

On motion of Senator Lucio, Senator Zaffirini will be shown as Co-sponsor of **HB 1850**.

**CO-SPONSOR OF HOUSE BILL 1976**

On motion of Senator West, Senator Davis will be shown as Co-sponsor of **HB 1976**.

**CO-SPONSORS OF HOUSE BILL 2154**

On motion of Senator Hinojosa, Senators Ellis, Hegar, Lucio, Shapleigh, Van de Putte, and Zaffirini will be shown as Co-sponsors of **HB 2154**.

**CO-SPONSOR OF HOUSE BILL 3646**

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

**CO-SPONSOR OF HOUSE JOINT RESOLUTION 36**

On motion of Senator Williams, Senator Patrick will be shown as Co-sponsor of **HJR 36**.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 26, 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 224**, In memory of Fredrick Michael Ford of Sulphur Springs.

**HCR 225**, Congratulating Sergeant First Class Corey J. King on being named the U.S. Army Cadet Command's Army Noncommissioned Officer of the Year for 2009.

**HCR 227**, Congratulating Adam Taylor on becoming an Eagle Scout.

**HCR 228**, Honoring Ralph Parr for his service to the Clear Creek Independent School District on the occasion of his retirement from the Clear Creek ISD Board of Trustees.

**HCR 229**, Honoring the memory of Clayton Bradley Rogers of Canton.

**HCR 231**, Honoring the Texas Land Title Association for its continued support of the Texas Courthouse Stewardship Program.

**HCR 232**, In memory of Dustin Dow Clements of North Hopkins.

**HCR 233**, Congratulating Elizabeth Radicioni on being named Clear Creek ISD Secondary Teacher of the Year.

**HCR 234**, Congratulating Julie Ballew on being nominated as Clear Creek ISD Elementary Teacher of the Year.

**HCR 235**, Congratulating Margaret Berti on being nominated as Clear Creek ISD Teacher of the Year.

**HCR 236**, Congratulating Samantha Youts on being nominated as Clear Creek ISD Secondary Teacher of the Year.

**HCR 238**, In memory of Joe Don Minor of Austin.

**HCR 239**, In memory of Ruth Evelyn Burd of Paris, Texas.

**HCR 240**, Congratulating Edna Meeks on being nominated as Clear Creek ISD Secondary Teacher of the Year.

**HCR 241**, Congratulating Dawn Gibler on being named the Clear Creek ISD Elementary Teacher of the Year.

**HCR 242**, Congratulating John Kennedy on his retirement as city manager of Nassau Bay.

**HCR 243**, Honoring the memory of Stephanye Irene Sampley of Atascocita.

**HCR 244**, In memory of William Richard McCord of Sumner.

**HCR 245**, Honoring the life of Shawn A. Edwards of Roxton.

**HCR 246**, Honoring Kathryn Jay Hamilton of Lubbock for her outstanding career in education on the occasion of her retirement.

**HCR 247**, In memory of Charles R. Grimes of Paris, Texas.

**HCR 248**, In memory of Mamie Bell Newsom of Paris, Texas.

**HCR 249**, In memory of Clyde Donald Smith of Paris, Texas.

**SB 80**, Relating to employer contributions under small employer health benefit plans.

**SB 202**, Relating to provisional licensing of physicians to practice in underserved areas.

**SB 229**, Relating to the procurement methods authorized for public projects by certain local governments.

(Committee Substitute)

**SB 279**, Relating to a prohibition against certain court orders in a suit affecting the parent-child relationship during a parent's military deployment.

(Amended)

**SB 282**, Relating to grant and outreach programs to provide nutrition education to children.

(Committee Substitute)

**SB 305**, Relating to an online list of work-study employment opportunities available to students at a public institution of higher education.

**SB 334**, Relating to the repeal of the authority of the Texas Department of Transportation to regulate air carriers.

**SB 348**, Relating to the Texas Transportation Commission's authority to establish advisory committees.

**SB 375**, Relating to the release of certain motor vehicle accident report information.

**SB 376**, Relating to the powers and duties of the Texas Department of Transportation related to county traffic officers.

**SB 379**, Relating to an annual report by the Texas Fusion Center regarding criminal street gangs and gang-related crime.

(Amended)

**SB 410**, Relating to the statute of limitations for a misdemeanor.

**SB 417**, Relating to the purchase of a retired firearm from the Parks and Wildlife Department by a game warden.

**SB 455**, Relating to the regulation of the practice of dental assistants, including the delegation of certain dental acts.

**SB 490**, Relating to money paid into the registry of a court in certain counties.

**SB 524**, Relating to the grounds for removal of a member of the board of directors of the Lynn County Hospital District.

**SB 530**, Relating to the disposition of cash in possession of a deceased pauper.

**SB 575**, Relating to the time for dissolution of crime control and prevention districts.  
(Amended)

**SB 584**, Relating to notification to a patient of a state-operated mental health facility or resident of a residential care facility of the exemption of certain trusts from liability to pay for support.

**SB 585**, Relating to standards of conduct and ethics policies for metropolitan planning organizations.

**SB 588**, Relating to the creation of the Waller County Municipal Utility District No. 9; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 596**, Relating to the name of Stephen F. Austin State University.

**SB 636**, Relating to the authority of a county or other local governmental entity to receive local sales tax information.

(Amended)

**SB 637**, Relating to the creation of the Wharton County Drainage District.

**SB 660**, Relating to the creation of the Caldwell County Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(Committee Substitute)

**SB 860**, Relating to the creation of the Fort Bend-Waller Counties Municipal Utility District No. 2; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(Committee Substitute)

**SB 880**, Relating to the creation of the Fort Bend County Municipal Utility District No. 200; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 994**, Relating to the creation of the Fort Bend County Municipal Utility District No. 192; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1039**, Relating to the creation of the Harris County Municipal Utility District No. 478; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1337**, Relating to the creation of the Van Alstyne Municipal Utility District No. 1 of Grayson County; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1483**, Relating to the creation of the Galveston County Municipal Utility District No. 76; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1979**, Relating to the creation of the Blaketree Municipal Utility District No. 1 of Montgomery County; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2410**, Relating to the creation of the Twin Lakes Municipal Utility District No. 1 of Kaufman County; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2460**, Relating to the creation of the Brazoria County Municipal Utility District No. 65; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2463**, Relating to the creation of the Comal County Water Improvement District No. 2; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2464**, Relating to the creation of the Comal County Water Improvement District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2466**, Relating to the creation of the Cypress Waters Municipal Management District; providing the authority to impose an assessment, impose a tax, and issue bonds.

**SB 2478**, Relating to the Parklands Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(Amended)

**SB 2479**, Relating to the creation of the Country Place Management District; providing authority to impose an assessment, impose a tax, and issue bonds.

**SB 2480**, Relating to the board of navigation and canal commissioners of the Matagorda County Navigation District No. 1.

**SB 2483**, Relating to the authority of the Harris-Montgomery Counties Municipal Utility District No. 386, formerly known as Harris County Municipal Utility District No. 386, to issue bonds supported by ad valorem taxes to finance recreational facilities.

**SB 2486**, Relating to the creation of the Montgomery County Water Control and Improvement District No. 3; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2496**, Relating to the powers of the Westchase District.

**SB 2504**, Relating to the creation of the Montgomery County Municipal Utility Districts Nos. 128 and 129; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2506**, Relating to the creation of the Gray County Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2507**, Relating to the creation of the Harris County Improvement District No. 16; providing authority to impose an assessment, impose a tax, and issue bonds.

**SB 2509**, Relating to the creation of the Montgomery County Water Control and Improvement District No. 2; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2514**, Relating to the powers of the North Fort Bend Water Authority.

**SB 2515**, Relating to the administration, powers and duties, operations, and financing of The Woodlands Township; providing authority to impose an events admission tax.

**SB 2520**, Relating to election and qualifications of members of the board of directors of the Santa Rita Underground Water Conservation District.

**SB 2521**, Relating to the creation of the Brazoria County Municipal Utility District No. 63; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 2529**, Relating to the creation of the Red River Groundwater Conservation District; providing authority to issue bonds; granting the power of eminent domain.

**SB 2531**, Relating to the creation of the Harris County Improvement District No. 15; providing authority to impose an assessment, impose a tax, and issue bonds.

**SB 2536**, Relating to the powers of the West Harris County Regional Water Authority.

**SB 2570**, Relating to the board of directors of the Kenedy County Groundwater Conservation District.  
(Committee Substitute)

**SCR 65**, Designating May 12, 2009, as Mary Kay Ash Day in the State of Texas.

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

**HB 1293** (141 Yeas, 0 Nays, 1 Present, not voting)

**HB 1861** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 1969** (142 Yeas, 0 Nays, 1 Present, not voting)

**HB 2066** (141 Yeas, 1 Nays, 2 Present, not voting)

**HB 2225** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 2763** (145 Yeas, 0 Nays, 1 Present, not voting)

**HB 3004** (144 Yeas, 1 Nays, 1 Present, not voting)

**HB 3148** (111 Yeas, 28 Nays, 1 Present, not voting)

**HB 3346** (139 Yeas, 0 Nays, 3 Present, not voting)

**HB 3515** (140 Yeas, 1 Nays, 1 Present, not voting)

**HB 3544** (142 Yeas, 0 Nays, 1 Present, not voting)

**HB 4781** (129 Yeas, 16 Nays, 2 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 1722** (non-record vote)

House Conferees: Castro - Chair/Gallego/Hunter/Moody/Phillips

**HB 2374** (non-record vote)

House Conferees: Guillen - Chair/Berman/Chisum/Martinez Fischer/Ritter

**HB 2571** (non-record vote)

House Conferees: Gonzales - Chair/McClendon/Phillips/Pickett/Smith, Todd

**HB 3983** (non-record vote)

House Conferees: Rodriguez - Chair/Harless/Howard, Donna/Maldonado/Patrick

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### PHYSICIAN OF THE DAY

Senator Eltife was recognized and presented Dr. Rodney Wiseman of Whitehouse as the Physician of the Day.

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

### SENATE RESOLUTION 998

Senator Hinojosa offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize *SOCIALIFE News Magazine* for its many contributions to the Rio Grande Valley community and to the charitable organizations of our state and country; and

WHEREAS, *SOCIALIFE News Magazine* was created in November of 2004 by entrepreneur Pepe Cabeza de Vaca; his goal was to create a magazine that would showcase the work of South Texas nonprofit organizations and that would help those organizations to become better known throughout the area; his mission was also to lend support to such indispensable charities as the American Cancer Society and the American Diabetes Association; and

WHEREAS, Members of the magazine's staff and its supporters have a love of art and music and enjoy the culture of the Rio Grande Valley; they are active in such organizations as the Rotary Club, local Chambers of Commerce, Kiwanis, VAMOS, the American Cancer Society, and the Palmer Drug Abuse Program; and

WHEREAS, The magazine has provided support for Easter Seals of the Rio Grande Valley, Su Casa de Esperanza, the Rio Grande Valley Food Bank, STARS, the McAllen Independent School District, South Texas College, Habitat for Humanity, The University of Texas—Pan American, CASA of Hidalgo County, the McAllen Arts and Cultural Movement, the Boys and Girls Club, the National Hispanic Professionals Organization, Young Executives for Success, the 22/40 Exchange, the Valley Symphony, Pro Cantus Lyric Opera, and a number of other institutions and organizations; and

WHEREAS, By supporting these organizations and promoting the events they sponsor, the magazine provides information to the community and highlights the outstanding work and accomplishments of the many Rio Grande Valley nonprofit groups; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby commend all associated with *SOCIALIFE News Magazine* for their exceptional work and express appreciation for the role of the publication in the Rio Grande Valley community; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of *SOCIALIFE News Magazine*.

HINOJOSA  
WHITMIRE

**SR 998** was read and was adopted without objection.

### GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate Pepe Cabeza de Vaca and Sylvia Castillo representing *SOCIALIFE News Magazine*.

The Senate welcomed its guests.

**SENATE RESOLUTION 1014**

Senator Shapleigh offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Candelario Barragan on his exceptional achievements as a teacher in the Socorro Independent School District; and

WHEREAS, Cande Barragan is a mathematics teacher at El Dorado High School in El Paso; in 2007, he was one of four teachers in Texas to earn the Milken Family Foundation National Educator Award; and

WHEREAS, Called the "Oscars of Teaching" by *Teacher Magazine*, the Milken National Educator Awards were created in 1985 to reward and retain the highest caliber professionals in our nation's schools; and

WHEREAS, Cande Barragan grew up in a family of migrant farm workers, working in the fields as a young man before riding the bus to school; he graduated as valedictorian of Bowie High School and earned a degree in math, cum laude, from The University of Texas at El Paso; and

WHEREAS, A highly regarded educator who is beloved by his students, Cande was Teacher of the Year at El Dorado High School in the 2006-2007 year; noted for his teaching style, he brings enthusiasm and a zest for life to the classroom; his antics include singing and dancing and using humor to gain the attention of his students; and

WHEREAS, Cande voluntarily tutors students before and after school, and students often ask to be placed in his classes, including his advanced placement calculus class; his students are known to achieve a 98 percent passing rate on the Texas Assessment of Knowledge and Skills; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby commend Candelario Barragan on his outstanding work as an educator and extend congratulations to him on having been the recipient of a Milken National Educator Award; and, be it further

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

**SR 1014** was read and was adopted without objection.

**GUEST PRESENTED**

Senator Shapleigh was recognized and introduced to the Senate Candelario Barragan of El Paso.

The Senate welcomed its guest.

**(Senator Watson in Chair)**

**CONCLUSION OF MORNING CALL**

The Presiding Officer at 11:07 a.m. announced the conclusion of morning call.

**(Senator Eltife in Chair)**

**HOUSE BILL 1218 ON SECOND READING**

The Presiding Officer laid before the Senate **HB 1218** by Senator Watson on its second reading. The bill had been read second time and further consideration postponed to a time certain of 10:30 a.m. today:

**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.

Question — Shall **HB 1218** be passed to third reading?

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1218** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, immediately following added Section 531.02416(d), Government Code (page 1, between lines 53 and 54), insert the following:

(e) The pilot project shall initially use the method of secure transmission that is available at the time implementation of the pilot project begins, and subsequently move toward full interoperability in conjunction with the health information exchange development plan administered by the commission.

(2) In SECTION 1 of the bill, in added Section 531.02416(e), Government Code (page 1, line 54), strike "(e)" and substitute "(f)".

(3) Strike SECTION 2 of the bill (page 1, lines 57-60) and substitute the following:

SECTION 2. The Health and Human Services Commission shall begin implementing the pilot project established under Section 531.02416, Government Code, as added by this Act, as soon as feasible after September 1, 2009, but not later than the 60th day after the effective date of this Act.

(4) In SECTION 3 of the bill (page 1, line 61), strike "December 1, 2010" and substitute "January 1, 2011".

The amendment to **HB 1218** 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: Harris, Hegar.

Absent: Williams.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1218** by inserting the following language on page 1, line 50, between the period and "The":

If the commissioner determines that there will be no significant cost to the state, the commission shall apply for and actively pursue any waiver from the federal Centers for Medicare and Medicaid Services as may be necessary for the pilot project and shall actively pursue a waiver to use an electronic alternative to the requirement for handwritten certification under 42 C.F.R. Section 447.152.

The amendment to **HB 1218** 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: Harris, Hegar.

Absent: Williams.

Senator Watson offered the following amendment to the bill:

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

Amend **HB 1218** by adding the appropriately numbered SECTIONS to read as follows:

SECTION \_\_. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.029 to read as follows:

Sec. 7.029. MEMORANDUM OF UNDERSTANDING REGARDING EXCHANGE OF INFORMATION FOR STUDENTS IN FOSTER CARE. (a) The agency and the Department of Family and Protective Services shall enter into a memorandum of understanding regarding the exchange of information as appropriate to facilitate the department's evaluation of educational outcomes of students in foster care. The memorandum of understanding must require:

(1) the department to provide the agency each year with demographic information regarding individual students who during the preceding school year were in the conservatorship of the department following an adversarial hearing under Section 262.201, Family Code; and

(2) the agency, in a manner consistent with federal law, to provide the department with aggregate information regarding educational outcomes of students for whom the agency received demographic information under Subdivision (1).

(b) For purposes of Subsection (a)(2), information regarding educational outcomes includes information relating to student academic achievement, graduation rates, school attendance, disciplinary actions, and receipt of special education services.

(c) The department may authorize the agency to provide education research centers established under Section 1.005 with demographic information regarding individual students received by the agency in accordance with Subsection (a)(1), as appropriate to allow the centers to perform additional analysis regarding educational outcomes of students in foster care. Any use of information regarding individual students provided to a center under this subsection must be approved by the department.

(d) Nothing in this section may be construed to:

(1) require the agency or the department to collect or maintain additional information regarding students in foster care; or

(2) allow the release of information regarding an individual student in a manner not permitted under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or another state or federal law.

SECTION \_\_\_\_\_. The Texas Education Agency and the Department of Family and Protective Services shall enter into the memorandum of understanding required by Section 7.029, Education Code, as added by this Act, not later than January 1, 2010.

The amendment to **HB 1218** 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: Harris, Hegar.

Absent: Williams.

Senator Nelson offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **HB 1218** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Chapter 531, Government Code, is amended by adding Subchapter V to read as follows:

#### SUBCHAPTER V. ELECTRONIC HEALTH INFORMATION EXCHANGE PROGRAM

Sec. 531.901. DEFINITIONS. In this subchapter:

(1) "Electronic health record" means an electronic record of aggregated health-related information concerning a person that conforms to nationally recognized interoperability standards and that can be created, managed, and consulted by authorized health care providers across two or more health care organizations.

(2) "Electronic medical record" means an electronic record of health-related information concerning a person that can be created, gathered, managed, and consulted by authorized clinicians and staff within a single health care organization.

(3) "Health information exchange system" means the electronic health information exchange system created under this subchapter that electronically moves health-related information among entities according to nationally recognized standards.

(4) "Local or regional health information exchange" means a health information exchange operating in this state that securely exchanges electronic health information, including information for patients receiving services under the child health plan or Medicaid program, among hospitals, clinics, physicians' offices, and other health care providers that are not owned by a single entity or included in a single operational unit or network.

Sec. 531.902. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM. (a) The commission shall develop an electronic health information exchange system to improve the quality, safety, and efficiency of health care services provided under the child health plan and Medicaid programs. In developing the system, the commission shall ensure that:

(1) the confidentiality of patients' health information is protected and the privacy of those patients is maintained in accordance with applicable federal and state law, including:

(A) Section 1902(a)(7), Social Security Act (42 U.S.C. Section 1396a(a)(7));

(B) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

- (C) Chapter 552, Government Code;
- (D) Subchapter G, Chapter 241, Health and Safety Code;
- (E) Section 12.003, Human Resources Code; and
- (F) federal and state rules and regulations, including:
  - (i) 42 C.F.R. Part 431, Subpart F; and
  - (ii) 45 C.F.R. Part 164;

(2) appropriate information technology systems used by the commission and health and human services agencies are interoperable;

(3) the system and external information technology systems are interoperable in receiving and exchanging appropriate electronic health information as necessary to enhance:

(A) the comprehensive nature of the information contained in electronic health records; and

(B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers;

(4) the system and other health information systems not described by Subdivision (3) and data warehousing initiatives are interoperable; and

(5) the system has the elements described by Subsection (b).

(b) The health information exchange system must include the following elements:

(1) an authentication process that uses multiple forms of identity verification before allowing access to information systems and data;

(2) a formal process for establishing data-sharing agreements within the community of participating providers in accordance with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);

(3) a method by which the commission may open or restrict access to the system during a declared state emergency;

(4) the capability of appropriately and securely sharing health information with state and federal emergency responders;

(5) compatibility with the Nationwide Health Information Network (NHIN) and other national health information technology initiatives coordinated by the Office of the National Coordinator for Health Information Technology;

(6) an electronic master patient index or similar technology that allows for patient identification across multiple systems; and

(7) the capability of allowing a health care provider to access the system if the provider has technology that meets current national standards.

(c) The commission shall implement the health information exchange system in stages as described by this subchapter, except that the commission may deviate from those stages if technological advances make a deviation advisable or more efficient.

(d) The health information exchange system must be developed in accordance with the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations and conform to other standards required under federal law.

Sec. 531.903. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM ADVISORY COMMITTEE. (a) The commission shall establish the Electronic Health Information Exchange System Advisory Committee to assist the commission in the performance of the commission's duties under this subchapter.

(b) The executive commissioner shall appoint to the advisory committee at least 12 and not more than 16 members who have an interest in health information technology and who have experience in serving persons receiving health care through the child health plan and Medicaid programs.

(c) The advisory committee must include the following members:

(1) Medicaid providers;

(2) child health plan program providers;

(3) fee-for-service providers;

(4) at least one representative of the Texas Health Services Authority established under Chapter 182, Health and Safety Code;

(5) at least one representative of each health and human services agency;

(6) at least one representative of a major provider association;

(7) at least one representative of a health care facility;

(8) at least one representative of a managed care organization;

(9) at least one representative of the pharmaceutical industry;

(10) at least one representative of Medicaid recipients and child health plan enrollees;

(11) at least one representative of a local or regional health information exchange; and

(12) at least one representative who is skilled in pediatric medical informatics.

(d) The members of the advisory committee must represent the geographic and cultural diversity of the state.

(e) The executive commissioner shall appoint the presiding officer of the advisory committee.

(f) The advisory committee shall advise the commission on issues regarding the development and implementation of the electronic health information exchange system, including any issue specified by the commission and the following specific issues:

(1) data to be included in an electronic health record;

(2) presentation of data;

(3) useful measures for quality of service and patient health outcomes;

(4) federal and state laws regarding privacy and management of private patient information;

(5) incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; and

(6) data exchange with local or regional health information exchanges to enhance:

(A) the comprehensive nature of the information contained in electronic health records; and

(B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers.

(g) The advisory committee shall collaborate with the Texas Health Services Authority to ensure that the health information exchange system is interoperable with, and not an impediment to, the electronic health information infrastructure that the authority assists in developing.

Sec. 531.904. STAGE ONE: ELECTRONIC HEALTH RECORD. (a) In stage one of implementing the health information exchange system, the commission shall develop and establish an electronic health record for each person who receives medical assistance under the Medicaid program. The electronic health record must be available through a browser-based format.

(b) The commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that electronic health records established under this section support health information exchange with electronic medical records systems in use by physicians in the public and private sectors in a manner that:

(1) allows those physicians to exclusively use their own electronic medical records systems; and

(2) does not require the purchase of a new electronic medical records system.

(c) The executive commissioner shall adopt rules specifying the information required to be included in the electronic health record. The required information may include, as appropriate:

(1) the name and address of each of the person's health care providers;

(2) a record of each visit to a health care provider, including diagnoses, procedures performed, and laboratory test results;

(3) an immunization record;

(4) a prescription history;

(5) a list of due and overdue Texas Health Steps medical and dental checkup appointments; and

(6) any other available health history that health care providers who provide care for the person determine is important.

(d) Information under Subsection (c) may be added to any existing electronic health record or health information technology and may be exchanged with local and regional health information exchanges.

(e) The commission shall make an electronic health record for a patient available to the patient through the Internet.

Sec. 531.9041. STAGE ONE: ENCOUNTER DATA. In stage one of implementing the health information exchange system, the commission shall require for purposes of the implementation each managed care organization with which the commission contracts under Chapter 533 for the provision of Medicaid managed care services or Chapter 62, Health and Safety Code, for the provision of child health plan program services to submit to the commission complete and accurate encounter data not later than the 30th day after the last day of the month in which the managed care organization adjudicated the claim.

Sec. 531.905. STAGE ONE: ELECTRONIC PRESCRIBING. (a) In stage one of implementing the health information exchange system, the commission shall support and coordinate electronic prescribing tools used by health care providers and health care facilities under the child health plan and Medicaid programs.

(b) The commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that the electronic prescribing tools described by Subsection (a):

(1) are integrated with existing electronic prescribing systems otherwise in use in the public and private sectors; and

(2) to the extent feasible:

(A) provide current payer formulary information at the time a health care provider writes a prescription; and

(B) support the electronic transmission of a prescription.

(c) The commission may take any reasonable action to comply with this section, including establishing information exchanges with national electronic prescribing networks or providing health care providers with access to an Internet-based prescribing tool developed by the commission.

(d) The commission shall apply for and actively pursue any waiver to the child health plan program or the state Medicaid plan from the federal Centers for Medicare and Medicaid Services or any other federal agency as necessary to remove an identified impediment to supporting and implementing electronic prescribing tools under this section, including the requirement for handwritten certification of certain drugs under 42 C.F.R. Section 447.512. If the commission with assistance from the Legislative Budget Board determines that the implementation of operational modifications in accordance with a waiver obtained as required by this subsection has resulted in cost increases in the child health plan or Medicaid program, the commission shall take the necessary actions to reverse the operational modifications.

Sec. 531.906. STAGE TWO: EXPANSION. (a) Based on the recommendations of the advisory committee established under Section 531.903 and feedback provided by interested parties, the commission in stage two of implementing the health information exchange system may expand the system by:

(1) providing an electronic health record for each child enrolled in the child health plan program;

(2) including state laboratory results information in an electronic health record, including the results of newborn screenings and tests conducted under the Texas Health Steps program, based on the system developed for the health passport under Section 266.006, Family Code;

(3) improving data-gathering capabilities for an electronic health record so that the record may include basic health and clinical information in addition to available claims information, as determined by the executive commissioner;

(4) using evidence-based technology tools to create a unique health profile to alert health care providers regarding the need for additional care, education, counseling, or health management activities for specific patients; and

(5) continuing to enhance the electronic health record created under Section 531.904 as technology becomes available and interoperability capabilities improve.

(b) In expanding the system, the commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that electronic health records provided under this section support health information exchange with electronic medical records systems in use by physicians in the public and private sectors in a manner that:

(1) allows those physicians to exclusively use their own electronic medical records systems; and

(2) does not require the purchase of a new electronic medical records system.

Sec. 531.907. STAGE THREE: EXPANSION. In stage three of implementing the health information exchange system, the commission may expand the system by:

(1) developing evidence-based benchmarking tools that can be used by health care providers to evaluate their own performances on health care outcomes and overall quality of care as compared to aggregated performance data regarding peers; and

(2) expanding the system to include state agencies, additional health care providers, laboratories, diagnostic facilities, hospitals, and medical offices.

Sec. 531.908. INCENTIVES. The commission and the advisory committee established under Section 531.903 shall develop strategies to encourage health care providers to use the health information exchange system, including incentives, education, and outreach tools to increase usage.

Sec. 531.909. REPORTS. (a) The commission shall provide an initial report to the Senate Committee on Health and Human Services or its successor, the House Committee on Human Services or its successor, and the House Committee on Public Health or its successor regarding the health information exchange system not later than January 1, 2011, and shall provide a subsequent report to those committees not later than January 1, 2013. Each report must:

(1) describe the status of the implementation of the system;

(2) specify utilization rates for each health information technology implemented as a component of the system; and

(3) identify goals for utilization rates described by Subdivision (2) and actions the commission intends to take to increase utilization rates.

(b) This section expires September 2, 2013.

Sec. 531.910. RULES. The executive commissioner may adopt rules to implement this subchapter.

(b) Subchapter B, Chapter 62, Health and Safety Code, is amended by adding Section 62.060 to read as follows:

Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS.

(a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the child health plan program conforms to standards required under federal law.

(c) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.073 to read as follows:

Sec. 32.073. HEALTH INFORMATION TECHNOLOGY STANDARDS.

(a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The Health and Human Services Commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the medical assistance program conforms to standards required under federal law.

(d) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules to implement the electronic health record and electronic prescribing system required by Subchapter V, Chapter 531, Government Code, as added by this section.

(e) The executive commissioner of the Health and Human Services Commission shall appoint the members of the Electronic Health Information Exchange System Advisory Committee established under Section 531.903, Government Code, as added by this section, as soon as practicable after the effective date of this Act.

The amendment to **HB 1218** 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 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **HB 1218** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill:

SECTION \_\_\_\_\_. LONG-TERM CARE INCENTIVES. (a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0283 to read as follows:

Sec. 32.0283. PAY-FOR-PERFORMANCE INCENTIVES FOR CERTAIN NURSING FACILITIES. (a) In this section, "nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, that provides long-term care services, as defined by Section 22.0011, to medical assistance recipients.

(b) If feasible, the executive commissioner of the Health and Human Services Commission by rule shall establish an incentive payment program for nursing facilities that is designed to improve the quality of care and services provided to medical assistance recipients. The program must provide additional payments in accordance with this section to the facilities that meet or exceed performance standards established by the executive commissioner.

(c) In establishing an incentive payment program under this section, the executive commissioner of the Health and Human Services Commission shall, subject to Subsection (d), adopt outcome-based performance measures. The performance measures:

(1) must be:

(A) recognized by the executive commissioner as valid indicators of the overall quality of care received by medical assistance recipients; and

(B) designed to encourage and reward evidence-based practices among nursing facilities; and

(2) may include measures of:

(A) quality of life;

(B) direct-care staff retention and turnover;

(C) recipient satisfaction;

(D) employee satisfaction and engagement;

(E) the incidence of preventable acute care emergency room services

use;

(F) regulatory compliance;

(G) level of person-centered care; and

(H) level of occupancy or of facility utilization.

(d) The executive commissioner of the Health and Human Services Commission shall:

(1) maximize the use of available information technology and limit the number of performance measures adopted under Subsection (c) to achieve administrative cost efficiency and avoid an unreasonable administrative burden on nursing facilities; and

(2) for each performance measure adopted under Subsection (c), establish a performance threshold for purposes of determining eligibility for an incentive payment under the program.

(e) To be eligible for an incentive payment under the program, a nursing facility must meet or exceed applicable performance thresholds in at least two of the performance measures adopted under Subsection (c), at least one of which is an indicator of quality of care.

(f) The executive commissioner of the Health and Human Services Commission may:

(1) determine the amount of an incentive payment under the program based on a performance index that gives greater weight to performance measures that are shown to be stronger indicators of a nursing facility's overall performance quality; and

(2) enter into a contract with a qualified person, as determined by the executive commissioner, for the following services related to the program:

(A) data collection;

(B) data analysis; and

(C) reporting of nursing facility performance on the performance measures adopted under Subsection (c).

(b) Subsection (a), Section 32.060, Human Resources Code, as added by Section 16.01, Chapter 204 (H.B. 4), Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; ~~[or]~~

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution; or

(3) any information obtained or used by the department to determine the eligibility of a nursing facility for an incentive payment, or to determine the facility's performance rating, under Section 32.028(g) or 32.0283(f).

(c) The Health and Human Services Commission shall conduct a study to evaluate the feasibility of providing an incentive payment program for the following types of providers of long-term care services, as defined by Section 22.0011, Human Resources Code, under the medical assistance program similar to the incentive payment program established for nursing facilities under Section 32.0283, Human Resources Code, as added by this section:

(1) intermediate care facilities for persons with mental retardation licensed under Chapter 252, Health and Safety Code; and

(2) providers of home and community-based services, as described by 42 U.S.C. Section 1396n(c), who are licensed or otherwise authorized to provide those services in this state.

(d) Not later than September 1, 2010, the Health and Human Services Commission shall submit to the legislature a written report containing the findings of the study conducted under Subsection (c) of this section and the commission's recommendations.

(e) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Section 32.0283, Human Resources Code, as added by this section.

The amendment to **HB 1218** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

Senator Nelson offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **HB 1218** (Senate committee printing) as follows:

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

SECTION \_\_\_\_\_. CHILD HEALTH PLAN AND MEDICAID PILOT PROGRAMS. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.0993 and 531.0994 to read as follows:

Sec. 531.0993. OBESITY PREVENTION PILOT PROGRAM. (a) The commission and the Department of State Health Services shall coordinate to establish a pilot program designed to:

(1) decrease the rate of obesity in child health plan program enrollees and Medicaid recipients;

(2) improve the nutritional choices and increase physical activity levels of child health plan program enrollees and Medicaid recipients; and

(3) achieve long-term reductions in child health plan and Medicaid program costs incurred by the state as a result of obesity.

(b) The commission and the Department of State Health Services shall implement the pilot program for a period of at least 24 months in one or more health care service regions in this state, as selected by the commission. In selecting the regions for participation, the commission shall consider the degree to which child health plan program enrollees and Medicaid recipients in the region are at higher than average risk of obesity.

(c) In developing the pilot program, the commission and the Department of State Health Services in consultation with the Health Care Quality Advisory Committee established under Section 531.0995 shall identify measurable goals and specific strategies for achieving those goals. The specific strategies may be evidence-based to the extent evidence-based strategies are available for the purposes of the program.

(d) The commission shall submit a report on or before each November 1 that occurs during the period the pilot program is operated to the standing committees of the senate and house of representatives having primary jurisdiction over the child health plan and Medicaid programs regarding the results of the program. In addition, the commission shall submit a final report to the committees regarding those results not later than three months after the conclusion of the program. Each report must include:

(1) a summary of the identified goals for the program and the strategies used to achieve those goals;

(2) an analysis of all data collected in the program as of the end of the period covered by the report and the capability of the data to measure achievement of the identified goals;

(3) a recommendation regarding the continued operation of the program;  
and

(4) a recommendation regarding whether the program should be implemented statewide.

(e) The executive commissioner may adopt rules to implement this section.

Sec. 531.0994. MEDICAL HOME FOR CHILD HEALTH PLAN PROGRAM ENROLLEES AND MEDICAID RECIPIENTS. (a) In this section, "medical home" means a primary care provider who provides preventive and primary care to a patient on an ongoing basis and coordinates with specialists when health care services provided by a specialist are needed.

(b) The commission shall establish and operate for a period of at least 24 months a pilot program in one or more health care service regions in this state designed to establish a medical home for each child health plan program enrollee and Medicaid recipient participating in the pilot program. A primary care provider participating in the program may designate a care coordinator to support the medical home concept.

(c) The commission shall develop in consultation with the Health Care Quality Advisory Committee established under Section 531.0995 the pilot program in a manner that:

(1) bases payments made, or incentives provided, to a participant's medical home on factors that include measurable wellness and prevention criteria, use of best practices, and outcomes; and

(2) allows for the examination of measurable wellness and prevention criteria, use of best practices, and outcomes based on type of primary care provider.

(d) The commission shall submit a report on or before each January 1 that occurs during the period the pilot program is operated to the standing committees of the senate and house of representatives having primary jurisdiction over the child health plan and Medicaid programs regarding the status of the pilot program. Each report must include:

(1) preliminary recommendations regarding the continued operation of the program or whether the program should be implemented statewide; or

(2) if the commission cannot make the recommendations described by Subdivision (1) due to an insufficient amount of data having been collected at the time of the report, statements regarding the time frames within which the commission anticipates collecting sufficient data and making those recommendations.

(e) The commission shall submit a final report to the committees specified by Subsection (d) regarding the results of the pilot program not later than three months after the conclusion of the program. The final report must include:

(1) an analysis of all data collected in the program; and

(2) a final recommendation regarding whether the program should be implemented statewide.

SECTION \_\_\_\_\_. HEALTH CARE QUALITY ADVISORY COMMITTEE.

(a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0995 to read as follows:

Sec. 531.0995. HEALTH CARE QUALITY ADVISORY COMMITTEE.

(a) The commission shall establish the Health Care Quality Advisory Committee to assist the commission as specified by Subsection (e) with defining best practices and quality performance with respect to health care services and setting standards for quality performance by health care providers and facilities for purposes of programs administered by the commission or a health and human services agency.

(b) The executive commissioner shall appoint the members of the advisory committee. The committee must consist of:

(1) the following types of health care providers:

(A) a physician from an urban area who has clinical practice expertise and who may be a pediatrician;

(B) a physician from a rural area who has clinical practice expertise and who may be a pediatrician; and

(C) a nurse practitioner;

(2) a representative of each of the following types of health care facilities:

(A) a general acute care hospital; and

(B) a children's hospital;

(3) a representative from a care management organization;

(4) a member of the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events who meets the qualifications prescribed by Section 98.052(a)(4), Health and Safety Code; and

(5) a representative of health care consumers.

(c) The credentials of a single member of the advisory committee may satisfy more than one of the criteria required of the advisory committee members under Subsection (b).

(d) The executive commissioner shall appoint the presiding officer of the advisory committee.

(e) The advisory committee shall advise the commission on:

(1) measurable goals for the obesity prevention pilot program under Section 531.0993;

(2) measurable wellness and prevention criteria and best practices for the medical home pilot program under Section 531.0994;

(3) quality of care standards, evidence-based protocols, and measurable goals for quality-based payment initiatives pilot programs implemented under Subchapter W; and

(4) any other quality of care standards, evidence-based protocols, measurable goals, or other related issues with respect to which a law or the executive commissioner specifies that the committee shall advise.

(b) The executive commissioner of the Health and Human Services Commission shall appoint the members of the Health Care Quality Advisory Committee not later than November 1, 2009.

SECTION \_\_\_\_\_. UNCOMPENSATED HOSPITAL CARE DATA. (a) The heading to Section 531.551, Government Code, is amended to read as follows:

Sec. 531.551. UNCOMPENSATED HOSPITAL CARE REPORTING AND ANALYSIS; HOSPITAL AUDIT FEE.

(b) Section 531.551, Government Code, is amended by amending Subsections (a) and (d) and adding Subsections (a-1), (a-2), and (m) to read as follows:

(a) Using data submitted to the Department of State Health Services under Subsection (a-1), the ~~The~~ executive commissioner shall adopt rules providing for:

(1) a standard definition of "uncompensated hospital care" that reflects unpaid costs incurred by hospitals and accounts for actual hospital costs and hospital charges and revenue sources;

(2) a methodology to be used by hospitals in this state to compute the cost of that care that incorporates the standard set of adjustments described by Section 531.552(g)(4); and

(3) procedures to be used by those hospitals to report the cost of that care to the commission and to analyze that cost.

(a-1) To assist the executive commissioner in adopting and amending the rules required by Subsection (a), the Department of State Health Services shall require each hospital in this state to provide to the department, not later than a date specified by the department, uncompensated hospital care data prescribed by the commission. Each hospital must submit complete and adequate data, as determined by the department, not later than the specified date.

(a-2) The Department of State Health Services shall notify the commission of each hospital in this state that fails to submit complete and adequate data required by the department under Subsection (a-1) on or before the date specified by the department. Notwithstanding any other law and to the extent allowed by federal law, the commission may withhold Medicaid program reimbursements owed to the hospital until the hospital complies with the requirement.

(d) If the commission determines through the procedures adopted under Subsection (b) that a hospital submitted a report described by Subsection (a)(3) with incomplete or inaccurate information, the commission shall notify the hospital of the specific information the hospital must submit and prescribe a date by which the hospital must provide that information. If the hospital fails to submit the specified information on or before the date prescribed by the commission, the commission shall notify the attorney general of that failure. On receipt of the notice, the attorney general shall impose an administrative penalty on the hospital in an amount not to exceed \$10,000. In determining the amount of the penalty to be imposed, the attorney general shall consider:

- (1) the seriousness of the violation;
- (2) whether the hospital had previously committed a violation; and
- (3) the amount necessary to deter the hospital from committing future violations.

(m) The commission may require each hospital that is required under 42 C.F.R. Section 455.304 to be audited to pay a fee to offset the cost of the audit in an amount determined by the commission. The total amount of fees imposed on hospitals as authorized by this subsection may not exceed the total cost incurred by the commission in conducting the required audits of the hospitals.

(c) As soon as possible after the date the Department of State Health Services requires each hospital in this state to initially submit uncompensated hospital care data under Subsection (a-1), Section 531.551, Government Code, as added by this section, the executive commissioner of the Health and Human Services Commission shall adopt rules or amendments to existing rules that conform to the requirements of Subsection (a), Section 531.551, Government Code, as amended by this section.

SECTION \_\_\_\_ . QUALITY-BASED PAYMENT INITIATIVES. (a) Chapter 531, Government Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. QUALITY-BASED PAYMENT INITIATIVES PILOT PROGRAMS FOR PROVISION OF HEALTH CARE SERVICES

Sec. 531.951. DEFINITIONS. In this subchapter:

(1) "Pay-for-performance payment system" means a system for compensating a health care provider or facility for arranging for or providing health care services to child health plan program enrollees or Medicaid recipients, or both, that is based on the provider or facility meeting or exceeding certain defined performance measures. The compensation system may include sharing realized cost savings with the provider or facility.

(2) "Pilot program" means a quality-based payment initiatives pilot program established under this subchapter.

Sec. 531.952. PILOT PROGRAM PROPOSALS; DETERMINATION OF BENEFIT TO STATE. (a) Health care providers and facilities and disease or care management organizations may submit proposals to the commission for the implementation through pilot programs of quality-based payment initiatives that provide incentives to the providers and facilities, as applicable, to develop health care interventions for child health plan program enrollees or Medicaid recipients, or both, that are cost-effective to this state and will improve the quality of health care provided to the enrollees or recipients.

(b) The commission shall determine whether it is feasible and cost-effective to implement one or more of the proposed pilot programs. In addition, the commission shall examine alternative payment methodologies used in the Medicare program and consider whether implementing one or more of the methodologies, modified as necessary to account for programmatic differences, through a pilot program under this subchapter would achieve cost savings in the Medicaid program while ensuring the use of best practices.

Sec. 531.953. PURPOSE AND IMPLEMENTATION OF PILOT PROGRAMS.

(a) If the commission determines under Section 531.952 that implementation of one or more quality-based payment initiatives pilot programs is feasible and cost-effective for this state, the commission shall establish one or more programs as provided by this subchapter to test pay-for-performance payment system alternatives to traditional fee-for-service or other payments made to health care providers or facilities participating in the child health plan or Medicaid program, as applicable, that are based on best practices, outcomes, and efficiency, but ensure high-quality, effective health care services.

(b) The commission shall administer any pilot program established under this subchapter. The executive commissioner may adopt rules, plans, and procedures and enter into contracts and other agreements as the executive commissioner considers appropriate and necessary to administer this subchapter.

(c) The commission may limit a pilot program to:

(1) one or more regions in this state;

(2) one or more organized networks of health care facilities and providers;

or

(3) specified types of services provided under the child health plan or Medicaid program, or specified types of enrollees or recipients under those programs.

(d) A pilot program implemented under this subchapter must be operated for at least one state fiscal year.

Sec. 531.954. STANDARDS; PROTOCOLS. (a) In consultation with the Health Care Quality Advisory Committee established under Section 531.0995, the executive commissioner shall approve quality of care standards, evidence-based protocols, and measurable goals for a pilot program to ensure high-quality and effective health care services.

(b) In addition to the standards approved under Subsection (a), the executive commissioner may approve efficiency performance standards that may include the sharing of realized cost savings with health care providers and facilities that provide health care services that exceed the efficiency performance standards. The efficiency

performance standards may not create any financial incentive for or involve making a payment to a health care provider that directly or indirectly induces the limitation of medically necessary services.

Sec. 531.955. QUALITY-BASED PAYMENT INITIATIVES. (a) The executive commissioner may contract with appropriate entities, including qualified actuaries, to assist in determining appropriate payment rates for a pilot program implemented under this subchapter.

(b) The executive commissioner may increase a payment rate, including a capitation rate, adopted under this section as necessary to adjust the rate for inflation.

(c) The executive commissioner shall ensure that services provided to a child health plan program enrollee or Medicaid recipient, as applicable, meet the quality of care standards required under this subchapter and are at least equivalent to the services provided under the child health plan or Medicaid program, as applicable, for which the enrollee or recipient is eligible.

Sec. 531.956. TERMINATION OF PILOT PROGRAM; EXPIRATION OF SUBCHAPTER. The pilot program terminates and this subchapter expires September 2, 2013.

(b) Not later than November 1, 2012, the Health and Human Services Commission shall present a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of each legislative committee having jurisdiction over the child health plan and Medicaid programs. For each pilot program implemented under Subchapter W, Chapter 531, Government Code, as added by this section, the report must:

- (1) describe the operation of the pilot program;
- (2) analyze the quality of health care provided to patients under the pilot program;
- (3) compare the per-patient cost under the pilot program to the per-patient cost of the traditional fee-for-service or other payments made under the child health plan and Medicaid programs; and
- (4) make recommendations regarding the continuation or expansion of the pilot program.

SECTION \_\_\_\_\_. QUALITY-BASED HOSPITAL PAYMENTS. Chapter 531, Government Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM

Sec. 531.981. DEFINITIONS. In this subchapter:

(1) "DRG methodology" means a diagnoses-related groups methodology.  
(2) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

- (A) occurs after the person's admission to a hospital;
- (B) results from the care or treatment provided during the hospital stay rather than from a natural progression of an underlying disease; and
- (C) could reasonably have been prevented if care and treatment had been provided in accordance with accepted standards of care.

(3) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by the executive commissioner.

Sec. 531.982. DEVELOPMENT OF QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM. (a) Subject to Subsection (b), the commission shall develop a quality-based hospital reimbursement system for paying Medicaid reimbursements to hospitals. The system is intended to align Medicaid provider payment incentives with improved quality of care, promote coordination of health care, and reduce potentially preventable complications and readmissions.

(b) The commission shall develop the quality-based hospital reimbursement system in phases as provided by this subchapter. To the extent possible, the commission shall coordinate the timeline for the development and implementation with the implementation of the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations and the ICD-10 code sets initiative and with the ongoing Enterprise Data Warehouse (EDW) planning process to maximize receipt of federal funds.

Sec. 531.983. PHASE ONE: COLLECTION AND REPORTING OF CERTAIN INFORMATION. (a) The first phase of the development of the quality-based hospital reimbursement system consists of the elements described by this section.

(b) The executive commissioner shall adopt rules for identifying potentially preventable readmissions of Medicaid recipients and the commission shall collect data on present-on-admission indicators for purposes of this section.

(c) The commission shall establish a program to provide a confidential report to each hospital in this state regarding the hospital's performance with respect to potentially preventable readmissions. A hospital shall provide the information contained in the report provided to the hospital to health care providers providing services at the hospital.

(d) After the commission provides the reports to hospitals as provided by Subsection (c), each hospital will be afforded a period of two years during which the hospital may adjust its practices in an attempt to reduce its potentially preventable readmissions. During this period, reimbursements paid to the hospital may not be adjusted on the basis of potentially preventable readmissions.

(e) The commission shall convert hospitals that are reimbursed using a DRG methodology to a DRG methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk. For purposes of hospitals that are not reimbursed using a DRG methodology, the commission may modify data collection requirements to allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

Sec. 531.984. PHASE TWO: REIMBURSEMENT ADJUSTMENTS. (a) The second phase of the development of the quality-based hospital reimbursement system consists of the elements described by this section and must be based on the information reported, data collected, and DRG methodology implemented during phase one of the development.

(b) Using the information reported by hospitals that are not reimbursed using a DRG methodology during phase one of the development of the quality-based hospital reimbursement system, and using the DRG methodology for hospitals that are reimbursed using the DRG methodology implemented during that phase, the commission shall adjust Medicaid reimbursements to hospitals based on performance in reducing potentially preventable readmissions. An adjustment:

(1) may not be applied to a hospital if the patient's readmission to that hospital is classified as a potentially preventable readmission, but that hospital is not the same hospital to which the person was previously admitted; and

(2) must be focused on addressing potentially preventable readmissions that are continuing, significant problems, as determined by the commission.

Sec. 531.985. PHASE THREE: STUDY OF POTENTIALLY PREVENTABLE COMPLICATIONS. (a) In phase three of the development of the quality-based hospital reimbursement system, the executive commissioner shall adopt rules for identifying potentially preventable complications and the commission shall study the feasibility of:

(1) collecting data from hospitals concerning potentially preventable complications;

(2) adjusting Medicaid reimbursements based on performance in reducing those complications; and

(3) developing reconsideration review processes that provide basic due process in challenging a reimbursement adjustment described by Subdivision (2).

(b) The commission shall provide a report to the standing committees of the senate and house of representatives having primary jurisdiction over the Medicaid program concerning the results of the study conducted under this section when the study is completed.

(c) Rules adopted by the executive commissioner regarding potentially preventable complications are not admissible in a civil action for purposes of establishing a standard of care applicable to a physician.

SECTION \_\_\_\_\_. REQUIREMENTS OF THIRD-PARTY HEALTH INSURERS. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0424 to read as follows:

Sec. 32.0424. REQUIREMENTS OF THIRD-PARTY HEALTH INSURERS.

(a) A third-party health insurer is required to provide to the department, on the department's request, information in a form prescribed by the department necessary to determine:

(1) the period during which an individual entitled to medical assistance, the individual's spouse, or the individual's dependents may be, or may have been, covered by coverage issued by the health insurer;

(2) the nature of the coverage; and

(3) the name, address, and identifying number of the health plan under which the person may be, or may have been, covered.

(b) A third-party health insurer shall accept the state's right of recovery and the assignment under Section 32.033 to the state of any right of an individual or other entity to payment from the third-party health insurer for an item or service for which payment was made under the medical assistance program.

(c) A third-party health insurer shall respond to any inquiry by the department regarding a claim for payment for any health care item or service reimbursed by the department under the medical assistance program not later than the third anniversary of the date the health care item or service was provided.

(d) A third-party health insurer may not deny a claim submitted by the department or the department's designee for which payment was made under the medical assistance program solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point of service that is the basis of the claim, if:

(1) the claim is submitted by the department or the department's designee not later than the third anniversary of the date the item or service was provided; and

(2) any action by the department or the department's designee to enforce the state's rights with respect to the claim is commenced not later than the sixth anniversary of the date the department or the department's designee submits the claim.

(e) This section does not limit the scope or amount of information required by Section 32.042.

SECTION \_\_\_\_ . PREVENTABLE ADVERSE EVENT REPORTING. (a) The heading to Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS  
AND PREVENTABLE ADVERSE EVENTS

(b) Subdivisions (1) and (11), Section 98.001, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(1) "Advisory panel" means the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events.

(11) "Reporting system" means the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System.

(c) Section 98.051, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events within ~~[the infectious disease surveillance and epidemiology branch of]~~ the department to guide the implementation, development, maintenance, and evaluation of the reporting system. The commissioner may establish one or more subcommittees to assist the advisory panel in addressing health care-associated infections and preventable adverse events relating to hospital care provided to children or other special patient populations.

(d) Subsection (a), Section 98.052, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) The advisory panel is composed of 18 ~~[16]~~ members as follows:

(1) two infection control professionals who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

(2) two infection control professionals who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physicians who:

(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state and at least one of whom is a pediatric infectious disease physician with expertise and experience in pediatric health care epidemiology;

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in quality assessment and performance improvement or infection control in health care facilities;

(4) four additional ~~[two]~~ professionals in quality assessment and performance improvement~~[, one of whom is employed by a general hospital and one of whom is employed by an ambulatory surgical center];~~

(5) one officer of a general hospital;

(6) one officer of an ambulatory surgical center;

(7) three nonvoting members who are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(8) two members who represent the public as consumers.

(e) Subsections (a) and (c), Section 98.102, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(a) The department shall establish the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System within the [~~infectious disease surveillance and epidemiology branch of the~~] department. The purpose of the reporting system is to provide for:

(1) the reporting of health care-associated infections by health care facilities to the department;

(2) the reporting of health care-associated preventable adverse events by health care facilities to the department;

(3) the public reporting of information regarding the health care-associated infections by the department;

(4) the public reporting of information regarding health care-associated preventable adverse events by the department; and

(5) [~~(3)~~] the education and training of health care facility staff by the department regarding this chapter.

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

(1) avoid duplicate submission of records;

(2) allow the department to verify the accuracy and completeness of the data reported; and

(3) for data reported under Section 98.103 or 98.104, allow the department to risk adjust the facilities' infection rates.

(f) Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Section 98.1045 to read as follows:

Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS.

(a) Each health care facility shall report to the department the occurrence of any of the following preventable adverse events involving the facility's patient:

(1) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment to the facility under a policy adopted by the federal Centers for Medicare and Medicaid Services; and

(2) subject to Subsection (b), an event included in the list of adverse events identified by the National Quality Forum that is not included under Subdivision (1).

(b) The executive commissioner may exclude an adverse event described by Subsection (a)(2) from the reporting requirement of Subsection (a) if the executive commissioner, in consultation with the advisory panel, determines that the adverse event is not an appropriate indicator of a preventable adverse event.

(g) Subsections (a), (b), and (g), Section 98.106, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Sections 98.103 and 98.104;  
and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the ~~The~~ departmental summary with respect to infections reported by facilities under Sections 98.103 and 98.104 must be risk adjusted and include a comparison of the risk-adjusted infection rates for each health care facility in this state that is required to submit a report under Sections 98.103 and 98.104.

(g) The department shall make the departmental summary available on an Internet website administered by the department and may make the summary available through other formats accessible to the public. The website must contain a statement informing the public of the option to report suspected health care-associated infections and preventable adverse events to the department.

(h) Section 98.108, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.108. FREQUENCY OF REPORTING. In consultation with the advisory panel, the executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103, ~~and~~ 98.104, and 98.1045. Facilities may not be required to report more frequently than quarterly.

(i) Section 98.109, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Subsection (b-1) and amending Subsection (e) to read as follows:

(b-1) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials obtained, compiled, or reported by the department under this chapter.

(e) A department summary or disclosure may not contain information identifying a ~~facility~~ patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific ~~infection~~ incident.

(j) Sections 98.110 and 98.111, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES ~~[WITHIN DEPARTMENT]~~. Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103, ~~or~~ 98.104, or 98.1045 to other programs within the department, to the Health and Human Services Commission, and to other health and human services agencies, as defined by Section 531.001, Government Code, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

Sec. 98.111. CIVIL ACTION. Published infection rates or preventable adverse events may not be used in a civil action to establish a standard of care applicable to a health care facility.

(k) As soon as possible after the effective date of this Act, the commissioner of state health services shall appoint two additional members to the advisory panel who meet the qualifications prescribed by Subdivision (4), Subsection (a), Section 98.052, Health and Safety Code, as amended by this section.

(l) Not later than February 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules and procedures necessary to implement the reporting of health care-associated preventable adverse events as required under Chapter 98, Health and Safety Code, as amended by this section.

SECTION \_\_\_\_\_. PREVENTABLE ADVERSE EVENT REIMBURSEMENT.

(a) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0312 to read as follows:

Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH PREVENTABLE ADVERSE EVENTS. The executive commissioner of the Health and Human Services Commission shall adopt rules regarding the denial or reduction of reimbursement under the medical assistance program for preventable adverse events that occur in a hospital setting. In adopting the rules, the executive commissioner:

(1) shall ensure that the commission imposes the same reimbursement denials or reductions for preventable adverse events as the Medicare program imposes for the same types of health care-associated adverse conditions and the same types of health care providers and facilities under a policy adopted by the federal Centers for Medicare and Medicaid Services;

(2) shall consult with the Health Care Quality Advisory Committee established under Section 531.0995, Government Code, to obtain the advice of that committee regarding denial or reduction of reimbursement claims for any other preventable adverse events that cause patient death or serious disability in health care settings, including events on the list of adverse events identified by the National Quality Forum; and

(3) may allow the commission to impose reimbursement denials or reductions for preventable adverse events described by Subdivision (2).

(b) Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Section 32.0312, Human Resources Code, as added by this section.

(c) Rules adopted by the executive commissioner of the Health and Human Services Commission under Section 32.0312, Human Resources Code, as added by this section, may apply only to a preventable adverse event occurring on or after the effective date of the rules.

SECTION \_\_\_\_\_. PATIENT RISK IDENTIFICATION SYSTEM. Subchapter A, Chapter 311, Health and Safety Code, is amended by adding Section 311.004 to read as follows:

Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION SYSTEM. (a) In this section:

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

(2) "Hospital" means a general or special hospital as defined by Section 241.003. The term includes a hospital maintained or operated by this state.

(b) The department shall coordinate with hospitals to develop a statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified through the use of a system that communicates

to hospital personnel the existence of that risk. The executive commissioner of the Health and Human Services Commission shall appoint an ad hoc committee of hospital representatives to assist the department in developing the statewide system.

(c) The department shall require each hospital to implement and enforce the statewide standardized patient risk identification system developed under Subsection (b) unless the department authorizes an exemption for the reason stated in Subsection (d).

(d) The department may exempt from the statewide standardized patient risk identification system a hospital that seeks to adopt another patient risk identification methodology supported by evidence-based protocols for the practice of medicine.

(e) The department shall modify the statewide standardized patient risk identification system in accordance with evidence-based medicine as necessary.

(f) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.

(2) Strike SECTION 5 of the bill (page 2, lines 18 through 22) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. This Act takes effect September 1, 2009.

The amendment to **HB 1218** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

Senator Uresti offered the following amendment to the bill:

### **Floor Amendment No. 7**

Amend **HB 1218** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsections (e) and (g), Section 531.102, Government Code, are amended to read as follows:

(e) The executive commissioner [~~commissioner~~], in consultation with the inspector general, by rule shall set specific claims criteria that, when met, require the office to begin an investigation. The claims criteria adopted under this subsection must be consistent with the criteria adopted under Section 32.0291(a-1), Human Resources Code.

(g)(1) Whenever the office learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified, the office shall immediately refer the case to the state's Medicaid fraud control unit. However, such criminal referral does not preclude the office from continuing its investigation of the provider, which investigation may lead to the imposition of appropriate administrative or civil sanctions.

(2) In addition to other instances authorized under state or federal law, the office shall impose without prior notice a hold on payment of claims for reimbursement submitted by a provider to compel production of records or when

requested by the state's Medicaid fraud control unit, as applicable. The office must notify the provider of the hold on payment not later than the fifth working day after the date the payment hold is imposed. The notice to the provider must include:

(A) an information statement indicating the nature of a payment hold;

(B) a statement of the reason the payment hold is being imposed, the provider's suspected violation, and the evidence to support that suspicion; and

(C) a statement that the provider is entitled to request a hearing regarding the payment hold or an informal resolution of the identified issues, the time within which the request must be made, and the procedures and requirements for making the request, including that a request for a hearing must be in writing.

(3) On timely written request by a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, the office shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. The provider must request an expedited hearing under this subdivision not later than the 10th day after the date the provider receives notice from the office under Subdivision (2). A provider who submits a timely request for a hearing under this subdivision must be given notice of the following not later than the 30th day before the date the hearing is scheduled:

(A) the date, time, and location of the hearing; and

(B) a list of the provider's rights at the hearing, including the right to present witnesses and other evidence.

(3-a) With respect to a provider who timely requests a hearing under Subdivision (3):

(A) if the hearing is not held on or before the 60th day after the date of the request, the payment hold is automatically terminated on the 60th day after the date of the request and may be reinstated only if prima facie evidence of fraud, waste, or abuse is presented subsequently at the hearing;

(B) if the hearing is held on or before the 60th day after the date of the request, the payment hold may be continued after the hearing only if the hearing officer determines that prima facie evidence of fraud, waste, or abuse was presented at the hearing; and

(C) if the hearing is scheduled to be held on or before the 60th day after the date of the request, but a request for a continuance is made by the provider and granted by the State Office of Administrative Hearings, the period of the continuance is excluded in computing whether the hearing was held on or before the 60th day after the date of the request for purposes of this subdivision.

(4) The commission shall adopt rules that allow a provider subject to a hold on payment under Subdivision (2), other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by the office in the notice provided under that subdivision. A provider must seek an informal resolution under this subdivision not later than the deadline prescribed by Subdivision (3). A provider's decision to seek an informal resolution under this subdivision does not extend the time by which the provider must request an expedited administrative hearing under Subdivision (3). However, a hearing initiated under Subdivision (3) shall be stayed at the office's request until the informal resolution process is

completed. The period during which the hearing is stayed under this subdivision is excluded in computing whether a hearing was scheduled or held not later than the 60th day after the hearing was requested for purposes of Subdivision (3-a).

(4-a) With respect to a provider who timely requests an informal resolution under Subdivision (4):

(A) if the informal resolution is not completed on or before the 60th day after the date of the request, the payment hold is automatically terminated on the 60th day after the date of the request and may be reinstated only if prima facie evidence of fraud, waste, or abuse is subsequently presented at a hearing requested and held under Subdivision (3); and

(B) if the informal resolution is completed on or before the 60th day after the date of the request, the payment hold may be continued after the completion of the informal resolution only if the office determines that prima facie evidence of fraud, waste, or abuse was presented during the informal resolution process.

(5) The executive commissioner [~~office~~] shall, in consultation with the state's Medicaid fraud control unit, adopt rules for the office [~~establish guidelines~~] under which holds on payment or program exclusions:

(A) may permissively be imposed on a provider; or

(B) shall automatically be imposed on a provider.

(6) If a payment hold is terminated, either automatically or after a hearing or informal review, in accordance with Subdivision (3-a) or (4-a), the office shall inform all affected claims payors, including Medicaid managed care organizations, of the termination not later than the fifth day after the date of the termination.

(7) A provider in a case in which a payment hold was imposed under this subsection who ultimately prevails in a hearing or, if the case is appealed, on appeal, or with respect to whom the office determines that prima facie evidence of fraud, waste, or abuse was not presented during an informal resolution process, is entitled to prompt payment of all payments held and interest on those payments at a rate equal to the prime rate, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday, plus one percent.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 531.103, Government Code, are amended to read as follows:

(a) The commission, acting through the commission's office of inspector general, and the office of the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of state or federal law under the state Medicaid program or other program administered by the commission or a health and human services agency, including the financial assistance program under Chapter 31, Human Resources Code, a nutritional assistance program under Chapter 33, Human Resources Code, and the child health plan program. The memorandum of understanding shall require:

(1) the office of inspector general and the office of the attorney general to set priorities and guidelines for referring cases to appropriate state agencies for investigation, prosecution, or other disposition to enhance deterrence of fraud, waste,

abuse, or other violations of state or federal law, including a violation of Chapter 102, Occupations Code, in the programs and maximize the imposition of penalties, the recovery of money, and the successful prosecution of cases;

(1-a) the office of inspector general to refer each case of suspected provider fraud, waste, or abuse to the office of the attorney general not later than the 20th business day after the date the office of inspector general determines that the existence of fraud, waste, or abuse is reasonably indicated;

(1-b) the office of the attorney general to take appropriate action in response to each case referred to the attorney general, which action may include direct initiation of prosecution, with the consent of the appropriate local district or county attorney, direct initiation of civil litigation, referral to an appropriate United States attorney, a district attorney, or a county attorney, or referral to a collections agency for initiation of civil litigation or other appropriate action;

(2) the office of inspector general to keep detailed records for cases processed by that office or the office of the attorney general, including information on the total number of cases processed and, for each case:

(A) the agency and division to which the case is referred for investigation;

(B) the date on which the case is referred; and

(C) the nature of the suspected fraud, waste, or abuse;

(3) the office of inspector general to notify each appropriate division of the office of the attorney general of each case referred by the office of inspector general;

(4) the office of the attorney general to ensure that information relating to each case investigated by that office is available to each division of the office with responsibility for investigating suspected fraud, waste, or abuse;

(5) the office of the attorney general to notify the office of inspector general of each case the attorney general declines to prosecute or prosecutes unsuccessfully;

(6) representatives of the office of inspector general and of the office of the attorney general to meet not less than quarterly to share case information and determine the appropriate agency and division to investigate each case; ~~and~~

(7) the office of inspector general and the office of the attorney general to submit information requested by the comptroller about each resolved case for the comptroller's use in improving fraud detection; and

(8) the office of inspector general and the office of the attorney general to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, which must include:

(A) procedures for maintaining a chain of custody for any records obtained during an investigation and for maintaining the confidentiality of the records;

(B) a procedure by which a provider who is the subject of an investigation may make copies of any records taken from the provider during the course of the investigation before the records are taken or, in lieu of the opportunity to make copies, a requirement that the office of inspector general or the office of the attorney general, as applicable, make copies of the records taken during the course of the investigation and provide those copies to the provider not later than the 10th day after the date the records are taken; and

(C) a procedure for returning any original records obtained from a provider who is the subject of a case of suspected fraud, waste, or abuse not later than the 15th day after the final resolution of the case, including all hearings and appeals.

(b) An exchange of information under this section between the office of the attorney general and the commission, the office of inspector general, or a health and human services agency does not affect the confidentiality of the information or whether the information is subject to disclosure under Chapter 552.

SECTION \_\_\_\_\_. Section 32.0291, Human Resources Code, is amended to read as follows:

Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

(a) Notwithstanding any other law and subject to Subsections (a-1) and (a-2), the department may:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(a-1) The executive commissioner of the Health and Human Services Commission shall adopt rules governing the conduct of a prepayment review of a claim for reimbursement from a medical assistance provider authorized by Subsection (a). The rules must:

(1) specify actions that must be taken by the department, or an appropriate person with whom the department contracts, to educate the provider and remedy irregular coding or claims filing issues before conducting a prepayment review;

(2) outline the mechanism by which a specific provider is identified for a prepayment review;

(3) define the criteria, consistent with the criteria adopted under Section 531.102(e), Government Code, used to determine whether a prepayment review will be imposed, including the evidentiary threshold, such as prima facie evidence, that is required before imposition of that review;

(4) prescribe the maximum number of days a provider may be placed on prepayment review status;

(5) require periodic reevaluation of the necessity of continuing a prepayment review after the review action is initially imposed;

(6) establish procedures affording due process to a provider placed on prepayment review status, including notice requirements, an opportunity for a hearing, and an appeals process; and

(7) provide opportunities for provider education while providers are on prepayment review status.

(a-2) The department may not perform a random prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse. The department may only perform a prepayment review of the claims of a provider who meets the criteria adopted under Subsection (a-1)(3) for imposition of a prepayment review.

(b) Notwithstanding any other law and subject to Section 531.102(g), Government Code, the department may impose a postpayment hold on payment of future claims submitted by a provider if the department has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. ~~[The department must notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.]~~

(c) A postpayment hold authorized by this section is governed by the requirements and procedures specified for payment holds under Section 531.102, Government Code ~~[On timely written request by a provider subject to a postpayment hold under Subsection (b), the department shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold. The provider must request an expedited hearing under this subsection not later than the 10th day after the date the provider receives notice from the department under Subsection (b). The department shall discontinue the hold unless the department makes a prima facie showing at the hearing that the evidence relied on by the department in imposing the hold is relevant, credible, and material to the issue of fraud or wilful misrepresentation.]~~

~~[(d) The department shall adopt rules that allow a provider subject to a postpayment hold under Subsection (b) to seek an informal resolution of the issues identified by the department in the notice provided under that subsection. A provider must seek an informal resolution under this subsection not later than the deadline prescribed by Subsection (c). A provider's decision to seek an informal resolution under this subsection does not extend the time by which the provider must request an expedited administrative hearing under Subsection (c). However, a hearing initiated under Subsection (c) shall be stayed at the department's request until the informal resolution process is completed].~~

SECTION \_\_\_\_\_. The executive commissioner of the Health and Human Services Commission shall adopt the rules required by Subsection (a-1), Section 32.0291, Human Resources Code, as added by this Act, not later than November 1, 2009.

The amendment to **HB 1218** 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 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

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

### **Floor Amendment No. 8**

Amend **HB 1218** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

Subchapter B, Chapter 562, Occupations Code, is amended by adding Section 562.057 to read as follows:

Sec. 562.057. COMMERCIAL USE STUDY; CIVIL PENALTY. (a) The board shall conduct a study on the license, transfer, use, and sale of prescription information records containing patient-identifiable and practitioner-identifiable information by pharmacy benefit managers, insurers, electronic transmission intermediaries, pharmacies, and other similar entities for the purpose of advertising, marketing, or promoting pharmaceutical products.

(b) Not later than August 1, 2010, the board shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the legislature a report regarding the results of the study conducted under Subsection (a), together with any recommendation for legislation.

(c) The report under this section must consist of aggregate information and may not identify by name any entity that provided information to the board. Information provided by an entity that is a trade secret is subject to Section 552.110, Government Code.

(d) An entity described by Subsection (a), other than a pharmacy, that fails to provide to the board the information requested by the board for the study conducted under this section before the 90th day after the date the board requests the information is liable to this state for a civil penalty not to exceed \$5,000 for each violation. Each day a violation continues constitutes a separate violation.

(e) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violation;
- (3) the amount necessary to deter a future violation; and
- (4) any other matter that justice may require.

(f) The board or the attorney general may sue to collect a civil penalty under this section. In the suit the state may recover the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(g) A pharmacy that fails to provide to the board the information requested by the board for the study conducted under this section before the 90th day after the date the board requests the information is subject to appropriate administrative sanctions imposed by the board.

(h) This section expires October 1, 2010.

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 1218** 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. 8 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

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

**Floor Amendment No. 9**

Amend **HB 1218** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Title 12, Health and Safety Code, is amended by designating Chapter 1001, Health and Safety Code, as Subtitle A and adding a heading for Subtitle A to read as follows:

SUBTITLE A. ADMINISTRATION BY DEPARTMENT

(b) Title 12, Health and Safety Code, is amended by adding Subtitle B to read as follows:

SUBTITLE B. DEPARTMENT OF STATE HEALTH SERVICES PROGRAMS

CHAPTER 1022. SERVICES FOR SERVICEMEMBERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1022.001. DEFINITIONS. In this chapter:

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

(2) "Post-traumatic stress disorder" means a psychiatric disorder that can occur in people who have experienced or witnessed life-threatening events, including natural disasters, serious accidents, terrorist incidents, war, or violent personal assaults.

(3) "Program" means the program established under this chapter.

(4) "Servicemember" has the meaning assigned by Section 161.551.

(5) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma.

Sec. 1022.002. RULES. The executive commissioner of the Health and Human Services Commission shall adopt rules to implement this chapter.

Sec. 1022.003. CREATION AND PURPOSE. The department shall establish a program under this chapter to promote the wellness of servicemembers and their families through the development, maintenance, and dissemination of clinical practice guidelines and other information for the effective treatment of psychological trauma and the reintegration of servicemembers into their communities, families, and workplaces, with emphasis on the trauma of war, including post-traumatic stress disorder, traumatic brain injury, and sexual trauma that occurs in military settings.

[Sections 1022.004-1022.050 reserved for expansion]

SUBCHAPTER B. CLINICAL PRACTICE GUIDELINES FOR TRAUMA

Sec. 1022.051. CLINICAL GUIDELINES. (a) The department shall develop evidence-based clinical practice guidelines containing recommendations to clinicians and other providers of mental health services for the management of trauma, including post-traumatic stress disorder, traumatic brain injury, and other trauma impacting behavioral health.

(b) In developing clinical practice guidelines, the department shall consider the recommendations and research of the National Center for Posttraumatic Stress Disorder of the federal Veterans Health Administration, the trauma registry and

research database of the United States Army Institute of Surgical Research, and other appropriate and reputable sources of clinical research and information as determined by the department.

(c) The department shall provide for the ongoing maintenance and updating of the clinical practice guidelines in a manner that reflects current diagnostic and treatment best practices.

(d) Clinical practice guidelines established under this subchapter do not constitute the sole source of guidance in the management of trauma. Guidelines are intended to assist clinicians by providing a framework for clinical decision making. These guidelines do not provide the only appropriate approach to the management of trauma or replace other clinical judgment.

Sec. 1022.052. DISSEMINATION OF GUIDELINES. (a) The department shall make the clinical practice guidelines and other information developed under this subchapter available to providers of physical and behavioral health services.

(b) The department shall provide the clinical practice guidelines and information to the appropriate professional associations to be used in continuing education and shall, to the extent feasible, enter into agreements or take other action to promote the use of the materials for continuing education purposes.

(c) The department or its designees shall provide training and continuing education to clinicians and shall recognize through certificates or other means the health care providers that have demonstrated knowledge and mastery of the clinical practice guidelines and other materials developed by the department for the program.

Sec. 1022.053. TRAINING AND EDUCATIONAL MATERIALS. In addition to clinical practice guidelines, the department shall develop, with the advice of and in consultation with the Texas Veterans Commission, training and educational materials for the use of the Texas Veterans Commission, veterans county service officers, and other service providers. The materials must promote the understanding and effective treatment of trauma affecting behavioral health and other health-related information pertaining to the reintegration of servicemembers into their communities, families, and workplaces.

[Sections 1022.054-1022.100 reserved for expansion]

#### SUBCHAPTER C. SERVICE COORDINATION FOR BEHAVIORAL HEALTH SERVICES

Sec. 1022.101. SERVICE COORDINATION. (a) The department, in consultation with the United States Department of Veterans Affairs, the Texas military forces, the Texas Information and Referral Network, the Texas Veterans Commission, and the General Land Office, shall provide service coordination for servicemembers and their families in all geographic regions of the state to connect them to behavioral health services that may be available through the United States Department of Veterans Affairs or available under this chapter.

(b) In geographic areas in this state in which services are not yet available or accessible through the United States Department of Veterans Affairs, the department shall negotiate contracts with the United States Department of Veterans Affairs for behavioral health services provided through community mental health centers or other community resources with which the department contracts until federal services are available.

(c) The department shall provide servicemembers and their families current, accurate, and complete information about behavioral health services and resources through existing Internet-based resource programs and through:

(1) the directory of services for military personnel and their families disseminated through the Texas Information and Referral Network under Subchapter U, Chapter 161; and

(2) the service referral program under Section 431.0291, Government Code, as added by Chapter 1381 (S.B. 1058), Acts of the 80th Legislature, Regular Session, 2007.

(d) The department shall seek reimbursement for the costs of services provided under this section from the United States Department of Veterans Affairs and from other governmental agencies that may provide behavioral health services or payments for such services to servicemembers and their families.

(e) In order to enhance service coordination and assess the needs of servicemembers and their families, the department shall provide an opportunity for servicemembers to disclose military status when accessing local behavioral health services that receive funding from the department.

[Sections 1022.102-1022.150 reserved for expansion]

#### SUBCHAPTER D. BEHAVIORAL HEALTH SERVICES PILOT PROGRAMS

Sec. 1022.151. ESTABLISHMENT OF PILOT PROGRAMS. (a) The department shall establish pilot programs in El Paso and Bexar Counties to evaluate the effectiveness of a program to provide behavioral health services to eligible servicemembers.

(b) The department shall contract with the local mental health authorities in El Paso and Bexar Counties to administer the pilot programs.

Sec. 1022.152. ELIGIBILITY. (a) To qualify for behavioral health services under Section 1022.153, a servicemember must:

(1) reside in El Paso or Bexar County;

(2) be younger than 65 years of age;

(3) have served for at least 180 days of duty after the servicemember's initial training;

(4) not be an inmate of a public institution;

(5) not be a resident of a nursing facility;

(6) not have health care coverage that provides diagnostic review and treatment for post-traumatic stress disorder, traumatic brain injury, or other trauma occurring in a military setting that impacts behavioral health; and

(7) be ineligible for services from the United States Department of Veterans Affairs or be unable to access those services because:

(A) the servicemember does not have transportation to a service provider; or

(B) the servicemember must wait more than 30 days for an appointment with a service provider.

(b) A servicemember who does not meet the eligibility requirements for services under this section shall be referred to an appropriate service provider for follow-up care.

(c) To receive behavioral health services under Section 1022.153, an eligible servicemember must enroll with the local mental health authority in the pilot program. Following expiration of the term of a servicemember's enrollment in the pilot program, the servicemember may reenroll for services under the pilot program if the local mental health authority determines that the servicemember continues to qualify for treatment for post-traumatic stress disorder, traumatic brain injury, or other trauma occurring in a military setting that impacts behavioral health.

(d) A family member of an enrolled servicemember may receive behavioral health services under the pilot program as described by Section 1022.153.

Sec. 1022.153. BEHAVIORAL HEALTH SERVICES PILOT PROGRAMS.

(a) The department through contracts with the local mental health authorities in El Paso and Bexar Counties shall establish pilot programs to provide behavioral health services in accordance with this section for eligible servicemembers under Section 1022.152. The behavioral health services provided under this section may include:

- (1) crisis services; and
- (2) behavioral health services.

(b) The behavioral health services provided under Subsection (a)(2) must to the greatest extent possible be provided in a peer-based treatment environment and may include:

- (1) screening assessments;
- (2) individual, family, and group therapy;
- (3) substance abuse early intervention and detoxification services; and
- (4) substance abuse medication-assisted treatment.

(c) The provision of services by the local mental health authority under this section must be based on medical necessity criteria established by department rule.

(d) The department shall seek reimbursement for the costs of services provided under this section from the United States Department of Veterans Affairs and from other governmental agencies that may provide behavioral health services or payments for such services to servicemembers and their families.

Sec. 1022.154. REPORT. Not later than December 1, 2010, the department shall submit a report to the governor, lieutenant governor, and speaker of the house of representatives that includes:

- (1) an analysis of the effectiveness of the pilot program under this subchapter; and
- (2) recommendations regarding continuation or expansion of the pilot program.

Sec. 1022.155. EXPIRATION. This subchapter expires September 1, 2011.

[Sections 1022.156-1022.200 reserved for expansion]

SUBCHAPTER E. BEHAVIORAL HEALTH OUTREACH

Sec. 1022.201. OUTREACH ACTIVITIES. (a) Through a public outreach program, the department shall provide to servicemembers and their families information on accessing services through the Texas Information and Referral Network and through other organizations participating in memoranda of understanding maintained by the Texas military forces.

(b) The department's outreach activities must describe programs administered by health and human services agencies that could be of interest to servicemembers and their families, including early childhood intervention services, state vocational rehabilitation services, and higher education benefits and support services.

(c) The department's outreach efforts must be:

(1) conducted on a statewide basis;

(2) conducted through a contract or contracts with statewide or local community-based organizations with experience in statewide outreach to the military; and

(3) staffed by individuals with demonstrated experience in working with the military and military service organizations.

(d) Outreach methods must include direct personal contacts with servicemembers and outreach using communications media and printed materials. As a component of the department's outreach activities, the department shall maintain or support an existing interactive Internet-based resource program that:

(1) allows individuals to access comprehensive information, advocacy resources, and other resources regarding public and private behavioral health services, crisis and emergency services, and early intervention and prevention programs; and

(2) enables the public and private health care communities to work together to address the problems related to obtaining access to behavioral health services and other reintegration services for servicemembers and their families.

(e) The interactive Internet-based program established under Subsection (d) shall be developed or maintained by the department with the advice of and in consultation with the Texas military forces. The department shall collaborate with state agencies and the Texas military forces to develop strategies to use existing interactive Internet-based resources that serve servicemembers and their families.

(c) Subchapter A, Chapter 431, Government Code, is amended by adding Section 431.0186 to read as follows:

Sec. 431.0186. SCREENING FOR TRAUMATIC BRAIN INJURY. (a) The adjutant general shall require each member of the Texas National Guard who served during Operation Enduring Freedom or Operation Iraqi Freedom to be screened for traumatic brain injury.

(b) The adjutant general shall assist a member of the Texas National Guard who tests positive for traumatic brain injury in obtaining appropriate medical care.

(d) Section 434.007, Government Code, is amended to read as follows:

Sec. 434.007. DUTIES. (a) The commission shall:

(1) compile federal, state, and local laws enacted to benefit members of the armed forces, veterans, and their families and dependents;

(2) collect information relating to services and facilities available to veterans;

(3) cooperate with veterans service agencies in the state;

(4) inform members and veterans of the armed forces, their families and dependents, and military and civilian authorities about the existence or availability of:

(A) educational training and retraining facilities;

(B) health, medical, rehabilitation, and housing services and facilities;

(C) employment and reemployment services;

(D) provisions of federal, state, and local law affording rights, privileges, and benefits to members and veterans of the armed forces and their families and dependents; and

(E) other similar, related, or appropriate matters;

(5) assist veterans and their families and dependents in presenting, proving, and establishing claims, privileges, rights, and benefits they may have under federal, state, or local law, including establishing eligibility for health care services and treatments from the federal Veterans Health Administration and for services provided through the Department of State Health Services;

(6) cooperate with all government and private agencies securing services or benefits to veterans and their families and dependents;

(7) investigate, and if possible correct, abuses or exploitation of veterans or their families or dependents, and recommend necessary legislation for full correction;

(8) coordinate the services and activities of state departments and divisions having services and resources affecting veterans or their families or dependents;

(9) provide training and certification of veterans county service officers and assistant veterans county service officers in accordance with Section 434.038; and

(10) through surveys or other reasonable and accurate methods of estimation, collect and maintain for each county in the state the number of servicemembers and veterans residing in the county and annually update and publish the information on the commission's website.

(b) The commission shall enter into a memorandum of understanding with the Department of State Health Services to develop training materials for veterans county service officers and veterans service organizations that promote the understanding and effective treatment of trauma affecting behavioral health and other health-related information that promotes the reintegration of members and veterans of the armed forces into their communities, families, and workplaces. The commission shall:

(1) disseminate training and educational materials for the development of clinical practice guidelines and other training and educational materials that it receives from the department;

(2) enter into a contract or other agreement for the development of the training and educational materials with the department;

(3) reimburse the department for costs of preparing the materials from appropriations or other amounts available to the commission; and

(4) enter into relationships with established training programs for the purpose of providing peer support training and certification for veterans county service officers.

(e) Subsection (a), Section 434.0078, Government Code, is amended to read as follows:

(a) The commission shall adopt procedures for administering claims assistance services under Section 434.007(5). Claims assistance services shall be provided for establishing eligibility for health care services and treatments from the federal Veterans Health Administration. The procedures shall include:

(1) criteria for determining when a veteran's initial claim is substantially complete and basic eligibility requirements are met as provided by federal law;

(2) a process for expediting a claim based on hardship, including whether the veteran:

- (A) is in immediate need;
- (B) is terminally ill;
- (C) has a verifiable financial hardship; or
- (D) has a disability that presents an undue burden;

(3) a procedure for counseling veterans on the potential merits or drawbacks of pursuing a claim;

(4) a process to ensure adequate documentation and development of a claim or appeal, including early client involvement, collection of needed evidence and records, and analysis of actions necessary to pursue and support a claim or appeal;

(5) criteria for evaluating whether a decision of the United States Department of Veterans Affairs contains sufficient cause for filing an appeal;

(6) a requirement that a claims counselor report to the United States Department of Veterans Affairs if the counselor has direct knowledge that a claim contains false or deceptive information; and

(7) a procedure for prioritizing a claim, when appropriate, or providing an alternative source for obtaining claims assistance services when it is not appropriate to prioritize.

(f) The Department of State Health Services shall conduct an immediate analysis of the behavioral health needs of servicemembers and their families and submit a preliminary report of its findings and recommendations to the legislature and the governor on or before December 1, 2009, and a final report of its findings and recommendations on or before December 1, 2010. The report shall:

(1) identify the gaps in behavioral health services available to servicemembers and their families;

(2) identify impediments to the ability of servicemembers and their families to access the behavioral health services that are available, particularly in the state's rural areas;

(3) evaluate collaboration among organizations and entities that provide behavioral health services to servicemembers and their families;

(4) make recommendations with respect to improving outreach to servicemembers and their families in need of behavioral health services;

(5) include a specific plan of action to promote federal and state collaboration to maximize funding and access to resources for the behavioral health needs of servicemembers and their families;

(6) make recommendations with respect to building provider capacity and increasing provider training to meet the behavioral health needs of servicemembers and their families through peer support treatment methodologies; and

(7) make recommendations with respect to improving the coordination of behavioral health services for servicemembers and their families.

(g) Not later than January 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules as necessary to administer Chapter 1022, Health and Safety Code, as added by this section.

(h) This section does not make an appropriation. This section 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 1218** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

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

### **Floor Amendment No. 10**

Amend **HB 1218** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 843.002, Insurance Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Extrapolation" means a mathematical process or technique used by a health maintenance organization or pharmacy benefit manager that administers pharmacy claims for a health maintenance organization in the audit of a pharmacy or pharmacist to estimate audit results or findings for a larger batch or group of claims not reviewed by the health maintenance organization or pharmacy benefit manager.

SECTION \_\_\_\_\_. Section 843.338, Insurance Code, is amended to read as follows:

Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections ~~[Section]~~ 843.3385 and 843.339, not later than the 45th day after the date on which a health maintenance organization receives a clean claim from a participating physician or provider in a nonelectronic format or the 30th day after the date the health maintenance organization receives a clean claim from a participating physician or provider that is electronically submitted, the health maintenance organization shall make a determination of whether the claim is payable and:

(1) if the health maintenance organization determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

(2) if the health maintenance organization determines a portion of the claim is payable, pay the portion of the claim that is not in dispute and notify the physician or provider in writing why the remaining portion of the claim will not be paid; or

(3) if the health maintenance organization determines that the claim is not payable, notify the physician or provider in writing why the claim will not be paid.

SECTION \_\_\_\_\_. Section 843.339, Insurance Code, is amended to read as follows:

Sec. 843.339. DEADLINE FOR ACTION ON ~~[CERTAIN]~~ PRESCRIPTION CLAIMS; PAYMENT. (a) A [Not later than the 21st day after the date a] health maintenance organization, or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, that affirmatively adjudicates a

pharmacy claim that is electronically submitted[~~the health maintenance organization~~ shall pay the total amount of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated.

(b) A health maintenance organization, or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, that affirmatively adjudicates a pharmacy claim that is not electronically submitted shall pay the total amount of the claim not later than the 21st day after the date on which the claim was affirmatively adjudicated.

SECTION \_\_\_\_ . Section 843.340, Insurance Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) A health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization may not use extrapolation to complete the audit of a provider who is a pharmacist or pharmacy. A health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization may not require extrapolation audits as a condition of participation in the health maintenance organization's contract, network, or program for a provider who is a pharmacist or pharmacy.

(g) A health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization that performs an on-site audit under this chapter of a provider who is a pharmacist or pharmacy shall provide the provider reasonable notice of the audit and accommodate the provider's schedule to the greatest extent possible. The notice required under this subsection must be in writing and must be sent by certified mail to the provider not later than the 15th day before the date on which the on-site audit is scheduled to occur.

SECTION \_\_\_\_ . Section 843.344, Insurance Code, is amended to read as follows:

Sec. 843.344. APPLICABILITY OF SUBCHAPTER TO ENTITIES CONTRACTING WITH HEALTH MAINTENANCE ORGANIZATION. This subchapter applies to a person, including a pharmacy benefit manager, with whom a health maintenance organization contracts to:

- (1) process or pay claims;
- (2) obtain the services of physicians and providers to provide health care services to enrollees; or
- (3) issue verifications or preauthorizations.

SECTION \_\_\_\_ . Subchapter J, Chapter 843, Insurance Code, is amended by adding Sections 843.354, 843.355, and 843.356 to read as follows:

Sec. 843.354. DEPARTMENT ENFORCEMENT OF PHARMACY CLAIMS.

(a) Notwithstanding any other provision of this subchapter, a dispute regarding payment of a claim to a provider who is a pharmacist or pharmacy shall be resolved as provided by this section.

(b) A provider who is a pharmacist or pharmacy may submit a complaint to the department alleging noncompliance with the requirements of this subchapter by a health maintenance organization, a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, or another entity that contracts with the health maintenance organization as provided by Section 843.344. A

complaint must be submitted in writing or by submitting a completed complaint form to the department by mail or through another delivery method. The department shall maintain a complaint form on the department's Internet website and at the department's offices for use by a complainant.

(c) After investigation of the complaint by the department, the commissioner shall determine the validity of the complaint and shall enter a written order. In the order, the commissioner shall provide the health maintenance organization and the complainant with:

(1) a summary of the investigation conducted by the department;

(2) written notice of the matters asserted, including a statement:

(A) of the legal authority, jurisdiction, and alleged conduct under which an enforcement action is imposed or denied, with a reference to the statutes and rules involved; and

(B) that, on request to the department, the health maintenance organization and the complainant are entitled to a hearing conducted by the State Office of Administrative Hearings in the manner prescribed by Section 843.355 regarding the determinations made in the order; and

(3) a determination of the denial of the allegations or the imposition of penalties against the health maintenance organization.

(d) An order issued under Subsection (c) is final in the absence of a request by the complainant or health maintenance organization for a hearing under Section 843.355.

(e) If the department investigation substantiates the allegations of noncompliance made under Subsection (b), the commissioner, after notice and an opportunity for a hearing as described by Subsection (c), shall require the health maintenance organization to pay penalties as provided by Section 843.342.

Sec. 843.355. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; FINAL ORDER. (a) The State Office of Administrative Hearings shall conduct a hearing regarding a written order of the commissioner under Section 843.354 on the request of the department. A hearing under this section is subject to Chapter 2001, Government Code, and shall be conducted as a contested case hearing.

(b) After receipt of a proposal for decision issued by the State Office of Administrative Hearings after a hearing conducted under Subsection (a), the commissioner shall issue a final order.

(c) If it appears to the department, the complainant, or the health maintenance organization that a person or entity is engaging in or is about to engage in a violation of a final order issued under Subsection (b), the department, the complainant, or the health maintenance organization may bring an action for judicial review in district court in Travis County to enjoin or restrain the continuation or commencement of the violation or to compel compliance with the final order. The complainant or the health maintenance organization may also bring an action for judicial review of the final order.

Sec. 843.356. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to providers who are pharmacists or pharmacies apply to all health maintenance organizations and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION \_\_\_\_\_. Section 1301.001, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Extrapolation" means a mathematical process or technique used by an insurer or pharmacy benefit manager that administers pharmacy claims for an insurer in the audit of a pharmacy or pharmacist to estimate audit results or findings for a larger batch or group of claims not reviewed by the insurer or pharmacy benefit manager.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term includes a pharmacist and a pharmacy. The term does not include a physician.

SECTION \_\_\_\_\_. Section 1301.103, Insurance Code, is amended to read as follows:

Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections 1301.104 and ~~Section~~ 1301.1054, not later than the 45th day after the date an insurer receives a clean claim from a preferred provider in a nonelectronic format or the 30th day after the date an insurer receives a clean claim from a preferred provider that is electronically submitted, the insurer shall make a determination of whether the claim is payable and:

(1) if the insurer determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) if the insurer determines a portion of the claim is payable, pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) if the insurer determines that the claim is not payable, notify the preferred provider in writing why the claim will not be paid.

SECTION \_\_\_\_\_. Section 1301.104, Insurance Code, is amended to read as follows:

Sec. 1301.104. DEADLINE FOR ACTION ON CERTAIN PHARMACY CLAIMS; PAYMENT. (a) An ~~insurer, or a pharmacy benefit manager that administers pharmacy claims for the insurer under a preferred provider benefit plan, that affirmatively adjudicates a pharmacy claim that is electronically submitted,~~ ~~the insurer~~ shall pay the total amount of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated.

(b) An insurer, or a pharmacy benefit manager that administers pharmacy claims for the insurer under a preferred provider benefit plan, that affirmatively adjudicates a pharmacy claim that is not electronically submitted shall pay the total amount of the claim not later than the 21st day after the date on which the claim was affirmatively adjudicated.

SECTION \_\_\_\_\_. Section 1301.105, Insurance Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) An insurer or a pharmacy benefit manager that administers pharmacy claims for the insurer may not use extrapolation to complete the audit of a preferred provider that is a pharmacist or pharmacy. An insurer may not require extrapolation audits as a condition of participation in the insurer's contract, network, or program for a preferred provider that is a pharmacist or pharmacy.

(f) An insurer or a pharmacy benefit manager that administers pharmacy claims for the insurer that performs an on-site audit of a preferred provider that is a pharmacist or pharmacy shall provide the provider reasonable notice of the audit and accommodate the provider's schedule to the greatest extent possible. The notice required under this subsection must be in writing and must be sent by certified mail to the preferred provider not later than the 15th day before the date on which the on-site audit is scheduled to occur.

SECTION \_\_\_\_\_. Section 1301.109, Insurance Code, is amended to read as follows:

Sec. 1301.109. APPLICABILITY TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person, including a pharmacy benefit manager, with whom an insurer contracts to:

- (1) process or pay claims;
- (2) obtain the services of physicians and health care providers to provide health care services to insureds; or
- (3) issue verifications or preauthorizations.

SECTION \_\_\_\_\_. Subchapter C-1, Chapter 1301, Insurance Code, is amended by adding Sections 1301.139, 1301.140, and 1301.141 to read as follows:

Sec. 1301.139. DEPARTMENT ENFORCEMENT OF PHARMACY CLAIMS.

(a) Notwithstanding any other provision of this subchapter, a dispute regarding payment of a claim to a preferred provider who is a pharmacist or pharmacy shall be resolved as provided by this section.

(b) A preferred provider who is a pharmacist or pharmacy may submit a complaint to the department alleging noncompliance with the requirements of this subchapter by an insurer, a pharmacy benefit manager that administers pharmacy claims for the insurer, or another entity that contracts with the insurer as provided by Section 1301.109. A complaint must be submitted in writing or by submitting a completed complaint form to the department by mail or through another delivery method. The department shall maintain a complaint form on the department's Internet website and at the department's offices for use by a complainant.

(c) After investigation of the complaint by the department, the commissioner shall determine the validity of the complaint and shall enter a written order. In the order, the commissioner shall provide the insurer and the complainant with:

- (1) a summary of the investigation conducted by the department;
- (2) written notice of the matters asserted, including a statement:
  - (A) of the legal authority, jurisdiction, and alleged conduct under which an enforcement action is imposed or denied, with a reference to the statutes and rules involved; and

(B) that, on request to the department, the insurer and the complainant are entitled to a hearing conducted by the State Office of Administrative Hearings in the manner prescribed by Section 1301.140 regarding the determinations made in the order; and

(3) a determination of the denial of the allegations or the imposition of penalties against the insurer.

(d) An order issued under Subsection (c) is final in the absence of a request by the complainant or insurer for a hearing under Section 1301.140.

(e) If the department investigation substantiates the allegations of noncompliance made under Subsection (b), the commissioner, after notice and an opportunity for a hearing as described by Subsection (c), shall require the insurer to pay penalties as provided by Section 1301.137.

Sec. 1301.140. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS; FINAL ORDER. (a) The State Office of Administrative Hearings shall conduct a hearing regarding a written order of the commissioner under Section 1301.139 on the request of the department. A hearing under this section is subject to Chapter 2001, Government Code, and shall be conducted as a contested case hearing.

(b) After receipt of a proposal for decision issued by the State Office of Administrative Hearings after a hearing conducted under Subsection (a), the commissioner shall issue a final order.

(c) If it appears to the department, the complainant, or the insurer that a person or entity is engaging in or is about to engage in a violation of a final order issued under Subsection (b), the department, the complainant, or the insurer may bring an action for judicial review in district court in Travis County to enjoin or restrain the continuation or commencement of the violation or to compel compliance with the final order. The complainant or the insurer may also bring an action for judicial review of the final order.

Sec. 1301.141. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to preferred providers who are pharmacists or pharmacies apply to all insurers and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION \_\_\_\_. The change in law made by this Act to Chapters 843 and 1301, Insurance Code, applies only to a claim submitted by a provider to a health maintenance organization or an insurer on or after the effective date of this Act. A claim submitted before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION \_\_\_\_. The change in law made by this Act to Chapters 843 and 1301, Insurance Code, applies only to a contract between a pharmacy benefit manager and an insurer or health maintenance organization entered into or renewed on or after January 1, 2010. A contract entered into 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.

The amendment to **HB 1218** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

Senator Shapleigh offered the following amendment to the bill:

### **Floor Amendment No. 11**

Amend **HB 1218** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 155.051, Occupations Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The time frame to pass each part of the examination does not apply to an applicant who:

(1) is licensed and in good standing as a physician in another state;

(2) has been licensed for at least five years;

(3) does not hold a medical license in the other state that has or has ever had any restrictions, disciplinary orders, or probation; and

(4) will practice in a medically underserved area or a health manpower shortage area, as those terms are defined by Section 157.052.

(e) The board may by rule establish a process to verify that a person, after meeting the requirements of Subsection (d), practices only in an area described by Subsection (d)(4).

SECTION \_\_\_\_\_. Section 155.056, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The limitation on examination attempts by an applicant under Subsection (a) does not apply to an applicant who:

(1) is licensed and in good standing as a physician in another state;

(2) has been licensed for at least five years;

(3) does not hold a medical license in the other state that has or has ever had any restrictions, disciplinary orders, or probation; and

(4) will practice in a medically underserved area or a health manpower shortage area, as those terms are defined by Section 157.052.

(f) The board may by rule establish a process to verify that a person who, after meeting the requirements of Subsection (e), practices only in an area described by Subsection (e)(4).

The amendment to **HB 1218** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11 except as follows:

Nays: Harris, Hegar.

Absent: Williams.

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

### **Floor Amendment No. 12**

Amend **HB 1218** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

Subchapter B, Chapter 562, Occupations Code, is amended by adding Section 562.057 to read as follows:

Sec. 562.057. COMMERCIAL USE STUDY; CIVIL PENALTY. (a) The board shall conduct a study on the license, transfer, use, and sale of prescription information records containing patient-identifiable and practitioner-identifiable information by pharmacy benefit managers, insurers, electronic transmission intermediaries, pharmacies, and other similar entities for the purpose of advertising, marketing, or promoting pharmaceutical products.

(b) Not later than August 1, 2010, the board shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the legislature a report regarding the results of the study conducted under Subsection (a), together with any recommendation for legislation.

(c) The report under this section must consist of aggregate information and may not identify by name any entity that provided information to the board. Information provided by an entity that is a trade secret is subject to Section 552.110, Government Code.

(d) An entity described by Subsection (a), other than a pharmacy, that fails to provide to the board the information requested by the board for the study conducted under this section before the 90th day after the date the board requests the information is liable to this state for a civil penalty not to exceed \$5,000 for each violation. Each day a violation continues constitutes a separate violation.

(e) The amount of the penalty shall be based on:

- (1) the seriousness of the violation;
- (2) the history of previous violation;
- (3) the amount necessary to deter a future violation; and
- (4) any other matter that justice may require.

(f) The board or the attorney general may sue to collect a civil penalty under this section. In the suit the state may recover the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(g) A pharmacy that fails to provide to the board the information requested by the board for the study conducted under this section before the 90th day after the date the board requests the information is subject to appropriate administrative sanctions imposed by the board.

(h) This section expires October 1, 2010.

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 1218** 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: Harris, Hegar.

Absent: Williams.

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

**HB 1218** 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: Harris, Hegar.

Absent: Williams.

### **HOUSE BILL 1218 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 1218** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

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

Nays: Harris, Hegar.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2. (Same as previous roll call)

### **SENATE CONCURRENT RESOLUTION 54 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **SCR 54** at this time on its second reading:

**SCR 54**, Memorializing Congress to cease and desist attempting to enact federal legislation impinging on the individual right of every American to keep and bear arms and urging Congress to oppose passage of the Blair Holt's Firearm Licensing and Record of Sale Act of 2009.

The motion prevailed.

Senators Ellis, Ogden, Shapleigh, and West asked to be recorded as voting "Nay" on suspension of the regular order of business.

The resolution was read second time and was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Van de Putte, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Ellis, Gallegos, Ogden, Shapleigh, Uresti, West.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3485 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 3485** at this time on its second reading:

**CSHB 3485**, Relating to the administration of certain county services and duties, including the administration of county assistance districts.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3485** (Senate committee printing) by adding the following SECTIONS and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. Subsection (a), Section 250.003, Local Government Code, is amended to read as follows:

(a) An individual who is an employee of the owner of real property for which a citation for a violation of a county or municipal rule or ordinance is issued, or of a company that manages the property on behalf of the property owner, is not personally liable for criminal or civil penalties resulting from the violation if, not later than five calendar days after the date the citation is issued, the individual provides the property owner's name, current street address, and telephone number to the enforcement official who issues the citation or the official's superior.

SECTION \_\_\_\_\_. Section 250.004, Local Government Code, is amended to read as follows:

Sec. 250.004. AGENT FOR SERVICE; NOTICE OF CITATION. (a) ~~The [if the property owner's street address is not in this state, the]~~ employee of the owner or management company to whom a citation described by Section 250.003 is issued is considered the owner's agent for accepting service of the citation for the violation of the county or municipal rule or ordinance. Service of the citation on the agent has the same legal effect as service on the owner for the purpose of fines against the owner or the property, including a warrant or capias.

(b) The county or municipality issuing the citation shall mail notice of the citation to the property owner at the address most recently provided to the county or municipality by the property owner or by the employee of the owner or management company under Section 250.003(a). This subsection does not require a county or municipality to mail notice using a service that provides delivery confirmation.

SECTION \_\_\_\_\_. The change in law made by Section 250.003 and 250.004, Local Government Code, is effective on or after January 1, 2010.

The amendment to **CSHB 3485** was read and was adopted by a viva voce vote.

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

Senator West offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3485** (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 372, Local Government Code, is amended to read as follows:

**SUBCHAPTER A. PUBLIC IMPROVEMENT DISTRICTS**

Sec. 372.001. **SHORT TITLE.** This subchapter may be cited as the Public Improvement District Assessment Act.

Sec. 372.0015. **DEFINITIONS** [~~DEFINITION~~]. In this subchapter:

(1) "Authorized instrumentality" means a public facility corporation created by the governing body of a municipality or county under Chapter 303 or a local government corporation created by the governing body of a municipality or county under Subchapter D, Chapter 431, Transportation Code.

(2) "Extraterritorial[~~," extraterritorial~~] jurisdiction" means extraterritorial jurisdiction of a municipality as determined under Chapter 42.

(3) "Public improvement district" or "district" means an area defined by the governing body of a municipality or county that:

(A) consists of one or more contiguous or noncontiguous tracts of land;  
and

(B) will be specially benefited as determined by the municipality or county by any or all of the public improvements or services.

(4) "Qualified costs" means the costs and expenses incurred in establishing, administering, managing, and operating a public improvement district, including:

(A) costs and expenses of or related to the construction of an improvement project;

(B) financing of an improvement project by a municipality, county, or authorized instrumentality, including the debt service requirements owed or to be owed under installment purchase or reimbursement contracts, temporary notes, time warrants, revenue bonds, special assessment bonds, or certificates of obligation, including reserve funds and capitalized interest;

(C) costs and expenses of or related to the negotiation, development, and execution of the obligations described by Paragraph (B);

(D) costs and expenses of or related to credit and interest rate management agreements entered into under Chapter 1371, Government Code;

(E) costs of attorneys and other professional advisors, including consultants; and

(F) costs related to the administrative oversight of public improvements, services, and operations of the public improvement district.

(5) "Revenue bonds" means bonds, notes, or other securities issued by a municipality, county, or authorized instrumentality that are payable from and secured by liens on all or part, or a combination of, the revenue derived from installment payments of special assessments plus any other revenues, donations, grants, or income described by Section 372.026(e).

(6) "Special assessment bonds" means bonds, notes, or other securities issued by a municipality, county, or authorized instrumentality that are payable solely from and secured by special assessments levied by the governing body of the municipality or county in a public improvement district.

(7) "Special district" means a political subdivision of this state with a limited geographic area created by local law or under general law for a special purpose.

Sec. 372.002. EXERCISE OF POWERS. (a) A public improvement district is not a separate body politic or corporate from the municipality or county that created the district.

(b) Subject to Section 372.010(c), powers [~~Powers~~] granted under this subchapter in an area comprising a public improvement district may be exercised by a municipality or county on and after the date [~~in which~~] the governing body of the municipality or county [~~initiates or~~] receives a petition requesting the establishment of a public improvement district that complies [~~. A petition must comply~~] with the requirements of Section 372.005.

(c) The powers granted under this subchapter may be exercised by the governing body of any other political subdivision if the law creating or governing the political subdivision grants the political subdivision authority described by this subchapter. The governing body of the political subdivision has the same powers and is subject to the same limitations as are applicable to the governing body of a municipality or a county under this subchapter unless and except as modified by the law creating or governing the political subdivision.

Sec. 372.003. AUTHORIZED IMPROVEMENTS AND SERVICES. (a) If the governing body of a municipality or county finds that it promotes the interests of the municipality or county, the governing body may create one or more public improvement districts under this subchapter and undertake one or more [~~an~~] improvement projects [~~project~~] that confer [~~confers~~] a special benefit on the property located in the public improvement district [~~a definable part of the municipality or county or the municipality's extraterritorial jurisdiction~~]. A project may be undertaken within or outside the district in the municipality or county or in the municipality's extraterritorial jurisdiction if the project benefits the district.

(b) A public improvement project may include:

(1) landscaping;  
(2) erection of fountains, distinctive lighting, and signs;  
(3) acquiring, constructing, improving, repairing, widening, narrowing, closing, or rerouting of sidewalks or of streets, roads, highways, bridges, culverts, water retention walls, [~~any other roadways,~~] or related [~~their~~] rights-of-way owned by or to be conveyed to the municipality, the county, the federal government, or another political subdivision or entity exercising powers granted under this subchapter;

(4) construction or improvement of pedestrian malls;

(5) acquisition and installation of pieces of art;

(6) acquisition, construction, or improvement of [~~libraries,~~

[~~(7) acquisition, construction, or improvement of~~] off-street parking facilities;

(7) ~~(8)~~ acquisition, construction, or improvement~~[-, or rerouting]~~ of mass transportation facilities, including light rail mass transit, streetcar, or similar systems, and related vehicle parking facilities;

(8) ~~(9)~~ acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;

(9) ~~(40)~~ the establishment or improvement of parks, playgrounds, lakes, and open spaces, including paths, trails, boat docks, and wharves;

(10) acquisition, construction, or improvement of other public projects that are determined by the municipality or county to promote the interests of the municipality or county and to be of a special benefit to the public improvement district, including:

(A) community centers, recreation centers, and recreation facilities;

(B) libraries;

(C) facilities for police, sheriffs, or firefighters;

(D) municipal or county administration centers; and

(E) other governmental buildings for the provision of governmental

services;

(11) acquisition, construction, or improvement of other public projects, facilities, or services required by a development agreement, interlocal agreement, zoning regulation, or permit issued by a municipality or county having jurisdiction in the public improvement district;

(12) acquisition, construction, maintenance, or improvement of buildings and other facilities commonly used for teaching, research, or the preservation of knowledge by an institution of higher education as defined by Section 372.0045 or for auxiliary purposes of the institution, including administration, student services and housing, athletics, performing arts, and alumni support;

(13) ~~(11) projects similar to those listed in Subdivisions (1) (10);~~

~~(12)~~ acquisition, by purchase or otherwise, of real property in connection with an authorized improvement; and

(14) ~~(13)~~ special supplemental services for improvement and promotion of the district, including services relating to:

(A) advertising;

(B) [;] promotion;

(C) [;] health and sanitation;

(D) [;] water and wastewater;

(E) enhanced fire protection, police, sheriff, and other[;] public safety

and[;] security;

(F) [;] business recruitment;

(G) [;] development;

(H) [;] recreation;[;] and

(I) cultural enhancement[; and

~~(14) payment of expenses incurred in the establishment, administration, and operation of the district].~~

(b-1) The legislature finds that a purpose described by Subsection (b)(12), including an auxiliary purpose, is an authorized economic development purpose of a county or municipality under Section 52-a, Article III, Texas Constitution.

(c) A public improvement project may include or may be limited to the provision of all or any part of the services described by Subsection (b)(14) [(b)(13)].

(d) A municipality that exercises powers under this subchapter may establish a public improvement district in the corporate limits or the extraterritorial jurisdiction of the municipality. A county or other political subdivision that exercises powers under this subchapter may establish a public improvement district in the county or the area of the political subdivision, including in the corporate limits or the extraterritorial jurisdiction of a municipality unless within 30 days after the date notice is provided to the municipality of an [a county's] action to approve [such] a public improvement district, the [a home rule] municipality objects to the district's [its] establishment within the municipality's corporate limits or extraterritorial jurisdiction.

Sec. 372.004. COMBINED IMPROVEMENTS. A public [A] improvement project may consist of an improvement on more than one street or of more than one type of improvement. An improvement [A] project described by this section may be included in one proceeding and financed as one improvement project.

Sec. 372.0045. AUTHORIZED HIGHER EDUCATION FACILITIES; LEASE TO INSTITUTION OF HIGHER EDUCATION. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The governing body of a municipality or county that establishes a public improvement district to finance a public improvement project described by Section 372.003(b)(12) may enter into a memorandum of understanding with an institution of higher education that provides educational services in the municipality or county under which the municipality or county leases the public improvement project to the institution, at a nominal rate, for use by the institution in providing teaching, research, public service, or auxiliary enterprise activities to students of the institution.

(c) A memorandum of understanding entered into by a municipality or county under this section must include adequate controls to ensure that the lease of the public improvement project promotes the municipality's or county's interests and provides a public benefit to the area served by the district.

Sec. 372.005. PETITION. (a) A petition for the establishment of a public improvement district must state:

- (1) the general nature of the proposed improvements [improvement];
- (2) the estimated qualified costs [cost] of the improvements [improvement];
- (3) the boundaries of the proposed [assessment] district;
- (4) the proposed method of assessment, which may specify included or excluded classes of assessable property;

(5) [the proposed apportionment of cost between the public improvement district and the municipality or county as a whole;

[~~(6)~~] whether the management of the district is to be by:

(A) the municipality;

(B) the [or] county;

(C) an authorized instrumentality;

(D) [s] the private sector; [s] or

(E) a partnership between the private sector and one of the entities

described by Paragraphs (A)-(C) [municipality or county and the private sector];

(6) [(7)] that the persons signing the petition request or concur with the establishment of the district; and

(7) [(8)] that an advisory body may be established or an authorized instrumentality may be incorporated to develop and recommend an improvement plan to the governing body of the municipality or county.

(b) The petition is sufficient if signed by:

(1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and

(2) record owners of real property liable for assessment under the proposal who:

(A) constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or

(B) own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

(c) A [The] petition filed with the municipality may be filed with the municipal secretary or other officer performing the functions of the municipal secretary. A petition filed with the county may be filed with the county clerk or other officer designated by the commissioners court. A petition filed with any other political subdivision exercising powers under this subchapter may be filed with the political subdivision's governing body.

Sec. 372.006. FINDINGS. (a) If a petition that complies with this subchapter is filed, the governing body of the municipality or county may make findings by resolution as to:

(1) the advisability of the proposed improvements;

(2) the [improvement, its] estimated qualified costs of the proposed improvements; and

(3) [cost,] the method of assessment[~~— and the apportionment of cost between the proposed improvement district and the municipality or county as a whole~~].

(b) The governing body's findings under this section are conclusive.

Sec. 372.007. FEASIBILITY REPORT. (a) Before holding the hearing required by Section 372.009, the governing body of the municipality may use the services of municipal employees, the governing body of the county may use the services of county employees, or the governing body of the municipality or county may employ consultants to prepare a report to determine whether improvements [an improvement] should be made as proposed by petition or otherwise or whether improvements [the improvement] should be made in combination with other improvements authorized under this subchapter. The governing body may also require that a preliminary estimate of the qualified costs [cost] of improvements [the improvement] or a combination of improvements be made.

(b) For the purpose of determining the feasibility and desirability of a public [an] improvement district, the governing body may take other preliminary steps before the hearing required by Section 372.009 and[=] before establishing a public improvement district[~~— or before entering into a contract~~].

Sec. 372.008. ADVISORY BODY. (a) The [After receiving a petition that complies with Section 372.005, the] governing body of the municipality or county, on the governing body's own initiative or after receiving a petition that complies with Section 372.005, may appoint an advisory body with the responsibility of developing and recommending an improvement plan to the governing body.

(b) The composition of an [the] advisory body, if established, must include:

(1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and

(2) record owners of real property liable for assessment under the proposal who:

(A) constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or

(B) own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

(c) The members of the advisory body serve at the will of the governing body of the municipality or county creating the public improvement district and may be removed at any time.

Sec. 372.009. HEARING. (a) A public improvement district may be established and improvements provided by the district may be financed under this subchapter only after the governing body of the municipality or county holds a public hearing on the advisability of the improvements [improvement].

(b) The hearing may be adjourned from time to time until the governing body makes findings by resolution as to:

(1) the advisability of each [the] improvement;

(2) the nature of each [the] improvement;

(3) the estimated qualified costs [cost] of each [the] improvement;

(4) the boundaries of the [public improvement] district; and

(5) the method of assessment~~]; and~~

~~[(6) the apportionment of costs between the district and the municipality or county as a whole].~~

(c) Notice of the hearing must be given in a newspaper of general circulation in the municipality or county. If any part of the public improvement district is to be located in the municipality's extraterritorial jurisdiction or if any part of the improvements is to be undertaken in the municipality's extraterritorial jurisdiction, the notice must also be filed with the municipal secretary or other officer performing the duties of the municipal secretary and published [given] in a newspaper of general circulation in the part of the extraterritorial jurisdiction in which the district is to be located or in which the improvements are to be undertaken. The final publication of notice must be made before the 15th day before the date of the hearing. The notice must state:

(1) the time and place of the hearing;

(2) the general nature of the proposed improvements [improvement];

(3) the estimated qualified costs [cost] of the proposed improvements [improvement];

(4) the boundaries of the proposed public improvement [~~assessment~~] district; and

(5) the proposed method of assessment[~~]; and~~

~~[(6) the proposed apportionment of cost between the improvement district and the municipality or county as a whole].~~

(d) Written notice containing the information required by Subsection (c) must be mailed before the 15th day before the date of the hearing. The notice must be addressed to "Property Owner" and mailed to the current address of the owner, as reflected on tax rolls, of property subject to assessment under the proposed public improvement district.

Sec. 372.010. IMPROVEMENT ORDER. (a) During the six-month period after the date of the final adjournment of the hearing under Section 372.009, the governing body of the municipality or county may authorize the creation of a public [~~an~~] improvement district subject to Section 372.012 if, by majority vote of all members of the governing body, the governing body adopts [~~members adopt~~] a resolution authorizing the district in accordance with its finding as to the advisability of the improvements [~~improvement~~].

(b) An authorization takes effect when it has been published one time in a newspaper of general circulation in the municipality or county. If any part of the [~~improvement~~] district is located in the municipality's extraterritorial jurisdiction or if any part of the improvements is to be undertaken in the municipality's extraterritorial jurisdiction, the authorization does not take effect until the notice is also given one time in a newspaper of general circulation in the part of the extraterritorial jurisdiction in which the district is located or in which the improvements are to be undertaken.

(c) Actual construction of improvements [~~an improvement~~] may not begin, and acquisition of existing improvements may not occur, until after the 20th day after the date the authorization takes effect and may not begin if during that 20-day period written protests signed by at least two-thirds of the owners of record of property within the [~~improvement~~] district or by the owners of record of property comprising at least two-thirds of the total area of the district are filed with the municipal [~~or county~~] secretary or other officer performing the duties of the municipal [~~or county~~] secretary or the county clerk or other officer designated by the commissioners court. A person whose name appears on a protest may withdraw the name from the protest at any time before the governing body of the municipality or county convenes to determine the sufficiency of the protest.

(d) Before the levy of assessments under Section 372.017, the property owners in the district who signed the original petition may petition the governing body to amend the resolution creating the district adopted under Subsection (a) to amend the estimated qualified costs of the improvements, including adding or deleting improvement projects. The governing body shall provide notice of the owners' petition and hold a public hearing as provided by Section 372.009 to make findings, by amended resolution, of the nature and estimated qualified costs of each improvement. A county or other entity that proposes to amend a resolution under this subsection in the corporate boundaries or extraterritorial jurisdiction of a municipality shall provide notice to the municipality on or before the 30th day before the date the entity amends the resolution.

Sec. 372.011. DISSOLUTION. (a) A public hearing may be ~~called and~~ held after giving notice in the same manner as a hearing under Section 372.009 for the purpose of dissolving a district if a petition requesting dissolution is filed and the petition contains the signatures of at least enough property owners in the district to make a petition sufficient under Section 372.005(b). If the district is dissolved, the district nonetheless shall remain in effect for the purpose of meeting obligations of indebtedness for improvements.

(b) A district may be dissolved at the discretion of the governing body without a petition only if no assessments have been levied on property in the district or if assessments previously levied have been paid in full and the district has no other outstanding obligations. A dissolution under this subsection may not occur until after the governing body holds a hearing and gives notice in the manner required by Section 372.009.

Sec. 372.012. AREA OF DISTRICT. The area of a public improvement district to be assessed according to the findings of the governing body of the municipality or county establishing the boundaries may include contiguous and noncontiguous tracts of land and may be less than the area described in the proposed boundaries stated by the notice under Section 372.009. The area to be assessed may not include property not described by the notice as being within the proposed boundaries of the district unless a hearing is held to include the property and notice for the hearing is given in the same manner as notice under Section 372.009.

Sec. 372.013. SERVICE PLAN. (a) The advisory body shall prepare an ongoing service plan and present the plan to the governing body of the municipality or county for review and approval. The governing body may assign responsibility for the plan to the employees of the governing body or an authorized instrumentality or to another entity instead ~~[in the absence]~~ of an advisory body.

(b) The plan must cover a period of at least five years and must also define the annual indebtedness and the projected qualified costs for improvements.

(c) The plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements. As part of the annual update, a revised assessment roll must be prepared to reflect any division of parcels and any reallocation of assessments based on the division.

Sec. 372.014. ASSESSMENT PLAN; PAYMENT BY EXEMPT JURISDICTIONS. (a) An assessment plan must be included in the annual service plan prepared under Section 372.013.

(b) The municipality or county is responsible for payment of assessments against exempt municipal or county property in the district if any assessments are levied. Payment of assessments by other exempt jurisdictions must be established by contract.

(c) The assessment plan may require the district to be divided into development phases and, subject to Sections 372.016 and 372.017, may levy assessments periodically in separate development phases or may stagger the collection of assessments, with different development phases in the district assigned different payment and collection dates. The development phases and staggered collection dates may be coordinated with the installation of the improvements or with the maturity dates of installation purchase or reimbursement contract obligations or with temporary

notes, time warrants, or bonds ~~[An assessment paid by the municipality or county under this subsection is considered to have been paid by special assessment for the purposes of Subsection (a)].~~

Sec. 372.015. DETERMINATION OF ASSESSMENT. (a) The governing body of the municipality or county shall apportion the qualified costs ~~[cost]~~ of an improvement to be assessed against property in a public ~~[an]~~ improvement district. The apportionment shall be made on the basis of special benefits accruing to the property because of the improvement.

(b) The qualified costs ~~[Cost]~~ of an improvement may be assessed:

(1) equally per front foot or square foot;

(2) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or

(3) in any other manner that results in imposing equal shares of the qualified costs ~~[cost]~~ on property similarly benefitted.

(c) The governing body may establish by ordinance or order:

(1) reasonable classifications and formulas for the apportionment of the qualified costs ~~[cost]~~ between the municipality or county and the area to be assessed; and

(2) the methods of assessing the special benefits for various classes of improvements.

(d) The amount of assessment for each property owner may be:

(1) adjusted following the annual review of the service plan; and

(2) reallocated, but not increased, if an assessed parcel has been divided.

(e) Notice of any reallocation of assessments shall be given to the property owner of the divided parcel.

(f) The findings, determinations, and assessments made by the governing body under this section are conclusive.

Sec. 372.016. ASSESSMENT ROLL. (a) The ~~[After the total cost of an improvement is determined, the governing body of the]~~ municipality or county shall prepare a proposed assessment roll based on the estimated qualified costs of the improvements. The roll must state the assessment against each parcel of land in the district ~~and~~ ~~[as determined by]~~ the method of assessment ~~[chosen by the municipality or county under this subchapter].~~

(b) The ~~[governing body shall file the]~~ proposed assessment roll must be filed with the municipal secretary or other officer performing the functions of the municipal secretary or in a district formed by a county, the county tax assessor-collector. The proposed assessment roll is subject to public inspection. When the assessment roll is filed, the appropriate designated officer described by this subsection shall ~~[The governing body shall require the municipal secretary or other officer or county tax assessor-collector to]~~ publish notice of the governing body's intention to consider the proposed assessments at a public hearing. The notice must be published in a newspaper of general circulation in the municipality or county before the 10th day before the date of the hearing. If any part of the public improvement district is located in the municipality's extraterritorial jurisdiction or if any part of the improvements is to be undertaken in the municipality's extraterritorial jurisdiction, the notice must also

be published, before the 10th day before the date of the hearing, in a newspaper of general circulation in the part of the extraterritorial jurisdiction in which the district is located or in which the improvements are to be undertaken. The notice must state:

- (1) the date, time, and place of the hearing;
- (2) the general nature of the improvements [~~improvement~~];
- (3) the qualified costs [~~cost~~] of the improvements [~~improvement~~];
- (4) the boundaries of the [~~assessment~~] district; and
- (5) that written or oral objections will be considered at the hearing.

(c) When the assessment roll is filed under Subsection (b), the appropriate designated [~~municipal secretary or other~~] officer shall mail to the owners of property liable for assessment a notice of the hearing. The notice must contain the information required by Subsection (b) and the appropriate designated [~~secretary or other~~] officer shall mail the notice to the last known address of the property owner. The failure of a property owner to receive notice does not invalidate the proceeding.

Sec. 372.017. LEVY OF ASSESSMENTS [~~ASSESSMENT~~]. (a) At or on the adjournment of the hearing referred to by Section 372.016 on proposed assessments, the governing body of the municipality or county must hear and pass on any objection to a proposed assessment. The governing body may:

- (1) amend a proposed assessment on any parcel; and
- (2) initially or by amendment, provide for reductions of the amount of the annual assessment installments if and to the extent other revenues of the municipality or county of any of the types described by Section 372.026(e) are pledged or become available to pay all or part of installment purchase or reimbursement contract obligations or temporary notes, time warrants, revenue bonds, special assessment bonds, or certificates of obligation that are payable in whole or in part from the assessment installments.

(b) After all objections have been heard and the governing body has passed on the objections, the governing body by ordinance or order shall levy the assessment in the amount required to pay qualified costs as a special assessment on the property. The governing body by ordinance or order shall specify the method of payment of the assessment. The governing body may provide that assessments be paid in periodic installments. The installments may be in equal or different annual amounts, but must be in amounts each year necessary to meet annual qualified costs. The installments [for improvements and] must continue for a period and be in amounts necessary to retire any [the] indebtedness or obligation to pay or reimburse for the qualified costs, including the proper administration of the district [on the improvements]. The obligation to pay installments may be conditioned on the occurrence of a future event or condition if the first periodic installment payment of the assessment occurs on a date not later than the fifth anniversary of the date the assessment was levied.

(c) The governing body may:

(1) levy multiple assessments on property in the district to finance all or part of public improvements and must comply with Section 372.016 for each assessment;

(2) execute and deliver installment purchase or reimbursement contracts or temporary notes or time warrants or issue revenue bonds, special assessment bonds, or certificates of obligation to pay the qualified costs or to refund previously executed installment purchase or reimbursement contracts or temporary notes or time warrants; and

(3) secure the obligations described by Subdivision (2) by pledging one or more of the assessments levied under this subchapter.

Sec. 372.018. INTEREST ON ASSESSMENT; LIEN. (a) An assessment bears interest at the rate and for the period specified by the governing body of the municipality or county, but may not exceed a rate that is [~~one-half of~~] one percent higher than the actual interest rate paid on any installment purchase or reimbursement contract obligation or temporary note or time warrant [~~the public debt~~] used to finance or to evidence an obligation to pay for the improvement. If revenue bonds, special assessment bonds, or certificates of obligation are issued to pay or refund any of the obligations described by this subsection, the annual interest rate is adjusted to a rate not to exceed one percent higher than the actual rate paid on the bonds or certificates, if the rate is lower than the rate on the obligations. Interest on the assessment between the effective date of the ordinance or order levying the assessment and the date the first installment is payable shall be added to the first installment. The interest on any delinquent installment shall be added to each subsequent installment until all delinquent installments are paid. The added interest payable on an installment purchase or reimbursement contract or a temporary note, time warrant, or bond under this subsection may be used by a municipality or county to pay qualified costs of improvements or the costs of administration of the district, including the enforcement of assessments or the payment or prepayment of obligations.

(b) An assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the property assessed, superior to all other liens and claims except liens or claims for [~~state,~~] county, special [~~school~~] district, or municipality ad valorem taxes, and is a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien is effective from the date of the ordinance or order levying the assessment until the assessment is paid in full and may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body. On the sale of assessed property, any installment or portion of an assessment that is or will be payable for the property during the year of the sale shall be prorated between the buyer and the seller in the same manner as ad valorem taxes are prorated between a buyer and seller. Delinquent installments of the assessment shall incur interest, penalties, and [~~attorney's~~] fees in the same manner as delinquent ad valorem taxes.

(c) A district assessment on property under this subchapter runs with the land. Any portion of an assessment payment obligation that is not yet due is not eliminated by the foreclosure of an ad valorem tax lien. Any purchaser of property at a foreclosure sale under an ad valorem tax lien takes the property subject to any assessment payment obligation that is not yet due and to the terms of payment under the applicable assessment ordinance or order.

(d) The owner of assessed property may pay at any time on any parcel or lot the entire assessment, with interest that:

(1) has accrued on the assessment; and

(2) will accrue on the assessment until the next scheduled prepayment or redemption date on the installment purchase or reimbursement contract or temporary note, time warrant, revenue bond, special assessment bond, or certificate of obligation that secured the assessment~~[, on any lot or parcel]~~.

Sec. 372.019. SUPPLEMENTAL ASSESSMENTS. After notice and a hearing, the governing body of the municipality or county may make supplemental assessments to correct omissions or mistakes in the assessment relating to the qualified costs ~~[total cost]~~ of the improvement. Notice must be given and the hearing held under this section in the same manner as required by Sections 372.016 and 372.017.

Sec. 372.020. REASSESSMENT. The governing body of the municipality or county may make a reassessment or new assessment of a parcel of land if:

(1) a court ~~[of competent jurisdiction]~~ sets aside an assessment against the parcel;

(2) the governing body determines that the original assessment is excessive; or

(3) on the written advice of counsel, the governing body determines that the original assessment is invalid.

Sec. 372.021. SPECIAL IMPROVEMENT DISTRICT FUND. (a) A municipality or county that intends to create a public improvement district may by ordinance or order establish a special improvement district fund in the municipal or county treasury or in a bank designated by the municipality or county to serve as a depository bank for the district's funds.

(b) The municipality or county annually may levy a tax to support the fund established under this section.

(c) The fund may be used to:

(1) pay the qualified costs of improvements ~~[planning, administration, and an improvement authorized by this subchapter]~~;

(2) prepare preliminary plans, studies, and engineering reports to determine the feasibility of improvements ~~[an improvement]~~; and

(3) if ordered by the governing body of the municipality or county, pay the initial qualified costs of improvements ~~[cost of the improvement]~~ until installment purchase contracts or reimbursement contracts are entered into or temporary notes or~~[ ]~~ time warrants are issued or revenue bonds, special assessment bonds, or certificates of obligation are~~[, or improvement bonds have been]~~ issued and sold.

(d) The fund is not required to be budgeted for expenditure during any year, but the amount of the fund must be stated in the municipality's or county's annual budget. The amount of the fund must be based on an annual service plan that describes the public improvements for the fiscal year.

~~[(e) A grant in aid or contribution made to the municipality or county for the planning and preparation of plans for an improvement authorized under this subchapter may be credited to the special improvement district fund.]~~

Sec. 372.022. SEPARATE FUNDS. (a) A separate public improvement district fund shall be created in the municipal or county treasury or in a designated depository bank as provided by Section 372.021 for each district.

(b) The following revenues shall be deposited to the fund:

(1) special assessments;

(2) money, if any, contributed by the municipality or county to pay qualified costs;

(3) proceeds [~~Proceeds~~] from the sale of revenue bonds, if payable in part from special assessments;

(4) proceeds from the sale of special assessment bonds or certificates of obligation; [~~temporary notes, and time warrants,~~] and

(5) any other sums appropriated to the fund by the governing body of the municipality or county for the district [~~shall be credited to the fund~~].

(c) The fund may be used solely to pay:

(1) qualified costs of improvement;

(2) amounts due on an installment purchase contract or reimbursement amounts owed under a reimbursement contract, temporary note, or time warrant; or

(3) any revenue bonds, special assessment bonds, or certificates of obligation that are payable in whole or in part from special assessments levied under this subchapter [~~incurred in making an improvement~~].

(d) When an improvement is completed and all of the obligations are paid in full, the balance on deposit in the special improvement district fund that was derived from special assessments, if any, [~~of the part of the assessment that is for improvements~~] shall be transferred to a [~~the~~] fund established for the retirement of bonds that are payable in whole or in part from assessments.

Sec. 372.023. PAYMENT OF QUALIFIED COSTS. (a) The qualified costs [~~cost~~] of an improvement made under this subchapter may [~~must~~] be paid by a method or by a combination of methods described by [~~in accordance with~~] this section and Section 372.024.

(b) The [~~A cost payable by the~~] municipality or county [~~as a whole~~] may, on its own or under an installment purchase, reimbursement, or other contract with a third party:

(1) erect, acquire, construct, improve, repair, establish, install, or equip improvements; and

(2) pay all or part of the qualified costs of the improvements [~~be paid~~] from:

(A) general funds or other revenues available for that [~~the~~] purpose;

(B) special assessments; or

(C) the issuance and sale of general obligation bonds, certificates of obligation, revenue bonds, or special assessment bonds [~~other available general funds~~].

(c) The municipality or county may enter into and execute an installment purchase or reimbursement contract with or may deliver a nonnegotiable but transferable temporary note or time warrant to a third party under which:

(1) the third party agrees to:

(A) erect, acquire, construct, improve, repair, establish, install, or equip public improvements; and

(B) dedicate or sell the improvements to the municipality, county, or authorized instrumentality; and

(2) the municipality, county, or authorized instrumentality agrees to pay or reimburse the third party for the qualified costs by paying accumulated amounts due under the installment purchase or reimbursement contract, temporary note, or time warrant from any and all of the sources described by Subsection (b)(2) [A cost payable from a special assessment that has been paid in full shall be paid from that assessment].

(d) Subject to Section 372.018, an installment purchase or reimbursement contract, temporary note, or time warrant may bear interest at a rate and for a period determined by the governing body of the municipality or county [A cost payable from a special assessment that is to be paid in installments and a cost payable by the municipality or county as a whole but not payable from available general funds or other available general improvement funds shall be paid by the issuance and sale of revenue or general obligation bonds].

(e) An installment purchase or reimbursement contract, temporary note, or time warrant that is payable from installments of assessments is subject to prepayment and redemption at any time from the proceeds of prepayment of assessments made by a property owner under Section 372.018(d) [While an improvement is in progress, the governing body of the municipality or county may issue temporary notes or time warrants to pay for the costs of the improvement and, on completion of the improvement, issue revenue or general obligation bonds.

[(f) The cost of more than one improvement may be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

[(g) The costs of any improvement include all costs incurred in connection with the issuance of bonds under Section 372.024 and may be included in the assessments against the property in the improvement district as provided by this subchapter].

Sec. 372.024. GENERAL OBLIGATION BONDS, [AND] REVENUE AND SPECIAL ASSESSMENT BONDS, CERTIFICATES OF OBLIGATION, AND BONDS ISSUED BY AUTHORIZED INSTRUMENTALITY. (a) The governing body of a municipality or county may issue:

(1) general [General] obligation bonds [issued to pay costs under Section 372.023(d) must be issued] under [the provisions of] Subtitles A and C, Title 9, Government Code;

(2) revenue bonds or special assessment bonds in one or more series; and

(3) certificates of obligation under Subchapter C, Chapter 271.

(b) A bond or obligation described by Subsection (a) may be issued to:

(1) pay qualified costs under Section 372.023(b), including the costs of issuing bonds; and

(2) pay or refund obligations executed or issued under Section 372.023(c).

(c) Certificates of obligation may be payable from and secured by installment payments of special assessments levied under this subchapter.

(d) The governing body of the municipality or county or the authorized instrumentality may include any term or provision consistent with this subchapter in a revenue bond or a special assessment bond issued under this section.

(e) The governing body of a municipality or county may incorporate an authorized instrumentality to act on its behalf to issue revenue bonds or special assessment bonds under this section. The governing body may enter into agreements and contracts with the authorized instrumentality to transfer pledged revenues, funds, and special assessments to or for the account of the authorized instrumentality at the times and as required by the terms of the resolution authorizing the issuance of the revenue bonds or special assessment bonds. Any bonds issued by an authorized instrumentality must be approved by the governing body of the municipality or county before issuance and delivery to the purchaser.

(f) To the extent consistent with this subchapter, an authorized instrumentality shall issue revenue bonds or special assessment bonds under:

(1) Chapter 303, if the authorized instrumentality is a public facility corporation; or

(2) Subchapter D, Chapter 431, Transportation Code, if the authorized instrumentality is a local government corporation [~~Revenue bonds issued to pay costs under that subsection may be issued from time to time in one or more series and are to be payable from and secured by liens on all or part of the revenue derived from improvements authorized under this subchapter, including revenue derived from installment payments of special assessments~~].

Sec. 372.0241. SPECIAL ASSESSMENT PUBLIC IMPROVEMENT DISTRICT MANAGEMENT POLICY. (a) The governing body of a municipality or county may develop, adopt, and amend a special assessment public improvement district management policy.

(b) The policy may establish the general requirements and standards for and the preconditions to:

(1) the creation of a public improvement district under this subchapter;

(2) the execution and issuance of installment purchase or reimbursement contracts or temporary notes or time warrants; and

(3) the issuance of any bonds or certificates of obligation payable in whole or in part from special assessments.

(c) If a management policy is adopted, compliance with the terms of the policy, including any amendments to the policy, is required for:

(1) the execution of any installment purchase or reimbursement contracts or temporary notes or time warrants;

(2) the issuance of any revenue bonds or special assessment bonds by the municipality or county or by an authorized instrumentality; and

(3) the issuance of any certificates of obligation by a municipality or county.

Sec. 372.025. TERMS AND CONDITIONS OF BONDS. (a) Revenue bonds and special assessment bonds issued under Section 372.024 must be authorized by:

(1) ordinance, if issued by a municipality;

(2) order, if issued by a county; and

(3) resolution, if issued by an authorized instrumentality.

(b) Revenue bonds and special assessment bonds may be issued to mature serially or in any other manner but must mature not later than 40 years after their date. A provision may be made for the subsequent issuance of additional parity bonds or

subordinate lien bonds secured in whole or in part by any assessments or any other revenues authorized by this subchapter under terms and conditions specified in the ordinance, ~~(or)~~ order, or resolution authorizing the issuance of the bonds.

(c) Revenue bonds, special assessment bonds, and certificates of obligation may be subject to redemption before maturity at the option of the issuer and at the times and in the manner provided by the ordinance, order, or resolution authorizing the issuance. Revenue bonds and certificates of obligation that are secured in part by a pledge of special assessments and all special assessment bonds are subject to mandatory redemption at least semiannually from funds provided by assessed parties, if any, as prepayment of installments of special assessments under Section 372.018(d).

(d) Revenue bonds and special assessment bonds shall be executed in the manner and by the persons required by the ordinance, order, or resolution authorizing the issuance.

(e) Revenue bonds and special assessment ~~[(b) The]~~ bonds ~~[shall be executed and the bonds]~~ and any interest coupons appertaining to the bonds ~~[them]~~ are negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code (Section 1.101 et seq., Business & Commerce Code).

(f) The ordinance, ~~(or)~~ order, or resolution authorizing the issuance of the revenue bonds or special assessment bonds must specify:

- (1) whether the bonds may be registered ~~[are issued registrable]~~ as to principal alone or as to both principal and interest;
- (2) whether the bonds are redeemable before maturity;
- (3) the form, denomination, and manner of issuance;
- (4) the terms, conditions, and other details applying to the bonds including the price, terms, and interest rates on the bonds; and
- (5) the manner of sale of the bonds.

(g) ~~(e)~~ The ordinance, ~~(or)~~ order, or resolution authorizing the issuance of the bonds may specify that the proceeds from the sale of the bonds:

- (1) be used to pay interest on the bonds during and after the period of acquisition or construction of an improvement financed through the sale of the bonds;
- (2) be used for creating a reserve fund for payment of the principal of and interest on the bonds and for creating other funds; ~~[and]~~
- (3) be used for the payment of any other qualified costs as determined by the governing body of the municipality or county or by the authorized instrumentality; and
- (4) may be placed in time deposit or invested, until needed.

Sec. 372.026. PLEDGES. (a) For the payment of ~~[bonds issued under this subchapter and the payment of]~~ principal, interest, and any other amounts payable on or with respect to any bonds issued by a municipality or county under this subchapter ~~[required or permitted in connection with the bonds]~~, the governing body of the municipality or county may pledge:

- (1) all or part of the income from improvements financed under this subchapter, including income received in installment payments from special assessments; and
- (2) if the payment is for the payment of revenue bonds, any other revenue described by Subsection (e) ~~[under Section 372.023].~~

(b) For the payment of principal, interest, and any other amounts payable on or with respect to bonds issued by an authorized instrumentality under this subchapter, the authorized instrumentality may pledge all or part of the assessments or other revenues, if any, that are to be transferred and paid to the authorized instrumentality by the municipality or county under an agreement entered into between the parties under Section 372.024(e).

(c) Pledged income must be ~~[fixed and collected in amounts]~~ sufficient, with other pledged resources, if any, to pay principal, interest, and other expenses related to the bonds, and to the extent required by the ordinance, ~~[or]~~ order, or resolution authorizing the bonds, to pay for the operation, maintenance, and other expenses related to improvements authorized by this subchapter.

(d) Bonds issued by a municipality or county ~~[(e) The bonds]~~ may also be secured by mortgages or deeds of trust on any real property related to the facilities authorized under this subchapter that are owned or are to be acquired by the municipality or county and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances as evidence of the security interest of the holders of the bonds in the related property ~~[indebtedness]~~.

(e) ~~(d)~~ The governing body may pledge to the payment of certificates of obligation issued by the governing body or to the payment of revenue bonds issued by the governing body or by an authorized instrumentality all or part of a grant, donation, revenue, or income received or to be received from the government of the United States or any other public or private source, whether or not it is received pursuant to an agreement or otherwise, including impact fees and incremental ad valorem tax revenues collected by a municipality or by another taxing unit and municipal sales tax collected by a municipality from all or part of a tax increment reinvestment zone created under Chapter 311, Tax Code.

Sec. 372.027. REFUNDING BONDS. (a) Revenue bonds and special assessment bonds issued under this subchapter and certificates of obligation payable solely from special assessments may be refunded or refinanced by the issuance of refunding bonds, under terms or conditions provided ~~[set forth]~~ in the ordinance, order, or resolution authorizing the issuance ~~[ordinances or orders]~~ of the ~~[municipality or county issuing the]~~ bonds. The provisions of this subchapter applying generally to revenue bonds and special assessment bonds, including provisions related to the issuance of those bonds, apply to refunding bonds of like kind authorized by this section. The refunding bonds may be sold and delivered in amounts necessary to pay ~~[for]~~ the principal, interest, and any redemption premium of the bonds ~~[to be refunded]~~, on the date of the maturity of the bonds ~~[bond]~~ or any redemption date of the bonds ~~[bond]~~.

(b) Refunding bonds may be issued for exchange with the bonds they are refunding. The comptroller of public accounts shall register refunding bonds described by this subsection and deliver the bonds to holders of bonds being refunded in accordance with the ordinance, ~~[or]~~ order, or resolution authorizing the issuance of refunding bonds. The exchange may be made in one delivery or several installment deliveries.

(c) General obligation bonds and certificates of obligation issued under this subchapter may be refunded in the manner provided by law.

Sec. 372.028. APPROVAL AND REGISTRATION. (a) Revenue bonds and special assessment bonds issued under this subchapter and a record of the proceedings authorizing their issuance must be submitted to the attorney general for examination. If revenue bonds state that they are secured by a pledge of revenue or rentals from a contract or lease, a copy of the contract or lease and a description of the proceedings authorizing the contract or lease must also be submitted to the attorney general.

(b) If the attorney general determines that the bonds were authorized and the contracts or leases related to the bonds were made in accordance with the law, the attorney general shall approve the bonds and the contract or lease. ~~After [On the approval of]~~ the attorney general approves the bonds and the contract or lease, the comptroller of public accounts shall register the bonds.

(c) Bonds and contracts or leases approved and registered under this section are:

(1) valid and binding obligations for all purposes in accordance with their terms; and

(2) ~~[are]~~ incontestable in any court or other forum.

(d) General obligation bonds and certificates of obligation issued under this subchapter shall be approved and registered as provided by law.

Sec. 372.029. AUTHORIZED INVESTMENTS; SECURITY. (a) Bonds issued under this subchapter are legal and authorized investments for:

(1) banks, trust companies, and savings and loan associations;

(2) all insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) interest funds, sinking funds, and other public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic.

(b) Bonds issued under this subchapter may be security for deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic, to the extent of the market value of the bonds, if accompanied by any appurtenant ~~[unmatured]~~ interest coupons that have not matured.

Sec. 372.030. SUBCHAPTER NOT EXCLUSIVE. This subchapter is an alternative to other methods by which a municipality may finance public improvements under applicable law ~~[by assessing property owners]~~.

SECTION \_\_\_\_\_. Section 61.0572, Education Code, is amended by adding Subsection (f) to read as follows:

(f) Approval of the board is not required for buildings or other facilities financed by a public improvement district under Subchapter A, Chapter 372, Local Government Code.

SECTION \_\_\_\_\_. Section 61.058, Education Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to construction, repair, or rehabilitation of buildings or other facilities financed by a public improvement district under Subchapter A, Chapter 372, Local Government Code.

SECTION \_\_\_\_\_. All governmental acts and proceedings of a governmental body of a municipality or county under Subchapter A, Chapter 372, Local Government Code, as that subchapter existed before the effective date of this Act, to establish a public improvement district, designate improvements, levy assessments, and finance costs of improvements in response to a petition filed with the governing body that conformed to the requirements of Section 372.005, Local Government Code, as that section existed before the effective date of this Act, are validated and confirmed in all respects.

The amendment to **CSHB 3485** 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 Deuell offered the following amendment to the bill:

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

Amend **CSHB 3485** (Senate committee printing) Section 2, Chapter 81, Health and Safety Code, by adding Subchapter J to read as follows:

#### Subchapter J. OUTREACH PROGRAMS TO REDUCE RISK OF CERTAIN COMMUNICABLE DISEASES

Sec. 81.401. This subchapter applies only to a county with a population of 300,000 or more.

Sec. 81.402. DISEASE CONTROL OUTREACH PROGRAMS. (a) A local health authority or an organization that contracts with a county, municipality, hospital district, or other local governmental entity charged with protecting the public health may establish a disease control outreach program that:

(1) assists outreach program participants in obtaining health care and other physical and mental health-related services, including substance abuse treatment services and blood-borne disease testing;

(2) offers education on the transmission and prevention of communicable diseases, including hepatitis C, hepatitis B, and HIV; and

(3) provides for the anonymous exchange of used hypodermic needles and syringes for an equal number of new hypodermic needles and syringes.

(b) A local health authority or other organization operating a disease control outreach program authorized by this subchapter may charge a participant in the outreach program a fee for each hypodermic needle or syringe used in the outreach program not to exceed 150 percent of the actual cost of the hypodermic needle or syringe.

(c) A local health authority or other organization operating a disease control outreach program authorized by this subchapter shall annually provide the department with information on:

(1) the effectiveness of the disease control outreach program, including:

(A) the number of clients served by the program; and

(B) the methods of distribution;

(2) the disease control outreach program's impact on reducing the spread of communicable diseases, such as hepatitis C, hepatitis B, and HIV, including:

(A) the number of syringes collected and the number of syringes disposed of through the program;

(B) the number of referrals for testing for communicable diseases made by the program; and

(C) a list of the facilities to which individuals are referred by the program to receive testing described by Paragraph (B); and

(3) the disease control outreach program's effect on injected drug use in the area served by the local health authority, including:

(A) the number of referrals for substance abuse treatment made by the program;

(B) a list of facilities to which individuals are referred by the program to receive substance abuse treatment; and

(C) other information specified by the department.

Sec. 81.403. DISTRIBUTION OF NEEDLES AND SYRINGES TO OUTREACH PROGRAM. A person licensed as a wholesale drug distributor or device distributor under Chapter 431 may distribute hypodermic needles and syringes to a disease control outreach program authorized by this subchapter.

Sec. 81.404. HANDLING OF NEEDLES AND SYRINGES. (a) The operator of a disease control outreach program shall store hypodermic needles and syringes in a proper and secure manner. Only authorized employees or volunteers of hypodermic needles and syringes. Outreach program clients may obtain hypodermic needles and syringes only from an authorized employee or volunteer.

(b) The operator of a disease control outreach program authorized by this subchapter shall store and dispose of used hypodermic needles and syringes in accordance with department rule.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under Subsections (a) and (b) that:

(1) the person manufactures hypodermic needles or syringes that are delivered or are to be delivered through a disease control outreach program established under Subchapter J, Chapter 81; or

(2) the person:

(A) uses, possesses, or delivers hypodermic needles or syringes that are delivered through a disease control outreach program established under Subchapter J, Chapter 81; and

(B) presents evidence showing that the person is an employee, volunteer, or participant of the disease control program.

(b) The change to Section 481.125, Health and Safety Code, made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(c) 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.

The amendment to **CSHB 3485** 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: Estes, Fraser, Harris, Huffman, Patrick, Shapiro, Williams.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 3485** (Senate committee report) as follows:

(1) Insert the following appropriately numbered SECTIONS to the bill:

SECTION \_\_. (a) Section 372.1011, Local Government Code, is amended to read as follows:

Sec. 372.1011. APPLICABILITY. This subchapter applies only to:

(1) a county with a population of 1.2 million [~~825,000~~] or more, other than a county that:

(A) borders on the Gulf of Mexico or a bay or inlet of the gulf; or

(B) has two municipalities located wholly or partly in its boundaries each having a population of 300,000 or more; or

(2) a county with a population of 70,000 or more that is adjacent to a county described by Subdivision (1) in which a municipality with a population of 35,000 or more is primarily situated and includes all or a part of the extraterritorial jurisdiction of a municipality with a population of 1.1 million or more.

(b) This section takes effect only if the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes does not become law. If the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes becomes law, this section has no effect.

SECTION \_\_. Subchapter C, Chapter 372, Local Government Code, is amended by adding Section 372.1245 to read as follows:

Sec. 372.1245. ANNEXATION OR EXCLUSION OF LAND. (a) A district may annex or exclude land from the district as provided by Subchapter J, Chapter 49, Water Code.

(b) Before a district may adopt an order adding or excluding land, the district must obtain the consent of:

(1) the county that created the district by a resolution of the county commissioners court; and

(2) a municipality in which the district is located, or in whose extraterritorial jurisdiction the district is located, by a resolution adopted by the municipality's governing body.

SECTION \_\_. Subsection (c), Section 372.127, Local Government Code, is amended to read as follows:

(c) A county must adopt an order providing whether a district has the authority to impose a hotel occupancy tax, sales and use tax, or ad valorem tax, and must provide the maximum rate at which the district may impose the tax. [~~A tax rate~~]

~~approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements may not be reduced until the obligations of those instruments have been satisfied.]~~

SECTION \_\_. (a) Section 382.002, Local Government Code, is amended to read as follows:

Sec. 382.002. APPLICABILITY. This chapter applies only to:

(1) a county with a population of 1.2 million [~~825,000~~] or more, other than a county that:

(A) borders on the Gulf of Mexico or a bay or inlet of the gulf; or

(B) has two municipalities located wholly or partly in its boundaries each having a population of 300,000 or more; or

(2) a county with a population of 70,000 or more that is adjacent to a county described by Subdivision (1) in which a municipality with a population of 35,000 or more is primarily situated and includes all or a part of the extraterritorial jurisdiction of a municipality with a population of 1.1 million or more.

(b) This section takes effect only if the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes becomes law. If the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes does not become law, this section has no effect.

SECTION \_\_. Subchapter C, Chapter 382, Local Government Code, is amended by adding Section 382.113 to read as follows:

Sec. 382.113. ANNEXATION OR EXCLUSION OF LAND. (a) A district may annex or exclude land from the district as provided by Subchapter J, Chapter 49, Water Code.

(b) Before a district may adopt an order adding or excluding land, the district must obtain the consent of:

(1) the county that created the district by a resolution of the county commissioners court; and

(2) a municipality in which the district is located, or in whose extraterritorial jurisdiction the district is located, by a resolution adopted by the municipality's governing body.

SECTION \_\_. Subsection (c), Section 382.153, Local Government Code, is amended to read as follows:

(c) A county must adopt an order providing whether a district has the authority to impose a hotel occupancy tax, sales and use tax, or ad valorem tax, and must provide the maximum rate at which the district may impose the tax. [~~A tax rate approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements may not be reduced until the obligations of those instruments have been satisfied.]~~

SECTION \_\_. (a) The legislature validates and confirms all governmental acts and proceedings before the effective date of this Act of a district created under Subchapter C, Chapter 372, Local Government Code, as that chapter existed before the effective date of this Act, including acts of the district's board of directors.

(b) Subsection (a) of this section does not apply to a matter that on the effective date of this Act:

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

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

SECTION \_\_. (a) The Sections of this Act amending Chapter 372, Local Government Code, take effect only if the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes does not become law. If the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes becomes law, the Sections of this Act amending Chapter 372, Local Government Code, have no effect.

(b) The Sections of this Act amending Chapter 382, Local Government Code, take effect only if the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes becomes law. If the Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes does not become law, the Sections of this Act amending Chapter 382, Local Government Code, have no effect.

(2) Renumber SECTIONS of the bill appropriately.

The amendment to **CSHB 3485** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Duncan offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSHB 3485** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. Subchapter B, Chapter 281, Health and Safety Code, is amended by adding Section 281.0282 to read as follows:

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) The board of the Dallas County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

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

(d) The authority granted to the board of the Dallas County Hospital District under Subsection (a) to employ physicians shall apply only as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The Dallas County Hospital District shall establish a committee consisting of at least five actively practicing physicians who provide care in the district. The committee shall approve existing policies or adopt new policies, if no policies exist, to ensure that a physician who is employed by the district is exercising the physician's independent medical judgment in providing care to patients.

(f) The chair of the committee must be a member of the executive committee of the Dallas County Hospital District's medical staff.

(g) The policies adopted or approved by the committee shall include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(h) Each member of a committee shall provide biennially to the chief medical officer of the Dallas County Hospital District a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all committee matters, including matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the committee member's best efforts to ensure compliance with the Dallas County Hospital District's policies that are adopted or established by the committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) The committee shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

(j) For all matters relating to the practice of medicine, each physician employed by the board shall ultimately report to the chief medical officer of the Dallas County Hospital District.

SECTION \_\_\_\_\_. Chapter 311, Health and Safety Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital located in a county with a population of 50,000 or less and operated by a governmental entity.

Sec. 311.062. EMPLOYMENT OF PHYSICIAN PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital:

(1) is certified by the Texas Medical Board under Section 162.001(d), Occupations Code;

(2) satisfies the requirements of Subchapter A, Chapter 162, Occupations Code, including Texas Medical Board rules; and

(3) satisfies the requirements of this subchapter.

(b) A hospital subject to this subchapter may continue to employ any physicians employed by the hospital on or before the date of release of a federal decennial census that shows the county's population exceeds 50,000. The hospital may not employ a new physician after that date.

(c) The requirements of this subchapter and Subchapter A, Chapter 162, Occupations Code, may not be voided or waived by contract.

Sec. 311.063. HOSPITAL POLICIES. (a) A hospital shall adopt, maintain, and enforce policies to ensure that a physician employed under this subchapter whose professional income is retained under Section 311.062 exercises independent medical judgment when providing care to patients at the hospital.

(b) The policies adopted under this section must include policies relating to:

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

(c) The policies adopted under this section, including any amendments to the policies, must be approved by the hospital governing board after input from the medical staff as appropriate.

(d) The policies adopted under this section must include the implementation of a complaint mechanism for processing and resolving complaints regarding interference or attempted interference with the physician's independent medical judgment. The policies must address the manner in which the public can access board complaint procedures.

(e) The policies of the hospital must be drafted and interpreted in a manner that reserves to physicians, including physicians employed and physicians not employed by the hospital, the sole authority to engage in the practice of medicine.

Sec. 311.064. CREDENTIALING AND PRIVILEGES. (a) A physician employed by a hospital under this subchapter is subject to the same standards and procedures regarding credentialing, peer review, quality of care, and privileges as a physician not employed by the hospital.

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

Sec. 311.065. OTHER HOSPITAL-PHYSICIAN RELATIONSHIPS. This subchapter 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.

Sec. 311.066. MEDICAL STAFF BYLAWS. The medical staff bylaws of a hospital may not discriminate against or favor a physician based solely on the physician's employment status with the hospital, including emergency call or charity care obligations.

Sec. 311.067. FAIR PROCESS; PEER REVIEW. (a) Termination of a physician's employment by a hospital is subject to a fair review process.

(b) A hospital that employs physicians shall provide peer review and quality assurance through a multi-hospital peer review agreement, an external independent peer review organization, or an internal peer review process approved by the hospital governing board with appropriate input from the medical staff.

Sec. 311.068. REFERRAL OF PATIENTS. (a) In this section, "referral" means referral for admissions, diagnostic tests and procedures, surgeries, or other health care services.

(b) An employment agreement entered into between a physician and a hospital under this subchapter:

(1) must state that the hospital may not set goals regarding referrals; and

(2) may not set, as a condition of employment, the volume or number of referrals that must be made.

Sec. 311.069. NONRETIATION REQUIREMENTS. (a) A hospital may not terminate, retaliate against, or otherwise penalize a person who reports in good faith to the hospital or the Texas Medical Board a violation or attempted violation of this subchapter, Subchapter A, Chapter 162, Occupations Code, or Texas Medical Board rules.

(b) A hospital may not prohibit, restrict, or discourage a physician from communicating with the hospital or advocating for a patient regarding medically appropriate health care.

(c) A physician who makes a report under this section:

(1) is immune from civil liability for a report made in good faith; and

(2) may not be disciplined by the Texas Medical Board for any corporate practice of medicine violation related to the reported action, event, or policy.

Sec. 311.070. LIABILITY. (a) In this section:

(1) "Governmental unit" has the meaning assigned by Section 101.001, Civil Practice and Remedies Code.

(2) "Governmental hospital" means a hospital that is owned or operated by a governmental unit.

(3) "Health care liability claim" has the meaning assigned by Section 74.001, Civil Practice and Remedies Code.

(b) Chapters 101 and 108, Civil Practice and Remedies Code, do not apply in an action in which final judgment is rendered in a health care liability claim against a physician employed under this subchapter by a governmental hospital.

(c) A physician's civil liability is limited to a maximum amount of \$250,000 for each single occurrence of bodily injury or death in an action in which final judgment is rendered in a health care liability claim against a physician employed under this subchapter by a governmental hospital.

(d) A governmental hospital shall maintain professional liability insurance or a plan of self-insurance covering each physician employed by the hospital in the amount of \$250,000 for each single occurrence of bodily injury or death.

SECTION \_\_\_\_ . Section 162.001, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The board by rule shall certify a health organization that:

(1) applies for certification on a form approved by the board; ~~and~~  
(2) presents proof satisfactory to the board that the organization meets the requirements of Subsection (b), ~~(c)~~, or (d); and

(3) states that the health organization has consulted with the organization's medical staff before filing an application for certification under Subsection (d), if appropriate.

(d) The board shall certify a health organization to employ physicians licensed by the board if the organization is in compliance with Subchapter E, Chapter 311, Health and Safety Code, and this subchapter, including board rules.

SECTION \_\_\_\_\_. Subchapter A, Chapter 162, Occupations Code, is amended by adding Sections 162.004-162.007 to read as follows:

Sec. 162.004. EMPLOYER AND EMPLOYEE REQUIREMENTS. The following requirements apply to an organization certified under Section 162.001(d) that employs physicians:

(1) the organization shall ensure that each physician retains independent medical judgment in providing care to patients at the organization and may not be penalized for reasonably advocating for patient care;

(2) the organization shall provide a certain portion of medical services free of charge, or at a reduced fee commensurate with a patient's ability to pay;

(3) a physician employed by the organization shall participate in the provision of services under Subdivision (2);

(4) an organization may not include or enforce a noncompete clause in a physician employment contract or condition privileges on the continuation or termination of an employment contract; and

(5) a physician who has privileges at the organization and is employed by the hospital and a physician who is not employed by the hospital must be given equal consideration and treatment in the creation and execution of all medical staff bylaw provisions regardless of the physician's employer.

Sec. 162.005. FEES; ENFORCEMENT. (a) The board may charge a reasonable fee as necessary for the certification of an organization under Section 162.001(d) and for the investigation, review, and enforcement of the organization's compliance with this subchapter and Subchapter E, Chapter 311, Health and Safety Code.

(b) The board may adopt and impose fines and administrative remedies, including the revocation of certification under Section 162.003, for a violation of this subchapter or Subchapter E, Chapter 311, Health and Safety Code.

Sec. 162.006. BIENNIAL COMPLIANCE STATEMENT. When an organization applies for certification, and every two years after that date, an organization seeking certification under Section 162.001(d) shall provide to the board a compliance statement signed by the organization's chief executive officer attesting that the organization is in compliance with all requirements for certification and continued certification, including the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code.

Sec. 162.007. DOCUMENTS IN SUPPORT OF CERTIFICATION AND BIENNIAL COMPLIANCE STATEMENTS. (a) An organization shall submit to the board at the time application for certification under Section 162.001(d) is made a copy

of the hospital's policies, bylaws, and medical staff bylaws that demonstrate compliance with the requirements of this subchapter and Subchapter E, Chapter 311, Health and Safety Code.

(b) An organization certified under Section 162.001(d) shall submit to the board as part of the organization's biennial compliance statement copies of any changes or amendments to the hospital's bylaws, policies, and medical staff bylaws that were submitted to the board after the organization's initial approved application for certification.

The amendment to **CSHB 3485** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 3485** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 49.01, Code of Criminal Procedure, is amended to read as follows:

Art. 49.01. DEFINITIONS. In this chapter [~~article~~]:

(1) "Autopsy" means a post mortem examination of the body of a person, including an external examination of the body [~~X-rays~~] and an examination of the internal organs [~~and structures after dissection~~], to determine the cause and manner of death or the nature of any pathological changes that may have contributed to the death or to obtain information or material for evidentiary or identification purposes. The forensic pathologist or physician performing the autopsy may limit the individuals in attendance at the examination and may vary the extent of the examination. The examination may include:

(A) radiographs;

(B) a microscopic examination;

(C) retention of an organ part or whole organ;

(D) an anthropologic examination;

(E) a dental examination;

(F) any other procedure considered necessary by the examining forensic pathologist or physician; or

(G) at the discretion of the medical examiner, the medical examiner's designee, or the justice of the peace, as appropriate, an in-person examination of the scene of death or injury or an examination of the scene through reports or photographs related to the injury or death.

(1-a) "Forensic pathologist" means a physician who is board certified in anatomic and forensic pathology by the American Board of Pathology.

(2) "Inquest" means an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission. The term includes each level of investigation, from rudimentary information gathering to a complete autopsy examination and formal hearing.

(3) "Inquest hearing" means a formal court hearing held to determine whether the death of a person was caused by an unlawful act or omission and, if the death was caused by an unlawful act or omission, to obtain evidence to form the basis of a criminal prosecution.

(4) "Institution" means any place where health care services are rendered, including a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, foster-care facility, and retirement home.

(5) "Physician" means a practicing doctor of medicine or doctor of osteopathic medicine who is licensed by the Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~ under Subtitle B, Title 3, Occupations Code.

SECTION \_\_\_\_\_. Section 1, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. OFFICE AUTHORIZED. Subject to the provisions of this Article ~~[Act]~~, the Commissioners Court of any county having a population of more than one million ~~[and not having a reputable medical school as defined in Articles 4501 and 4503, Revised Civil Statutes of Texas.]~~ shall establish and maintain the office of medical examiner, and the Commissioners Court of any county may establish and provide for the maintenance of the office of medical examiner. Population shall be according to the last preceding federal census.

SECTION \_\_\_\_\_. Subsection (b), Section 1-a, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

(b) There may be only one chief medical examiner in a medical examiners district, although the chief medical examiner ~~[he]~~ may employ, within the district, necessary staff personnel, including deputy medical examiners. When a county becomes a part of a medical examiners district, the effect is the same within the county as if the office of medical examiner had been established in that county alone. A ~~[The]~~ district medical examiner has all the powers and duties within the district that a medical examiner who serves in a single county has within that county.

SECTION \_\_\_\_\_. Section 2, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 2. APPOINTMENTS AND QUALIFICATIONS. (a) The commissioners court shall appoint the chief medical examiner, who serves ~~[shall serve]~~ at the pleasure of the commissioners court. The chief medical examiner must be:

(1) board certified in anatomic and forensic pathology by the American Board of Pathology; and

(2) ~~[No person shall be appointed medical examiner unless he is]~~ a physician licensed by the Texas ~~[State Board of]~~ Medical Board ~~[Examiners. To the greatest extent possible, the medical examiner shall be appointed from persons having training and experience in pathology, toxicology, histology and other medico legal sciences].~~

(b) The chief medical examiner shall devote the ~~[so much of his]~~ time and energy ~~[as is]~~ necessary to perform ~~[in the performance of]~~ the duties conferred by this Article.

SECTION \_\_\_\_\_. Section 3, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 3. ASSISTANTS. (a) The chief medical examiner may, subject to the approval of the commissioners court, employ the ~~[such]~~ deputy medical examiners, medical, dental, or anthropologic consultants, scientific experts, trained technicians, officers, and employees ~~[as may be]~~ necessary to properly perform ~~[the proper performance of]~~ the duties imposed by this Article on ~~[upon]~~ the chief medical examiner.

(b) A deputy medical examiner must:

- (1) be board certified in anatomic and forensic pathology; or
- (2) have satisfactorily completed accredited residency and fellowship training programs in anatomic and forensic pathology and, not later than the third anniversary of the date the training programs were completed, obtain board certification in anatomic and forensic pathology.

SECTION \_\_\_\_\_. Section 4, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. SALARIES. The commissioners court shall establish and pay the salaries and compensations of the chief medical examiner and the chief medical examiner's ~~[his]~~ staff.

SECTION \_\_\_\_\_. Section 6, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 6. DEATH INVESTIGATIONS. (a) A chief ~~[Any]~~ medical examiner, or the chief medical examiner's ~~[his]~~ duly authorized deputy medical examiner, shall ~~[be authorized, and it shall be his duty, to]~~ hold inquests with or without a jury in the ~~[within his]~~ county in which the office is established~~;~~ in the following cases:

(1) ~~[1-]~~ When a person dies ~~[shall die]~~ within twenty-four hours after the person is:

- (A) admitted ~~[admission]~~ to a hospital or institution;
- (B) confined ~~[or]~~ in prison or in jail; or
- (C) placed in law enforcement custody;

(2) ~~[2-]~~ When any person:

- (A) is killed;
- (B) ~~[or]~~ from any cause dies an unnatural death, except under sentence

of the law;

- (C) ~~[or]~~ dies in the absence of one or more good witnesses; or
- (D) dies as a result of medical treatment or therapy;

(3) ~~[3-]~~ When the body or a body part of a person is found and~~;~~ the cause or circumstances of death are unknown~~,-and-~~

- ~~[(A) the person is identified; or~~
- ~~[(B) the person is unidentified];~~

(4) ~~[4-]~~ When the circumstances of the death of any person ~~[are such as to]~~ lead to suspicion that the person died ~~[he came to his death]~~ by unlawful means;

(5) ~~[5-]~~ When any person commits suicide, or the circumstances of the person's ~~[his]~~ death ~~[are such as to]~~ lead to suspicion that the person ~~[he]~~ committed suicide;

(6) ~~[6-]~~ When a person dies who has not ~~[without having]~~ been attended during the preceding year by a duly licensed and practicing physician~~[-, and the local health officer or registrar required to report the cause of death under Section 193.005, Health and Safety Code, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the medical examiner of the county in which the death occurred and request an inquest];~~

(7) ~~[7-]~~ When the person is a child ~~[who is]~~ younger than six years of age and the death is reported under Chapter 264, Family Code; ~~[and]~~

(8) When an unidentified person dies; and

(9) ~~[8-]~~ When a person dies who has been attended immediately preceding the person's ~~[his]~~ death by a duly licensed and practicing physician or physicians~~[-]~~ and the ~~[such]~~ physician or physicians ~~[are not certain as to the cause of death and]~~ are unable to certify to a reasonable degree of medical probability ~~[with certainty]~~ the cause of death as required by Section 193.005 ~~[193.004]~~, Health and Safety Code.

(a-1) If a physician is unable to certify the cause of death to a reasonable degree of medical probability, ~~[In case of such uncertainty]~~ the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased ~~[shall have]~~ died, shall ~~[so]~~ report the inability to the medical examiner of the county in which the death occurred~~[-]~~ and request an inquest.

(a-2) If a medical examiner determines after performing an inquest that the death is due to natural causes and the deceased person was attended by a physician at the time of death or during the preceding year, the medical examiner may waive the medical examiner's authority to further investigate the case. If the medical examiner waives the authority to further investigate the case, the attending physician shall certify the cause of death.

(b) The inquests authorized and required by this Article shall be held by the chief medical examiner of the county in which the death occurred.

(c) In making such investigations and holding such inquests, the chief medical examiner or an authorized deputy medical examiner may administer oaths and take affidavits. In the absence of next of kin or legal representatives of the deceased, the chief medical examiner or authorized deputy medical examiner shall take charge of the body and all property found with it.

(d) A medical examiner may subpoena medical records, law enforcement records, or other types of records required to perform the duties imposed under this section.

SECTION \_\_\_\_\_. Section 6a, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 6a. ORGAN TRANSPLANT DONORS; NOTICE; INQUESTS.

(a) When death occurs to an individual designated a prospective organ donor for transplantation by a licensed physician under circumstances requiring the chief medical examiner of the county in which death occurred, or the chief medical examiner's authorized deputy medical examiner, to hold an inquest, the chief medical

examiner, or a member of the chief medical examiner's ~~[his]~~ staff, shall ~~[will]~~ be ~~[so]~~ notified by the administrative head of the facility in which the prospective donor is located ~~[transplantation is to be performed]~~.

(b) When notified pursuant to Subsection (a) of this Section, the chief medical examiner or the chief medical examiner's deputy medical examiner shall perform an inquest on the deceased prospective organ donor.

(c) Subject to the procedures and requirements established by Section 693.002, Health and Safety Code, a medical examiner may:

(1) determine before or after the medical examiner examines the body of the deceased that the release of organs or tissues for transplant purposes will likely hinder the determination of the cause or manner of death or compromise an evidentiary aspect of the examination; and

(2) based on the determination, prohibit or limit the extent of the organ or tissue removal.

SECTION \_\_\_\_\_. Subsection (b), Section 7, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

(b) A person investigating the ~~[a]~~ death of an unidentified person ~~[described by Subdivision 3(D) of Section 6(a)]~~ shall report the death to the missing children and missing persons information clearinghouse of the Department of Public Safety and the national crime information center not later than the 10th working day after the date the investigation began.

SECTION \_\_\_\_\_. Section 8, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 8. REMOVAL OF BODIES. When any death under circumstances set out in Section 6 of this Article occurs ~~[shall have occurred]~~, the body shall not be disturbed or removed from the position in which it is found by any person without authorization from the chief medical examiner or an authorized deputy medical examiner, except for the purpose of preserving the ~~[such]~~ body from loss or destruction or maintaining the flow of traffic on a highway, railroad, or airport.

SECTION \_\_\_\_\_. Section 9, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 9. AUTOPSY. (a) If the cause of death is ~~[shall be]~~ determined beyond a reasonable doubt as a result of the investigation, the medical examiner shall prepare ~~[file]~~ a report on the investigation ~~[thereof]~~ setting forth specifically the cause of death and file the report with the district attorney or criminal district attorney, or in a county in which there is no district attorney or criminal district attorney with the county attorney, of the county in which the death occurred.

(b) If in the opinion of the medical examiner an autopsy is necessary to determine the cause or manner of death, to better determine any pathological or injurious process present, or to obtain evidence for a potential legal proceeding or for identification purposes, or if the autopsy ~~[such]~~ is requested by the district attorney or criminal district attorney, or county attorney where there is no district attorney or criminal district attorney, the autopsy shall be ~~[immediately]~~ performed by the chief medical examiner or a duly authorized deputy medical examiner. In ~~[those]~~ cases where a complete autopsy is considered ~~[deemed]~~ unnecessary by the medical examiner to ascertain the cause of death, the medical examiner may perform a limited

autopsy or external inspection of the body that may include ~~[involving the]~~ taking ~~[of]~~ blood samples or any other samples of body fluids, tissues, or organs ~~[-in order]~~ to ascertain the cause of death or whether a crime has been committed.

(c) If ~~[in]~~ the identity ~~[case]~~ of a body of a human being ~~[whose identity]~~ is unknown, the medical examiner may authorize the ~~[such]~~ investigative and laboratory tests and processes ~~[as are]~~ required to determine the [its] identity and [as well as] the cause of death.

(d) The extent of an autopsy is solely at the discretion of the medical examiner.

(e) A medical examiner is not required to notify or seek any approval from a deceased person's next of kin to perform an autopsy or any other type of examination related to an autopsy.

~~(f) On [in performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available. Upon]~~ completion of the autopsy, the medical examiner shall prepare [file] a report setting forth the findings in detail and file the report with the office of the district attorney or criminal district attorney of the county, or if there is no district attorney or criminal district attorney, with the county attorney of the county.

(g) [(b)] A medical examination on an unidentified person shall include the following information to enable a timely and accurate identification of the person:

- (1) all available fingerprints and palm prints;
- (2) dental charts and radiographs (X-rays) of the person's teeth;
- (3) ~~[frontal and lateral]~~ facial photographs with scale indicated;
- (4) notation ~~[and photographs, with scale indicated,]~~ of a significant scar, mark, tattoo, or item of clothing or other personal effect found with or near the body;
- (5) notation of any identified antemortem medical conditions; and
- (6) notation of observations pertinent to the estimation of time of death[; and

~~[(7) precise documentation of the location of burial of the remains].~~

(h) [(e)] A medical examination on an unidentified person may include the following information to enable a timely and accurate identification of the person:

- (1) full body radiographs (X-rays); and
- (2) ~~[hair]~~ specimens from the body for DNA characterization and comparison [with roots].

(i) A medical examiner performing an autopsy of a deceased person may retain an organ or part of an organ if the medical examiner determines that retaining the organ or organ part is necessary for further examination and testing. After completing the examination or testing on the organ or organ part, the medical examiner shall:

- (1) retain the organ or organ part as required by law or by published professional or accreditation standards;
- (2) dispose of the organ or organ part as a hazardous biological specimen; or
- (3) release the organ or organ part to the funeral establishment or crematory under Subsection (m)(2).

(j) A medical examiner may not be required to perform an autopsy on a person whose death resulted from a highly infectious disease or a chemical or radiological agent that presents a hazard to the medical examiner, the medical examiner's staff, or the public.

(k) Except as provided by Subsection (l), a medical examiner may not perform an autopsy on a deceased person if the medical examiner receives before the performance of the autopsy a notarized affidavit signed by the person before the person's death that states the person's objection for religious reasons to the performance of an autopsy on the person after the person's death.

(l) A medical examiner may perform an autopsy on a deceased person following receipt of a notarized affidavit under Subsection (k) if the chief medical examiner determines a compelling public necessity exists to perform the autopsy on the deceased person despite the objection.

(m) If the medical examiner performs the autopsy despite receipt of a notarized affidavit under Subsection (k), the medical examiner shall:

(1) use the least invasive means possible in the performance of the autopsy;  
and

(2) notwithstanding Subsection (i), release to the funeral establishment or crematory any organ or organ part retained by the medical examiner, except as required by law or by published professional or accreditation standards.

(n) In this section, "compelling public necessity" means:

(1) a criminal homicide investigation in which the deceased person is the victim;

(2) an immediate and substantial threat to public health;

(3) the death of a child under 12 years of age for which the cause of death is not apparent and neglect or a threat to public health was suspected;

(4) the cause or manner of death of the deceased person is not apparent after a diligent investigation by the medical examiner; or

(5) the autopsy is required by law.

SECTION \_\_\_\_\_. Section 10, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 10. DISINTERMENTS AND CREMATIONS. (a) The [When a body upon which an inquest ought to have been held has been interred, the] medical examiner may cause a body that has been interred and on which an inquest should have been held [it] to be disinterred for the purpose of holding the [such] inquest.

(b) A [Before any] body on[, upon] which an inquest is authorized by [the provisions of] this Article may not[, can] be [lawfully] cremated unless[;] an examination is [autopsy shall be] performed on the body [thereon] as provided in this Article[;] or a certificate that the examination [no autopsy] was not necessary is [shall be] furnished by the medical examiner.

(c) Before a [any] dead body may [can] be [lawfully] cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the medical examiner of the county in which the death occurred stating [showing] that:

(1) an examination [autopsy] was performed on the [said] body; or

(2) an examination on the body [that no autopsy thereon] was not necessary.

(d) ~~The [It shall be the duty of the]~~ medical examiner shall ~~[to]~~ determine whether or not, from all the circumstances surrounding the death, an examination [autopsy] is necessary prior to issuing a certificate under ~~[the provisions of]~~ this section.

(e) The owner or operator of a crematory requesting authorization to cremate a body shall provide the medical examiner with a legible and properly completed death certificate.

(f) A medical examiner is not required to perform an examination [No autopsy shall be required by the medical examiner] as a prerequisite to cremation if the [in case] death was [is] caused by [the] pestilential or highly infectious diseases [of Asiatic cholera, bubonic plague, typhus fever, or smallpox].

(g) All certificates furnished to the owner or operator of a crematory by any medical examiner, under the terms of this Article, shall be preserved by the [such] owner or operator until the second anniversary of [such crematory for a period of two years from] the date of the body's cremation [of said body].

(h) A medical examiner is not required to perform an autopsy on the body of a deceased person whose death was caused by a communicable disease during a public health disaster.

SECTION \_\_\_\_\_. Section 10a, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 10a. WAITING PERIOD BETWEEN DEATH AND CREMATION.

(a) The body of a deceased person shall not be cremated within 48 hours after the time of death as indicated on the regular death certificate, unless:

(1) the death certificate indicates death was caused by [the] pestilential or highly infectious diseases; [of Asiatic cholera, bubonic plague, typhus fever, or smallpox,] or

(2) [unless] the time requirement is waived in writing by the county medical examiner or, in counties without [not having] a county medical examiner, a justice of the peace.

(b) In a public health disaster, the commissioner of state [public] health services may designate other communicable diseases for which cremation within 48 hours of the time of death is authorized.

SECTION \_\_\_\_\_. Section 11, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 11. RECORDS. (a) The medical examiner shall:

(1) keep full and complete records properly indexed that include[-, giving] the name if known of every person whose death is investigated, the place where the body was found, the date, and the cause and manner of death;[-] and

(2) [shall] issue a death certificate.

(b) The full report and detailed findings of the autopsy, if any, shall be a part of the record.

(c) [Copies of all records shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable.] The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken

during a medical examiner investigation [~~an autopsy~~] is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

(1) under a subpoena or authority of other law; or

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

SECTION \_\_\_\_\_. Section 12, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

Sec. 12. TRANSFER OF DUTIES OF JUSTICE OF PEACE. When the commissioners court of any county establishes [~~shall establish~~] the office of medical examiner, all powers and duties of justices of the peace in the [~~such~~] county relating to the investigation of deaths and inquests [~~shall~~] vest in the office of the medical examiner. Any subsequent General Law pertaining to the duties of justices of the peace in death investigations and inquests [~~shall~~] apply to the medical examiner in the county [~~such counties as~~] to the extent not inconsistent with this Article, and all laws or parts of laws otherwise in conflict with this Article [~~herewith~~] are [~~hereby~~] declared [~~to be~~] inapplicable to this Article.

SECTION \_\_\_\_\_. Subsection (a), Section 14, Article 49.25, Code of Criminal Procedure, is amended to read as follows:

(a) A person commits an offense if the person knowingly violates this article or knowingly provides false information to a medical examiner in the performance by the medical examiner of an investigation under this article.

SECTION \_\_\_\_\_. Section 13, Article 49.25, Code of Criminal Procedure, is repealed.

SECTION \_\_\_\_\_. Article 49.25, Code of Criminal Procedure, is amended by adding Sections 13A and 13B to read as follows:

Sec. 13A. FEES. A medical examiner may charge reasonable fees for services provided by the medical examiner's office under this Article, including cremation approvals, court testimonies, consultations, and depositions.

Sec. 13B. EDUCATION AND RESEARCH. (a) A medical examiner may use for educational or teaching purposes photographs taken during a death investigation.

(b) A medical examiner's office may engage in educational and research activities that do not interfere with the performance of the duties imposed on the office under this Article.

SECTION \_\_\_\_\_. Notwithstanding Sections 2 and 3, Article 49.25, Code of Criminal Procedure, as amended by this Act, a person serving as the chief medical examiner or a deputy medical examiner for a medical examiners district or county in this state on the effective date of this Act is not required to be board certified in anatomic and forensic pathology by the American Board of Pathology to continue to hold that position of chief medical examiner or deputy medical examiner for that district or county.

The amendment to **CSHB 3485** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6 except as follows:

Nays: Williams.

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

**CSHB 3485** as amended was passed to third reading by the following vote: Yeas 21, Nays 10.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Hinojosa, Lucio, Nelson, Nichols, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Estes, Fraser, Harris, Hegar, Huffman, Jackson, Ogden, Patrick, Shapiro, Williams.

### VOTES RECONSIDERED

On motion of Senator West and by unanimous consent, the vote by which **CSHB 3485** was passed to third reading was reconsidered.

Question — Shall **CSHB 3485** be passed to third reading?

On motion of Senator Deuell and by unanimous consent, the vote by which Floor Amendment No. 3 was adopted was reconsidered.

Question — Shall Floor Amendment No. 3 to **CSHB 3485** be adopted?

Senator Deuell withdrew Floor Amendment No. 3.

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

**CSHB 3485** as amended was again passed to third reading by the following vote: Yeas 27, Nays 4.

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

Nays: Fraser, Huffman, Ogden, Patrick.

### COMMITTEE SUBSTITUTE HOUSE BILL 3485 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 3485** 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, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Huffman, Ogden, Patrick.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

**HOUSE BILL 148 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 148** at this time on its second reading:

**HB 148**, Relating to the prosecution of the offense of barratry and solicitation of professional employment.

The bill was read second time.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 148** (House engrossment) as follows:

(1) In SECTION 2 of the bill, strike "The change in law made by this Act applies" and substitute "Section 38.12(d), Penal Code, as amended by this Act,".

(2) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.067 to read as follows:

Sec. 82.067. CLIENT CAUSE OF ACTION. (a) A client may bring a civil action against any person who knowingly engages in conduct prohibited by:

(1) the following sections of the Penal Code:

(A) Section 38.12 (Barratry and Solicitation of Professional Employment);

(B) Section 38.122 (Falsely Holding Oneself Out as a Lawyer); or

(C) Section 38.123 (Unauthorized Practice of Law); or

(2) Rule 8.04 (a)(9), Texas Disciplinary Rules of Professional Conduct.

(b) A client who prevails in an action under this section may recover the following as damages:

(1) all amounts paid to or received by the person as a result of the conduct on which the cause of action is based;

(2) at the discretion of the fact-finder and as a penalty based on the severity of the wrongful conduct, up to an additional two times the amounts paid to or received by the person as a result of such conduct;

(3) reasonable and necessary attorney's fees and court costs incurred by the client in the action; and

(4) prejudgment and post-judgment interest as provided by law.

(c) The standard of proof for proving a cause of action under this section shall be by a preponderance of the evidence.

(d) For the purposes of this section, a person acts "knowingly" when the person has actual awareness of the nature of the person's conduct or that the circumstances exist, or has actual awareness that the person's conduct is reasonably certain to cause the result. For the purposes of this section, "actual awareness" may be inferred where objective manifestations indicate that a person acted with actual awareness.

SECTION \_\_\_\_\_. Section 82.067, Government Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment to **HB 148** was read and was adopted by a viva voce vote.

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

Senator Davis offered the following amendment to the bill:

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

Amend **HB 148** (Senate committee printing) as follows:

(1) On page 2, line 1, strike "or any" and substitute " ~~or~~ any".

(2) On page 2, line 3, between "this state" and the semicolon, insert " , or any agent for or representative of an insurance company authorized to engage in the business of automobile or other property and casualty insurance in this state who discusses the settlement or evaluation of a casualty claim or the casualty portion of a claim".

The amendment to **HB 148** was read.

Senator Davis withdrew Floor Amendment No. 1.

Senator Davis offered the following amendment to the bill:

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

Amend **HB 148** (Senate committee printing) by inserting the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 42, Civil Practice and Remedies Code, is amended by adding Section 42.0031 to read as follows:

Sec. 42.0031. ENFORCEABILITY OF CERTAIN SETTLEMENT AGREEMENTS. (a) Notwithstanding Section 42.002(c), this section applies to any agreement to settle a claim that arises from bodily injury or death.

(b) A settlement agreement described by Subsection (a) may be voided by the injured party until the expiration of the seventh day after the date the agreement is entered into unless the claimant is represented by counsel at the time the claimant enters into the agreement. An injured party who is not represented by counsel must be informed of the party's option to void the agreement at the time of settlement.

The amendment to **HB 148** was read.

Senator Davis withdrew Floor Amendment No. 2.

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

**HB 148** 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 148 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 148** be placed on its third reading and final passage.

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

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

**GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate fourth- and fifth-grade students from Rosa Parks Elementary School, accompanied by their teachers.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3228 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 3228** at this time on its second reading:

**CSHB 3228**, Relating to the offense of prohibited substances and items in correctional facilities.

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 3228 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 3228** 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 1357 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 1357** at this time on its second reading:

**CSHB 1357**, Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 1357** as follows:

(1) Amend Section 254.051 by adding a new subsection (f):

(f) A facility that is not in continuous operation 24 hours per day and 7 days per week cannot be issued a license with a term that extends beyond August 31, 2013.

(2) Amend Section 254.053 by inserting a new subsection (c) and renumbering subsequent sections accordingly:

(c) The application must contain evidence that there is at least one physician and one nurse on the staff of the facility who is licensed by the appropriate state licensing board.

(3) Amend 254.151 by inserting a new subsection (a)(12) and renumbering subsequent sections accordingly and adding a new subsection (c):

(a)(12) transfer protocols for patients requiring advanced medical care at a hospital;

(c) The minimum standards under this section shall apply to facilities operating 24 hours a day and 7 days per week and facilities operating less than 24 hours a day and 7 days per week.

(4) Strike SECTION 6(d) of the bill.

The amendment to **CSHB 1357** was read and was adopted by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

Senator Carona offered the following amendment to the bill:

### Floor Amendment No. 2

Amend **CSHB 1357** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 843.306, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) A health maintenance organization may not terminate participation of a physician or provider solely because the physician or provider informs an enrollee of the full range of physicians and providers available to the enrollee, including out-of-network providers.

(b) Subsection (a), Section 843.363, Insurance Code, is amended to read as follows:

(a) A health maintenance organization may not, as a condition of a contract with a physician, dentist, or provider, or in any other manner, prohibit, attempt to prohibit, or discourage a physician, dentist, or provider from discussing with or communicating in good faith with a current, prospective, or former patient, or a person designated by a patient, with respect to:

(1) information or opinions regarding the patient's health care, including the patient's medical condition or treatment options;

(2) information or opinions regarding the terms, requirements, or services of the health care plan as they relate to the medical needs of the patient; [✗]

(3) the termination of the physician's, dentist's, or provider's contract with the health care plan or the fact that the physician, dentist, or provider will otherwise no longer be providing medical care, dental care, or health care services under the health care plan; or

(4) information regarding the availability of facilities, both in-network and out-of-network, for the treatment of the patient's medical condition.

(c) Section 1301.001, Insurance Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Out-of-network provider" means a physician or health care provider who is not a preferred provider.

(d) Subchapter A, Chapter 1301, Insurance Code, is amended by adding Sections 1301.0051 and 1301.0052 to read as follows:

Sec. 1301.0051. ACCESS TO OUT-OF-NETWORK PROVIDERS. An insurer may not terminate, or threaten to terminate, an insured's participation in a preferred provider benefit plan solely because the insured uses an out-of-network provider.

Sec. 1301.0052. PROTECTED COMMUNICATIONS BY PREFERRED PROVIDERS. (a) An insurer may not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a preferred provider from communicating with an insured about the availability of out-of-network providers for the provision of the insured's medical or health care services.

(b) An insurer may not terminate the contract of or otherwise penalize a preferred provider solely because the provider's patients use out-of-network providers for medical or health care services.

(c) A preferred provider terminated by an insurer is entitled, on request, to all information on which the insurer wholly or partly based the termination, including the economic profile of the preferred provider, the standards by which the provider is measured, and the statistics underlying the profile and standards.

(d) An insurer's contract with a preferred provider may require that, except in a case of a medical emergency as determined by the preferred provider, before the provider may make an out-of-network referral for an insured, the preferred provider shall inform the insured:

(1) that:

(A) the insured may choose a preferred provider or an out-of-network provider; and

(B) if the insured chooses the out-of-network provider the insured may incur higher out-of-pocket expenses; and

(2) whether the preferred provider has a financial interest in the out-of-network provider.

(e)(1) Except as provided by this subsection, the changes in law made by this section apply only to an insurance policy, health maintenance organization contract, or evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 2010. A policy, contract, or evidence of coverage issued before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(2) Sections 843.306 and 843.363, Insurance Code, as amended by this Act, and Section 1301.0052, Insurance Code, as added by this Act, apply only to a contract between a health maintenance organization or preferred provider benefit plan issuer and a physician or health care provider that is entered into or renewed on or after the effective date of this Act. A contract entered into or renewed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment to **CSHB 1357** was read and was adopted by a viva voce vote.

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

Senator Patrick offered the following amendment to the bill:

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

Amend **CSHB 1357** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 243.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivisions (3-a), (3-b), and (5) to read as follows:

(3) "Department" means the [~~Texas~~] Department of State Health Services.

(3-a) "Designated physician group" means any business entity formed exclusively by one or more physicians licensed to practice medicine in this state, including a professional association, a professional corporation, a professional limited liability company, or a professional limited liability partnership, that has entered into a use agreement.

(3-b) "Facility" means the physical premises that the department determines constitutes an ambulatory surgical center.

(5) "Use agreement" means a written executed agreement between a licensed ambulatory surgical center and a designated physician group under which the ambulatory surgical center allows the designated physician group to use its facility to provide ambulatory surgical center services on a part-time basis to the designated physician group's patients.

SECTION \_\_\_\_\_. The heading to Section 243.003, Health and Safety Code, is amended to read as follows:

Sec. 243.003. LICENSE REQUIRED; USE AGREEMENTS.

SECTION \_\_\_\_\_. Section 243.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(c) Except as provided by Subsection (d), a [~~A~~] license is not transferable or assignable.

(d) Except as provided by Subsection (e), an ambulatory surgical center may share its license under a sublicense agreement with one or more designated physician groups that is entered into under the terms of a use agreement, if the ambulatory surgical center:

(1) remains responsible for ensuring that the facility and all surgical and other ambulatory surgical center services provided in the facility by any designated physician group comply with this chapter and applicable department rules; and

(2) at least annually, provides the department with:

(A) a list of the designated physician groups with which the ambulatory surgical center has entered into use agreements; and

(B) any other information that the department requires by rule about the designated physician groups or use agreements.

(e) A use agreement under Subsection (d) may not cover a transaction paid for under the Medicare or Medicaid health program.

(f) A use agreement entered into under this section must comply with all applicable federal laws and regulations.

(g) The department by rule shall prescribe minimum requirements for a use agreement entered into under this chapter.

SECTION \_\_\_\_ . Section 843.002, Insurance Code, is amended by adding Subdivision (1-a) and amending Subdivision (24) to read as follows:

(1-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, registered optician, or acupuncturist; or

(ii) a pharmacy, hospital, ambulatory surgical center, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

SECTION \_\_\_\_ . Section 1301.001, Insurance Code, is amended by amending Subdivisions (1) and (4) and adding Subdivision (1-a) to read as follows:

(1) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term does not include a physician.

(4) "Institutional provider" means an ambulatory surgical center, a hospital, a nursing home, or another [other] medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy.

SECTION \_\_\_\_ . Section 401.011, Labor Code, is amended by adding Subdivision (4-a) and amending Subdivision (20) to read as follows:

(4-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code, and includes a designated physician group operating under a use agreement entered into under that chapter.

(20) "Health care facility" means a hospital, ambulatory surgical center, emergency clinic, outpatient clinic, or other facility providing health care.

SECTION \_\_\_\_\_. The change in law made by this Act applies only to a use agreement under Section 243.003, Health and Safety Code, as amended by this Act, that is entered into on or after the effective date of this Act. A use agreement entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

The amendment to **CSHB 1357** was read and was adopted by a viva voce vote.

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

Senator Williams offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 1357** (Senate committee report) as follows:

(1) In SECTION 2 of the bill, strike added Section 843.002(9-a) and substitute the following:

(9-a) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code. A health care plan is not obligated to pay a facility fee to a licensed free standing emergency care facility that is operating less than 24 hours a day, seven days a week.

(2) In SECTION 5 of the bill, in amended Section 1301.155, Insurance Code (page 7, between lines 51 and 52), insert Section 1301.155(c), Insurance Code, as follows:

(c) An insurer is not obligated to pay a facility fee to a licensed free standing emergency care facility that is operating less than 24 hours a day, seven days a week.

The amendment to **CSHB 1357** was read.

On motion of Senator Deuell, Floor Amendment No. 4 was tabled by the following vote: Yeas 16, Nays 14.

Yeas: Carona, Davis, Deuell, Gallegos, Hegar, Lucio, Nelson, Nichols, Ogden, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Zaffirini.

Nays: Averitt, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hinojosa, Huffman, Jackson, Patrick, Seliger, Whitmire, Williams.

Absent: Wentworth.

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

**CSHB 1357** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1357 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 1357** be placed on its third reading and final passage.

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

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

**RECESS**

On motion of Senator Duncan, the Senate at 1:18 p.m. recessed until 2:00 p.m. today.

**AFTER RECESS**

The Senate met at 2:10 p.m. and was called to order by Senator Watson.

**HOUSE BILL 1937 ON SECOND READING**

Senator Seliger moved to suspend the regular order of business to take up for consideration **HB 1937** at this time on its second reading:

**HB 1937**, Relating to the voluntary assessment of property owners by a municipality to finance certain energy conservation improvements.

The motion prevailed.

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

The bill was read second time.

Senator Carona, on behalf of Senator Watson, offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1937** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 54.012, Local Government Code, is amended to read as follows:

Sec. 54.012. CIVIL ACTION. A municipality may bring a civil action for the enforcement of an ordinance:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

(4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

(6) relating to dangerously damaged or deteriorated structures or improvements;

(7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification; ~~[or]~~

(9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality; or

(10) relating to energy conservation or energy efficiency.

The amendment to **HB 1937** 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: Huffman, Jackson, Patrick, Williams.

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

**HB 1937** as amended was passed to third reading by a viva voce vote.

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

Nays: Jackson, Williams.

### **HOUSE BILL 1937 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 1937** 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, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Jackson, Williams.

The bill was read third time.

**(Senator Carona in Chair)**

Senator Seliger moved to postpone further consideration of **HB 1937** to a time certain of 3:00 p.m. today.

The motion prevailed.

Question — Shall **HB 1937** be finally passed?

**COMMITTEE SUBSTITUTE  
HOUSE BILL 358 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 358** at this time on its second reading:

**CSHB 358**, Relating to the seizure of the circuit board of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia.

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 358 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 358** 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 3438 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3438** at this time on its second reading:

**HB 3438**, Relating to authorizing the Texas Board of Criminal Justice to convey certain real property to the City of Dallas in exchange for comparable property.

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 3438 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 3438** 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 West in Chair)****HOUSE BILL 55 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 55** at this time on its second reading:

**HB 55**, Relating to an offense of using a wireless communication device while operating a motor vehicle.

The motion prevailed.

Senators Estes, Hegar, Jackson, and Williams 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 committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 55** (engrossed version) in SECTION 1 of the bill as follows:

(1) Strike added Subdivision (2), Subsection (e), Section 545.425, Transportation Code (page 3, lines 9-12), and substitute:

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(2) Strike added Subsection (f), Section 545.425, Transportation Code (page 3, lines 13-16), and substitute:

(f) An offense under this section is a misdemeanor punishable by a fine not to exceed \$50.

(3) After added Subsection (f), Section 545.425, Transportation Code (page 3, between lines 16 and 17), insert:

(g) This section preempts all local ordinances, rules, or regulations adopted by a political subdivision of this state relating to the use of a wireless communication device by the operator of a motor vehicle.

The amendment to **HB 55** 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 except as follows:

Nays: Williams.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend Committee Amendment No. 1 to **HB 55** (Senate committee printing) as follows:

(1) Strike Item (2) of the amendment adding Subsection (f), Section 545.425, Transportation Code (page 1, lines 16-19).

(2) In Item (3) of the amendment, in added Subsection (g), Section 545.425, Transportation Code (page 1, line 23), between "regulations" and "adopted", insert "that are inconsistent with specific provisions of this section".

The amendment to **HB 55** 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 Carona offered the following amendment to the bill:

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

Amend **HB 55** (Senate committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 545.425(b-1), Transportation Code, strike the last sentence of that subsection (page 1, lines 54-61) and substitute the following:

The department shall adopt standards that:

(1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and

(2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

(2) Strike added Section 545.425(f), Transportation Code (page 2, lines 28-31).

The amendment to **HB 55** 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: Williams.

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

**HB 55** 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, Hegar, Jackson, Williams.

### **HOUSE BILL 55 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 55** 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, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Estes, Hegar, Jackson, Williams.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

**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 5:00 p.m. today for the Wednesday, May 27, 2009, Intent Calendar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 719 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 719** at this time on its second reading:

**CSHB 719**, Relating to polling places for certain elections.

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 719 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 719** 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 853 ON SECOND READING**

Senator Uresti moved to suspend the regular order of business to take up for consideration **HB 853** at this time on its second reading:

**HB 853**, Relating to inclusion of pets and other companion animals in protective orders; providing a penalty.

The motion prevailed.

Senators Eltife, Fraser, Hegar, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 853** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 71.0021(a), Family Code, is amended to read as follows:

(a) "Dating violence" means an act by an individual that is against another individual with whom that person has or has had a dating relationship, or by an individual against another individual who is in a dating relationship with a third individual with whom the actor is or has been in a dating relationship or marriage, and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 71.0021, Family Code, applies only to an application for a protective order that is filed on or after the effective date of this Act. An application for a protective order filed before the effective date of this Act is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

The amendment to **HB 853** 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 853** 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, Fraser, Hegar, Patrick, Shapiro.

### **HOUSE BILL 853 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 853** 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, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Eltife, Fraser, Hegar, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

### **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 9:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**HOUSE BILL 2961 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2961** at this time on its second reading:

**HB 2961**, Relating to authorizing an increase in the student union fee at the University of Houston.

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 2961 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 **HB 2961** 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 2240 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2240** at this time on its second reading:

**HB 2240**, Relating to creating the offense of continuous violence against the family.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2240** by adding an appropriately numbered SECTION to read as follows:

SECTION \_\_\_\_\_. Section 261.302, Family Code, is amended by adding Subsection (g) to read as follows:

(g) The department, without filing suit, may seek a court order in aid of an investigation under Section 261.303.

SECTION \_\_\_\_\_. Section 261.303, Family Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (c-1), (c-2), (c-3), (f), (g), (h), (i), (j), (k), (l), and (m) to read as follows:

(a) A person may not interfere with an investigation of a report of child abuse or neglect conducted by the department or designated agency, and a court may render an order to assist the department in an investigation under this subchapter.

(b) If admission to the home, school, or any place where the child may be cannot be obtained, or if consent to transport a child for purposes relating to an interview or investigation cannot be obtained, then, on presentation of an application supported by an affidavit described by Subsection (c-2) that is executed by an

investigator or authorized representative of the department, ~~[for good cause shown]~~ the court having family law jurisdiction, including any associate judge designated by the court, may, on finding that the affidavit is sufficient and without prior notice or a hearing, ~~[shall]~~ order the parent, the person responsible for the care of the children, or the person in charge of any place where the child may be to allow entrance, transport of the child, or both entrance and transport for the interview, examination, and investigation.

(c) If a parent or person responsible for the child's care does not consent to release of the child's prior medical, psychological, or psychiatric records or to a medical, psychological, or psychiatric examination of the child that is requested by the department or designated agency, then, on presentation of an application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of the department, the court having family law jurisdiction, including any associate judge designated by the court, may, on finding that the affidavit is sufficient and without prior notice or a hearing, ~~[shall, for good cause shown,]~~ order the records to be released or the examination to be made at the times and places designated by the court.

(c-1) If a person having possession of records relating to a child that are relevant to an investigation does not consent to the release of the records on the request of the department or designated agency, then, on presentation of an application supported by an affidavit described by Subsection (c-2) that is executed by an investigator or authorized representative of the department, the court having family law jurisdiction, including any associate judge designated by the court, may, on finding that the affidavit is sufficient and without prior notice or a hearing, order the records to be released at the time and place designated by the court.

(c-2) An application filed under this section must be accompanied by an affidavit executed by an investigator or authorized representative of the department that states facts sufficient to lead a person of ordinary prudence and caution to believe that:

(1) based on information available, a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect;

(2) the requested order is necessary to aid in the investigation; and

(3) there is a fair probability that allegations of abuse or neglect will be sustained if the order is issued and executed.

(c-3) An application and supporting affidavit used to obtain a court order in aid of an investigation under this section may be filed on any day, including Sunday.

(f) A court may designate an associate judge to render an order in aid of an investigation under this section. An order rendered by an associate judge is immediately effective without the ratification or signature of the court making the designation.

(g) As soon as practicable after executing the order or attempting to execute the order, as applicable, the department shall file with the clerk of the court that rendered the order a written report stating:

(1) the facts surrounding the execution of the order, including the date and time the order was executed and the name of the investigator or authorized representative executing the order; or

(2) the reasons why the department was unable to execute the order.

(h) A court issuing an order in aid of an investigation under this section shall keep a record of all the proceedings before the court under this subchapter, including a report filed with the court under Subsection (g). The record of proceedings, including any application and supporting affidavit presented to the court and any report filed with the court under Subsection (g), is confidential and may only be disclosed as provided by Subsection (i) or Section 261.201.

(i) If the department files a suit under Chapter 262, the department shall include with its original petition a copy of the record of all the proceedings before the court under this subchapter, including an application and supporting affidavit for an order under this section and any report relating to an order in aid of an investigation.

(j) As soon as practicable after the department obtains access to records of a child under an order in aid of an investigation, the department shall notify the child's parents or another person with legal custody of the child that the department has obtained the records.

(k) Access to a confidential record under this subchapter does not constitute a waiver of confidentiality.

(l) This section does not prevent a court from requiring notice and a hearing before issuance of an order in aid of an investigation under this section if the court determines that:

(1) there is no immediate risk to the safety of the child; and

(2) notice and a hearing are required to determine whether the requested access to persons, records, or places or to transport the child is necessary to aid in the investigation.

(m) A court's denial of a request for an ex parte order under this section does not prevent the issuance of a criminal warrant.

The amendment to **HB 2240** 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 Nelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2240** 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 2240 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2240** 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 26, 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:****SB 175**, Relating to limitations on the automatic admission of undergraduate students to general academic teaching institutions.

(Committee Substitute/Amended)

**SB 638**, Relating to the collateralization of certain public funds; providing administrative penalties.**SB 662**, Relating to the establishment and use of a mausoleum beneath certain religious buildings.**SB 693**, Relating to proof of identification to purchase an alcoholic beverage.**SB 698**, Relating to the establishment of a registry at the Texas Department of Insurance of certain legal entities alleged to have sold race-based insurance coverage.

(Committee Substitute)

**SB 703**, Relating to the provision of a certified copy of a birth certificate for certain minors receiving services from the Department of Family and Protective Services.

(Amended)

**SB 707**, Relating to requiring a sexually oriented business to maintain certain photographic identification records; providing a criminal penalty.**SB 748**, Relating to the powers and duties of the Fort Bend County Municipal Utility District No. 161; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.**SB 749**, Relating to the powers and duties of the Fort Bend County Municipal Utility District No. 163; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.**SB 755**, Relating to the requirements for a funeral establishment license.**SB 759**, Relating to certain standards for group-administered achievement tests used by school districts.

(Committee Substitute)

**SB 768**, Relating to exemptions from the Texas Structural Pest Control Act; providing penalties.

(Amended)

**SB 794**, Relating to the composition of the board of directors of the Central Colorado River Authority.

**SB 808**, Relating to allowing certain claimants to file an application under the Crime Victims' Compensation Act.

**SB 812**, Relating to reimbursement of expenses incurred by court reporters for the 506th Judicial District.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### HOUSE BILL 2917 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 2917** at this time on its second reading:

**HB 2917**, Relating to authorizing the Department of State Health Services to obtain criminal history record information for certain applicants for employment.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2917** (Senate committee printing) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 12 and 13) and substitute "Section 411.110, Government Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (f) to read as follows:".

(2) In SECTION 1 of the bill, immediately following amended Section 411.110(d), Government Code (page 1, after line 54), insert the following:

(f) The Department of State Health Services may not consider offenses for which points are assessed under Section 708.052, Transportation Code, to determine whether to hire or retain an employee or to contract with a person on whom criminal history record information is obtained under this section.

The amendment to **HB 2917** 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 **HB 2917** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1389 to read as follows:

Sec. 411.1389. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT.

(a) The Office of Violent Sex Offender Management is entitled to obtain from the department criminal history record information that is maintained by the department and that relates to a person who has applied with the office to be:

- (1) an employee of the office; or
- (2) a contracted service provider with the office.

(b) Criminal history record information obtained by the Office of Violent Sex Offender Management under Subsection (a) may not be released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) The Office of Violent Sex Offender Management shall destroy criminal history record information obtained under Subsection (a) as soon as practicable after the date on which, as applicable:

- (1) the person's employment or contract with the office terminates; or
- (2) the office decides not to employ or contract with the person.

SECTION \_\_\_\_\_. Subtitle B, Title 4, Government Code, is amended by adding Chapter 420A to read as follows:

CHAPTER 420A. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

Sec. 420A.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the Office of Violent Sex Offender Management.

(2) "Office" means the Office of Violent Sex Offender Management.

Sec. 420A.002. OFFICE; GOVERNING BOARD. (a) The Office of Violent Sex Offender Management is a state agency.

(b) The office is governed by a board composed of the following three members appointed by the governor:

(1) one member experienced in the management of sex offenders;  
(2) one member experienced in the investigation or prosecution of sex offenses; and

(3) one member experienced in counseling or advocating on behalf of victims of sexual assault.

(c) Members of the board serve staggered two-year terms. Two members' terms expire February 1 of each even-numbered year and one member's term expires February 1 of each odd-numbered year.

(d) A member of the board is entitled to travel expenses incurred in performing official duties and to a per diem equal to the maximum amount allowed on January 1 of that year for federal employees per diem for federal income tax purposes, subject to the same limitations provided for members of state boards and commissions in the General Appropriations Act.

Sec. 420A.003. PRESIDING OFFICER; MEETINGS. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves at the discretion of the governor.

(b) The board shall meet at least quarterly and at other times at the call of the presiding officer.

Sec. 420A.004. SUNSET PROVISION. The Office of Violent Sex Offender Management is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Sec. 420A.005. GRANTS AND DONATIONS. On behalf of the state, the office may apply for and accept grants and donations from any source to be used by the office in the performance of the duties of the office.

Sec. 420A.006. PUBLIC INTEREST INFORMATION. The office shall prepare information of public interest describing the functions of the office and the procedures by which complaints are filed with and resolved by the office. The office shall make the information available to the public and appropriate state agencies.

Sec. 420A.007. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the office shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report concerning the operation of the office. The office may include in the report any recommendations that the office considers appropriate.

Sec. 420A.008. STAFF. The office may select and employ a general counsel, staff attorneys, and other staff necessary to perform the office's functions.

Sec. 420A.009. SALARY CAREER LADDER FOR CASE MANAGERS.  
 (a) The board shall adopt a salary career ladder for case managers. The salary career ladder must base a case manager's salary on the manager's classification and years of service with the office.

(b) For purposes of the salary schedule, the office shall classify all case manager positions as Case Manager I, Case Manager II, Case Manager III, Case Manager IV, or Case Manager V.

(c) Under the salary career ladder adopted under Subsection (a), a case manager to whom the schedule applies and who received an overall evaluation of at least satisfactory in the case manager's most recent annual evaluation is entitled to an annual salary increase, during each of the case manager's first 10 years of service in a designated case manager classification as described by Subsection (b), equal to one-tenth of the difference between:

(1) the case manager's current annual salary; and

(2) the minimum annual salary of a case manager in the next highest classification.

Sec. 420A.010. POWERS AND DUTIES. The office shall perform appropriate functions related to the sex offender civil commitment program provided under Chapter 841, Health and Safety Code, including functions related to the provision of treatment and supervision to civilly committed sex offenders.

SECTION \_\_\_\_\_. Subdivisions (3) and (4), Section 841.002, Health and Safety Code, are amended to read as follows:

(3) "Case manager" means a person employed by or under contract with the office ~~[council]~~ to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(4) "Office" ~~["Council"]~~ means the Office of Violent Sex Offender Management ~~[Council on Sex Offender Treatment]~~.

SECTION \_\_\_\_\_. Section 841.007, Health and Safety Code, is amended to read as follows:

Sec. 841.007. DUTIES OF OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT [~~COUNCIL ON SEX OFFENDER TREATMENT~~]. The Office of Violent Sex Offender Management [~~Council on Sex Offender Treatment~~] is responsible for providing appropriate and necessary treatment and supervision through the case management system.

SECTION \_\_\_\_\_. Subsection (a), Section 841.022, Health and Safety Code, is amended to read as follows:

(a) The executive director of the Texas Department of Criminal Justice and the commissioner of the [~~Texas~~] Department of State Health Services [~~Mental Health and Mental Retardation~~] jointly shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

- (1) one person [~~two persons~~] from the [~~Texas~~] Department of State Health Services [~~Mental Health and Mental Retardation~~];
- (2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department;
- (3) one person from the [~~Texas~~] Department of Public Safety; [~~and~~]
- (4) two persons from the office [~~council~~] or office [~~council~~] personnel; and
- (5) one person from the Council on Sex Offender Treatment.

SECTION \_\_\_\_\_. Subsections (a) and (c), Section 841.082, Health and Safety Code, are amended to read as follows:

(a) Before entering an order directing a person's outpatient civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

- (1) requiring the person to reside in a Texas residential facility under contract with the office [~~council~~] or at another location or facility approved by the office [~~council~~];
- (2) prohibiting the person's contact with a victim or potential victim of the person;
- (3) prohibiting the person's possession or use of alcohol, inhalants, or a controlled substance;
- (4) requiring the person's participation in and compliance with a specific course of treatment provided by the office and compliance with all written requirements imposed by the case manager or otherwise by the office;
- (5) requiring the person to:
  - (A) submit to tracking under a particular type of tracking service and to any other appropriate supervision; and
  - (B) refrain from tampering with, altering, modifying, obstructing, or manipulating the tracking equipment;
- (6) prohibiting the person from changing the person's residence without prior authorization from the judge and from leaving the state without that prior authorization;

(7) if determined appropriate by the judge, establishing a child safety zone in the same manner as a child safety zone is established by a judge under Section 13B, Article 42.12, Code of Criminal Procedure, and requiring the person to comply with requirements related to the safety zone; and

~~(8) [requiring the person to notify the case manager immediately but in any event within 24 hours of any change in the person's status that affects proper treatment and supervision, including a change in the person's physical health or job status and including any incarceration of the person; and~~

~~(9)]~~ any other requirements determined necessary by the judge.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the office [council]. The office [council] shall provide a copy of those requirements to the case manager and to the service providers.

SECTION \_\_\_\_\_. Section 841.083, Health and Safety Code, is amended to read as follows:

Sec. 841.083. TREATMENT; SUPERVISION. (a) The office [council] shall approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed \$10,000 [~~\$6,000~~] for providing the required treatment.

(b) The case manager shall provide supervision to the person. The provision of supervision ~~must~~ [shall] include a tracking service and, if required by court order, supervised housing.

(c) The office [council] shall enter into appropriate memoranda of understanding with the [Texas] Department of Public Safety for the provision of a tracking service and with the Department of Public Safety and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

~~[(c-1) Notwithstanding Subsection (c) or any other provision of this subchapter, the council shall provide through the case management system any supervision or tracking service required under this chapter for persons residing in Dallas, Harris, or Tarrant County. The council shall provide the tracking service under this subsection through two employees of the Department of State Health Services. Any tracking personnel used by the department for purposes of this chapter must be approved by the council.]~~

~~[(c-2) If the equipment necessary to implement the tracking service is available through a contract entered into by the comptroller, the Department of Public Safety or the council, as appropriate, shall acquire that equipment through that contract.]~~

(d) The office [council] shall enter into appropriate memoranda of understanding for any necessary supervised housing. The office [council] shall reimburse the applicable provider for housing costs under this section. The committed person may not be housed for any period of time in a mental health facility, state school, or community center, unless the placement results from a commitment of the person to that facility, school, or center by governmental action. In this subsection:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Mental health facility" has the meaning assigned by Section 571.003.

(3) "State school" has the meaning assigned by Section 531.002.

(e) The case manager shall:

(1) coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision;

(2) make timely recommendations to the judge on whether to allow the committed person to change residence or to leave the state and on any other appropriate matters; and

(3) provide a report to the office [council], semiannually or more frequently as necessary, which must include:

(A) any known change in the person's status that affects proper treatment and supervision; and

(B) any recommendations made to the judge.

SECTION \_\_\_\_\_. Section 841.084, Health and Safety Code, is amended to read as follows:

Sec. 841.084. COST OF TRACKING SERVICE. Notwithstanding Section 841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Section 841.082 and monthly shall pay to the office [council] the amount that the office [council] determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office [council] immediately shall transfer the money to the appropriate service provider.

SECTION \_\_\_\_\_. Section 841.101, Health and Safety Code, is amended to read as follows:

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The office [council] shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the case manager shall provide a report of the biennial examination to the judge. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter. The case manager shall provide a copy of the report to the office [council].

SECTION \_\_\_\_\_. Section 841.141, Health and Safety Code, is amended to read as follows:

Sec. 841.141. RULEMAKING AUTHORITY. (a) The office [council] by rule shall administer this chapter. Rules adopted by the office [council] under this section must be consistent with the purposes of this chapter.

(b) The office [council] by rule shall develop standards of care and case management for persons committed under this chapter.

SECTION \_\_\_\_\_. Subsections (c) and (d), Section 841.142, Health and Safety Code, are amended to read as follows:

(c) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the office [council], a service provider contracting with one of those agencies, the

multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the office [council], a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

SECTION \_\_\_\_\_. Section 841.147, Health and Safety Code, is amended to read as follows:

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, or the office [council];

(2) a member of the multidisciplinary team established under Section 841.022;

(3) an employee of the civil division of the special prosecution unit charged with initiating and pursuing civil commitment proceedings under this chapter; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

SECTION \_\_\_\_\_. Subchapter H, Chapter 841, Health and Safety Code, is amended by adding Section 841.151 to read as follows:

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) This section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating:

(1) a civil commitment requirement imposed under Section 841.082; or

(2) a law of this state.

(c) Not later than the day preceding the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, the facility shall notify the person's case manager in writing of the anticipated date and time of the person's release.

(d) A case manager, on request, shall provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

SECTION \_\_\_\_\_. As soon as possible after the effective date of this Act, the governor shall appoint three members to the Office of Violent Sex Offender Management as provided by Section 420A.002, Government Code, as added by this Act.

SECTION \_\_\_\_\_. (a) The following are transferred to the Office of Violent Sex Offender Management:

(1) the functions of the Council on Sex Offender Treatment that relate to the sex offender civil commitment program;

(2) the director of the Department of State Health Services who has jurisdiction over the sex offender civil commitment program; and

(3) the staff of the council whose primary duties include the operation of the sex offender civil commitment program.

(b) The Office of Violent Sex Offender Management, the Department of State Health Services, and the Council on Sex Offender Treatment shall coordinate the transfer of functions relating to the sex offender civil commitment program as required by this section.

(c) The transfer of all functions relating to the sex offender civil commitment program to the Office of Violent Sex Offender Management shall be accomplished as soon as possible but not later than the 90th day after the date that the last member of the Office of Violent Sex Offender Management qualifies for office.

(d) The transfer required by this section includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by the Department of State Health Services and the Council on Sex Offender Treatment in performing the functions relating to the sex offender civil commitment program that are transferred by this section. For purposes of this subsection, "employees" includes the executive director of the Council on Sex Offender Treatment and administrative technicians and program specialists employed by the council.

(e) A form, rule, or procedure adopted by the Health and Human Services Commission or the Department of State Health Services in relation to the Council on Sex Offender Treatment that is in effect on the effective date of this Act remains in effect on and after that date as if adopted by the Office of Violent Sex Offender Management until amended, repealed, withdrawn, or otherwise superseded by that office.

(f) All unexpended appropriations for functions relating to the sex offender civil commitment program that are made for use by the Department of State Health Services or the Council on Sex Offender Treatment are transferred to the Office of Violent Sex Offender Management.

(g) The Office of Violent Sex Offender Management shall publish in the Texas Register the date on which the transfer of functions under this section is accomplished.

(h) After the effective date of this Act, the Council on Sex Offender Treatment shall continue to perform applicable functions until the transfer of functions required by this section is completed, and the laws providing for those functions are continued in effect for that purpose.

The amendment to **HB 2917** 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 Shapiro moved to postpone further consideration of the bill to a time certain of 3:30 p.m. today.

The motion prevailed.

Question — Shall **HB 2917** as amended be passed to third reading?

**COMMITTEE SUBSTITUTE  
HOUSE JOINT RESOLUTION 36 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHJR 36** at this time on its second reading:

**CSHJR 36**, Proposing a constitutional amendment authorizing the legislature to provide for the ad valorem taxation of a residence homestead solely on the basis of the property's value as a residence homestead; authorizing the legislature to authorize a single board of equalization for two or more adjoining appraisal entities that elect to provide for consolidated equalizations; and authorizing the legislature to provide for the administration and enforcement of uniform standards and procedures for appraisal of property for ad valorem tax purposes.

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.

**COMMITTEE SUBSTITUTE  
HOUSE JOINT RESOLUTION 36 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 **CSHJR 36** 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.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2559 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSHB 2559** at this time on its second reading:

**CSHB 2559**, Relating to the powers and duties of and benefits available under the Employees Retirement System of Texas.

The motion prevailed.

Senators Davis, Ellis, Van de Putte, and Watson asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2559** (Senate committee printing), in SECTION 5 of the bill, in added Section 812.205(b), Government Code (page 2, lines 32-33), by striking "in the trust fund established under Section 815.310" and substituting "as provided by Section 815.309".

The amendment to **CSHB 2559** was read and was adopted by a viva voce vote.

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

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

**CSHB 2559** 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: Davis, Ellis, Lucio, Van de Putte, Watson.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2559 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2559** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Davis, Ellis, Van de Putte, Watson.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Davis, Ellis, Lucio, Van de Putte, Watson.

**HOUSE BILL 694 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 694** at this time on its second reading:

**HB 694**, Relating to Gonzales Healthcare Systems.

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 694 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 694** 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 1937 ON THIRD READING**

The Presiding Officer, Senator West in Chair, laid before the Senate **HB 1937** by Senator Seliger on its third reading. The bill had been read third time and further consideration postponed to a time certain of 3:00 p.m. today:

**HB 1937**, Relating to the voluntary assessment of property owners by a municipality to finance certain energy conservation improvements.

Question — Shall **HB 1937** be finally passed?

**VOTES RECONSIDERED**

On motion of Senator Seliger and by unanimous consent, the vote by which the Three-day Rule was suspended for **HB 1937** was reconsidered.

Question — Shall the Three-day Rule be suspended for **HB 1937**?

On motion of Senator Seliger and by unanimous consent, the vote by which **HB 1937** was passed to third reading was reconsidered.

Question — Shall **HB 1937** be passed to third reading?

On motion of Senator Watson and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **HB 1937** be adopted?

Senator Watson withdrew Floor Amendment No. 1.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1937** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 54.012, Local Government Code, is amended to read as follows:

Sec. 54.012. CIVIL ACTION. A municipality may bring a civil action for the enforcement of an ordinance:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

(4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

(6) relating to dangerously damaged or deteriorated structures or improvements;

(7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification; ~~or~~

(9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality; or

(10) relating to energy conservation or energy efficiency only in a municipality with a population of more than 650,000 that has a governing body consisting only of members who are elected at large and has a city manager form of government.

The amendment to **HB 1937** was read.

Senator Watson withdrew Floor Amendment No. 2.

**HB 1937** was again 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 1937 ON THIRD READING**

Senator Watson again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1937** 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 finally passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 394 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 394** at this time on its second reading:

**CSHB 394**, Relating to use of the money from the Texas Enterprise Fund to benefit small businesses.

The motion prevailed.

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

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 394** (Senate committee printing) as follows:

- (1) On page 1, line 15, strike "creation" and substitute "development".
- (2) On page 1, line 20, between "the" and "development", strike "creation".
- (3) On page 1, line 20, between "development" and "and", strike ",".
- (4) On page 1, line 22, between "fund" and ":", strike "to recipients that are".
- (5) On page 1, line 23, between "(1)" and "small", insert "to recipients that are".
- (6) On page 1, line 24, following ";", strike "or".
- (7) On page 1, line 25, between "(2)" and "small", insert "to recipients that are".
- (8) On page 1, line 26, between "state" and ":", insert "; or  
(3) for individual projects that create 100 or fewer additional jobs".

The amendment to **CSHB 394** 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: Shapiro, 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.

**CSHB 394** 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: Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 394 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 394** 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 2555 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 2555** at this time on its second reading:

**HB 2555**, Relating to the length of time certain property acquired by a charitable organization to provide low-income housing may be exempted from ad valorem taxation.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2555** by adding the following SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 11.184, Tax Code, is amended by amending Subsection (c) and adding Subsections (l), (m), and (n) to read as follows:

(c) A [~~If approved under Subsection (b), a~~] qualified charitable organization is entitled to an exemption from taxation of:

(1) the buildings and other real property and the tangible personal property that:

(A) are owned by the organization; and

(B) except as permitted by Subsection (d), are used exclusively by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18; and

(2) the real property owned by the organization consisting of:

(A) an incomplete improvement that:

(i) is under active construction or other physical preparation; and

(ii) is designed and intended to be used exclusively by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18; and

(B) the land on which the incomplete improvement is located that will be reasonably necessary for the use of the improvement by the organization and other organizations eligible for an exemption from taxation under this section or Section 11.18.

(l) Notwithstanding the other provisions of this section, a corporation that is not a qualified charitable organization is entitled to an exemption from taxation of property under this section if:

(1) the corporation is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(2) of that code;

(2) the corporation holds title to the property for, collects income from the property for, and turns over the entire amount of that income, less expenses, to a qualified charitable organization; and

(3) the qualified charitable organization would qualify for an exemption from taxation of the property under this section if the qualified charitable organization owned the property.

(m) Before a corporation described by Subsection (l) may submit an application for an exemption under this section, the qualified charitable organization for which the corporation holds title to the property must apply to the comptroller for the determination described by Subsection (e) with regard to the qualified charitable organization. The application for the determination must also include an application to the comptroller for a determination of whether the corporation meets the requirements of Subsections (l)(1) and (2). The corporation shall submit with the application for an exemption under this section a copy of the determination letter issued by the comptroller. The chief appraiser shall accept the copy of the letter as conclusive evidence of the matters described by Subsection (h) as well as of whether the corporation meets the requirements of Subsections (l)(1) and (2).

(n) Notwithstanding Subsection (k), in order for a corporation to continue to receive an exemption under Subsection (l) after the fifth tax year after the year in which the exemption is granted, the qualified charitable organization for which the corporation holds title to property must obtain a new determination letter and the corporation must reapply for the exemption.

(b) Section 11.184(b), Tax Code, is repealed.

(c) This section applies only to ad valorem taxes imposed for a tax year that begins on or after the effective date of this section.

(d) This section takes effect January 1, 2010.

The amendment to **HB 2555** was read and was adopted by a viva voce vote.

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

Senator Ogden offered the following amendment to the bill:

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

Amend **HB 2555** 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 2555** 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 Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2555** 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 2555 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 2555** 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 4244 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4244** at this time on its second reading:

**CSHB 4244**, Relating to certain competitive scholarship recipients at public institutions of higher education.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 4244** by adding the following sections to the bill, numbered appropriately, and by renumbering any subsequent sections of the bill accordingly:

SECTION \_\_. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5351 to read as follows:

Sec. 54.5351. STUDENT ENDOWMENT FUND FEE; THE UNIVERSITY OF TEXAS AT EL PASO. (a) The board of regents of The University of Texas System may impose a student endowment fund fee on each student enrolled at The University of Texas at El Paso. The fee may not be imposed unless approved by a majority vote of the students participating in a general student election held at the university under Section 56.243.

(b) The amount of the fee may not exceed \$1 per semester for each regular semester or summer session, unless the amount is increased as provided by Subsection (c).

(c) The amount of the fee per semester may be increased from one academic year to the next only if approved by a majority vote of the students of the university participating in a general student election held for that purpose or, if the amount of the increase does not exceed five percent, by a majority vote of the legislative body of the student government of the university.

(d) A fee imposed under this section must be used to establish a student endowment fund under Section 56.247.

(e) A fee imposed under this section is in addition to any other fee authorized by law and may not be considered in determining the maximum amount of student services fees that may be imposed under Section 54.503(b).

(f) The fee may not be charged after the fifth academic year in which the fee is first charged unless, before the end of that academic year, the institution has issued bonds payable from the fee, in which event the fee may not be charged after the academic year in which all such bonds, including refunding bonds for those bonds, have been fully paid.

SECTION \_\_. This Act applies beginning with the 2009 fall semester.

The amendment to **CSHB 4244** was read and was adopted by a viva voce vote.

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

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

**CSHB 4244** 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 4244 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 4244** 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 1517 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 1517** at this time on its second reading:

**HB 1517**, Relating to the powers and duties of the Montgomery County 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 1517 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 1517** 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 1822 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 1822** at this time on its second reading:

**CSHB 1822**, Relating to the use of certain terms by certificated telecommunications utilities, retail electric providers, and electric utilities in retail bills.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1822** (Senate committee printing) as follows:

- (1) On page 1, line 24, strike "in each contract and".
- (2) On page 1, lines 24-25, strike "residential or small commercial".
- (3) On page 2, lines 66-67, strike "and in contracts for residential and small commercial customers".

The amendment to **CSHB 1822** 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 Davis offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1822** (Senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 39, Utilities Code, is amended by adding section 39.112 to read as follows:

Sec. 39.112. NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In this section, "fixed rate product" means a retail electric product with a term of at least three months for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in transmission and distribution utility charges, changes to ERCOT or Texas Regional Entity administrative fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

(b) A retail electric provider shall provide a residential customer who has a fixed rate product with at least one written notice of the date the fixed rate product will expire. The notice must:

(1) be sent to the customer's billing address by mail at least 30, but not more than 60, days preceding the date the contract will expire;

(2) be sent to the customer's email address, if available to the provider and if the customer has agreed to receive notices electronically, at least 30, but not more than 60, days preceding the date the contract will expire;

(3) include on the outside of the envelope in which the notice is sent, a statement that reads: "Contract Expiration Notice. See Enclosed.";

(4) if included with a customer's bill, be printed on a separate page; and

(5) include a description of any fees or charges associated with the early termination of the customer's fixed rate product.

(c) A retail electric provider shall include on each billing statement the end date of the fixed rate product.

(d) No provision in this section shall be construed to prohibit the commission from adopting rules that would provide a greater degree of customer protection.

The amendment to **CSHB 1822** 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 Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1822** 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 1822 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 1822** 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 2368 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2368** at this time on its second reading:

**HB 2368**, Relating to trusts.

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 2368 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 2368** 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 556 ON SECOND READING**

Senator Harris moved to suspend the regular order of business to take up for consideration **CSHB 556** at this time on its second reading:

**CSHB 556**, Relating to payment of attorney's fees in certain actions to recover possession of real property.

The motion prevailed.

Senator West 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: West.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 556 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 **CSHB 556** be placed on its third reading and final passage.

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

Nays: West.

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 4424 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4424** at this time on its second reading:

**CSHB 4424**, Relating to operations fees and child support service fees assessed by domestic relations offices.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 4424** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subsection (e), Section 54.06, Family Code, is amended to read as follows:

(e) The court shall apply the child support guidelines under Subchapter C, Chapter 154, in an order requiring the payment of child support under this section. The court shall also require in an order to pay child support under this section that health insurance and dental insurance be provided for the child. Subchapter D, Chapter 154, applies to an order requiring health insurance and dental insurance for a child under this section.

SECTION \_\_\_\_\_. Section 101.006, Family Code, is amended to read as follows:

Sec. 101.006. CHILD SUPPORT SERVICES. "Child support services" means administrative or court actions to:

- (1) establish paternity;
- (2) establish, modify, or enforce child support, ~~[or]~~ medical support, or dental support obligations;
- (3) locate absent parents; or
- (4) cooperate with other states in these actions and any other action authorized or required under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) or Chapter 231.

SECTION \_\_\_\_\_. Chapter 101, Family Code, is amended by adding Sections 101.0094 and 101.0095 to read as follows:

Sec. 101.0094. DENTAL INSURANCE. "Dental insurance" means insurance coverage that provides preventive dental care and other dental services, including usual dentist services, office visits, examinations, X-rays, and emergency services, that may be provided through a single service health maintenance organization or other private or public organization.

Sec. 101.0095. DENTAL SUPPORT. "Dental support" means periodic payments or a lump-sum payment made under an order to cover dental expenses, including dental insurance coverage, incurred for the benefit of a child.

SECTION \_\_\_\_\_. Section 101.012, Family Code, is amended to read as follows:

Sec. 101.012. EMPLOYER. "Employer" means a person, corporation, partnership, workers' compensation insurance carrier, governmental entity, the United States, or any other entity that pays or owes earnings to an individual. The term includes, for the purposes of enrolling dependents in a group health or dental insurance plan, a union, trade association, or other similar organization.

SECTION \_\_\_\_\_. Subsection (b), Section 101.024, Family Code, is amended to read as follows:

(b) For purposes of establishing, determining the terms of, modifying, or enforcing an order, a reference in this title to a parent includes a person ordered to pay child support under Section 154.001(a-1) or to provide medical support or dental support for a child.

SECTION \_\_\_\_\_. Section 101.034, Family Code, is amended to read as follows:

Sec. 101.034. TITLE IV-D CASE. "Title IV-D case" means an action in which services are provided by the Title IV-D agency under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), relating to the location of an absent parent, determination of parentage, or establishment, modification, or enforcement of a child support, ~~[or]~~ medical support, or dental support obligation.

SECTION \_\_\_\_\_. Section 153.611, Family Code, is amended to read as follows:

Sec. 153.611. EXCEPTION FOR CERTAIN TITLE IV-D PROCEEDINGS. Notwithstanding any other provision of this subchapter, this subchapter does not apply to a proceeding in a Title IV-D case relating to the determination of parentage or establishment, modification, or enforcement of a child support, ~~or~~ medical support, or dental support obligation.

SECTION \_\_\_\_\_. Section 154.008, Family Code, is amended to read as follows:

Sec. 154.008. PROVISION FOR MEDICAL SUPPORT AND DENTAL SUPPORT. The court shall order medical support and dental support for the child as provided by Subchapters B and D.

SECTION \_\_\_\_\_. Subsection (c), Section 154.015, Family Code, is amended to read as follows:

(c) For purposes of this section, the court of continuing jurisdiction shall determine the amount of the unpaid child support obligation for each child of the deceased obligor. In determining the amount of the unpaid child support obligation, the court shall consider all relevant factors, including:

(1) the present value of the total amount of monthly periodic child support payments that would become due between the month in which the obligor dies and the month in which the child turns 18 years of age, based on the amount of the periodic monthly child support payments under the child support order in effect on the date of the obligor's death;

(2) the present value of the total amount of health insurance and dental insurance premiums payable for the benefit of the child from the month in which the obligor dies until the month in which the child turns 18 years of age, based on the cost of health insurance and dental insurance for the child ordered to be paid on the date of the obligor's death;

(3) in the case of a disabled child under 18 years of age or an adult disabled child, an amount to be determined by the court under Section 154.306;

(4) the nature and amount of any benefit to which the child would be entitled as a result of the obligor's death, including life insurance proceeds, annuity payments, trust distributions, social security death benefits, and retirement survivor benefits; and

(5) any other financial resource available for the support of the child.

SECTION \_\_\_\_\_. Subsection (b), Section 154.016, Family Code, is amended to read as follows:

(b) In determining the nature and extent of the obligation to provide for the support of the child in the event of the death of the obligor, the court shall consider all relevant factors, including:

(1) the present value of the total amount of (monthly periodic child support payments from the date the child support order is rendered until the month in which the child turns 18 years of age, based on the amount of the periodic monthly child support payment under the child support order;

(2) the present value of the total amount of health insurance and dental insurance premiums payable for the benefit of the child from the date the child support order is rendered until the month in which the child turns 18 years of age, based on the cost of health insurance and dental insurance for the child ordered to be paid; and

(3) in the case of a disabled child under 18 years of age or an adult disabled child, an amount to be determined by the court under Section 154.306.

SECTION \_\_\_\_\_. Subsection (d), Section 154.062, Family Code, is amended to read as follows:

(d) The court shall deduct the following items from resources to determine the net resources available for child support:

- (1) social security taxes;
- (2) federal income tax based on the tax rate for a single person claiming one personal exemption and the standard deduction;
- (3) state income tax;
- (4) union dues; and
- (5) expenses for the cost of health insurance, dental insurance, ~~or~~ cash medical support, and cash dental support for the obligor's child ordered by the court under Sections ~~[Section]~~ 154.182 and 154.1825.

SECTION \_\_\_\_\_. Subsection (e), Section 154.062, Family Code, as added by Chapters 363 (S.B. 303) and 620 (H.B. 448), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(e) In calculating the amount of the deduction for health care or dental coverage for a child under Subsection (d)(5), if the obligor has other minor dependents covered under the same health or dental insurance plan, the court shall divide the total cost to the obligor for the insurance by the total number of minor dependents, including the child, covered under the plan.

SECTION \_\_\_\_\_. Section 154.064, Family Code, is amended to read as follows:

Sec. 154.064. MEDICAL SUPPORT AND DENTAL SUPPORT FOR CHILD PRESUMPTIVELY PROVIDED BY OBLIGOR. The guidelines for support of a child are based on the assumption that the court will order the obligor to provide medical support and dental support for the child in addition to the amount of child support calculated in accordance with those guidelines.

SECTION \_\_\_\_\_. The subchapter heading of Subchapter D, Chapter 154, Family Code, is amended to read as follows:

SUBCHAPTER D. MEDICAL SUPPORT AND DENTAL SUPPORT FOR CHILD

SECTION \_\_\_\_\_. Subchapter D, Chapter 154, Family Code, is amended by adding Section 154.1815 to read as follows:

Sec. 154.1815. DENTAL SUPPORT ORDER. (a) In this section, "reasonable cost" means the cost of a dental insurance premium that does not exceed three percent of the responsible parent's annual resources, as described by Section 154.062(b).

(b) In a suit affecting the parent-child relationship or in a proceeding under Chapter 159, the court shall render an order for the dental support of the child as provided by this section and Section 154.1825.

(c) Before a hearing on temporary orders or a final order, if no hearing on temporary orders is held, the court shall require the parties to the proceedings to disclose in a pleading or other document whether the child is covered by dental insurance and, if the child is covered, the identity of the insurer providing the coverage, the policy number, which parent is responsible for payment of any insurance premium for the coverage, whether the coverage is provided through a

parent's employment, and the cost of the premium. If dental insurance is not in effect for the child, the parties must disclose to the court whether either parent has access to dental insurance at a reasonable cost to that parent.

(d) In rendering temporary orders, the court shall, except for good cause shown, order that any dental insurance coverage in effect for the child continue in effect pending the rendition of a final order, except that the court may not require the continuation of any dental insurance that is not available to the parent at a reasonable cost. If dental insurance coverage is not in effect for the child or if the insurance in effect is not available at a reasonable cost, the court shall, except for good cause shown, order dental insurance coverage for the child as provided by Section 154.1825.

(e) On rendering a final order the court shall:

(1) make specific findings with respect to the manner in which dental insurance coverage is to be provided for the child, in accordance with the priorities identified under Section 154.1825; and

(2) except for good cause shown or on agreement of the parties, require the parent ordered to provide dental insurance coverage for the child as provided by Section 154.1825 to produce evidence to the court's satisfaction that the parent has applied for or secured dental insurance or has otherwise taken necessary action to provide for dental insurance coverage for the child, as ordered by the court.

SECTION \_\_\_\_. Subchapter D, Chapter 154, Family Code, is amended by adding Section 154.1825 to read as follows:

Sec. 154.1825. DENTAL CARE COVERAGE FOR CHILD. (a) In this section, "reasonable cost" has the meaning assigned by Section 154.1815(a).

(b) The court shall consider the cost and quality of dental insurance coverage available to the parties and shall give priority to dental insurance coverage available through the employment of one of the parties if the coverage is available at a reasonable cost.

(c) In determining the manner in which dental care coverage for the child is to be ordered, the court shall render its order in accordance with the following priorities, unless a party shows good cause why a particular order is not in the best interest of the child:

(1) if dental insurance is available for the child through a parent's employment or membership in a union, trade association, or other organization at reasonable cost to the parent, the court shall order that parent to include the child in the parent's dental insurance;

(2) if dental insurance is not available for the child under Subdivision (1) but is available to a parent from another source and at a reasonable cost, the court may order that parent to provide dental insurance for the child; or

(3) if dental insurance coverage is not available for the child under Subdivision (1) or (2), the court shall order the obligor to pay the obligee, in addition to any amount ordered under the guidelines for child support, an amount, not to exceed three percent of the obligor's annual resources, as described by Section 154.062(b), as cash dental support for the child.

(d) If the parent ordered to provide dental insurance under Subsection (c)(1) or (2) is the obligee, the court shall order the obligor to pay the obligee, as additional child support, an amount equal to the actual cost of dental insurance for the child. In calculating the actual cost of dental insurance for the child, if the obligee has other minor dependents covered under the same dental insurance plan, the court shall divide the total cost to the obligee for the insurance by the total number of minor dependents, including the child covered under the plan.

(e) If the court finds that neither parent has access to private dental insurance at a reasonable cost, the court shall order the parent awarded the exclusive right to designate the child's primary residence or, to the extent permitted by law, the other parent to apply immediately on behalf of the child for participation in any government medical assistance program or health plan that provides dental coverage. If the child participates in a government medical assistance program or health plan that provides dental coverage, the court shall order cash dental support under Subsection (c)(3).

(f) An order requiring the payment of cash dental support under Subsection (c)(3) must allow the obligor to discontinue payment of the cash dental support if:

(1) dental insurance for the child becomes available to the obligor at a reasonable cost; and

(2) the obligor:

(A) enrolls the child in the insurance plan; and

(B) provides the obligee and, in a Title IV-D case, the Title IV-D agency, the information required under Section 154.185.

SECTION \_\_\_\_\_. Section 154.183, Family Code, as amended by Chapters 363 (S.B. 303) and 620 (H.B. 448), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

Sec. 154.183. MEDICAL AND DENTAL SUPPORT ADDITIONAL SUPPORT DUTY OF OBLIGOR. (a) An amount that an obligor is ordered to pay as medical support or dental support for the child under this chapter, including the costs of health insurance coverage or cash medical support under Section 154.182 and the costs of dental insurance or cash dental support under Section 154.1825:

(1) is in addition to the amount that the obligor is required to pay for child support under the guidelines for child support;

(2) is a child support obligation; and

(3) may be enforced by any means available for the enforcement of child support, including withholding from earnings under Chapter 158.

(b) If the court finds and states in the child support order that the obligee will maintain health insurance coverage, dental insurance coverage, or both, for the child at the obligee's expense, the court shall increase the amount of child support to be paid by the obligor in an amount not exceeding the actual cost to the obligee for maintaining the ~~health insurance~~ coverage, as provided under Sections ~~[Section]~~ 154.182(b-1) and 154.1825(d). ~~[In calculating the total expense to the obligee for maintaining health insurance for the child under this subsection, if the obligee has other minor dependents covered under the same health insurance plan, the court shall divide the total expense to the obligee for the insurance by the total number of minor dependents, including the child, covered under the plan.]~~

(c) As additional child support, the court shall allocate between the parties, according to their circumstances, the reasonable and necessary:

(1) health care expenses of a child that are not reimbursed by health insurance or are not otherwise covered by the amount of cash medical support ordered under Section 154.182(b)(3); and

(2) dental expenses of a child that are not reimbursed by dental insurance or are not otherwise covered by the amount of cash dental support ordered under Section 154.1825(b)(3).

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 154.184, Family Code, are amended to read as follows:

(a) Receipt of a medical support order requiring that health insurance be provided for a child or a dental support order requiring dental insurance be provided for a child shall be considered a change in the family circumstances of the employee or member, for health insurance purposes and dental insurance purposes, equivalent to the birth or adoption of a child.

(b) If the employee or member is eligible for dependent health coverage or dependent dental coverage, the employer shall automatically enroll the child for the first 31 days after the receipt of the order or notice of the medical support order or the dental support order under Section 154.186 on the same terms and conditions as apply to any other dependent child.

SECTION \_\_\_\_\_. Section 154.185, Family Code, is amended to read as follows:

Sec. 154.185. PARENT TO FURNISH INFORMATION. (a) The court shall order a parent providing health insurance or dental insurance to furnish to either the obligee, obligor, or child support agency the following information not later than the 30th day after the date the notice of rendition of the order is received:

- (1) the social security number of the parent;
- (2) the name and address of the parent's employer;
- (3) with regard to health insurance:

(A) whether the employer is self-insured or has health insurance available;

(B) [~~(4)~~] proof that health insurance has been provided for the child;

(C) [~~(5)~~] if the employer has health insurance available, the name of the health insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a health insurance membership card, claim forms, and any other information necessary to submit a claim; and

(D) [~~(6)~~] if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim; and

- (4) with regard to dental insurance:

(A) whether the employer is self-insured or has dental insurance available;

(B) proof that dental insurance has been provided for the child;

(C) if the employer has dental insurance available, the name of the dental insurance carrier, the number of the policy, a copy of the policy and schedule of benefits, a dental insurance membership card, claim forms, and any other information necessary to submit a claim; and

(D) if the employer is self-insured, a copy of the schedule of benefits, a membership card, claim forms, and any other information necessary to submit a claim.

(b) The court shall also order a parent providing health insurance or dental insurance to furnish the obligor, obligee, or child support agency with additional information regarding the health insurance coverage or dental insurance coverage not later than the 15th day after the date the information is received by the parent.

SECTION \_\_\_\_\_. The heading to Section 154.186, Family Code, is amended to read as follows:

Sec. 154.186. NOTICE TO EMPLOYER CONCERNING MEDICAL SUPPORT OR DENTAL SUPPORT.

SECTION \_\_\_\_\_. Subsection (a), Section 154.186, Family Code, is amended to read as follows:

(a) The obligee, obligor, or a child support agency of this state or another state may send to the employer a copy of the order requiring an employee to provide health insurance coverage or dental insurance coverage for a child or may include notice of the medical support order or dental support order in an order or writ of withholding sent to the employer in accordance with Chapter 158.

SECTION \_\_\_\_\_. Subsections (a), (b), (c), (d), (e), and (g), Section 154.187, Family Code, are amended to read as follows:

(a) An order or notice under this subchapter to an employer directing that health insurance coverage or dental insurance coverage be provided to a child of an employee or member is binding on a current or subsequent employer on receipt without regard to the date the order was rendered. If the employee or member is eligible for dependent health coverage or dental coverage for the child, the employer shall immediately enroll the child in a health insurance plan or dental insurance plan regardless of whether the employee is enrolled in the plan. If dependent coverage is not available to the employee or member through the employer's health insurance plan or dental insurance plan or enrollment cannot be made permanent or if the employer is not responsible or otherwise liable for providing such coverage, the employer shall provide notice to the sender in accordance with Subsection (c).

(b) If additional premiums are incurred as a result of adding the child to the health insurance plan or the dental insurance plan, the employer shall deduct the health insurance premium or the dental insurance premium from the earnings of the employee in accordance with Chapter 158 and apply the amount withheld to payment of the insurance premium.

(c) An employer who has received an order or notice under this subchapter shall provide to the sender, by first class mail not later than the 30th day after the date the employer receives the order or notice, a statement that the child:

(1) has been enrolled in a health insurance plan or dental insurance plan; or  
(2) cannot be enrolled or cannot be enrolled permanently in a health insurance plan or dental insurance plan and provide the reason why coverage or permanent coverage cannot be provided.

(d) If the employee ceases employment or if the health insurance coverage or dental insurance coverage lapses, the employer shall provide to the sender, by first class mail not later than the 15th day after the date of the termination of employment or the lapse of the coverage, notice of the termination or lapse and of the availability of any conversion privileges.

(e) On request, the employer shall release to the sender information concerning the available health insurance coverage or dental insurance coverage, including the name of the health insurance carrier or dental insurance carrier, the policy number, a copy of the policy and schedule of benefits, a health insurance membership card, and claim forms.

(g) An employer who fails to enroll a child, fails to withhold or remit premiums or cash medical support or dental support, or discriminates in hiring or employment on the basis of a medical support order or a dental support order or notice under this subchapter shall be subject to the penalties and fines in Subchapter C, Chapter 158.

SECTION \_\_\_\_\_. Section 154.188, Family Code, is amended to read as follows:

Sec. 154.188. FAILURE TO PROVIDE OR PAY FOR REQUIRED HEALTH INSURANCE OR DENTAL INSURANCE. A parent ordered to provide health insurance or dental insurance or to pay the other parent additional child support for the cost of health insurance or dental insurance who fails to do so is liable for:

(1) necessary medical expenses or dental expenses of the child, without regard to whether the expenses would have been paid if health insurance or dental insurance had been provided; and

(2) the cost of health insurance premiums, dental insurance premiums, or contributions, if any, paid on behalf of the child.

SECTION \_\_\_\_\_. Section 154.189, Family Code, is amended to read as follows:

Sec. 154.189. NOTICE OF TERMINATION OR LAPSE OF INSURANCE COVERAGE. (a) An obligor ordered to provide health insurance coverage or dental insurance coverage for a child must notify the obligee and any child support agency enforcing a support obligation against the obligor of the:

(1) termination or lapse of health insurance coverage or dental insurance coverage for the child not later than the 15th day after the date of a termination or lapse; and

(2) availability of additional health insurance or dental insurance to the obligor for the child after a termination or lapse of coverage not later than the 15th day after the date the insurance becomes available.

(b) If termination of coverage results from a change of employers, the obligor, the obligee, or the child support agency may send the new employer a copy of the order requiring the employee to provide health insurance or dental insurance for a child or notice of the medical support order or the dental support order as provided by this subchapter.

SECTION \_\_\_\_\_. Section 154.190, Family Code, is amended to read as follows:

Sec. 154.190. REENROLLING CHILD FOR INSURANCE COVERAGE. After health insurance or dental insurance has been terminated or has lapsed, an obligor ordered to provide health insurance coverage or dental insurance coverage for the child must enroll the child in a health insurance plan or a dental insurance plan at the next available enrollment period.

SECTION \_\_\_\_\_. Section 154.191, Family Code, is amended to read as follows:

Sec. 154.191. REMEDY NOT EXCLUSIVE. (a) This subchapter does not limit the rights of the obligor, obligee, local domestic relations office, or Title IV-D agency to enforce, modify, or clarify the medical support order or dental support order.

(b) This subchapter does not limit the authority of the court to render or modify a medical support order or dental support order containing a provision for payment of uninsured health expenses, health care costs, [~~or~~] health insurance premiums, uninsured dental expenses, dental costs, or dental insurance premiums that are in addition to and inconsistent with this subchapter.

SECTION \_\_\_\_\_. Section 154.192, Family Code, is amended to read as follows:

Sec. 154.192. CANCELLATION OR ELIMINATION OF INSURANCE COVERAGE FOR CHILD. [~~(a)~~] Unless the employee or member ceases to be eligible for dependent coverage, or the employer has eliminated dependent health coverage or dental coverage for all of the employer's employees or members, the employer may not cancel or eliminate coverage of a child enrolled under this subchapter until the employer is provided satisfactory written evidence that:

(1) the court order or administrative order requiring the coverage is no longer in effect; or

(2) the child is enrolled in comparable [~~health~~] insurance coverage or will be enrolled in comparable coverage that will take effect not later than the effective date of the cancellation or elimination of the employer's coverage.

SECTION \_\_\_\_\_. Subsection (a), Section 154.193, Family Code, is amended to read as follows:

(a) If a plan administrator or other person acting in an equivalent position determines that a medical support order or dental support order issued under this subchapter does not qualify for enforcement under federal law, the tribunal may, on its own motion or the motion of a party, render an order that qualifies for enforcement under federal law.

SECTION \_\_\_\_\_. Subsection (a), Section 156.401, Family Code, is amended to read as follows:

(a) Except as provided by Subsection (a-1) or (b), the court may modify an order that provides for the support of a child, including an order for health care coverage under Section 154.182 or an order for dental care coverage under Section 154.1825, if:

(1) the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of:

(A) the date of the order's rendition; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; or

(2) it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded in accordance with the child support guidelines.

SECTION \_\_\_\_\_. Section 157.269, Family Code, is amended to read as follows:

Sec. 157.269. RETENTION OF JURISDICTION. A court that renders an order providing for the payment of child support retains continuing jurisdiction to enforce the order, including by adjusting the amount of the periodic payments to be made by the obligor or the amount to be withheld from the obligor's disposable earnings, until all current support, ~~and~~ medical support, dental support, and child support arrearages, including interest and any applicable fees and costs, have been paid.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 158.206, Family Code, are amended to read as follows:

(a) An employer receiving an order or a writ of withholding under this chapter, including an order or writ directing that health insurance or dental insurance be provided to a child, who complies with the order or writ is not liable to the obligor for the amount of income withheld and paid as required by the order or writ.

(b) An employer receiving an order or writ of withholding who does not comply with the order or writ is liable:

(1) to the obligee for the amount not paid in compliance with the order or writ, including the amount the obligor is required to pay for health insurance or dental insurance under Chapter 154;

(2) to the obligor for:

(A) the amount withheld and not paid as required by the order or writ;

and

(B) an amount equal to the interest that accrues under Section 157.265 on the amount withheld and not paid; and

(3) for reasonable attorney's fees and court costs.

SECTION \_\_\_\_\_. Section 158.302, Family Code, is amended to read as follows:

Sec. 158.302. CONTENTS OF NOTICE OF APPLICATION FOR JUDICIAL WRIT OF WITHHOLDING. The notice of application for judicial writ of withholding shall be verified and:

(1) state the amount of monthly support due, including medical support and dental support, the amount of arrearages or anticipated arrearages, including accrued interest, and the amount of wages that will be withheld in accordance with a judicial writ of withholding;

(2) state that the withholding applies to each current or subsequent employer or period of employment;

(3) state that if the obligor does not contest the withholding within 10 days after the date of receipt of the notice, the obligor's employer will be notified to begin the withholding;

(4) describe the procedures for contesting the issuance and delivery of a writ of withholding;

(5) state that if the obligor contests the withholding, the obligor will be afforded an opportunity for a hearing by the court not later than the 30th day after the date of receipt of the notice of contest;

(6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages, including accrued interest;

(7) describe the actions that may be taken if the obligor contests the notice of application for judicial writ of withholding, including the procedures for suspending issuance of a writ of withholding; and

(8) include with the notice a suggested form for the motion to stay issuance and delivery of the judicial writ of withholding that the obligor may file with the clerk of the appropriate court.

SECTION \_\_\_\_\_. Subsection (c), Section 158.309, Family Code, is amended to read as follows:

(c) Upon hearing, the court shall:

(1) render an order for income withholding that includes a determination of the amount of child support arrearages, including medical support, dental support, and interest; or

(2) grant the motion to stay.

SECTION \_\_\_\_\_. Subsection (a), Section 158.312, Family Code, is amended to read as follows:

(a) If a notice of application for judicial writ of withholding is delivered and a motion to stay is not filed within the time limits provided by Section 158.307, the party who filed the notice shall file with the clerk of the court a request for issuance of the writ of withholding stating the amount of current support, including medical support and dental support, the amount of arrearages, and the amount to be withheld from the obligor's income.

SECTION \_\_\_\_\_. Section 158.314, Family Code, is amended to read as follows:

Sec. 158.314. CONTENTS OF WRIT OF WITHHOLDING. The judicial writ of income withholding issued by the clerk must direct that the employer or a subsequent employer withhold from the obligor's disposable income for current child support, including medical support and dental support, and child support arrearages an amount that is consistent with the provisions of this chapter regarding orders of withholding.

SECTION \_\_\_\_\_. Subsection (a), Section 158.502, Family Code, is amended to read as follows:

(a) An administrative writ of withholding under this subchapter may be issued by the Title IV-D agency at any time until all current support, including medical support and dental support, ~~and~~ child support arrearages, and Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible~~[-r]~~ have been paid. The writ issued under this subsection may be based on an obligation in more than one support order.

SECTION \_\_\_\_\_. Subsection (b), Section 158.504, Family Code, is amended to read as follows:

(b) An administrative writ of withholding issued under this subchapter may contain only the information that is necessary for the employer to withhold income for child support, ~~and~~ medical support, and dental support and shall specify the place where the withheld income is to be paid.

SECTION \_\_\_\_\_. Section 158.507, Family Code, is amended to read as follows:

Sec. 158.507. ADMINISTRATIVE WRIT TERMINATING WITHHOLDING. An administrative writ to terminate withholding may be issued and delivered to an employer by the Title IV-D agency when all current support, including medical

support and dental support, ~~and~~ child support arrearages, and Title IV-D service fees authorized under Section 231.103 for which the obligor is responsible[.] have been paid.

SECTION \_\_\_\_\_. Subsection (c), Section 159.502, Family Code, is amended to read as follows:

(c) Except as otherwise provided in Subsection (d) and Section 159.503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support and dental support, whether in the form of periodic cash payments, stated as a sum certain, or ordering the obligor to provide health insurance coverage or dental insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

SECTION \_\_\_\_\_. The heading to Section 231.0011, Family Code, is amended to read as follows:

Sec. 231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT, ~~AND~~ MEDICAL SUPPORT, AND DENTAL SUPPORT ENFORCEMENT.

SECTION \_\_\_\_\_. Subsections (a) and (g), Section 231.0011, Family Code, are amended to read as follows:

(a) The Title IV-D agency shall have final approval authority on any contract or proposal for delivery of Title IV-D services under this section and in coordination with the Texas Judicial Council, the Office of Court Administration of the Texas Judicial System, the federal Office of Child Support Enforcement, and state, county, and local officials[.] shall develop and implement a statewide integrated system for child support, ~~and~~ medical support, and dental support enforcement, employing federal, state, local, and private resources to:

(1) unify child support registry functions;

(2) record and track all child support orders entered in the state;

(3) establish an automated enforcement process which will use delinquency monitoring, billing, and other enforcement techniques to ensure the payment of current support;

(4) incorporate existing enforcement resources into the system to obtain maximum benefit from state and federal funding; and

(5) ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

(g) Participation in the statewide integrated system for child support, ~~and~~ medical support, and dental support enforcement by a county is voluntary, and nothing in this section shall be construed to mandate participation.

SECTION \_\_\_\_\_. Subsection (e), Section 231.002, Family Code, is amended to read as follows:

(e) The Title IV-D agency may take the following administrative actions with respect to the location of a parent, the determination of parentage, and the establishment, modification, and enforcement of child support, ~~and~~ medical support, and dental support orders required by 42 U.S.C. Section 666(c), without obtaining an order from any other judicial or administrative tribunal:

(1) issue an administrative subpoena, as provided by Section 231.303, to obtain financial or other information;

(2) order genetic testing for parentage determination, as provided by Chapter 233;

(3) order income withholding, as provided by Chapter 233, and issue an administrative writ of withholding, as provided by Chapter 158; and

(4) take any action with respect to execution, collection, and release of a judgment or lien for child support necessary to satisfy the judgment or lien, as provided by Chapter 157.

SECTION \_\_\_\_\_. Subsection (a), Section 231.101, Family Code, is amended to read as follows:

(a) The Title IV-D agency may provide all services required or authorized to be provided by Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), including:

(1) parent locator services;

(2) paternity determination;

(3) child support, ~~and~~ medical support, and dental support establishment;

(4) review and adjustment of child support orders;

(5) enforcement of child support, ~~and~~ medical support, and dental support orders; and

(6) collection and distribution of child support payments.

SECTION \_\_\_\_\_. Subsection (b), Section 231.104, Family Code, is amended to read as follows:

(b) An application for child support services is an assignment of support rights to enable the Title IV-D agency to establish and enforce child support, ~~and~~ medical support, and dental support obligations, but an assignment is not a condition of eligibility for services.

SECTION \_\_\_\_\_. Subsection (a), Section 231.123, Family Code, is amended to read as follows:

(a) In order to maximize the amount of any tax refund to which an obligor may be entitled and which may be applied to child support, ~~and~~ medical support, and dental support obligations, the Title IV-D agency shall cooperate with volunteer income tax assistance programs in the state in informing obligors of the availability of the programs.

SECTION \_\_\_\_\_. Subsection (a), Section 231.301, Family Code, is amended to read as follows:

(a) The parent locator service conducted by the Title IV-D agency shall be used to obtain information for:

(1) child support establishment and enforcement purposes regarding the identity, social security number, location, employer and employment benefits, income, and assets or debts of any individual under an obligation to pay child support, ~~or~~ medical support, or dental support or to whom a support obligation is owed; or

(2) the establishment of paternity.

SECTION \_\_\_\_\_. Section 231.306, Family Code, is amended to read as follows:

Sec. 231.306. MAXIMIZING MEDICAL SUPPORT AND DENTAL SUPPORT ESTABLISHMENT AND COLLECTION BY THE TITLE IV-D AGENCY. (a) On the installation of an automated child support enforcement system, the Title IV-D agency is strongly encouraged to:

(1) maximize the collection of medical support and dental support; and

(2) establish cash medical support and cash dental support orders for children eligible for medical assistance under the state Medicaid program for whom private insurance coverage is not available.

(b) In this section:

(1) "Medical~~;~~ ~~"medical"~~ support" has the meaning assigned by Section 101.020.

(2) "Dental support" has the meaning assigned by Section 101.0095.

SECTION \_\_\_\_\_. Subsection (a), Section 233.001, Family Code, is amended to read as follows:

(a) The purpose of the procedures specified in the child support review process authorized by this chapter is to enable the Title IV-D agency to take expedited administrative actions to establish, modify, and enforce child support, ~~and~~ medical support, and dental support obligations, to determine parentage, or to take any other action authorized or required under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and Chapter 231.

SECTION \_\_\_\_\_. Subsection (b), Section 233.009, Family Code, is amended to read as follows:

(b) The notice of proposed child support review order shall state:

(1) the amount of periodic payment of child support due, the amount of any overdue support that is owed as an arrearage as of the date of the notice, and the amounts that are to be paid by the obligor for current support due and in payment on the arrearage owed;

(2) that the person identified in the notice as the party responsible for payment of the support amounts may contest the notice order on the grounds that:

(A) the respondent is not the responsible party;

(B) the dependent child is no longer entitled to child support; or

(C) the amount of monthly support or arrearage is incorrectly stated;

and

(3) that, if the person identified in the notice as the party responsible for payment of the support amounts does not contest the notice in writing or request a negotiation conference to discuss the notice not later than the 15th day after the date

the notice was delivered, the Title IV-D agency may file a child support review order for child support, ~~and for~~ medical support, and dental support for the child as provided by Chapter 154 according to the information available to the agency.

SECTION \_\_\_\_\_. Subsection (b), Section 233.0095, Family Code, is amended to read as follows:

(b) The notice of proposed child support review order shall state:

(1) the amount of periodic payment of child support due;

(2) that the person identified in the notice as the party responsible for payment of the support amounts may only contest the amount of monthly support; and

(3) that, if the person identified in the notice as the party responsible for payment of the support amounts does not contest the notice in writing or request a negotiation conference to discuss the notice not later than the 15th day after the date the notice was delivered, the Title IV-D agency may file the child support order for child support, ~~and for~~ medical support, and dental support for the child as provided by Chapter 154 according to the information available to the agency.

SECTION \_\_\_\_\_. Subsection (a), Section 233.017, Family Code, is amended to read as follows:

(a) An order issued under this chapter must be reviewed and signed by an attorney of the Title IV-D agency and must contain all provisions that are appropriate for an order under this title, including current child support, medical support, and dental support, a determination of any arrearages or retroactive support, and, if not otherwise ordered, income withholding.

SECTION \_\_\_\_\_. Section 234.002, Family Code, is amended to read as follows:

Sec. 234.002. INTEGRATED SYSTEM FOR CHILD SUPPORT, ~~AND~~ MEDICAL SUPPORT, AND DENTAL SUPPORT ENFORCEMENT. The statewide integrated system for child support, ~~and~~ medical support, and dental support enforcement under Chapter 231 shall be part of the state case registry and state disbursement unit authorized by this subchapter.

SECTION \_\_\_\_\_. Subsection (a), Section 71.035, Government Code, is amended to read as follows:

(a) The council shall gather judicial statistics and other pertinent information from the several state judges and other court officials of this state. In addition, the council shall implement a monthly tracking system to ensure accountability for counties and courts which participate in the statewide integrated system for child support, ~~and~~ medical support, and dental support enforcement established under Section 231.0011, Family Code. As a duty of office, the district clerks and county clerks serving the affected courts shall report monthly such information as may be required by the council, including, at a minimum, the time required to enforce cases from date of delinquency, from date of filing, and from date of service until date of disposition. Such information as is necessary to complete the report and not directly within the control of the district or county clerk, such as date of delinquency, shall be provided to the clerk by the child support registry or by the enforcement agency providing Title IV-D enforcement services in the court. The monthly report shall be transmitted to the Office of Court Administration of the Texas Judicial System no later than the 20th day of the month following the month reported, in such form as may be prescribed by the Office of Court Administration, which may include electronic data

transfer. Copies of such reports shall be maintained in the office of the appropriate district or county clerk for a period of at least two years and shall be available to the public for inspection and reproduction.

SECTION \_\_\_\_\_. Section 402.085, Labor Code, is amended to read as follows:

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The division shall release information on a claim to:

(1) the Texas Department of Insurance for any statutory or regulatory purpose, including a research purpose under Chapter 405;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

(4) the attorney general or another entity that provides child support services under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), relating to:

(A) establishing, modifying, or enforcing a child support, ~~or~~ medical support, or dental support obligation; or

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office.

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support, ~~or~~ medical support, or dental support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

SECTION \_\_\_\_\_. Subsection (b), Section 1201.053, Insurance Code, is amended to read as follows:

(b) On the application of an adult member of a family, an individual accident and health insurance policy may, at the time of original issuance or by subsequent amendment, insure two or more eligible members of the adult's family, including a spouse, unmarried children younger than 25 years of age, including a grandchild of

the adult as described by Section 1201.062(a)(1), a child the adult is required to insure under a medical support order or dental support order, if the policy provides dental coverage, issued under Chapter 154, Family Code, or enforceable by a court in this state, and any other individual dependent on the adult.

SECTION \_\_\_\_\_. Subsection (a), Section 1201.062, Insurance Code, is amended to read as follows:

(a) An individual or group accident and health insurance policy that is delivered, issued for delivery, or renewed in this state, including a policy issued by a corporation operating under Chapter 842, or a self-funded or self-insured welfare or benefit plan or program, to the extent that regulation of the plan or program is not preempted by federal law, that provides coverage for a child of an insured or group member, on payment of a premium, must provide coverage for:

(1) each grandchild of the insured or group member if the grandchild is:

(A) unmarried;

(B) younger than 25 years of age; and

(C) a dependent of the insured or group member for federal income tax purposes at the time application for coverage of the grandchild is made; and

(2) each child for whom the insured or group member must provide medical support or dental support, if the policy provides dental coverage, under an order issued under Chapter 154, Family Code, or enforceable by a court in this state.

SECTION \_\_\_\_\_. Section 1201.063, Insurance Code, is amended to read as follows:

Sec. 1201.063. PROHIBITION OF CERTAIN CRITERIA RELATING TO CHILD'S COVERAGE IN INDIVIDUAL OR GROUP POLICY. Regarding a natural or adopted child of an insured or group member or a child for whom the insured or group member must provide medical support or dental support, if the policy provides dental coverage, under an order issued under Chapter 154, Family Code, or enforceable by a court in this state, an individual or group accident and health insurance policy that provides coverage for a child of an insured or group member may not set a different premium for the child, exclude the child from coverage, or discontinue coverage of the child because:

(1) the child does not reside with the insured or group member; or

(2) the insured or group member does not claim the child as an exemption for federal income tax purposes under Section 151(c)(1)(B), Internal Revenue Code of 1986.

SECTION \_\_\_\_\_. The heading to Chapter 1504, Insurance Code, is amended to read as follows:

CHAPTER 1504. MEDICAL AND DENTAL CHILD SUPPORT

SECTION \_\_\_\_\_. Subdivision (4), Section 1504.001, Insurance Code, is amended to read as follows:

(4) "Benefit [~~Health benefit~~] plan issuer" means:

(A) an insurance company, group hospital service corporation, or health maintenance organization that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness, or dental expenses;

(B) a governmental entity subject to Subchapter D, Chapter 1355, Subchapter C, Chapter 1364, Chapter 1578, Article 3.51-1, 3.51-4, or 3.51-5, or Chapter 177, Local Government Code;

(C) the issuer of a multiple employer welfare arrangement as defined by Section 846.001; or

(D) the issuer of a group health plan as defined by Section 607, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1167).

SECTION \_\_\_\_\_. Subsection (b), Section 1504.002, Insurance Code, is amended to read as follows:

(b) The commissioner shall adopt rules that define "comparable health or dental coverage" in a manner that:

(1) is consistent with federal law; and  
(2) complies with the requirements necessary to maintain federal Medicaid funding.

SECTION \_\_\_\_\_. Section 1504.003, Insurance Code, is amended to read as follows:

Sec. 1504.003. VIOLATION OF CHAPTER: RELIEF AVAILABLE TO INJURED PERSON. A [~~health~~] benefit plan issuer that violates this chapter is subject to the same penalties, and an injured person has the same rights and remedies, as those provided by Subchapter D, Chapter 541.

SECTION \_\_\_\_\_. The heading to Subchapter B, Chapter 1504, Insurance Code, is amended to read as follows:

SUBCHAPTER B. DUTIES OF [~~HEALTH~~] BENEFIT PLAN ISSUER

SECTION \_\_\_\_\_. Section 1504.051, Insurance Code, is amended to read as follows:

Sec. 1504.051. ENROLLMENT OF CERTAIN CHILDREN REQUIRED.

(a) A [~~health~~] benefit plan issuer shall permit a parent to enroll a child in dependent health or dental coverage offered through the issuer regardless of any enrollment period restriction if the parent is:

(1) eligible for dependent health or dental coverage; and  
(2) required by a court order or administrative order to provide health insurance coverage or dental coverage for the child.

(b) A [~~health~~] benefit plan issuer shall enroll a child of a parent described by Subsection (a) in dependent health or dental coverage offered through the issuer if:

(1) the parent does not apply to obtain health or dental coverage for the child through the issuer; and

(2) the child, a custodial parent of the child, or a child support agency having a duty to collect or enforce support for the child applies for the coverage.

SECTION \_\_\_\_\_. Section 1504.052, Insurance Code, is amended to read as follows:

Sec. 1504.052. CHILD RESIDING OUTSIDE SERVICE AREA; COMPARABLE HEALTH OR DENTAL COVERAGE REQUIRED. (a) A [~~health~~] benefit plan issuer may not deny enrollment of a child under the health or dental coverage of the child's parent on the ground that the child does not reside in the issuer's service area.

(b) A [~~health~~] benefit plan issuer may not enforce an otherwise applicable provision of the health or dental coverage that would deny, limit, or reduce payment of a claim for a covered child who resides outside the issuer's service area but inside the United States.

(c) For a covered child who resides outside the [~~health~~] benefit plan issuer's service area and whose coverage under a policy or plan is required by a medical support order or dental support order, the issuer shall provide coverage that is comparable health or dental coverage to that provided to other dependents under the policy or plan.

(d) Comparable health or dental coverage may include coverage in which a [~~health~~] benefit plan issuer uses different procedures for service delivery and health care provider reimbursement. Comparable health or dental coverage may not include coverage:

- (1) that is limited to emergency services only; or
- (2) for which the issuer charges a higher premium.

SECTION \_\_\_\_\_. Section 1504.053, Insurance Code, is amended to read as follows:

Sec. 1504.053. CANCELLATION OR NONRENEWAL OF COVERAGE FOR CERTAIN CHILDREN. (a) A [~~health~~] benefit plan issuer may not cancel or refuse to renew health or dental coverage provided to a child who is enrolled or entitled to enrollment under this chapter unless satisfactory written evidence is filed with the issuer showing that:

- (1) the court or administrative order that required the coverage is not in effect; or
- (2) the child:
  - (A) is enrolled in comparable health or dental coverage; or
  - (B) will be enrolled in comparable health or dental coverage that takes effect not later than the effective date of the cancellation or nonrenewal.

(b) For purposes of this section, a child is not enrolled or entitled to enrollment under this chapter if the child's eligibility for health or dental coverage ends because the parent ceases to be eligible for dependent health or dental coverage.

SECTION \_\_\_\_\_. Section 1504.054, Insurance Code, is amended to read as follows:

Sec. 1504.054. CONTINUATION OR CONVERSION OF COVERAGE. (a) If a child's eligibility for dependent health or dental coverage ends because the parent ceases to be eligible for the coverage and the coverage provides for the continuation or conversion of the coverage for the child, the [~~health~~] benefit plan issuer shall notify the custodial parent and the child support agency of the costs and other requirements for continuing or converting the coverage.

(b) The [~~health~~] benefit plan issuer shall, on application of a parent of the child, a child support agency, or the child, enroll or continue enrollment of a child whose eligibility for coverage ended under Subsection (a).

SECTION \_\_\_\_\_. Section 1504.055, Insurance Code, is amended to read as follows:

Sec. 1504.055. PROCEDURE FOR CLAIMS. (a) A [~~health~~] benefit plan issuer that provides health or dental coverage to a child through a covered parent of the child shall:

(1) provide to each custodial parent of the child or to an adult child documents and other information necessary for the child to obtain benefits under the coverage, including:

(A) the name of the issuer;

(B) the number of the policy or evidence of coverage;

(C) a copy of the policy or evidence of coverage and schedule of benefits;

(D) a health or dental coverage membership card;

(E) claim forms; and

(F) any other document or information necessary to submit a claim in accordance with the issuer's policies and procedures;

(2) permit a custodial parent, health care provider, state agency that has been assigned medical or dental support rights, or adult child to submit claims for covered services without the approval of the covered parent; and

(3) make payments on covered claims submitted in accordance with this subsection directly to a custodial parent, health care provider, adult child, or state agency making a claim.

(b) A [~~health~~] benefit plan issuer shall provide to a state agency that provides medical assistance, including medical assistance for dental services, to the child or shall provide to a child support agency that enforces medical or dental support on behalf of a child the information necessary to obtain reimbursement of medical or dental services provided to or paid on behalf of the child.

SECTION \_\_\_\_\_. Section 1504.101, Insurance Code, is amended to read as follows:

Sec. 1504.101. DENIAL OF ENROLLMENT ON CERTAIN GROUNDS PROHIBITED. A [~~health~~] benefit plan issuer may not deny enrollment of a child under the health or dental coverage of the child's parent on the ground that the child:

(1) has a preexisting condition;

(2) was born out of wedlock;

(3) is not claimed as a dependent on the parent's federal income tax return;

(4) does not reside with the parent; or

(5) receives or has applied for medical assistance.

SECTION \_\_\_\_\_. Section 1504.102, Insurance Code, is amended to read as follows:

Sec. 1504.102. ASSIGNMENT OF MEDICAL OR DENTAL SUPPORT RIGHTS: DIFFERENT REQUIREMENTS PROHIBITED. A [~~health~~] benefit plan issuer may not require a state agency that has been assigned the rights of an individual who is eligible for medical assistance and is covered for health or dental benefits from the issuer to comply with a requirement that is different from a requirement imposed on an agent or assignee of any other covered individual.

SECTION \_\_\_\_\_. (a) The changes in law made by this Act regarding dental support and dental insurance for a child subject to a child support order apply to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A

suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act regarding dental support and dental insurance for a child subject to a child support order do not constitute a material and substantial change of circumstances under Section 156.401, Family Code, sufficient to warrant modification of a court order or a portion of a decree that provides for the support of a child rendered before the effective date of this Act.

The amendment to **CSHB 4424** was read.

Senator Uresti offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 by Uresti (9.143.89) to **CSHB 4424** as follows:

(1) In the added SECTION amending Section 154.062(d), Family Code (page 5, lines 14-17 of the amendment), strike amended Subdivision (5) and substitute the following:

(5) expenses for the cost of health insurance, dental insurance, or cash medical support for the obligor's child ordered by the court under Sections ~~[Section]~~ 154.182 and 154.1825.

(2) In the added SECTION adding Section 154.1825, Family Code (page 8, lines 1-21 of the amendment), strike added Subsection (c) and substitute the following:

(c) In determining the manner in which dental care coverage for the child is to be ordered, the court shall render its order in accordance with the following priorities, unless a party shows good cause why a particular order is not in the best interest of the child:

(1) if dental insurance is available for the child through a parent's employment or membership in a union, trade association, or other organization at reasonable cost to the parent, the court shall order that parent to include the child in the parent's dental insurance; or

(2) if dental insurance is not available for the child under Subdivision (1) but is available to a parent from another source and at a reasonable cost, the court may order that parent to provide dental insurance for the child.

(3) In the added SECTION adding Section 154.1825, Family Code (page 9, lines 1-20 of the amendment), strike added Subsections (e) and (f).

(4) In the added SECTION amending Section 154.183(a), Family Code (page 9, line 30 of the amendment), strike "or cash dental support".

(5) In the added SECTION amending Section 154.183(c), Family Code (page 10, line 30, through page 11, line 1 of the amendment), strike "or are not otherwise covered by the amount of cash dental support ordered under Section 154.1825(b)(3)".

(6) In the added SECTION amending Section 231.306, Family Code (page 25, lines 29 and 30 of the amendment), strike "and cash dental support".

The amendment to Floor Amendment No. 1 to **CSHB 4424** was read and was adopted by the following vote: Yeas 23, Nays 8.

Yeas: Averitt, Carona, Davis, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Duncan, Estes, Fraser, Harris, Jackson, Ogden, Wentworth.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 4424**, the amendment as amended was adopted by a viva voce vote.

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

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

**CSHB 4424** as amended was passed to third reading by the following vote: Yeas 29, Nays 2.

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

Nays: Harris, Jackson.

### **COMMITTEE SUBSTITUTE HOUSE BILL 4424 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 4424** 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, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Jackson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

### **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 Wednesday, May 27, 2009, Intent Calendar.

### **AT EASE**

The Presiding Officer, Senator West in Chair, at 4:53 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

**IN LEGISLATIVE SESSION**

Senator West at 5:12 p.m. called the Senate to order as In Legislative Session.

**RECESS**

On motion of Senator Whitmire, the Senate at 5:12 p.m. recessed until 5:30 p.m. today.

**AFTER RECESS**

The Senate met at 5:39 p.m. and was called to order by Senator West.

**HOUSE BILL 1187 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 1187** at this time on its second reading:

**HB 1187**, Relating to the membership of the board of managers for certain emergency communication districts.

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 1187 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 1187** 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 269 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 269** at this time on its second reading:

**CSHB 269**, Relating to course credit for certain students at a public institution of higher education.

The motion prevailed.

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

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 269** 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. 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 269** 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: Shapiro.

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 269** 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: Shapiro.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 269 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 269** 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 4785 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 4785** at this time on its second reading:

**HB 4785**, Relating to the powers and financing of the Brazoria County Groundwater Conservation District.

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

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

#### **HOUSE BILL 4785 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 4785** 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 1013 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1013** at this time on its second reading:

**CSHB 1013**, Relating to the authority of certain counties to regulate the installation and use of lighting in certain areas.

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 1013 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 1013** 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 2153 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2153** at this time on its second reading:

**CSHB 2153**, Relating to certain registration requirements imposed on sex offenders.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2153** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Subsection (c)(1), Article 62.051, Code of Criminal Procedure (page 1, line 44) insert between "reside" and the semi-colon, insert the following:

, and any home, work, or cellular telephone number of the person;

(2) In SECTION 2 of the bill, in Subsection (c)(6), Article 62.051, Code of Criminal Procedure (page 1, line 61) delete "and".

(3) In SECTION 2 of the bill, in amended Subsection (c), Article 62.051, Code of Criminal Procedure (page 1, line 62) following "(7)" insert the following:  
the identification of any online identifier established or used by the person; and

Amend C.S.H.B. 2153 (Senate committee printing) by adding the following appropriately numbers SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

(4) SECTION \_\_\_\_\_. Amend Article 62.001, Code of Criminal Procedure, insert the following:

(11) "Online identifier" means electronic mail address information or a name used by a person when sending or receiving an instant message, social networking communication, or similar Internet communication or when participating in an Internet chat. The term includes an assumed name, nickname, pseudonym, moniker, or user name established by a person for use in connection with an electronic mail address, chat or instant chat room platform, commercial social networking site, or online picture-sharing service.

(5) SECTION \_\_\_\_\_. Article 62.005, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (j) to read as follows:

(b) The information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information:

(1) regarding the person's social security number or[~~7~~] driver's license number, or any home, work, or cellular telephone number of the person;

(2) that is described [~~required~~] by [~~the department under~~] Article 62.051(c)(7) or required by the department under Article 62.051(c)(8); or

(3) that would identify the victim of the offense for which the person is subject to registration.

(j) The department, for law enforcement purposes, shall release all relevant information described by Subsection (a), including information that is not public information under Subsection (b), to a peace officer, an employee of a local law enforcement authority, or the attorney general on the request of the applicable person or entity.

(6) SECTION \_\_\_\_\_. Subchapter A, Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.0061 to read as follows:

Art. 62.0061. REQUEST FOR ONLINE IDENTIFIERS BY SOCIAL NETWORKING SITES. (a) On request by a commercial social networking site, the department may provide to the commercial social networking site:

(1) all public information that is contained in the database maintained under Article 62.005; and

(2) notwithstanding Article 62.005(b)(2), any online identifier established or used by a person who uses the site, is seeking to use the site, or is precluded from using the site.

(b) The department by rule shall establish a procedure through which a commercial social networking site may request information under Subsection (a), including rules regarding the eligibility of commercial social networking sites to request information under Subsection (a). The department shall consult with the attorney general, other appropriate state agencies, and other appropriate entities in adopting rules under this subsection.

(c) A commercial social networking site or the site's agent:

(1) may use information received under Subsection (a) only to:

(A) prescreen persons seeking to use the site; or

(B) preclude persons registered under this chapter from using the site;

and

(2) may not use any information received under Subsection (a) that the networking site obtained solely under Subsection (a) in any manner not described by Subdivision (1).

(d) A commercial social networking site that uses information received under Subsection (a) in any manner not described by Subsection (c)(1) or that violates a rule adopted by the department under Subsection (b) is subject to a civil penalty of \$1,000 for each misuse of information or rule violation. A commercial social networking site that is assessed a civil penalty under this article shall pay, in addition to the civil penalty, all court costs, investigative costs, and attorney's fees associated with the assessment of the penalty. A civil penalty assessed under this subsection shall be deposited to the compensation to victims of crime fund established under Subchapter B, Chapter 56.

(e) This article does not create a private cause of action against a commercial social networking site, including a cause of action that is based on the site:

(1) identifying, removing, disabling, blocking, or otherwise affecting the user of a commercial social networking site, based on a good faith belief that the person is required to register as a sex offender under this chapter or federal law; or

(2) failing to identify, remove, disable, block, or otherwise affect the user of a commercial social networking site who is required to register as a sex offender under this chapter or federal law.

(f) In this article, "commercial social networking site":

(1) means an Internet website that:

(A) allows users, through the creation of Internet web pages or profiles or other similar means, to provide personal information to the public or other users of the Internet website;

(B) offers a mechanism for communication with other users of the Internet website; and

(C) has the primary purpose of facilitating online social interactions;

and

(2) does not include an Internet service provider, unless the Internet service provider separately operates and directly derives revenue from an Internet website described by Subdivision (1).

(7) SECTION \_\_\_\_\_. Subchapter B, Chapter 62, Code of Criminal Procedure, is amended by adding Article 62.0551 to read as follows:

Art. 62.0551. CHANGE IN ONLINE IDENTIFIERS. (a) If a person required to register under this chapter changes any online identifier included on the person's registration form or establishes any new online identifier not already included on the person's registration form, the person, not later than the later of the seventh day after the change or establishment or the first date the applicable authority by policy allows the person to report, shall report the change or establishment to the person's primary registration authority in the manner prescribed by the authority.

(b) A primary registration authority that receives information under this article shall forward information in the same manner as information received by the authority under Article 62.055.

(8) SECTION \_\_\_\_\_. Subsection (f)(1), Article 62.053, Code of Criminal Procedure, is amended to read as follows:

(1) the person's social security number or driver's license number, or any home, work, or cellular telephone number of the person; and

(9) SECTION \_\_\_\_\_. Subsection (g)(1), Article 62.055, Code of Criminal Procedure, is amended to read as follows:

(1) the person's social security number or driver's license number, or any home, work, or cellular telephone number of the person; and

(10) SECTION \_\_\_\_\_. The Department of Public Safety of the State of Texas shall implement Subsection (c), Article 62.051, Code of Criminal Procedure, as amended by this Act, and Subsection (j), Article 62.005, and Article 62.0061, Code of Criminal Procedure, as added by this Act, as soon as practicable after September 1, 2009, but not later than January 1, 2010.

The amendment to **CSHB 2153** was read and was adopted by a viva voce vote.

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

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

**CSHB 2153** 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 2153 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 **CSHB 2153** 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 1309 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 1309** at this time on its second reading:

**HB 1309**, Relating to the date by which the comptroller must certify the apportioned amount of the market value of railroad rolling stock to a county assessor-collector.

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 1309 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 1309** 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 1038 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 1038** at this time on its second reading:

**HB 1038**, Relating to the determination of the market value of a residence homestead for purposes of ad valorem taxation.

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 1038 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 1038** 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 3417 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 3417** at this time on its second reading:

**HB 3417**, Relating to the jurisdiction of criminal law hearing officers in Cameron County.

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 3417 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 3417** 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 677 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 677** at this time on its second reading:

**CSHB 677**, Relating to violations of laws administered and enforced by the Texas Ethics Commission and to sworn complaints alleging such violations.

The motion prevailed.

Senator Zaffirini 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: Zaffirini.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 677 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 677** be placed on its third reading and final passage.

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

Nays: Zaffirini.

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

**HOUSE BILL 3089 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 3089** at this time on its second reading:

**HB 3089**, Relating to the disposition of vehicles by a local government participating in a program designed to encourage the use of low-emission vehicles.

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 3089 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 3089** 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 2656 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2656** at this time on its second reading:

**CSHB 2656**, Relating to the composition of the board of trustees of the Teacher Retirement System of Texas.

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 2656 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2656** 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 2668 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2668** at this time on its second reading:

**CSHB 2668**, Relating to the creation of the Smith Road Water Control and Improvement District No. 1 of Jefferson County; providing authority to impose a tax and issue bonds; granting levee and flood hazard mitigation powers; granting the power of eminent domain.

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 2668 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 2668** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3095 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 3095** at this time on its second reading:

**CSHB 3095**, Relating to the use of a parking space or area designated specifically for persons with disabilities.

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 3095 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 3095** 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 3202 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3202** at this time on its second reading:

**CSHB 3202**, Relating to authorizing the transfer of certain real property held by the Texas Department of Criminal Justice.

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 3202 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 **CSHB 3202** 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 3445 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 3445** at this time on its second reading:

**CSHB 3445**, Relating to requirements governing registration and authorized activities of certain lobbyists.

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 3445 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 3445** be placed on its third reading and final passage.

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

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

**(Senator Carona in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2347 ON SECOND READING**

Senator Whitmire moved to suspend the regular order of business to take up for consideration **CSHB 2347** at this time on its second reading:

**CSHB 2347**, Relating to tuition and laboratory fee exemptions at public institutions of higher education for certain peace officers enrolled in criminal justice or law enforcement management-related course work.

The motion prevailed.

Senator Shapiro 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 **CSHB 2347** by adding the following sections and renumbering existing sections accordingly:

SECTION \_\_. Section 54.214(d), Education Code, is amended to read as follows:

(d) The institution of higher education at which a person seeking an exemption under this section is enrolled ~~[coordinating board]~~ must certify the [a] person's eligibility to receive the [an] exemption ~~[under this section]~~. As soon as practicable after receiving an application for certification, the institution ~~[coordinating board]~~

shall make the determination of eligibility and give notice of its determination to the applicant~~[, the institution of higher education at which the applicant is enrolled,]~~ and to the school district employing the applicant ~~[person]~~ as an educational aide.

SECTION \_\_. The change in law made by this Act to Section 54.214, Education Code, applies to an exemption from tuition and fees granted under that section beginning with the 2009 fall semester.

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

The amendment to **CSHB 2347** 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: Shapiro.

Senator Ogden offered the following amendment to the bill:

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

Amend **CSHB 2347** 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. 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 2347** 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: Shapiro.

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

**CSHB 2347** 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: Shapiro.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2347 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 2347** 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)

**(President in Chair)**

### **BILLS AND RESOLUTIONS SIGNED**

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

**SCR 5, SCR 10, SCR 11, SCR 22, SCR 64, HB 621, HB 675, HB 783, HB 1113, HB 1257, HB 1362, HB 1365, HB 1452, HB 1761, HB 1919, HB 2187, HB 2447, HB 2467, HB 2572, HB 3097, HB 3129, HB 3358, HB 3391, HB 3961, HB 4114, HB 4127, HB 4328, HB 4779.**

### **HOUSE BILL 1946 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 1946** at this time on its second reading:

**HB 1946**, Relating to the creation of the Brazoria County Municipal Utility District No. 64; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

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 1946 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 1946** 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 464 ON SECOND READING**

Senator Nelson moved to suspend the regular order of business to take up for consideration **HB 464** at this time on its second reading:

**HB 464**, Relating to the preparation by the Legislative Budget Board of a dynamic fiscal impact statement for certain bills and joint resolutions affecting taxes and fees.

The motion prevailed.

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

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 464** (Senate committee printing) as follows:

1. On page 1, line 21, strike "\$100 million" and substitute "\$75 million".
2. On page 1, line 22, strike "during a period not to exceed five years" and substitute "annually".

The amendment to **HB 464** 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: Duncan.

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

**HB 464** 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: Duncan.

**HOUSE BILL 464 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 464** be placed on its third reading and final passage.

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

Nays: Duncan.

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

**HOUSE BILL 4742 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4742** at this time on its second reading:

**HB 4742**, Relating to the preservation of a record in a proceeding in a municipal court of record in Austin.

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 4742 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 4742** 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 2808 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2808** at this time on its second reading:

**HB 2808**, Relating to the power of a licensing authority to revoke, suspend, or deny a license on the basis of certain criminal proceedings.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2808**, in SECTION 1 of the bill, in added Section 53.021(e), Occupations Code, (Senate committee printing, page 1) by striking lines 38-39 and substituting the following:  
to provide:

(1) law enforcement or public health, education, or safety services; or  
(2) financial services in an industry regulated by a person listed in Section 411.081(i)(19), Government Code.

The amendment to **HB 2808** 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.

**HB 2808** 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 2808 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 2808** 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 4300 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4300** at this time on its second reading:

**CSHB 4300**, Relating to safety rules for certain pipeline facilities and public awareness.

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 4300 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 4300** 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 3220 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 3220** at this time on its second reading:

**HB 3220**, Relating to the applicability of certain laws to open-enrollment charter schools.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3220** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 12.101, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The State Board of Education, after thoroughly investigating and evaluating an applicant, may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant ~~[a total of]~~ more than 10 new [215] charters for an open-enrollment charter school each state fiscal year.

(b-1) A charter holder may establish one or more new open-enrollment charter school campuses under a charter without applying for authorization from the State Board of Education if:

(1) 90 percent or more of the open-enrollment charter school campuses operating under the charter have been rated as academically acceptable or higher under Subchapter D, Chapter 39, for the two preceding school years;

(2) either no campus operating under the charter has been rated as academically unacceptable for any two of the three preceding school years or such a campus has been closed;

(3) the charter holder satisfies generally accepted accounting standards of fiscal management;

(4) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to the State Board of Education and the commissioner of the establishment of any campus under this subsection; and

(5) not later than the 90th day after the date the charter holder provides written notice under Subdivision (4), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

SECTION 2. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1011 to read as follows:

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The State Board of Education may grant under Section 12.101 a charter on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. A charter granted under this section is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is granted under Section 12.101.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability.

SECTION 3. Section 12.104, Education Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, and G, Chapter 39, except as provided by Subsection (e);

(M) the requirement under Section 21.006 to report an educator's misconduct; and

(N) intensive programs of instruction under Section 28.0213.

(e) In computing dropout and completion rates for an open-enrollment charter school, the commissioner may:

(1) exclude students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate; and

(2) exclude students who were previously reported to the state as dropouts.

SECTION 4. Section 12.1056, Education Code, is amended to read as follows:

Sec. 12.1056. IMMUNITY FROM LIABILITY. (a) In matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee.

(b) An open-enrollment charter school is a governmental unit as defined by Section 101.001, Civil Practice and Remedies Code, and is subject to liability only as provided by Chapter 101, Civil Practice and Remedies Code, and only in the manner that liability is provided by that chapter for a school district.

(c) An open-enrollment charter school is a local government as defined by Section 102.001, Civil Practice and Remedies Code, and a payment on a tort claim must comply with Chapter 102, Civil Practice and Remedies Code.

SECTION 5. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1058 to read as follows:

Sec. 12.1058. APPLICABILITY OF OTHER LAWS. (a) An open-enrollment charter school is considered to be:

(1) a local government for purposes of Chapter 791, Government Code;

(2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code; and

(3) a political subdivision for purposes of Chapter 172, Local Government Code.

(b) An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this section is considered to be a political subdivision for all purposes under Chapter 504, Labor Code.

SECTION 6. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a charter for

an open-enrollment charter school under Section 12.110 or on receipt by the board and the commissioner of notice of the establishment of a campus as authorized under Section 12.101(b-1):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION 7. Section 12.111(a), Education Code, is amended to read as follows:

(a) Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) specify the period for which the charter or, consistent with Section 12.116(b-1), any charter renewal is valid;

(3) provide that continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1) [acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter];

(4) ~~[establish the level of student performance that is considered acceptable for purposes of Subdivision (3);~~

~~[(5)]~~ specify any basis, in addition to a basis [specified by this subchapter, on which the charter may be placed on probation or revoked ~~[or on which renewal of the charter may be denied];~~

~~(5) [(6)]~~ prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

~~(6) [(7)]~~ specify the grade levels to be offered;

~~(7) [(8)]~~ describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

~~(8) [(9)]~~ specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9) ~~[(40)]~~ specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10) ~~[(41)]~~ describe the process by which the person providing the program will adopt an annual budget;

(11) ~~[(42)]~~ describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(12) ~~[(43)]~~ describe the facilities to be used;

(13) ~~[(44)]~~ describe the geographical area served by the program; and

(14) ~~[(45)]~~ specify any type of enrollment criteria to be used.

SECTION 8. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION ~~[, OR DENIAL OF RENEWAL]~~. (a) The commissioner may modify, place on probation, or revoke ~~[, or deny renewal of]~~ the charter of an open-enrollment charter school if the commissioner determines that the charter holder:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; or

(4) failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner takes under Subsection (a) shall be based on:

(1) the best interest of the school's students;

(2) ~~[-]~~ the severity of the violation~~[-]~~ and any previous violation the school has committed; and

(3) the accreditation status of the school under Section 39.072.

SECTION 9. Section 12.116, Education Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsection (b) to read as follows:

(a-1) The commissioner shall revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent as a result of recovery of overallocated state funds under Section 42.258(a).

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.1324(d), (e), or (f) [procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated].

(b-1) The procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school must provide that the charter automatically renews unless the school's charter is revoked under Subchapter G, Chapter 39, before the expiration of a charter term. The term for which a charter is renewed shall not be less than 10 years.

SECTION 10. Section 12.118(a), Education Code, is amended to read as follows:

(a) The commissioner shall designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

SECTION 11. Section 12.119(c), Education Code, is amended to read as follows:

(c) On request, the State Board of Education shall provide the information required by this section and Section 12.111(a)(7) [~~12.111(8)~~] to a member of the public. The board may charge a reasonable fee to cover the board's cost in providing the information.

SECTION 12. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.134 and 12.135 to read as follows:

Sec. 12.134. COLOCATION AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a) This section applies to a school district that:

(1) leases a district facility for the operation of an open-enrollment charter school to be colocated on a district campus; and

(2) enters into an agreement with the charter school as provided by Subsection (d).

(b) The board of trustees of a school district may elect to have data regarding the academic performance of students enrolled in the open-enrollment charter school combined with comparable data of the colocated district campus in determining the performance of the campus and the district.

(c) The board of trustees of a school district that elects under Subsection (b) to have academic data combined shall annually file with the agency a copy of the lease and agreement described by Subsection (a).

(d) The agreement between the school district and the open-enrollment charter school:

(1) shall establish terms for sharing instructional or other specified resources, such as professional development;

(2) shall for each year specify factors for identifying a student who will be served by the charter school in the leased facilities, which may include:

(A) the student's attendance at a specified district campus or campuses;

(B) the student's need for specific academic services;

(C) the student's academic performance in previous school years; or

(D) other objective factors determined by the district and the charter

school;

(3) may prohibit the charter school from enrolling students at the leased facilities other than those identified under factors designated in the agreement; and

(4) shall require the district and the charter school to adopt measures, as required by commissioner rule, such as using different numerical codes for reporting information through the Public Education Information Management System (PEIMS), so that data remains identifiable as that of the district or of the school, as applicable.

Sec. 12.135. EDUCATIONAL SERVICES AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL.

(a) Notwithstanding Chapter 41 or 42, and in addition to any other funds to which a school district may be entitled, if the board of trustees of the district enters into an agreement under this section with an open-enrollment charter school for the charter school to provide educational services to a student enrolled in school in the district, the district is entitled to receive the greater of the following amounts:

(1) the amount the charter school would receive under Section 12.106 if the student were enrolled in the charter school; or

(2) the amount to which the district is entitled under Chapters 41 and 42 for the student.

(b) The board of trustees of a school district that enters into an agreement described by Subsection (a) with an open-enrollment charter school may elect to have the state and federal funds attributable to the students educated by the charter school paid directly to the charter school. A school district that makes such an election must make an annual declaration of the election to the agency in a manner determined by the commissioner. The district remains responsible for any overallocation or audit recovery of state or federal funds as determined by the commissioner.

SECTION 13. Sections 39.202 and 39.203, Education Code, are amended to read as follows:

Sec. 39.202. DEVELOPMENT AND IMPLEMENTATION. (a) The commissioner shall, in consultation with the comptroller, develop and implement a financial accountability rating system for school districts and open-enrollment charter schools in this state that:

(1) distinguishes among school districts and open-enrollment charter schools based on levels of financial performance; and

(2) includes procedures to:

(A) provide additional transparency to public education finance; and

(B) enable the commissioner and school district and open-enrollment charter school administrators to provide meaningful financial oversight and improvement.

(b) The system must include uniform indicators adopted by the commissioner by which to measure a district's or open-enrollment charter school's financial management performance.

Sec. 39.203. REPORTING. (a) The commissioner shall develop, as part of the system, a reporting procedure under which:

(1) each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report; and

(2) the public is provided an opportunity to comment on the report at a hearing.

(b) The annual financial management report must include:

(1) a description of the district's or school's financial management performance based on a comparison, provided by the agency, of the district's or school's performance on the indicators adopted under Section 39.202(b) to:

(A) state-established standards; and

(B) the district's or school's previous performance on the indicators;

and

(2) any descriptive information required by the commissioner.

(c) The report may include:

(1) information concerning, if applicable, the district's or school's:

(A) financial allocations;

(B) tax collections;

(C) financial strength;

(D) operating cost management;

(E) personnel management;

(F) debt management;

(G) facility acquisition and construction management;

(H) cash management;

(I) budgetary planning;

(J) overall business management;

(K) compliance with rules; and

(L) data quality; and

(2) any other information the board of trustees determines to be necessary or useful.

(d) The board of trustees of each school district and the governing body of each open-enrollment charter school shall hold a public hearing on the report. The board shall give notice of the hearing to, as applicable, owners of real property in the district and to parents of district students or to owners of real property in the district in which the open-enrollment charter school is located and to the parents of school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district; and

(2) through electronic mail to media serving the district.

(e) After the hearing, the report shall be disseminated in the district or in the district in which the open-enrollment charter school is located in the manner prescribed by the commissioner.

SECTION 14. Section 12.113(b), Education Code, is repealed.

SECTION 15. This Act applies beginning with the 2009-2010 school year.

SECTION 16. 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.

SECTION 17. Except as provided by Section 16 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009, except as provided by Section 16 of this Act.

The amendment to **HB 3220** 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 Patrick and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3220** 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 3220 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 3220** 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 4818 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4818** at this time on its second reading:

**HB 4818**, Relating to the Dallas County Utility and Reclamation 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 4818 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 4818** 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 4800 ON SECOND READING**

Senator Ogden moved to suspend the regular order of business to take up for consideration **HB 4800** at this time on its second reading:

**HB 4800**, Relating to the creation of the San Gabriel Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

The motion prevailed.

Senator Shapiro asked to be recorded as "Present-not voting" 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:

Present-not voting: Shapiro.

### **HOUSE BILL 4800 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 4800** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Shapiro.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

### **HOUSE BILL 518 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 **HB 518** at this time on its second reading:

**HB 518**, Relating to programs to provide student loan repayment assistance for certain correctional officers and for certain speech-language pathologists and audiologists.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

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

Amend **HB 518** (Senate committee printing) by adding the following SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

#### SUBCHAPTER GG. TEXAS TEACH CORPS STUDENT LOAN REPAYMENT ASSISTANCE PROGRAM FOR MATHEMATICS AND SCIENCE CLASSROOM TEACHERS

Sec. 61.9831. LOAN REPAYMENT ASSISTANCE AUTHORIZED. The board shall provide, in accordance with this subchapter and board rules, assistance in the repayment of eligible student loans for eligible undergraduate students who agree to teach mathematics or science for a specified period in school districts in this state that are determined by the Texas Education Agency to have shortages of teachers in mathematics or science.

Sec. 61.9832. ELIGIBILITY; AGREEMENT REQUIREMENTS. (a) To be eligible to receive loan repayment assistance under this subchapter, a person must:

(1) apply for the loan repayment assistance in the manner prescribed by the board;

(2) have graduated from high school in this state;

(3) be currently enrolled in an educator preparation program accredited by the State Board for Educator Certification that is provided by an institution of higher education or by a private or independent institution of higher education in this state;

(4) have a cumulative grade point average of at least 2.75 on a four-point scale or the equivalent;

(5) enter into an agreement with the board providing that:

(A) the person will earn a baccalaureate degree through completion of an educator preparation program described by Subdivision (3);

(B) the person will graduate with a cumulative grade point average of at least 2.75 on a four-point scale or the equivalent;

(C) the person will obtain, within the period prescribed by board rule, appropriate certification under Subchapter B, Chapter 21, to teach mathematics or science in a public school in this state;

(D) beginning with the first school year that begins after the date the person obtains the appropriate certification described by Paragraph (C), the person will accept an offer of full-time employment to teach mathematics or science, as applicable based on the person's certification, in a school district in this state selected by the person from among districts determined by the Texas Education Agency to have shortages of teachers in that subject for that first school year for which the person is accepting employment;

(E) the person will complete four consecutive years of employment as a full-time classroom teacher in a district described by Paragraph (D) whose primary duty is to teach mathematics or science, as applicable, based on the person's certification; and

(F) the person acknowledges the conditional nature of the loan repayment assistance; and

(6) comply with any other requirement adopted by the board under this subchapter.

(b) Except as provided by Section 61.9833, for the first school year of employment and each following consecutive school year of employment, as described by Subsections (a)(5)(D) and (E), not to exceed a total of four years, the board may provide assistance for the repayment of a portion of an eligible person's eligible loans. Subject to the availability of funding under Section 61.9836 and except as otherwise provided by this subsection, the amount of an assistance payment provided under this subsection in any year to an eligible person is \$5,000. The board shall increase that amount as necessary to adjust for inflation or, as determined by the board, on the basis of other relevant considerations. The board shall reduce the amount of a single assistance payment or refrain from making an assistance payment to an eligible person as necessary to avoid making total payments under this subsection to the person in an amount greater than the total amount of principal and interest due on the person's eligible loans.

(c) For purposes of this subchapter, whether a school district is determined to have a shortage of mathematics or science teachers for a school year is based on a determination made by the Texas Education Agency during the preceding school year. Not later than April 1 of each school year, the Texas Education Agency shall determine which school districts in this state have a shortage of mathematics or science teachers during that school year and shall provide that information to the board and to each educator preparation program in this state accredited by the State Board for Educator Certification.

(d) For purposes of Subsection (a)(5)(E), if a person is employed as a teacher in a school district determined to have a shortage of teachers in mathematics or science for the first year of employment, each subsequent year of continuous employment as a teacher in that district is considered to be employment in a district determined to have such a shortage of teachers in that subject in that subsequent year, regardless of whether the Texas Education Agency determined that the district had a shortage of teachers in that subject for that year.

(e) To satisfy the teaching obligation prescribed by an agreement under this section, a person must teach mathematics or science courses for not less than an average of four hours each school day.

Sec. 61.9833. EXCEPTION TO CONSECUTIVE YEARS OF EMPLOYMENT REQUIREMENT. The board shall excuse an otherwise eligible person from the requirement imposed by Section 61.9832(a)(5)(E) that the employment be performed in consecutive years if the break in employment is a result of the person's:

(1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by an institution of higher education or by a private or independent institution of higher education in this state;

(2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty;

(3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician;

(4) inability to secure employment as required by Section 61.9832 for a period not to exceed 12 months, because of care required by a disabled spouse or child;

(5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, employment as required by Section 61.9832; or

(6) satisfaction of the provisions of any other exception adopted by the board for purposes of this section.

Sec. 61.9834. ELIGIBLE LOANS. (a) The board may provide under this subchapter repayment assistance for the repayment of any student loan that:

(1) is for education at a public or private institution of higher education; and

(2) is received by an eligible person through an eligible lender.

(b) If the loan is not a state or federal guaranteed student loan, the note or other writing governing the terms of the loan must require the loan proceeds to be used for expenses incurred by a person in attending a postsecondary educational institution.

(c) The board may not provide loan repayment assistance under this subchapter for a student loan that is in default at the time of the person's application for repayment assistance.

Sec. 61.9835. PAYMENT OF ASSISTANCE. (a) The board shall pay any loan repayment assistance under this subchapter in a lump sum:

(1) payable to both the holder of the loan and the eligible person; or

(2) delivered on the eligible person's behalf directly to the holder of the loan.

(b) Loan repayment assistance provided under this subchapter may be applied to any amount due on the loan.

(c) Each fiscal biennium, the board shall attempt to allocate all money available to the board for the purpose of providing loan repayment assistance under this subchapter.

Sec. 61.9836. MATHEMATICS AND SCIENCE TEACHER INVESTMENT FUND. (a) In this section, "fund" means the mathematics and science teacher investment fund.

(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, and other donations received for the fund; and

(3) interest and other earnings from the investment of the fund.

(c) The fund may be used only to provide repayment assistance for the repayment of loans eligible under Section 61.9834, including related administrative costs.

(d) The fund is exempt from the application of Sections 403.095 and 404.071, Government Code.

(e) The board may solicit and accept grants, gifts, or donations from any public or private entity for the purposes of this subchapter. All money received under this subchapter shall be deposited in the fund.

Sec. 61.9837. AMOUNT OF LOAN REPAYMENT ASSISTANCE. (a) The total amount of loan repayment assistance paid by the board under this subchapter may not exceed the total amount of money available in the fund under Section 61.9836 and any other money that the board is legally authorized to use for purposes of this subchapter.

(b) Not more than 4,000 eligible persons may be provided loan repayment assistance in the amount authorized under this subchapter in any school year.

(b-1) This subsection expires January 1, 2016. Notwithstanding Subsection (b), not more than the following number of eligible persons may be provided loan repayment assistance in the amount authorized under this subchapter in the specified school year:

(1) in the 2012-2013 school year, not more than 1,000 eligible persons may be provided loan repayment assistance;

(2) in the 2013-2014 school year, not more than 2,000 eligible persons may be provided loan repayment assistance; and

(3) in the 2014-2015 school year, not more than 3,000 eligible persons may be provided loan repayment assistance.

(c) If in any year the amount of money available for loan repayment assistance under this subchapter is insufficient to provide loan repayment assistance to each eligible applicant or if there are more eligible applicants than the number authorized by this section, the board shall establish criteria to determine which eligible applicants will be provided repayment assistance as the board determines appropriate to further the purposes of this subchapter.

Sec. 61.9838. RULES. The board shall:

(1) adopt rules necessary for the administration of this subchapter, including a rule providing for the manner in which a person may apply for loan repayment assistance; and

(2) distribute to each educator preparation program approved by the State Board for Educator Certification offered by an institution of higher education or by a private or independent institution of higher education in this state a copy of the rules adopted under this section.

SECTION \_\_\_\_\_. The Texas Higher Education Coordinating Board shall begin providing loan repayment assistance under Subchapter GG, Chapter 61, Education Code, as added by this Act, for eligible persons teaching in the 2012-2013 school year.

SECTION \_\_\_\_\_. Subchapter GG, Chapter 61, Education Code, as added by this Act, does not make an appropriation. A provision in Subchapter GG, Chapter 61, Education Code, as added by 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 518** was read and was adopted by a viva voce vote.

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

Senator Ogden offered the following amendment to the bill:

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

Amend **HB 518** 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. 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 518** 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.

**HB 518** 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 518 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 518** 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 4775 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 4775** at this time on its second reading:

**HB 4775**, Relating to the creation of the Alden Lake Management District; providing authority to impose an assessment, impose a tax, and issue bonds.

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 4775 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 4775** 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 4795 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 4795** at this time on its second reading:

**HB 4795**, Relating to territory included in, and the validation of acts of, the Harris County Improvement District No. 10 and the Harris County Improvement District No. 10B; changing the name of the Harris County Improvement District No. 10B.

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 4795 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 **HB 4795** 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 2919 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2919** at this time on its second reading:

**HB 2919**, Relating to the regulation of land use to ensure compatible development with military facilities in certain counties.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2919** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 397A to read as follows:

#### CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS RELATING TO MILITARY INSTALLATIONS

Sec. 397A.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the areas that surround military installations will be frequented for military, national security, and international training purposes by residents from many parts of the state, nation, and world;

(2) compatible development and use of those areas is of concern to the state and nation; and

(3) without adequate regulation, the areas will tend to become incompatible with military missions and will be used in ways that interfere with:

(A) the proper continued use of those areas as secure locations for military installations and missions; and

(B) the effective operation of the military installations and missions.

(b) The regulatory powers granted under this chapter are for the purposes of:

(1) promoting the public health, safety, and general welfare;

(2) protecting and preserving places and areas of military and national security importance and significance;

(3) protecting critical military missions and operations related to those missions; and

(4) ensuring state and national security.

(c) This chapter may not be interpreted to grant regulatory powers to administer Chapter 245 or to amend a protection or benefit provided by Chapter 245.

Sec. 397A.002. APPLICABILITY. (a) A regulation or compatible development standard adopted under this chapter does not apply to:

(1) a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision;

(2) a tract of land in agricultural use;

(3) an activity or a structure or appurtenance on a tract of land in agricultural use; or

(4) an area designated as part of the commission's territory under Section 397A.003 that is subject to the jurisdiction of a regulatory agency as defined by Section 245.001, and that, on the effective date of the Act adding this chapter, is:

(A) within the boundaries of a project as defined by Section 245.001 and any revision to the project that has accrued rights under Chapter 245;

(B) the subject of a permit as defined by Section 245.001 issued by or a permit application filed with a regulatory agency as defined by Section 245.001; or

(C) subject to a plan for development or plat application filed with a regulatory agency as defined by Section 245.001.

(b) In this section:

(1) "Agricultural use" means use or activity involving agriculture.

(2) "Agriculture" means:

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a government program or normal crop or livestock rotation procedure; or

(E) engaging in wildlife management.

(c) A term used in this chapter that is defined or used in Chapter 245 has the meaning assigned by Chapter 245.

Sec. 397A.003. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) A county with unincorporated area located within five miles of the boundary line of a military installation, and a municipality with a population of 1.1 million or more and with extraterritorial jurisdiction located within five miles of the boundary line of a military installation, each of which, with respect to the same military installation, constitutes a defense community as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this chapter in an area that is located:

(1) in the same county as the active military installation; and

(2) in the extraterritorial jurisdiction of the municipality.

(b) Defense communities may not establish more than one commission in a county.

(c) Except as provided by Subsection (d), a commission's territory consists of the unincorporated area located within two miles of the boundary line of a military installation designated as the commission's territory when the commission is established.

(d) If a military installation is engaged in flight training at the time a commission is established under this section, the commission's territory consists of the unincorporated area located within three miles of the boundary line of the military installation.

(e) A commission is a political subdivision of the state, is subject to Section 245.006, and is entitled to immunity as described by Chapter 101, Civil Practice and Remedies Code.

(f) This chapter shall be narrowly construed in conformity with the findings and purposes under Section 397A.001.

Sec. 397A.004. HEARING ON CREATION OF COMMISSION. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of each participating governmental entity establishes a regional military sustainability commission, each governing body shall hold two public hearings to consider the creation of the proposed commission. Each governing body must, at least seven days before each public hearing, prominently post notice of the hearing in the administrative offices of the governmental entity and publish notice of the hearing in a newspaper of general circulation, if any, in the proposed territory.

(b) The notice required by Subsection (a) must:

(1) state the date, time, and place for the public hearing;

(2) identify the boundaries of the proposed territory, including a map of the proposed territory; and

(3) provide a description of the proposed commission's authority.

Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) The governing body of a regional military sustainability commission is composed of not more than nine members.

(b) Participating governmental entities may by joint agreement determine the number, qualifications, and method of selecting members of the governing body of a commission.

(c) A member of a governing body of a commission may not be an elected official of a participating county or municipality.

Sec. 397A.006. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter. The term does not include a revision to a project commenced before the effective date of the Act adding this chapter.

(b) A regional military sustainability commission shall establish an advisory committee and appoint six members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project. The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a

recommendation regarding compatibility, to the reviewing governmental entity not later than the 30th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission, if the fiscal impact is determinable based on the project description and other information provided by the developer.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

(e) On annexation of an area in the commission's territory for full or limited purposes by a municipality, the commission's authority over the area expires. The commission regains the authority in an area if the municipality disannexes the area.

Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS.

(a) Before exercising the authority granted by Section 397A.006, a regional military sustainability commission shall recommend and adopt compatible development standards for the territory. The commission must consider and may adopt, as part of the regional compatible development standards, standards required by the Federal Aviation Administration regulations for military installations that service aircraft and helicopters. The commission shall submit compatible development standards adopted under this section to the participating governmental entities for approval.

(b) Before taking action to approve or reject the compatible development standards proposed by the commission, the participating governmental entities shall:

(1) provide notice of the commission's proposed compatible development standards to property owners in the commission's territory, as determined by the most recent county tax roll; and

(2) publish notice of the commission's proposed compatible development standards in a newspaper of general circulation, if any, in the commission's territory.

(c) The failure of notice to reach each property owner under Subsection (b) does not invalidate compatible development standards adopted under this section.

(d) The compatible development standards are final after approval by a majority vote of each participating governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) The commission may include in the compatible development standards a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) The commission may recommend and approve amendments to approved compatible development standards. The participating governmental entities may approve the commission's amended standards under procedures adopted by the entities.

Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this chapter must be coordinated with:

(1) the county plan for growth and development of the participating county or a county located in the regional military sustainability commission's territory;

(2) the comprehensive plan of the participating municipality; and

(3) the most recent Joint Land Use Study, if the commission makes a finding that the conclusions of the study accurately reflect circumstances in the territory.

Sec. 397A.009. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this chapter conflicts with a standard imposed under another statute or local order or regulation, the more stringent standard controls.

Sec. 397A.010. FUNDS. (a) A regional military sustainability commission does not have power to tax.

(b) A participating governmental entity may appropriate funds to the commission for the costs and expenses required in the performance of the commission's purposes.

(c) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental entity, the state, the federal government, or any other source.

Sec. 397A.011. RESTRICTIONS. (a) A regional military sustainability commission shall comply with laws applicable to participating governmental entities relating to:

(1) reimbursement for travel expenses;

(2) nepotism;

(3) conflicts of interest; and

(4) registration of lobbyists.

(b) To the extent of a conflict between laws applicable to participating governmental entities relating to a subject described by Subsection (a), the more stringent requirement controls.

Sec. 397A.012. WITHDRAWAL FROM COMMISSION. A participating governmental entity may withdraw from a regional military sustainability commission:

(1) by a two-thirds vote of its governing body; and

(2) after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1).

Sec. 397A.013. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. A regional military sustainability commission that regulates territory around a military installation that is closed by the federal government and the regional compatible development standards adopted by the commission may continue in effect until the fourth anniversary of the date the military installation is closed.

Sec. 397A.014. JUDICIAL REVIEW OF COMMISSION OR GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision of this chapter, a landowner aggrieved by a report submitted by the regional military sustainability commission or by a permit application decision of the participating governmental entity under this chapter may appeal all or part of the report or permit application decision to a district court. The court may reverse or modify, wholly or partly, the report submitted by the commission or the permit application decision that is appealed.

The amendment to **HB 2919** 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 **HB 2919** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 397A to read as follows:

CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS  
RELATING TO MILITARY INSTALLATIONS

Sec. 397A.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the areas that surround military installations will be frequented for military, national security, and international training purposes by residents from many parts of the state, nation, and world;

(2) compatible development and use of those areas is of concern to the state and nation; and

(3) without adequate regulation, the areas will tend to become incompatible with military missions and will be used in ways that interfere with:

(A) the proper continued use of those areas as secure locations for military installations and missions; and

(B) the effective operation of the military installations and missions.

(b) The regulatory powers granted under this chapter are for the purposes of:

(1) promoting the public health, safety, and general welfare;

(2) protecting and preserving places and areas of military and national security importance and significance;

(3) protecting critical military missions and operations related to those missions; and

(4) ensuring state and national security.

(c) This chapter may not be interpreted to grant regulatory powers to administer Chapter 245 or to amend a protection or benefit provided by Chapter 245.

Sec. 397A.002. APPLICABILITY. (a) A regulation or compatible development standard adopted under this chapter does not apply to:

(1) an area located in a county with a population of less than 5,000 that is adjacent to an international border;

(2) a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision;

(3) a tract of land in agricultural use;

(4) an activity or a structure or appurtenance on a tract of land in agricultural use; or

(5) any activity or a project, as that term is defined by Section 245.001, that

is:

(A) occurring or in existence on the effective date of the Act adding this

chapter; or

(B) receiving the benefits of or protected under Chapter 245.

(b) In this section:

(1) "Agricultural use" means use or activity involving agriculture.

(2) "Agriculture" means:

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a government program or normal crop or livestock rotation procedure; or

(E) engaging in wildlife management.

Sec. 397A.003. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) A county with a population of 60,000 or less and a municipality that, with respect to the same active military installation, constitutes a defense community, as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this chapter in an area that is located:

(1) in the same county as the active military installation; and

(2) in the extraterritorial jurisdiction of the municipality.

(b) Defense communities may not establish more than one commission in a county.

(c) A commission's territory consists of the unincorporated area located within five miles of the boundary line of a military installation designated as the commission's territory when the commission is established.

(d) A commission is a political subdivision of the state, is subject to Section 245.006, and is entitled to immunity as described by Chapter 101, Civil Practice and Remedies Code.

(e) This chapter shall be narrowly construed in conformity with the findings and purposes under Section 397A.001.

Sec. 397A.004. HEARING ON CREATION OF COMMISSION. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of each participating governmental entity establishes a regional military sustainability commission, each governing body shall hold two public hearings to consider the creation of the proposed commission. Each governing body must, at least seven days before each public hearing, prominently post notice of the hearing in the administrative offices of the governmental entity and publish notice of the hearing in a newspaper of general circulation, if any, in the proposed territory.

(b) The notice required by Subsection (a) must:

(1) state the date, time, and place for the public hearing;

(2) identify the boundaries of the proposed territory, including a map of the proposed territory; and

(3) provide a description of the proposed commission's authority.

Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) The governing body of a regional military sustainability commission is composed of not more than nine members.

(b) Participating governmental entities may by joint agreement determine the number, qualifications, and method of selecting members of the governing body of a commission.

(c) A member of a governing body of a commission may not be an elected official of a participating county or municipality.

Sec. 397A.006. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter, including a water contract, sewer contract, or master plan.

(b) A regional military sustainability commission shall establish an advisory committee and appoint six members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project. The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a recommendation regarding compatibility, to the reviewing governmental entity not later than the 15th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission as part of the report.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

(e) On annexation of an area in the commission's territory for full or limited purposes by a municipality, the commission's authority over the area expires. The commission regains the authority in an area if the municipality disannexes the area.

Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS. (a) Before exercising the authority granted by Section 397A.006, a regional military sustainability commission shall recommend and adopt compatible development standards for the territory. The commission must consider and may adopt, as part of the regional compatible development standards, the Federal Aviation Administration regulations regarding height restrictions surrounding a military installation that

services aircraft and helicopters. The commission shall submit compatible development standards adopted under this section to the participating governmental entities for approval.

(b) Before taking action to approve or reject the compatible development standards proposed by the commission, the participating governmental entities shall:

(1) provide notice of the commission's proposed compatible development standards to property owners in the commission's territory, as determined by the most recent county tax roll; and

(2) publish notice of the commission's proposed compatible development standards in a newspaper of general circulation, if any, in the commission's territory.

(c) The failure of notice to reach each property owner under Subsection (b) does not invalidate compatible development standards adopted under this section.

(d) The compatible development standards are final after approval by a majority vote of each participating governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) The commission may include in the compatible development standards a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) The commission may recommend and approve amendments to approved compatible development standards. The participating governmental entities may approve the commission's amended standards under procedures adopted by the entities.

Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this chapter must be coordinated with:

(1) the county plan for growth and development of the participating county or a county located in the regional military sustainability commission's territory;

(2) the comprehensive plan of the participating municipality; and

(3) the most recent Joint Land Use Study, if the commission makes a finding that the conclusions of the study accurately reflect circumstances in the territory.

Sec. 397A.009. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this chapter conflicts with a standard imposed under another statute or local order or regulation, the more stringent standard controls.

Sec. 397A.010. FUNDS. (a) A regional military sustainability commission does not have power to tax.

(b) A participating governmental entity may appropriate funds to the commission for the costs and expenses required in the performance of the commission's purposes.

(c) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental entity, the state, the federal government, or any other source.

Sec. 397A.011. RESTRICTIONS. (a) A regional military sustainability commission shall comply with laws applicable to participating governmental entities relating to:

- (1) reimbursement for travel expenses;
- (2) nepotism;
- (3) conflicts of interest; and
- (4) registration of lobbyists.

(b) To the extent of a conflict between laws applicable to participating governmental entities relating to a subject described by Subsection (a), the more stringent requirement controls.

Sec. 397A.012. WITHDRAWAL FROM COMMISSION. A participating governmental entity may withdraw from a regional military sustainability commission:

- (1) by a two-thirds vote of its governing body; and
- (2) after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1).

Sec. 397A.013. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. A regional military sustainability commission that regulates territory around a military installation that is closed by the federal government and the regional compatible development standards adopted by the commission may continue in effect until the fourth anniversary of the date the military installation is closed.

Sec. 397A.014. JUDICIAL REVIEW OF COMMISSION OR GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision of this chapter, a landowner aggrieved by a report submitted by the regional military sustainability commission or by a permit application decision of the participating governmental entity under this chapter may appeal all or part of the report or permit application decision to a district court, county court, or county court at law. The court may reverse or modify, wholly or partly, the report submitted by the commission or the permit application decision that is appealed.

The amendment to **HB 2919** 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: Harris, Williams.

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

**HB 2919** 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: Harris.

### **HOUSE BILL 2919 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 **HB 2919** be placed on its third reading and final passage.

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

Nays: Harris.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

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

Nays: Harris, Hegar.

### **HOUSE BILL 4728 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 4728** at this time on its second reading:

**HB 4728**, Relating to the Parker County Utility District No. 1.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

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

Amend **HB 4728** (Senate committee report) by striking SECTION 3 of the bill amending the description of the district territory under Section 7208.005, Special District Local Laws Code, and renumbering subsequent SECTIONS accordingly.

The amendment to **HB 4728** 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 4728** 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 4728 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 4728** be placed on its third reading and final passage.

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

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

### **HOUSE JOINT RESOLUTION 102 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 102** at this time on its second reading:

**HJR 102**, Proposing a constitutional amendment to protect the right of the public to access and use public beaches.

The resolution was read second time and was passed to third reading by the following vote: Yeas 20, Nays 11.

Yeas: Averitt, Carona, Davis, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nichols, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Deuell, Duncan, Estes, Fraser, Harris, Jackson, Nelson, Ogden, Patrick, Shapiro, Williams.

### **HOUSE BILL 2582 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 2582** at this time on its second reading:

**HB 2582**, Relating to the production and taxation of renewable diesel fuel.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

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

Amend **HB 2582** (Senate committee printing) by adding the appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Title 2, Chapter 16, Agriculture Code, is amended by adding Sec. 16.007 to read as follows:

Sec. 16.007. COMPLIANCE WITH FUEL STANDARDS AND SPECIFICATIONS. (a) A manufacturer of motor fuel as defined in Chapter 162, Tax Code, including biodiesel and renewable diesel, is liable only to the extent that the fuel fails to meet the express standards promulgated by the state or federal government.

The amendment to **HB 2582** 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.

**HB 2582** 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 2582 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 2582** 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.

### RECESS

On motion of Senator Williams, the Senate at 7:04 p.m. recessed until 7:30 p.m. today.

### AFTER RECESS

The Senate met at 7:41 p.m. and was called to order by the President.

### COMMITTEE SUBSTITUTE HOUSE BILL 2752 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 2752** at this time on its second reading:

**CSHB 2752**, Relating to independent audits of insurer financial statements and insurer internal controls.

The bill was read second time.

Senator Averitt offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 2752** (Senate committee report) as follows:

(1) In SECTION 7 of the bill, in amended Section 401.007, Insurance Code (page 3, line 52), amend the introductory language by striking "Subsection (c)" and substituting "Subsection (d)".

(2) In SECTION 7 of the bill, in proposed Section 401.007(c), Insurance Code (page 4, line 1), strike "(c)" and substitute "(d)".

The amendment to **CSHB 2752** 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 Averitt offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **CSHB 2752** (Senate committee printing) with the following appropriately numbered new sections into the bill and renumbering remaining sections accordingly:

SECTION \_\_. Title 8, Insurance Code, is amended by adding Subchapter K to read as follows:

#### SUBCHAPTER K. NONINSURANCE HEALTH COVERAGES CHAPTER 1680. HEALTH CARE SHARING ORGANIZATIONS.

Sec. 1680.001. SHORT TITLE. This subchapter may be cited as the Health Care Sharing Organizations Freedom to Share Act.

Sec. 1680.002. TREATMENT AS HEALTH CARE SHARING ORGANIZATION. An organization that administers a health care sharing arrangement among individuals of the same religion based on the individuals' sincerely held religious belief qualifies for treatment as a health care sharing organization under this subchapter if:

(1) the organization is a bona fide religious organization, the primary purpose and function of which is religious, that is entitled to tax exempt status under Section 501(c)(3) Internal Revenue Code of 1986; and

(2) in operating the health care sharing arrangement, the organization:

(A) does not bear risk but facilitates payments to participants who have financial or medical-related needs from participants with the present ability to assist those with financial or medical-related needs, all in accordance with the organization's criteria;

(B) notifies a participant of sharing amounts;

(C) provides a written monthly statement to all participants listing the total dollar amount of qualified needs submitted to the organization as well as the total dollar amount actually assigned to participants for sharing;

(D) maintains a complaint log to track complaints by participants and retains information regarding each complaint until the third anniversary of the date the complaint is made;

(E) provides, on each application for participation in a health care sharing arrangement distributed directly or on behalf of the organization, a notice that complies with Section 1680.003; and

(F) requires each adult member to sign on behalf of the participant or, in the case of a minor or dependent child, on behalf of the minor or dependent child an acknowledgment that the member has read and understands the notice described by Section 1680.003 and retains the signed acknowledgment until the second anniversary of the last date of the member's participation in the health care sharing arrangement.

Sec. 1680.003. NOTICE. The notice described by Section 1680.002(2)(E) must be printed in no smaller than 12-point font and must read substantially as follows:

"This health care sharing organization is not offering an insurance product, and the health care sharing arrangement is not being offered by or through an insurance company. Participation in the health care sharing organization may limit your future options to purchase insurance if your health condition changes. Participation in the health care sharing organization does not provide creditable coverage, and, therefore, future insurance coverage you obtain may limit or exclude benefits for your preexisting conditions.

"This health care sharing organization is also not offering a discount health care program.

"Whether anyone chooses to assist you with your medical bills is voluntary, as no other participant may be compelled to share payment of your medical bills.

"This health care sharing arrangement is not insurance or a substitute for insurance. Whether you receive any payments for medical expenses and whether this health care sharing organization or arrangement continues to operate, you remain, to

the extent allowable under law, personally and fully responsible for the payment of your own medical bills. Complaints concerning this health care sharing organization may be reported to the Texas Office of the Attorney General."

Sec. 1680.004. AUTHORITY; LIMITATIONS. (a) A health care sharing organization may:

(1) establish additional qualifications for participation in the health care sharing arrangement;

(2) limit the financial or medical-related needs that may be eligible for payment among the participants;

(3) cancel a participant's participation in the health care sharing arrangement if the participant fails to make a specific payment to another participant before the 60th day after the date the payment is due; and

(4) issue participant membership cards.

(b) If a health care sharing organization issues participant membership cards, the cards must include the statement "Not Insurance."

(c) A health care sharing organization may not require that participants speak English.

Sec. 1680.005. CONSTRUCTION WITH OTHER LAW. (a) Chapter 76, Health and Safety Code, does not apply to a health care sharing organization.

(b) Notwithstanding any other provision of this code, a health care sharing organization is exempt from the operation of the insurance laws of this state and is not subject to the commissioner's oversight.

Sec. 1680.006. ENFORCEMENT AND ADMINISTRATION BY ATTORNEY GENERAL. (a) Notwithstanding any other law, the office of the attorney general has jurisdiction over health care sharing organization to ensure compliance with this subchapter and for:

(1) the prevention and prosecution of deceptive trade practices and fraud;  
and

(2) consumer protection.

(b) A health care sharing organization shall provide to the attorney general, on the request of the attorney general, any audit conducted of the organization and any original or amended annual filing made by the organization with the United States Internal Revenue Service.

(c) The attorney general may adopt rules to implement this subchapter.

Sec. 1680.007. CONSUMER PROTECTION. A participant in a health care sharing organization is a consumer for purposes of Chapter 17.46(a), Business & Commerce Code, and is entitled to the protections of the office of the attorney general as provided by that section.

Sec. 1680.008. NO ASSUMPTION OF RISK. (a) Participants in a health care sharing arrangement and the health care sharing organization:

(1) do not assume any risk or make any promise to pay the financial or medical-related needs of other participants; and

(2) are not risk-bearing entities.

(b) None of the activities in this subchapter give rise to an assumption of risk or promise to pay by either the participants or the health care sharing organization.

Sec. 1680.009. COLLATERAL SHARING ACTIVITIES. A health care sharing organization may:

(1) arrange for participants to share bills when a participant experiences disability; and

(2) provide health counseling, education, and resources to participants in the health care sharing arrangement.

Sec. 1680.010. CONTRACTUAL ARRANGEMENTS WITH OTHER ENTITIES. (a) A health care sharing organization may contract with an administrator as defined by Chapter 4151, Insurance Code, or a preferred provider organization or similar entity to facilitate the operation of the organization.

(b) A health care sharing organization that enters into a contractual arrangement under Subsection (a) remains exempt from the operation of the insurance laws of this state as described by Section 1680.005.

Sec. 1680.011. ANNUAL REPORT. Not later than January 1 of each year, the organization shall file an annual report regarding its operations in this state during that fiscal year with the governor, attorney general, lieutenant governor, and speaker of the house of representatives.

SECTION \_\_. Subsection (a), Section 101.055, Insurance Code, is amended to read as follows:

(a) Section 101.051(b)(7) does not apply to:

(1) a program otherwise authorized by law that is established:

(A) by a political subdivision of this state;

(B) by a state agency; or

(C) under Chapter 791, Government Code; ~~or~~

(2) a multiple employer welfare arrangement that is fully insured as defined by 29 U.S.C. Section 1144(b)(6); or

(3) a health care sharing organization operated under Chapter 1680.

SECTION \_\_. Section 76.002, Health and Safety Code, is amended to read as follows:

Sec. 76.002. CONSTRUCTION WITH ~~[APPLICABILITY OF]~~ OTHER LAW.

(a) In addition to the requirements of this chapter, a program operator or marketer is subject to the applicable consumer protection laws under Chapter 17, Business & Commerce Code.

(b) This chapter does not apply to a health care sharing organization operated under Chapter 1680, Insurance Code.

The amendment to **CSHB 2752** 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 Averitt offered the following amendment to the bill:

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

Amend **CSHB 2752** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

#### ARTICLE 1. RESCISSION OF HEALTH BENEFIT PLAN

SECTION 1.001. Subchapter B, Chapter 541, Insurance Code, is amended by adding Section 541.062 to read as follows:

Sec. 541.062. BAD FAITH RESCISSION. (a) For purposes of this section, "rescission" has the meaning assigned by Section 1202.101.

(b) It is an unfair method of competition or an unfair or deceptive act or practice for a health benefit plan issuer to:

(1) set rescission goals, quotas, or targets;

(2) pay compensation of any kind, including a bonus or award, that varies according to the number of rescissions;

(3) set, as a condition of employment, a number or volume of rescissions to be achieved; or

(4) set a performance standard, for employees or by contract with another entity, based on the number or volume of rescissions.

SECTION 1.002. Chapter 1202, Insurance Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. INDEPENDENT REVIEW OF CERTAIN RESCISSION DECISIONS

Sec. 1202.101. DEFINITIONS. In this subchapter:

(1) "Affected individual" means an individual who is otherwise entitled to benefits under a health benefit plan that is subject to a decision to rescind.

(2) "Independent review organization" means an organization certified under Chapter 4202.

(3) "Rescission" means the termination of an insurance agreement, contract, evidence of coverage, insurance policy, or other similar coverage document in which the health benefit plan issuer refunds premium payments or, if applicable, demands the restitution of any benefit paid under the plan, on the ground that the issuer is entitled to restoration of the issuer's precontractual position.

(4) "Screening criteria" means the elements or factors used in a determination of whether to subject an issued health benefit plan to additional review for possible rescission, including any applicable dollar amount or number of claims submitted.

Sec. 1202.102. APPLICABILITY. (a) This subchapter applies only to a health benefit plan, including a small or large employer health benefit plan written under Chapter 1501, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another limited benefit other than an accident policy;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan described by Subsection (a);

(6) a Medicaid managed care plan offered under Chapter 533, Government Code;

(7) any policy or contract of insurance with a state agency, department, or board providing health services to eligible individuals under Chapter 32, Human Resources Code; or

(8) a child health plan offered under Chapter 62, Health and Safety Code, or a health benefits plan offered under Chapter 63, Health and Safety Code.

Sec. 1202.103. RESCISSION FOR MISREPRESENTATION OR PREEXISTING CONDITION. Notwithstanding any other law, a health benefit plan issuer may not rescind a health benefit plan on the basis of a misrepresentation or a preexisting condition except as provided by this subchapter.

Sec. 1202.104. NOTICE OF INTENT TO RESCIND. (a) A health benefit plan issuer may not rescind a health benefit plan on the basis of a misrepresentation or a preexisting condition without first notifying an affected individual in writing of the issuer's intent to rescind the health benefit plan and the individual's entitlement to an independent review.

(b) The notice required under Subsection (a) must include, as applicable:

(1) the principal reasons for the decision to rescind the health benefit plan;

(2) the clinical basis for a determination that a preexisting condition exists;

(3) a description of any general screening criteria used to evaluate issued health benefit plans and determine eligibility for a decision to rescind;

(4) a statement that the individual is entitled to appeal a rescission decision to an independent review organization;

(5) a statement that the individual has at least 45 days in which to appeal the rescission decision to an independent review organization, and a description of the consequences of failure to appeal within that time limit;

(6) a statement that there is no cost to the individual to appeal the rescission decision to an independent review organization; and

(7) a description of the independent review process under Chapters 4201 and 4202.

Sec. 1202.105. INDEPENDENT REVIEW PROCESS; PAYMENT OF CLAIMS. (a) An affected individual may appeal a health benefit plan issuer's rescission decision to an independent review organization not later than the 45th day after the date the individual receives notice under Section 1202.104.

(b) A health benefit plan issuer shall comply with all requests for information made by the independent review organization and with the independent review organization's determination regarding the appropriateness of the issuer's decision to rescind.

(c) A health benefit plan issuer shall pay all otherwise valid medical claims under an individual's plan until the later of:

(1) the date on which an independent review organization determines that the decision to rescind is appropriate; or

(2) the time to appeal to an independent review organization has expired without an affected individual initiating an appeal.

Sec. 1202.106. RESCISSION AUTHORIZED; RECOVERY OF CLAIMS PAID. (a) A health benefit plan issuer may rescind a health benefit plan covering an affected individual on the later of:

(1) the date an independent review organization determines that rescission is appropriate; or

(2) the 45th day after the date an affected individual receives notice under Section 1202.104, if the individual has not initiated an appeal.

(b) An issuer that rescinds a health benefit plan under this section may seek to recover from an affected individual amounts paid for the individual's medical claims under the rescinded health benefit plan.

(c) An issuer that rescinds a health benefit plan under this section may not offset against or recoup or recover from a physician or health care provider amounts paid for medical claims under a rescinded health benefit plan. This subsection may not be waived, voided, or modified by contract.

Sec. 1202.107. RESCISSION RELATED TO PREEXISTING CONDITION; STANDARDS. (a) For purposes of this subchapter, a rescission for a preexisting condition is appropriate if, within the 18-month period immediately preceding the date on which an application for coverage under a health benefit plan is made, an affected individual received or was advised by a physician or health care provider to seek medical advice, diagnosis, care, or treatment for a physical or mental condition, regardless of the cause, and the individual's failure to disclose the condition:

(1) affects the risks assumed under the health benefit plan; and

(2) is undertaken with the intent to deceive the health benefit plan issuer.

(b) A health benefit plan issuer may not rescind a health benefit plan based on a preexisting condition of a newborn delivered after the application for coverage is made or as may otherwise be prohibited by law.

Sec. 1202.108. RESCISSION FOR MISREPRESENTATION; STANDARDS. For purposes of this subchapter, a rescission for a misrepresentation not related to a preexisting condition is inappropriate unless the misrepresentation:

- (1) is of a material fact;
- (2) affects the risks assumed under the health benefit plan; and
- (3) is made with the intent to deceive the health benefit plan issuer.

Sec. 1202.109. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are not exclusive and are in addition to any other remedy or procedure provided by law or at common law.

Sec. 1202.110. RULES. The commissioner shall adopt rules necessary to implement and administer this subchapter.

Sec. 1202.111. SANCTIONS AND PENALTIES. A health benefit plan issuer that violates this subchapter commits an unfair practice in violation of Chapter 541 and is subject to sanctions and penalties under Chapter 82.

Sec. 1202.112. CONFIDENTIALITY. (a) A record, report, or other information received or maintained by a health benefit plan issuer, including any material received or developed during a review of a rescission decision under this subchapter, is confidential.

(b) A health benefit plan issuer may not disclose the identity of an individual or a decision to rescind an individual's health benefit plan unless:

- (1) an independent review organization determines the decision to rescind is appropriate; or
- (2) the time to appeal has expired without an affected individual initiating an appeal.

SECTION 1.003. Subtitle G, Title 8, Insurance Code, is amended by adding Chapter 1515 to read as follows:

CHAPTER 1515. INFORMATION CONCERNING RESCINDED HEALTH  
BENEFIT PLANS

Sec. 1515.001. DEFINITION. In this chapter, "coverage document" means a policy or certificate evidencing the coverage of an individual or group under a health benefit plan described by Section 1515.002.

Sec. 1515.002. APPLICABILITY. (a) This chapter applies only to a health benefit plan, including a small or large employer health benefit plan written under Chapter 1501, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

- (1) an insurance company;
- (2) a group hospital service corporation operating under Chapter 842;
- (3) a fraternal benefit society operating under Chapter 885;
- (4) a stipulated premium company operating under Chapter 884;
- (5) a reciprocal exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;  
(7) a health maintenance organization operating under Chapter 843;  
(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter does not apply to:

(1) a health benefit plan that provides coverage only:

(A) for a specified disease or diseases or under an individual limited benefit policy;

(B) for accidental death or dismemberment;

(C) as a supplement to a liability insurance policy; or

(D) for dental or vision care;

(2) disability income insurance coverage or a combination of accident only and disability income insurance coverage;

(3) credit insurance coverage;

(4) a hospital confinement indemnity policy;

(5) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(6) a workers' compensation insurance policy;

(7) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan described by Subsection (a) and is not exempted from the application of this chapter.

Sec. 1515.003. REPORT. (a) Each health benefit plan issuer authorized to issue coverage documents in this state shall submit a report to the department containing the rescission rates of coverage documents issued by the issuer.

(b) In addition to the rescission rates described by Subsection (a), the report must contain:

(1) the number of individuals whose coverage document was rescinded by the health benefit plan issuer during the reporting period for each type of health benefit plan to which this chapter applies;

(2) the total number of enrollees that were covered by rescinded coverage documents before those documents were rescinded; and

(3) the reasons for rescission of rescinded coverage documents for each type of health benefit plan to which this chapter applies.

(c) The commissioner shall adopt rules necessary to implement this section, including rules concerning any applicable reporting period and the form of the report required under Subsection (a).

Sec. 1515.004. INTERNET POSTING; CONSUMER HOTLINE. (a) The department shall post on the department's Internet website:

(1) the information contained in the reports received under Section 1515.003 that is not confidential or proprietary; and

(2) a form through which consumers may report rescission of a health benefit plan and complaints or suspected violations of the law governing the rescission of health benefit plans.

(b) For purposes of Subsection (a), aggregated information regarding a health benefit plan issuer's rescission rates is not confidential or proprietary.

(c) The department shall operate a toll-free telephone hotline to:

(1) respond to consumer inquiries concerning the rescission of health benefit plans; and

(2) provide information to consumers concerning the rescission of health benefit plans and technical assistance with the completion of the form described by Subsection (a)(2).

SECTION 1.004. Section 4202.002, Insurance Code, is amended to read as follows:

Sec. 4202.002. ADOPTION OF STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS. (a) The commissioner shall adopt standards and rules for:

(1) the certification, selection, and operation of independent review organizations to perform independent review described by Subchapter C, Chapter 1202, or Subchapter I, Chapter 4201; and

(2) the suspension and revocation of the certification.

(b) The standards adopted under this section must ensure:

(1) the timely response of an independent review organization selected under this chapter;

(2) the confidentiality of medical records transmitted to an independent review organization for use in conducting an independent review;

(3) the qualifications and independence of each physician or other health care provider making a review determination for an independent review organization;

(4) the fairness of the procedures used by an independent review organization in making review determinations; ~~and~~

(5) the timely notice to an enrollee of the results of an independent review, including the clinical basis for the review determination; and

(6) that review of a rescission decision based on a preexisting condition be conducted under the direction of a physician.

SECTION 1.005. Sections 4202.003, 4202.004, and 4202.006, Insurance Code, are amended to read as follows:

Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF DETERMINATION. The standards adopted under Section 4202.002 must require each independent review organization to make the organization's determination:

(1) for a life-threatening condition as defined by Section 4201.002, not later than the earlier of:

(A) the fifth day after the date the organization receives the information necessary to make the determination; or

(B) the eighth day after the date the organization receives the request that the determination be made; and

(2) for a condition other than a life-threatening condition or of the appropriateness of a rescission under Subchapter C, Chapter 1202, not later than the earlier of:

(A) the 15th day after the date the organization receives the information necessary to make the determination; or

(B) the 20th day after the date the organization receives the request that the determination be made.

Sec. 4202.004. CERTIFICATION. To be certified as an independent review organization under this chapter, an organization must submit to the commissioner an application in the form required by the commissioner. The application must include:

(1) for an applicant that is publicly held, the name of each shareholder or owner of more than five percent of any of the applicant's stock or options;

(2) the name of any holder of the applicant's bonds or notes that exceed \$100,000;

(3) the name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the control or affiliation;

(4) the name and a biographical sketch of each director, officer, and executive of the applicant and of any entity listed under Subdivision (3) and a description of any relationship the named individual has with:

(A) a health benefit plan;

(B) a health maintenance organization;

(C) an insurer;

(D) a utilization review agent;

(E) a nonprofit health corporation;

(F) a payor;

(G) a health care provider; or

(H) a group representing any of the entities described by Paragraphs (A)

through (G);

(5) the percentage of the applicant's revenues that are anticipated to be derived from independent reviews conducted under Subchapter I, Chapter 4201;

(6) a description of the areas of expertise of the physicians or other health care providers making review determinations for the applicant; and

(7) the procedures to be used by the applicant in making independent review determinations under Subchapter C, Chapter 1202, or Subchapter I, Chapter 4201.

Sec. 4202.006. PAYORS FEES. (a) The commissioner shall charge payors fees in accordance with this chapter as necessary to fund the operations of independent review organizations.

(b) A health benefit plan issuer shall pay for an independent review of a rescission decision under Subchapter C, Chapter 1202.

SECTION 1.006. Section 4202.009, Insurance Code, is amended to read as follows:

Sec. 4202.009. CONFIDENTIAL INFORMATION. (a) Information that reveals the identity of a physician or other individual health care provider who makes a review determination for an independent review organization is confidential.

(b) A record, report, or other information received or maintained by an independent review organization, including any material received or developed during a review of a rescission decision under Subchapter C, Chapter 1202, is confidential.

(c) An independent review organization may not disclose the identity of an affected individual or an issuer's decision to rescind a health benefit plan under Subchapter C, Chapter 1202, unless:

(1) an independent review organization determines the decision to rescind is appropriate; or

(2) the time to appeal a rescission under that subchapter has expired without an affected individual initiating an appeal.

SECTION 1.007. Subsection (a), Section 4202.010, Insurance Code, is amended to read as follows:

(a) An independent review organization conducting an independent review under Subchapter C, Chapter 1202, or Subchapter I, Chapter 4201, is not liable for damages arising from the review determination made by the organization.

SECTION 1.008. The commissioner of insurance shall adopt rules under Subsection (c), Section 1515.003, Insurance Code, as added by this article, not later than January 1, 2010. The rules must require health benefit plan issuers to submit the first report under Section 1515.003, Insurance Code, as added by this article, not later than April 1, 2010.

SECTION 1.009. The change in law made by this article applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. An insurance policy that is delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed before the effective date of this Act, and that law is continued in effect for that purpose.

## ARTICLE 2. MEDICAL LOSS RATIO

SECTION 2.001. Subtitle A, Title 8, Insurance Code, is amended by adding Chapter 1223 to read as follows:

### CHAPTER 1223. MEDICAL LOSS RATIO

Sec. 1223.001. DEFINITIONS. In this chapter:

(1) "Enrollee" has the meaning assigned by Section 1457.001.

(2) "Evidence of coverage" has the meaning assigned by Section 843.002.

(3) "Market segment" means, as applicable, one of the following categories of health benefit plans issued by a health benefit plan issuer:

(A) individual evidences of coverage issued by a health maintenance organization;

(B) individual preferred provider benefit plans;

(C) evidences of coverage issued by a health maintenance organization to small employers as defined by Section 1501.002;

(D) preferred provider benefit plans issued to small employers as defined by Section 1501.002;

(E) evidences of coverage issued by a health maintenance organization to large employers as defined by Section 1501.002; and

(F) preferred provider benefit plans issued to large employers as defined by Section 1501.002.

(4) "Medical loss ratio" means direct losses incurred for all preferred provider benefit plans issued by an insurer divided by direct premiums earned for all preferred provider benefit plans issued by that insurer. This amount may not include home office and overhead costs, advertising costs, network development costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

Sec. 1223.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a health benefit plan issuer that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding any other law, this chapter applies to a health benefit plan issuer with respect to a standard health benefit plan provided under Chapter 1507.

(c) Notwithstanding Section 1501.251 or any other law, this chapter applies to a health benefit plan issuer with respect to coverage under a small employer health benefit plan subject to Chapter 1501.

Sec. 1223.003. EXCEPTIONS. This chapter does not apply with respect to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a Medicaid managed care program operated under Chapter 533, Government Code;

(4) Medicaid programs operated under Chapter 32, Human Resources Code;

(5) the state child health plan operated under Chapter 62 or 63, Health and Safety Code;

(6) a workers' compensation insurance policy; or

(7) medical payment insurance coverage provided under a motor vehicle insurance policy.

Sec. 1223.004. NOTIFICATION OF MEDICAL LOSS RATIO, MEDICAL COST MANAGEMENT, AND HEALTH EDUCATION COST. (a) A health benefit plan issuer shall report its medical loss ratio for each market segment, as applicable, with the annual report required under Section 843.155 or 1301.009. Beginning in the fourth year during which a health benefit plan issuer is required to make a report under this section, the issuer may report the medical loss ratio as a three-year rolling average.

(b) Each health benefit plan issuer shall include in the report described by Subsection (a), for each market segment, a separate report of costs attributed to medical cost management and health education. The commissioner by rule shall prescribe the reporting requirements for the costs, which may include:

(1) case management activities;

(2) utilization review;

(3) detection and prevention of payment of fraudulent requests for reimbursement;

(4) network access fees to preferred provider organizations and other network-based health benefit plans, including prescription drug networks, and allocated internal salaries and related costs associated with network development or provider contracting;

(5) consumer education solely relating to health improvement and relying on the direct involvement of health personnel, including smoking cessation and disease management programs and other programs that involve medical education;

(6) telephone hotlines, including nurse hotlines, that provide enrollees health information and advice regarding medical care; and

(7) expenses for internal and external appeals processes.

(c) The department shall post on the department's Internet website or another website maintained by the department for the benefit of consumers or enrollees:

(1) the information received under Subsections (a) and (b);

(2) an explanation of the meaning of the term "medical loss ratio," how the medical loss ratio is calculated, and how the ratio may affect consumers or enrollees; and

(3) an explanation of the types of activities and services classified as medical cost management and health education, how the costs for these activities and services are calculated, what those costs, when aggregated with a medical loss ratio, mean, and how the costs might affect consumers or enrollees.

(d) A health benefit plan issuer shall provide each enrollee or the plan sponsor, as applicable, with the Internet website address at which the enrollee or plan sponsor may access the information described by Subsection (c). A health benefit plan issuer must provide the information required under this subsection:

(1) to an enrollee, at the time of the initial enrollment of the enrollee in a health benefit plan issued by the health benefit plan issuer; and

(2) at the time of renewal of a health benefit plan to:

(A) each enrollee, if the health benefit plan is an individual health benefit plan; or

(B) the plan sponsor, if the health benefit plan is a group health benefit plan.

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

SECTION 2.002. The change in law made by this article applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2011. A health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2011, is covered by the law in effect at the time the health benefit plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

### ARTICLE 3. PREMIUM RATE INCREASES FOR SMALL EMPLOYER HEALTH BENEFIT PLANS

SECTION 3.001. Subchapter D, Chapter 501, Insurance Code, is amended by amending Sections 501.151 and 501.153 and adding Section 501.160 to read as follows:

Sec. 501.151. POWERS AND DUTIES OF OFFICE. (a) The office:

(1) may assess the impact of insurance rates, rules, and forms on insurance consumers in this state; ~~and~~

(2) shall advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of insurance consumers; and

(3) shall accept from a small employer, an eligible employee, or an eligible employee's dependent and, if appropriate, refer to the commissioner, a complaint described by Section 501.160.

(b) The decision to refer a complaint to the commissioner under Subsection (a) is at the public counsel's sole discretion.

Sec. 501.153. AUTHORITY TO APPEAR, INTERVENE, OR INITIATE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner or department on behalf of insurance consumers, as a class, in matters involving:

(A) rates, rules, and forms affecting:

(i) property and casualty insurance;

(ii) title insurance;

(iii) credit life insurance;

(iv) credit accident and health insurance; or

(v) any other line of insurance for which the commissioner or department promulgates, sets, adopts, or approves rates, rules, or forms;

(B) rules affecting life, health, or accident insurance; or

(C) withdrawal of approval of policy forms:

(i) in proceedings initiated by the department under Sections 1701.055 and 1701.057; or

(ii) if the public counsel presents persuasive evidence to the department that the forms do not comply with this code, a rule adopted under this code, or any other law;

(2) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of insurance consumers as a class in any proceeding in which the public counsel determines that insurance consumers are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; ~~and~~

(4) may appear or intervene before the commissioner or department as a party or otherwise on behalf of small commercial insurance consumers, as a class, in a matter involving rates, rules, or forms affecting commercial insurance consumers, as a class, in any proceeding in which the public counsel determines that small commercial consumers are in need of representation; and

(5) may appear before the commissioner on behalf of a small employer, eligible employee, or eligible employee's dependent in a complaint the office refers to the commissioner under Section 501.160.

Sec. 501.160. COMPLAINT RESOLUTION FOR CERTAIN PREMIUM RATE INCREASES. (a) A small employer, an eligible employee, or an eligible employee's dependent may file a complaint with the office alleging that a rate is excessive for the risks to which the rate applies, if the percentage increase in the premium rate charged to a small employer under Subchapter E, Chapter 1501, for a new rating period exceeds 20 percent.

(b) The office shall refer a complaint received under Subsection (a) to the commissioner if the office determines that the complaint substantially attests to a rate charged that is excessive for the risks to which the rate applies. A rate may not be considered excessive for the risks to which the rate applies solely because the percentage increase in the premium rate charged exceeds the percentage described by Subsection (a).

(c) With respect to a complaint filed under Subsection (a), the office may issue a subpoena applicable throughout the state that requires the production of records.

(d) On application of the office in the case of disobedience of a subpoena, a district court may issue an order requiring any individual or person, including a small employer health benefit plan issuer described by Section 1501.002, that is subpoenaed to obey the subpoena and produce records, if the individual or person has refused to do so. An application under this subsection must be made in a district court in Travis County.

SECTION 3.002. Section 1501.205, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) On the request of a small employer, a small employer health benefit plan issuer shall disclose the percentage change in the risk load assessed to a small employer group to the group, along with the percentage change attributable exclusively to any change in case characteristics.

SECTION 3.003. Subchapter E, Chapter 1501, Insurance Code, is amended by adding Section 1501.2131 and amending Section 1501.214 to read as follows:

Sec. 1501.2131. COMPLAINT FACILITATION FOR PREMIUM RATE ADJUSTMENTS. If the percentage increase in the premium rate charged to a small employer for a new rating period exceeds 20 percent, the small employer, an eligible employee, or an eligible employee's dependent may file a complaint with the office of

public insurance counsel as provided by Section 501.160. The complaint facilitation under this section and Chapter 501 is not exclusive and is in addition to any other remedy or complaint procedure provided by law or rule.

Sec. 1501.214. ENFORCEMENT. (a) Subject to Subsection (b), if [H] the commissioner determines that a small employer health benefit plan issuer subject to this chapter exceeds the applicable premium rate established under this subchapter, the commissioner may order restitution and assess penalties as provided by Chapter 82.

(b) The commissioner shall enter an order under this section if the commissioner makes the finding described by Section 1501.653.

SECTION 3.004. Chapter 1501, Insurance Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. RESOLUTION OF CERTAIN COMPLAINTS AGAINST  
SMALL EMPLOYER HEALTH BENEFIT PLAN ISSUERS

Sec. 1501.651. DEFINITIONS. In this subchapter:

(1) "Honesty-in-premium account" means the account established under Section 1501.656.

(2) "Office" means the office of public insurance counsel.

Sec. 1501.652. COMPLAINT RESOLUTION PROCEDURE. (a) On the receipt of a referral of a complaint from the office of public insurance counsel under Section 501.160, the commissioner shall request written memoranda from the office and the small employer health benefit plan issuer that is the subject of the complaint.

(b) After receiving the initial memoranda described by Subsection (a), the commissioner may request one rebuttal memorandum from the office.

(c) The commissioner may by rule limit the number of exhibits submitted with or the time frame allowed for the submittal of the memoranda described by Subsection (a) or (b).

Sec. 1501.653. ORDER; FINDINGS. The commissioner shall issue an order under Section 1501.214(b) if the commissioner determines that the rate complained of is excessive for the risks to which the rate applies.

Sec. 1501.654. COSTS. The office may request, and the commissioner may award to the office, reasonable costs and fees associated with the investigation and resolution of a complaint filed under Section 501.160 and disposed of in accordance with this subchapter.

Sec. 1501.655. ASSESSMENT. (a) The commissioner may make an assessment against each small employer health benefit plan issuer in an amount that is sufficient to cover the costs of investigating and resolving a complaint filed under Section 501.160 and disposed of in accordance with this subchapter.

(b) The commissioner shall deposit assessments collected under this section to the credit of the honesty-in-premium account.

Sec. 1501.656. HONESTY-IN-PREMIUM ACCOUNT. (a) The honesty-in-premium account is an account in the general revenue fund that may be appropriated only to cover the cost associated with the investigation and resolution of a complaint filed under Section 501.160 and disposed of in accordance with this subchapter.

(b) Interest earned on the honesty-in-premium account shall be credited to the account. The account is exempt from the application of Section 403.095, Government Code.

Sec. 1501.657. RATE CHANGE NOT PROHIBITED. Nothing in this subchapter prohibits a small employer health benefit plan issuer from, at any time, offering a different rate to the group whose rate is the subject of a complaint.

SECTION 3.005. The change in law made by Chapter 1501, Insurance Code, as amended by this article, applies only to a small employer health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2010. A small employer health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2010, is covered by the law in effect at the time the health benefit plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

#### ARTICLE 5. NO APPROPRIATION; EFFECTIVE DATE

SECTION 5.001. 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 5.002. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment to **CSHB 2752** 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: Williams.

Senator Deuell offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 2752** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subtitle A, Title 8, Insurance Code, is amended by adding Chapter 1223 to read as follows:

#### CHAPTER 1223. MEDICAL LOSS RATIO

Sec. 1223.001. DEFINITIONS. In this chapter:

(1) "Enrollee" has the meaning assigned by Section 1457.001.

(2) "Evidence of coverage" has the meaning assigned by Section 843.002.

(3) "Market segment" means, as applicable, one of the following categories of health benefit plans issued by a health benefit plan issuer:

(A) individual evidences of coverage issued by a health maintenance organization;

(B) individual preferred provider benefit plans;

(C) evidences of coverage issued by a health maintenance organization to small employers as defined by Section 1501.002;

(D) preferred provider benefit plans issued to small employers as defined by Section 1501.002;

(E) evidences of coverage issued by a health maintenance organization to large employers as defined by Section 1501.002; and

(F) preferred provider benefit plans issued to large employers as defined by Section 1501.002.

(4) "Medical loss ratio" means direct losses incurred and direct losses paid for all preferred provider benefit plans issued by an insurer, divided by direct premiums earned for all preferred provider benefit plans issued by that insurer. This amount may not include home office and overhead costs, advertising costs, network development costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, utilization review costs, or claims processing costs.

Sec. 1223.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a health benefit plan issuer that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843; or

(7) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding any other law, this chapter applies to a health benefit plan issuer with respect to a standard health benefit plan provided under Chapter 1507.

(c) Notwithstanding Section 1501.251 or any other law, this chapter applies to a health benefit plan issuer with respect to coverage under a small employer health benefit plan subject to Chapter 1501.

Sec. 1223.003. EXCEPTIONS. This chapter does not apply with respect to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a Medicaid managed care program operated under Chapter 533, Government Code;

(4) Medicaid programs operated under Chapter 32, Human Resources Code;

(5) the state child health plan operated under Chapter 62 or 63, Health and Safety Code;

(6) a workers' compensation insurance policy; or

(7) medical payment insurance coverage provided under a motor vehicle insurance policy.

Sec. 1223.004. NOTIFICATION OF MEDICAL LOSS RATIO, MEDICAL COST MANAGEMENT, AND HEALTH EDUCATION COST. (a) A health benefit plan issuer shall report its medical loss ratio for each market segment, as applicable, with the annual report required under Section 843.155 or 1301.009. Beginning in the fourth year during which a health benefit plan issuer is required to make a report under this section, the issuer may report the medical loss ratio as a three-year rolling average.

(b) Each health benefit plan issuer shall include in the report described by Subsection (a), for each market segment, a separate report of costs attributed to medical cost management and health education. The commissioner by rule shall prescribe the reporting requirements for the costs, which may include:

(1) case management activities;

(2) utilization review;

(3) detection and prevention of payment of fraudulent requests for reimbursement;

(4) network access fees to preferred provider organizations and other network-based health benefit plans, including prescription drug networks, and allocated internal salaries and related costs associated with network development or provider contracting;

(5) consumer education solely relating to health improvement and relying on the direct involvement of health personnel, including smoking cessation and disease management programs and other programs that involve medical education;

(6) telephone hotlines, including nurse hotlines, that provide enrollees health information and advice regarding medical care; and

(7) expenses for internal and external appeals processes.

(c) The department shall post on the department's Internet website or another website maintained by the department for the benefit of consumers or enrollees:

(1) the information received under Subsections (a) and (b);

(2) an explanation of the meaning of the term "medical loss ratio," how the medical loss ratio is calculated, and how the ratio may affect consumers or enrollees; and

(3) an explanation of the types of activities and services classified as medical cost management and health education, how the costs for these activities and services are calculated, what those costs, when aggregated with a medical loss ratio, mean, and how the costs might affect consumers or enrollees.

(d) A health benefit plan issuer shall provide each enrollee or the plan sponsor, as applicable, with the Internet website address at which the enrollee or plan sponsor may access the information described by Subsection (c). A health benefit plan issuer must provide the information required under this subsection:

(1) to an enrollee, at the time of the initial enrollment of the enrollee in a health benefit plan issued by the health benefit plan issuer; and

(2) at the time of renewal of a health benefit plan to:

(A) each enrollee, if the health benefit plan is an individual health benefit plan; or

(B) the plan sponsor, if the health benefit plan is a group health benefit plan.

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

SECTION \_\_\_\_\_. The change in law made by this Act applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2011. A health benefit plan that is delivered, issued for delivery, or renewed before January 1, 2011, is covered by the law in effect at the time the health benefit plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

The amendment to **CSHB 2752** 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 except as follows:

Nays: Williams.

Senator Ellis offered the following amendment to the bill:

### **Floor Amendment No. 5**

Amend **CSHB 2752** by inserting the following new sections and renumber accordingly:

SECTION \_\_\_\_\_. Section 102.001, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (3) to read as follows:

(1) "Charitable gift annuity" means an annuity:

(A) that is payable over the lives of one or two individuals;

(B) that is made in return for the transfer of cash or other property to a charitable organization or qualified educational organization; and

(C) the actuarial value of which is less than the value of the cash or other property transferred, with the difference in those values being a charitable deduction for federal tax purposes.

(3) "Qualified educational organization" means an issuer of a charitable gift annuity that is:

(A) an institution of higher education as defined by Section 61.003, Education Code;

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code; or

(C) a foundation designated in writing by an institution described by Paragraph (A) or (B) to issue charitable gift annuities for the benefit of the institution.

SECTION \_\_\_\_\_. Section 102.002, Insurance Code, is amended to read as follows:

Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. (a) A charitable gift annuity is a qualified charitable gift annuity for purposes of this chapter if it was issued before September 1, 1995, or if it is:

(1) described by Section 501(m)(5), Internal Revenue Code of 1986; and

(2) issued by a charitable organization that on the date of the annuity agreement:

(A) has, exclusive of the assets funding the annuity agreement, a minimum of \$300,000 [~~\$100,000~~] in unrestricted cash, cash equivalents, or publicly traded securities; and

(B) has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

(b) A charitable gift annuity is a qualified charitable gift annuity if it is issued by a qualified educational organization that, on the date of the annuity agreement:

(1) has, exclusive of the assets funding the annuity agreement, a minimum of \$300,000 in unrestricted cash, cash equivalents, or publicly traded securities; and

(2) has been in continuous operation for at least three years or is a successor or affiliate of an institution or foundation described by Section 102.001(3) that has been in continuous operation for at least three years.

SECTION \_\_\_\_\_. Subchapter C, Chapter 102, Insurance Code, is amended by amending Section 102.102 and adding Section 102.105 to read as follows:

Sec. 102.102. NOTICE AND APPROVAL OF QUALIFIED STATUS OF CHARITABLE ORGANIZATION ~~[TO DEPARTMENT]~~. (a) Not later than the 60th day before the date on which a charitable organization sells the organization's first qualified charitable gift annuity, the ~~[A]~~ charitable organization ~~[that issues qualified charitable gift annuities]~~ shall:

(1) notify the department's annuities division in writing of the organization's intention to issue a charitable gift annuity; and

(2) request in writing the department's approval of the organization as a qualified charitable organization under this chapter ~~[not later than the date on which the organization enters into the organization's first qualified charitable gift annuity agreement].~~

(b) The notice required by this section must:

(1) be signed by an officer or director of the organization;

(2) identify the organization; ~~[and]~~

(3) certify that:

(A) the organization is a charitable organization; and

(B) the annuities issued by the organization are ~~[qualified]~~ charitable gift annuities; and

(4) be submitted in a form and manner adopted by the commissioner by rule under Subsection (c).

(c) The commissioner may adopt rules that establish the form and manner of information that a charitable organization must ~~[may not be required to]~~ submit to request approval under this section ~~[additional information except to determine appropriate penalties under Section 102.104].~~

(d) On receipt of notice and request for approval under this section, the department may:

(1) approve a request for a charitable organization to issue charitable gift annuities; or

(2) disapprove a request and notify the issuer in writing of the grounds for the disapproval in sufficient detail to allow remediation.

(e) A request under Subsection (b) is considered approved if the commissioner does not act on the request on or before the 60th day after the date the department received the request.

(f) The department may withdraw the approval of a request for qualified status of a charitable organization if the organization no longer satisfies the requirements for approval. The department shall notify the organization in writing of the grounds for the withdrawal of approval in sufficient detail to allow remediation.

(g) A proceeding under this chapter for the disapproval or withdrawal of approval is a contested case under Chapter 2001, Government Code.

Sec. 102.105. NOTICE OF QUALIFIED EDUCATIONAL ORGANIZATION STATUS. (a) Not later than the 60th day before the date on which a qualified educational organization sells the organization's first qualified charitable gift annuity, the organization shall:

(1) notify the department's annuities division in writing of the organization's intention to issue a charitable gift annuity; and

(2) request in writing the department's acknowledgment of the organization as a qualified educational organization under this chapter.

(b) The notice required by this section must:

(1) be signed by an officer or director of the organization;

(2) identify the organization; and

(3) certify that:

(A) the organization is an institution of higher education or a private or independent institution of higher education as defined by Section 61.003, Education Code, or a foundation designated by the institution as described by Section 102.001(3); and

(B) the annuities issued by the organization are charitable gift annuities.

(c) On receipt of notice and request for acknowledgment under this section, the department shall acknowledge that the organization may issue a charitable gift annuity.

SECTION \_\_\_\_\_. Section 102.152, Insurance Code, is amended to read as follows:

Sec. 102.152. TREATMENT OF ANNUITY AS CHARITABLE GIFT ANNUITY; ESTOPPEL. In any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs or distributees, an annuity that the donor has treated as a charitable gift annuity in a filing with the United States Internal Revenue Service shall be considered to be a qualified charitable gift annuity issued by a charitable organization or a qualified educational organization, as described by Subchapters A and B and Section 101.053(b).

SECTION \_\_\_\_\_. Section 1107.006, Insurance Code, is amended to read as follows:

Sec. 1107.006. MATURITY DATE. ~~[(a)]~~ In determining the value of benefits under Sections 1107.102, 1107.103, and 1107.104, ~~[and subject to Subsection (b), if an annuity contract permits an election to have annuity payments begin on optional maturity dates,]~~ the maturity date is ~~[considered to be]~~ the latest date on which an election is permitted by the contract, but[-

~~[(b) A maturity date determined under this section may]~~ not ~~[be]~~ later than the later of:

(1) the next anniversary of the annuity contract that follows the annuitant's 70th birthday; or

(2) the 10th anniversary of the contract.

SECTION \_\_\_\_\_. Section 1115.102, Insurance Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) In addition to any other remedy available for a violation of this chapter, if the commissioner finds a pattern or practice of unsuitable sales of annuities, or such a pattern or practice is reasonably expected, because of the compensation offered by an insurer for the sale of annuities, the commissioner may, after notice and hearing, order the insurer to cease and desist or modify the compensation offered.

(d) An order issued under Subsection (c) may not include a regular salaried officer or employee of a licensed insurer, a jointly managed affiliate of a licensed insurer, or a licensed insurance agent if the officer or employee does not receive a commission or other compensation for the services of the officer or employee that is directly dependent on the amount of business done.

SECTION \_\_\_\_\_. Sections 2 and 3 of this Act apply only to an annuity that is delivered or issued for delivery on or after January 1, 2010. An annuity that is delivered or issued for delivery 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.

SECTION \_\_\_\_\_. Section 1107.006, Insurance Code, as amended by this Act, applies only to an annuity that is delivered or issued for delivery on or after June 1, 2010. An annuity that is delivered or issued for delivery before June 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.

SECTION \_\_\_\_\_. Section 1115.102, Insurance Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is covered by the law in effect when the conduct occurred, and the former law is continued in effect for that purpose.

The amendment to **CSHB 2752** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Williams offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 2752** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (c), Section 463.153, Insurance Code, is amended to read as follows:

(c) The total amount of assessments on a member insurer for each account under Section 463.105 may not exceed two percent of the insurer's average annual premiums on the policies covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If two or more assessments are authorized in a calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation described by this subsection shall be equal to the higher of the three-year average annual premiums for the applicable subaccount or account as computed in accordance with this section. If the maximum assessment and the other assets of the association do not provide in a year an amount sufficient to carry out the association's responsibilities, the association shall make necessary additional assessments as soon as this chapter permits.

SECTION \_\_\_\_\_. Subsection (b), Section 463.203, Insurance Code, is amended to read as follows:

(b) This chapter does not provide coverage for:

(1) any part of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(2) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(3) any part of a policy or contract to the extent that the rate of interest on which that part is based:

(A) as averaged over the period of four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for a lesser period if the policy or contract was issued less than four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier; and

(B) on and after the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, similar entity, or other person to provide life, health, or annuity benefits to the entity's employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) any part of a policy or contract to the extent that the part provides dividends, experience rating credits, or voting rights, or provides that fees or allowances be paid to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time the insurer was not authorized to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the Pension Benefit Guaranty Corporation has not yet become liable to make any payments with respect to the benefit plan;

(8) any part of an unallocated annuity contract that is not issued to or in connection with a specific employee, a benefit plan for a union or association of individuals, or a governmental lottery;

(9) any part of a financial guarantee, funding agreement, or guaranteed investment contract that:

(A) does not contain a mortality guarantee; and

(B) is not issued to or in connection with a specific employee, a benefit plan, or a governmental lottery;

(10) a part of a policy or contract to the extent that the assessments required by Subchapter D with respect to the policy or contract are preempted by federal or state law;

(11) a contractual agreement that established the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or the plan's trustee in a case in which neither the benefit plan sponsor nor its trustee is an affiliate of the member insurer; [✗]

(12) a part of a policy or contract to the extent the policy or contract provides for interest or other changes in value that are to be determined by the use of an index or external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever date is earlier, subject to Subsection (c); or

(13) a policy or contract providing any hospital, medical, prescription drug, or other health care benefits under Part C or Part D, Subchapter XVIII, Chapter 7, Title 42, United States Code (Medicare Part C or Part D) or any regulations issued under those parts.

SECTION \_\_\_\_\_. Section 463.204, Insurance Code, is amended to read as follows:

Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual obligation does not include:

(1) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 under one or more policies on a single life;

(2) an amount in excess of:

(A) \$250,000 [~~\$100,000~~] in the present value under one or more annuity contracts issued with respect to a single life under individual annuity policies or group annuity policies; or

(B) \$5 million in unallocated annuity contract benefits with respect to a single contract owner regardless of the number of those contracts;

(3) an amount in excess of the following amounts, including any net cash surrender or cash withdrawal values, under one or more accident, health, accident and health, or long-term care insurance policies on a single life:

(A) \$500,000 for basic hospital, medical-surgical, or major medical insurance, as those terms are defined by this code or rules adopted by the commissioner;

(B) \$300,000 for disability and long-term care insurance, as those terms are defined by this code or rules adopted by the commissioner; or

(C) \$200,000 for coverages that are not defined as basic hospital, medical-surgical, major medical, disability, or long-term care insurance;

(4) an amount in excess of \$250,000 [~~\$100,000~~] in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by an unallocated annuity contract or the beneficiary or beneficiaries of the individual if the individual is deceased;

(5) an amount in excess of \$250,000 [~~\$100,000~~] in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each payee of a structured settlement annuity or the beneficiary or beneficiaries of the payee if the payee is deceased;

(6) aggregate benefits in an amount in excess of \$300,000 with respect to a single life, except with respect to:

(A) benefits paid under basic hospital, medical-surgical, or major medical insurance policies, described by Subdivision (3)(A), in which case the aggregate benefits are \$500,000; and

(B) benefits paid to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, in which case the maximum benefits are \$5 million regardless of the number of policies and contracts held by the owner;

(7) an amount in excess of \$5 million in benefits, with respect to either one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Subdivision (4) irrespective of the number of contracts with respect to the contract owner or plan sponsor or one contract owner provided coverage under Section 463.201(a)(3)(B), except that, if one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts

is held by a plan sponsor whose principal place of business is in this state, and in no event shall the association be obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts;

(8) any contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic value of economic benefits of the covered policy or contract; or

(9) punitive, exemplary, extracontractual, or bad faith damages, regardless of whether the damages are:

(A) agreed to or assumed by an insurer or insured; or

(B) imposed by a court.

SECTION \_\_\_\_\_. Subsection (b), Section 463.263, Insurance Code, is amended to read as follows:

(b) The association is entitled to retain a portion of any amount paid to the association under this section equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency, and shall remit to the domiciliary receiver the amount paid to the association less the amount [and] retained under this section.

SECTION \_\_\_\_\_. Chapter 463, Insurance Code, is amended by adding Subchapter K to read as follows:

#### SUBCHAPTER K. REINSURANCE

Sec. 463.501. DEFINITIONS. In this subchapter:

(1) "Election date" means the date on which the association elects to make an assumption under Section 463.503.

(2) "Order of liquidation" means an order described by Section 443.151.

Sec. 463.502. APPLICABILITY. (a) Except as otherwise provided by this subchapter, this subchapter does not alter or modify the terms and conditions of any reinsurance contract.

(b) This subchapter does not:

(1) abrogate or limit any right of a reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract;

(2) give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(3) limit or affect the association's rights as a creditor of the estate against the assets of the estate; or

(4) apply to reinsurance agreements covering property or casualty risks.

Sec. 463.503. ASSUMPTION BY ASSOCIATION OF RIGHTS AND OBLIGATIONS OF CEDING MEMBER INSURER. (a) Not later than the 180th day after the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered wholly or partially by the association under one or more reinsurance contracts entered into by the insolvent insurer and the insolvent insurer's reinsurers and selected by the association. An assumption by the association under this subsection takes effect on the date of the order of liquidation.

(b) The election under Subsection (a) takes effect when the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, sends written notice, return receipt requested, to the affected reinsurers.

(c) To facilitate the earliest practicable decision about whether to assume any of the reinsurance contracts, and to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available on request to the association, or to the National Organization of Life and Health Insurance Guaranty Associations on the association's behalf, as soon as possible after the commencement of formal delinquency proceedings:

(1) copies of reinsurance contracts in force, and all related files and records relevant to the determination of whether those contracts should be assumed; and

(2) notices of:

(A) any defaults under the reinsurance contracts; or

(B) any known event or condition that, with the passage of time, could become a default under the reinsurance contracts.

Sec. 463.504. ASSOCIATION OBLIGATIONS UNDER REINSURANCE CONTRACTS. (a) With respect to the reinsurance contracts assumed by the association that relate to policies or annuities covered wholly or partially by the association, the association is responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation.

(b) The association may charge a policy or annuity covered partially by the association, through reasonable allocation methods, the costs for reinsurance in excess of the association's obligations, and shall provide notice and an accounting of those charges to the liquidator.

Sec. 463.505. LOSS PAYMENTS. (a) The association is entitled to any amount payable by the reinsurer under a reinsurance contract with respect to a loss or event that:

(1) occurs after the date of the order of liquidation; and

(2) relates to a policy or annuity covered wholly or partially by the association.

(b) On receipt of an amount described by Subsection (a), the association is obliged to pay to the beneficiary under the affected policy or annuity an amount equal to the lesser of:

(1) the amount received by the association under Subsection (a); or

(2) the excess of the amount received by the association under Subsection (a) over the amount equal to the benefits paid by the association on account of the policy or annuity, less the retention of the insurer applicable to the loss or event.

Sec. 463.506. COMPUTATION OF NET BALANCE. (a) Not later than the 30th day after the election date, the association and each reinsurer under a reinsurance contract assumed by the association shall compute the net balance due to or from the association under the reinsurance contract, as of the election date, with respect to a policy or annuity covered wholly or partially by the association.

(b) The computation must give full credit to all items paid by the insurer or the insurer's receiver or the reinsurer before the election date. The reinsurer shall pay the receiver any amounts due for losses or events before the date of the order of liquidation, subject to any set-off for premiums unpaid for periods before that date, and the association or reinsurer shall pay any remaining balance due to the other. The payment must be made not later than the fifth day after the date on which the computation is completed.

(c) A dispute regarding the amounts due to the association or the reinsurer shall be resolved by arbitration under the terms of the affected reinsurance contract or, if the contract does not contain an arbitration clause, as otherwise provided by law.

(d) If the receiver has received any amounts due to the association under Section 463.505(a), the receiver shall remit those amounts to the association as promptly as practicable.

Sec. 463.507. PROHIBITED ACTS BY REINSURER. If the association, or the receiver on the association's behalf, pays, not later than the 60th day after the election date, the unpaid premiums due for periods before and after the election date that relate to policies or annuities covered wholly or partially by the association, the reinsurer may not:

(1) terminate a reinsurance contract for failure to pay premium to the extent that the reinsurance contract relates to a policy or annuity covered wholly or partially by the association; or

(2) set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due to the association.

Sec. 463.508. RIGHTS AND OBLIGATIONS OF PARTIES. (a) During the period from the date of the order of liquidation until the election date, or, if the election date does not occur, until the 180th day after the date of the order of liquidation:

(1) the association and the reinsurer have no rights or obligations under a reinsurance contract that the association has the right to assume under Section 463.503, whether for periods before or after the date of the order of liquidation; and

(2) the reinsurer, the receiver, and the association shall, to the extent practicable, provide to each other data and records reasonably requested.

(b) After the association has elected to assume a reinsurance contract, the parties' rights and obligations are governed by this subchapter.

(c) If the association does not elect to assume a reinsurance contract by the date described by Section 463.503(a), the association has no rights or obligations with respect to the reinsurance contract for periods before or after the date of the order of liquidation.

Sec. 463.509. TRANSFERS OF REINSURANCE CONTRACTS TO ASSUMING INSURERS. (a) In the case of a contract assumed under Section 463.503, if a policy or annuity, or a covered obligation with respect to the policy or annuity, is transferred to an assuming insurer, reinsurance on the policy or annuity may also be transferred by the association, subject to the requirements of this section.

(b) Unless the reinsurer and the assuming insurer otherwise agree, the transferred reinsurance contract may not cover any new insurance policy or annuity in addition to those transferred.

(c) The obligations described by this subchapter do not apply with respect to matters arising after the effective date of a transfer under this section.

(d) The transferring party must give notice in writing, return receipt requested, to the affected reinsurer not later than the 30th day before the effective date of the transfer.

Sec. 463.510. EFFECT OF OTHER LAW OR CONTRACT PROVISION.

(a) This subchapter supersedes the provisions of any law, or of any affected reinsurance contract, that provides for or requires payment of reinsurance proceeds because of a loss or event that occurs after the date of the order of liquidation, to:

(1) the receiver of the insolvent insurer; or

(2) any other person.

(b) The receiver remains entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to a loss or event that occurs before the date of the order of liquidation, subject to any applicable set-off provisions.

SECTION \_\_\_\_ . (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an insurer that first becomes an impaired or insolvent insurer on or after the effective date of this Act. An insurer that becomes an impaired or insolvent insurer before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

(b) The change in law made by this Act to Subsection (c), Section 463.153, Insurance Code, as amended by this Act, applies to an assessment authorized on or after October 1, 2008, with respect to an insurer that first became impaired or insolvent on or after September 1, 2005.

The amendment to **CSHB 2752** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

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

**CSHB 2752** 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 2752 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 2752** 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 2154 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 2154** at this time on its second reading:

**CSHB 2154**, Relating to the physician education loan repayment program.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, 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: Fraser, Jackson.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2154** (Senate committee printing) by striking SECTIONS 10 through 15 of the bill (page 3, line 32 through page 5, line 16), substituting the following appropriately numbered SECTIONS, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 155.001, Tax Code, is amended by adding Subdivisions (1-a) and (10-a) and redesignating Subdivision (1) as Subdivision (1-b) to read as follows:

(1-a) "Affiliate" means a person who, because of stock ownership, a contract, or otherwise, controls, is controlled by, or is under common control with another person.

(1-b) [(+) ] "Bonded agent" means a person in this state who is an agent of a person outside this state and receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the person outside this state.

(10-a) "Manufacturer's list price" means the price reported monthly by a manufacturer to the comptroller as required under Section 155.103(a)(4), which must be the highest gross price at which a unit of a product is offered for purchase by the manufacturer to distributors in this state that are not affiliates of the manufacturer, inclusive of all delivery, destination, and other charges of any kind that are assessed based on the number of units sold. A sales price that is less than the manufacturer's list price is assumed to include a trade discount, special discount, or deal.

SECTION \_\_. Section 155.0211(b), Tax Code, is amended to read as follows:

(b) The tax rate for tobacco products other than cigars is 75 [~~40~~] percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

The amendment to **CSHB 2154** was read.

On motion of Senator Hinojosa, Floor Amendment No. 1 was tabled by the following vote: Yeas 19, Nays 10.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Estes, Gallegos, Harris, Hinojosa, Huffman, Ogden, Patrick, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Ellis, Eltife, Fraser, Jackson, Lucio, Nelson, Seliger, Shapiro, Shapleigh, Wentworth.

Absent: Hegar, Nichols.

**CSHB 2154** 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: Fraser, Jackson.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2154 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 2154** 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, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Jackson.

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 3646 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3646** at this time on its second reading:

**CSHB 3646**, Relating to public school finance.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

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

Amend **CSHB 3646** (Senate committee printing) as follows:

(1) In ARTICLE 1 of the bill (page 1, between lines 12 and 13), add the following appropriately numbered SECTION:

SECTION 1.\_\_\_\_. Section 12.106, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the greater of:

(1) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), that would have been received for the school during the 2009-2010 school year under Chapter 42 as it existed on January 1, 2009, and an additional amount of \$135 for each student in weighted average daily attendance; or

(2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 ~~as~~ if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue [~~"LR"~~] for purposes of Section 42.2516 ~~[42.302]~~.

(a-1) In determining funding for an open-enrollment charter school under Subsection (a), adjustments under Sections 42.102, 42.103, 42.104, and 42.105 ~~[and the district enrichment tax rate ("DTR") under Section 42.302]~~ are based on the average adjustment ~~[and average district enrichment tax rate]~~ for the state.

(a-2) In addition to the funding provided by Subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under Section 42.302 based on the state average tax effort.

(2) In SECTION 1.01 of the bill, in added Section 12.1331(b), Education Code (page 1, line 23), between "district" and the period, insert "or to pay for any resulting increases in the amount of contributions made by the charter holder for social security coverage for the specified employees or on behalf of the specified employees under Section 825.405, Government Code".

(3) In SECTION 1.03 of the bill, in added Section 19.009(d-2), Education Code (page 1, line 60), between "Chapter 11" and the period, insert "or to pay for any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or on behalf of the specified employees under Section 825.405, Government Code".

(4) In SECTION 1.04 of the bill, in added Section 21.402(c-1), Education Code (page 2, line 31), between "district" and the period, insert "or to pay for any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or on behalf of the specified employees under Section 825.405, Government Code".

(5) In SECTION 1.04 of the bill, in added Section 21.402(c-3), Education Code (page 2, lines 41 and 42), strike "does not include" and substitute "is in addition to".

(6) In ARTICLE 1 of the bill (page 3, between lines 14 and 15), add the following appropriately numbered SECTION:

SECTION 1.\_\_\_\_. Section 21.704, Education Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) A local awards plan must provide for teachers and principals eligible to receive awards under the plan to be notified of the specific criteria and any formulas on which the awards will be based before the beginning of the period on which the awards will be based.

(7) In SECTION 1.10 of the bill, in amended Section 41.002(a)(1), Education Code (page 4, line 20), strike "\$470,000" and substitute "\$475,000".

(8) In SECTION 1.12 of the bill, in added Section 42.008(a), Education Code (page 4, lines 67 and 68), strike "six percent" and substitute "\$350".

(9) In SECTION 1.12 of the bill, in added Section 42.008(a-1), Education Code (page 5, line 6), strike "six percent" and substitute "\$350".

(10) In SECTION 1.13 of the bill, in amended Section 42.101(a), Education Code (page 5, lines 32 and 34), strike "\$4,700" each place it appears and substitute "\$4,750".

(11) In SECTION 1.19 of the bill, in amended Section 42.2516, Education Code (page 9, lines 16-44), strike deleted Subsection (b-1) and substitute the following:

(b-1) The amount determined for a school district under Subsection (b) is increased or reduced as follows:

(1) if for any school year the district is entitled to a greater allotment under Section 42.155 or 42.158 or more additional state aid under Section 42.2515 than the allotment or additional state aid to which the district was entitled under Section 42.155, 42.158, or 42.2515, as applicable, [~~that section~~] for the 2009-2010 school year [~~on which the district's entitlement under Subsection (b) is based~~], the district's entitlement under Subsection (b) is increased by an amount equal to the difference between the amount to which the district is entitled under Section 42.155, 42.158, or 42.2515, as applicable, for that school year and the amount to which the district was entitled under the applicable [~~that~~] section for the 2009-2010 school year[~~:~~

~~[(A) the 2005-2006 school year, if the amount determined for the district under Subsection (b) is determined under Subsection (b)(1)(A); or~~

~~[(B) the 2006-2007 school year, if the amount determined for the district under Subsection (b) is determined under Subsection (b)(1)(B) or (C)]; and~~

(2) if for any school year the district is not entitled to an allotment under Section 42.155 or 42.158 or additional state aid under Section 42.2515 or is entitled to a lesser allotment or less additional state aid under the applicable [~~that~~] section than the allotment or additional state aid to which the district was entitled under the applicable [~~that~~] section for the 2009-2010 school year [~~on which the district's entitlement under Subsection (b) is based~~], the district's entitlement under Subsection (b) is reduced by an amount equal to the difference between the amount to which the district was entitled under Section 42.155, 42.158, or 42.2515, as applicable, for the 2009-2010 [~~2005-2006 or 2006-2007~~] school year[~~, as appropriate based on whether the district's entitlement under Subsection (b) is determined under Subsection (b)(1)(A), (B), or (C);~~] and the amount to which the district is entitled under the applicable section [Section 42.158] for the current school year.

(12) In SECTION 1.19 of the bill, in amended Section 42.2516, Education Code (page 10, line 69, through page 11, line 40), strike deleted Subsections (f-1), (f-2), and (f-3) and substitute the following:

(f-1) The commissioner shall, in accordance with rules adopted by the commissioner, adjust the amount of a school district's local revenue derived from maintenance and operations tax collections, as calculated for purposes of determining the amount of state revenue to which the district is entitled under this section, if the district, for the 2010 [~~2007~~] tax year or a subsequent tax year:

(1) adopts an exemption under Section 11.13(n), Tax Code, that was not in effect for the 2009 [~~2005 or 2006~~] tax year, or eliminates an exemption under Section 11.13(n), Tax Code, that was in effect for the 2009 [~~2005 or 2006~~] tax year;

(2) adopts an exemption under Section 11.13(n), Tax Code, at a greater or lesser percentage than the percentage in effect for the district for the 2009 [~~2005 or 2006~~] tax year;

(3) grants an exemption under an agreement authorized by Chapter 312, Tax Code, that was not in effect for the 2009 [~~2005 or 2006~~] tax year, or ceases to grant an exemption authorized by that chapter that was in effect for the 2009 [~~2005 or 2006~~] tax year; or

(4) agrees to deposit taxes into a tax increment fund created under Chapter 311, Tax Code, under a reinvestment zone financing plan that was not in effect for the 2009 [~~2005 or 2006~~] tax year, or ceases depositing taxes into a tax increment fund created under that chapter under a reinvestment zone financing plan that was in effect for the 2009 [~~2005 or 2006~~] tax year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b) that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(f-3) An adjustment made by the commissioner under the rules adopted under Subsection (f-1) is final and may not be appealed.

(13) In ARTICLE 1 of the bill (page 12, between lines 19 and 20), insert the following appropriately numbered SECTION:

SECTION 1.     . Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.25161 to read as follows:

Sec. 42.25161. ADDITIONAL STATE AID FOR SOUTH TEXAS INDEPENDENT SCHOOL DISTRICT. (a) The commissioner shall provide South Texas Independent School District with the amount of state aid necessary to ensure that the district receives an amount of state and local revenue per student in weighted average daily attendance that is at least \$135 greater than the amount the district would have received per student in weighted average daily attendance during the 2009-2010 school year under this chapter, as it existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, provided that the district imposes a maintenance and operations tax at that rate.

(b) The commissioner may adopt rules necessary to implement this section.

(c) A determination by the commissioner under this section is final and may not be appealed.

(14) In SECTION 1.25 of the bill, in added Section 42.451(a), Education Code (page 14, line 1), between "system" and the period, insert ", including all current weights and adjustments provided under this chapter and any additional weights and adjustments recommended by the committee".

(15) In SECTION 1.25 of the bill, in added Section 42.451, Education Code (page 14, lines 2-26), strike added Subsection (b) and substitute the following:

(b) The committee is composed of 15 members appointed as follows:

(1) two members of the senate, appointed by the lieutenant governor;

(2) two members of the house of representatives, appointed by the speaker of the house of representatives;

(3) the commissioner of education;

(4) three school district superintendents and two school district business officials, each currently employed in this state and each appointed jointly by the lieutenant governor and the speaker of the house of representatives;

(5) one representative from the business community or the public, appointed by the lieutenant governor;

(6) one representative from the business community or the public, appointed by the speaker of the house of representatives; and

(7) three representatives from the business community or the public, at least one of whom has one or more children who currently attend public school in this state, appointed by the governor.

(16) In SECTION 1.25 of the bill, in added Section 42.455(c), Education Code (page 14, line 65), between "Board," and "the comptroller," insert "the Texas Education Agency,".

(17) In SECTION 1.25 of the bill, in added Section 42.455(d), Education Code (page 15, line 1), immediately following the period, insert "To the extent the review duplicates the study of funding elements otherwise required by Section 42.007, the review replaces that study."

(18) In SECTION 3.01 of the bill (page 19, between lines 24 and 25), insert the following:

(d) Section 40, Chapter 1504 (H.B. 6), Acts of the 77th Legislature, Regular Session, 2001, is repealed.

(19) Add the following appropriately numbered SECTIONS to ARTICLE 3 of the bill:

SECTION 3.\_\_\_\_. For purposes of interpreting and implementing Section 825.406, Government Code, the Teacher Retirement System of Texas may not consider salaries of personnel paid in whole or in part from education stabilization funds distributed to school districts under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) as being paid from federal funds.

SECTION 3.\_\_\_\_. The commissioner of education shall provide school districts with the maximum flexibility permitted under federal law in the administration of education stabilization funds distributed under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5).

(20) Renumber existing SECTIONS in the bill accordingly.

The amendment to **CSHB 3646** 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 Whitmire offered the following amendment to the bill:

### Floor Amendment No. 2

Amend **CSHB 3646** (Senate committee report), as follows:

(1) In SECTION 1.04 of the bill, 21.402(c-1), Education Code, (page 2, line 29), strike "~~salaries of classroom teachers, full time librarians, full time counselors certified under Subchapter B, and full time school nurses~~" and substitute "salary of each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, and full-time nurse".

(2) In SECTION 1.04 of the bill (page 2, lines 32-36), strike added Section 21.402(c-2), Education Code and substitute the following:

(c-2) The amount required to be used in accordance with Subsection (c-1) is the greater of:

(1) the maximum uniform amount that may be provided using the product of \$65 multiplied by the number of students in weighted average daily attendance in the district during the 2009-2010 school year, as determined by the commissioner; or

(2) \$800.

(3) In Section 1.04 of the bill, in added Section 21.402(c-3), Education Code (page 2, lines 41-42), strike "does not include:" and substitute "is in addition to:".

The amendment to **CSHB 3646** was read.

Senator Shapiro moved to table Floor Amendment No. 2.

The motion to table was lost by the following vote: Yeas 12, Nays 19.

Yeas: Duncan, Estes, Fraser, Harris, Hegar, Jackson, Nelson, Ogden, Patrick, Shapiro, Wentworth, Williams.

Nays: Averitt, Carona, Davis, Deuell, Ellis, Eltife, Gallegos, Hinojosa, Huffman, Lucio, Nichols, Seliger, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 2 to **CSHB 3646**, the amendment was adopted by a viva voce vote.

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

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

### Floor Amendment No. 3

Amend **CSHB 3646** (Senate committee printing) as follows:

(1) In SECTION 1.10 of the bill, strike amended Section 41.002(a), Education Code (page 4, lines 18-43), and substitute the following:

(a) A school district may not have a wealth per student that exceeds:

(1) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student per cent of tax effort available to a district as a result of the guaranteed level provided by Section 42.302(a-1)(1) [~~at the 88th percentile in wealth per student~~], for the district's maintenance and operations tax

effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student per cent of tax effort available to a district as a result of the guaranteed level provided by Section 42.302(a-1)(2) [~~the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board~~], for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, subject to Section 41.093(b-1); or

(3) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student per cent of tax effort available to a district as a result of the guaranteed level provided by Section 42.302(a-1)(3) [~~\$319,500~~], for the district's maintenance and operations tax effort that exceeds the first six cents by which the district's maintenance and operations tax effort exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year.

(2) Strike SECTION 1.11 of the bill, amending Section 41.093(b-1), Education Code (page 4, lines 44-60).

(3) Strike SECTION 1.13 of the bill, amending Section 42.101, Education Code (page 5, lines 24-48).

(4) In SECTION 1.19 of the bill, in amended Section 42.2516, Education Code (page 7, line 47, through page 8, line 26), strike added Subsections (b) through (e) and substitute the following:

(b) Notwithstanding any other provision of this title, a school district that imposes a maintenance and operations tax at a rate at least equal to the maintenance and operations tax rate adopted by the district for the 2008-2009 tax year is entitled to at least the amount of state revenue necessary to provide the district with the sum of:

(1) except as provided by Subsection (e), the amount of state and local revenue per student in weighted average daily attendance for maintenance and operations to which the district was entitled during the 2008-2009 school year under Chapter 41 and this chapter, as those chapters existed on January 1, 2009;

(2) an amount equal to the product of \$135 multiplied by the number of students in weighted average daily attendance in the district;

(3) an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code, in the current tax year; and

(4) any amount to which the district is entitled under Section 42.106.

(c) For purposes of Subsection (b)(1), the amount of revenue to which a school district was entitled during the 2008-2009 school year as a result of the technology allotment under Section 32.005, the transportation allotment under Section 42.155, and the new instructional facility allotment under Section 42.158 and the amount of state and local revenue resulting from a tax rate described by Section 42.302(a-1)(2)

or (3) is not included. In addition to the amount to which a district is entitled under Subsection (b), the district is entitled to receive for the current year each of the allotments specified in this subsection.

(d) In determining the amount to which a district is entitled under Subsection (b)(1), the commissioner shall:

(1) include any amounts received by the district during the 2008-2009 school year under Rider 86, page III-23, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act); and

(2) for a school district that paid tuition under Section 25.039 during the 2008-2009 school year, reduce the amount to which the district is entitled by the amount of tuition paid during that school year.

(e) If a school district adopts a maintenance and operations tax rate that is below the tax rate for maintenance and operations adopted by the district for the 2008-2009 school year, the commissioner shall reduce the district's entitlement under this section in proportion to the amount by which the district's adopted rate is less than the rate adopted by the district for the 2008-2009 school year.

(5) Strike SECTION 1.20 of the bill, amending Section 42.252(a), Education Code (page 12, lines 20-36).

(6) In SECTION 1.23 of the bill, in the introductory language (page 12, line 53), strike "42.302(a), (a-1), and (a-2)" and substitute "42.302(a) and (a-1)".

(7) In SECTION 1.23 of the bill, strike amended Sections 42.302(a-1) and (a-2), Education Code (page 13, lines 18-53), and substitute the following:

(a-1) In this section, "wealth per student" has the meaning assigned by Section 41.001. For purposes of Subsection (a), the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort ("GL") for a school district is:

(1) the greater of 85 percent of the amount of district tax revenue per weighted student per cent of tax effort that would be available to the Austin Independent School District [a district at the 88th percentile in wealth per student], as determined by the commissioner in cooperation with the Legislative Budget Board, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the greater of the amount of district tax revenue per weighted student per cent of tax effort that would be available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, if the reduction of the limitation on tax increases as provided by Section 11.26(a-1), (a-2), or (a-3), Tax Code, did not apply, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression

percentage, as determined under Section 42.2516 [~~and notwithstanding the limitation on district enrichment tax rate ("DTR") under Section 42.303~~], multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

(3) \$31.95, for the district's maintenance and operations tax effort that exceeds the amount of tax effort described by Subdivision (2).

(8) Immediately following SECTION 1.23 of the bill, amending Sections 42.302(a), (a-1), and (a-2), Education Code (page 13, between lines 53 and 54), add the following appropriately numbered SECTION:

SECTION 1. \_\_. Effective September 1, 2010, Section 42.302(a-1), Education Code, as amended by Chapters 19 (H.B. 5) and 1191 (H.B. 828), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(a-1) In this section, "wealth per student" has the meaning assigned by Section 41.001. For purposes of Subsection (a), the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort ("GL") for a school district is:

(1) the greater of 90 percent of the amount of district tax revenue per weighted student per cent of tax effort that would be available to the Austin Independent School District [a district at the 88th percentile in wealth per student], as determined by the commissioner in cooperation with the Legislative Budget Board, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the greater of the amount of district tax revenue per weighted student per cent of tax effort that would be available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, if the reduction of the limitation on tax increases as provided by Section 11.26(a-1), (a-2), or (a-3), Tax Code, did not apply, or the amount of district tax revenue per weighted student per cent of tax effort used for purposes of this subdivision in the preceding school year, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

(3) \$31.95, for the district's maintenance and operations tax effort that exceeds the amount of tax effort described by Subdivision (2).

(9) Strike SECTION 1.24 of the bill, amending Section 42.303, Education Code (page 13, lines 54-61).

(10) In SECTION 3.01(a) of the bill (page 19, lines 14-20), add the following appropriately numbered subdivision and renumber subsequent subdivisions accordingly:

( ) Section 41.002(g);

(11) Add the following appropriately numbered SECTION to ARTICLE 3 of the bill:

SECTION 3. \_\_. Notwithstanding any other provision of this Act:

(1) if, as a result of the changes in law made by this Act, the total cost to the state under Chapters 41 and 42, Education Code, exceeds the amount provided for that purpose by S.B. No. 1, Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for the 2010-2011 state fiscal biennium, the commissioner of education shall reduce the percentage of the amount of district tax revenue per weighted student per cent of tax effort available to the Austin Independent School District used in determining the equalized wealth level under Section 41.002(a)(1), Education Code, the basic allotment under Section 42.101, Education Code, and the guaranteed yield under Section 42.302(a-1)(1), Education Code, for the 2010-2011 school year to a percentage that will produce a total cost for the biennium equal to the amount appropriated; and

(2) if, as a result of the changes in law made by this Act, the total cost to the state under Chapters 41 and 42, Education Code, is less than the amount provided for that purpose by S.B. No. 1, Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for the 2010-2011 state fiscal biennium, the commissioner of education shall increase the percentage of the amount of district tax revenue per weighted student per cent of tax effort available to the Austin Independent School District used in determining the equalized wealth level under Section 41.002(a)(1), Education Code, the basic allotment under Section 42.101, Education Code, and the guaranteed yield under Section 42.302(a-1)(1), Education Code, for the 2010-2011 school year to a percentage that will produce a total cost for the biennium equal to the amount appropriated.

(12) Renumber existing SECTIONS of the bill accordingly.

The amendment to **CSHB 3646** was read.

**(Senator Carona in Chair)**

Senator Shapiro moved to table Floor Amendment No. 3.

The motion to table was lost by the following vote: Yeas 14, Nays 17.

Yeas: Averitt, Deuell, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Carona, Davis, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nichols, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 3 to **CSHB 3646**, the amendment failed of adoption by the following vote: Yeas 13, Nays 18.

Yeas: Davis, Ellis, Eltife, Gallegos, Hinojosa, Lucio, Nichols, Shapleigh, Uresti, Van de Putte, West, Whitmire, Zaffirini.

Nays: Averitt, Carona, Deuell, Duncan, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Seliger, Shapiro, Watson, Wentworth, Williams.

**(President in Chair)**

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 3646** (Senate committee printing) by inserting into the bill the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES of the bill to read as follows:

## ARTICLE \_\_. CREDIT ENHANCEMENT

SECTION \_\_.01. Chapter 45, Education Code, is amended by adding Subchapters I and J to read as follows:

SUBCHAPTER I. INTERCEPT PROGRAM TO PROVIDE CREDIT  
ENHANCEMENT FOR BONDS

Sec. 45.251. DEFINITIONS. In this subchapter:

(1) "Board" means the State Board of Education.

(2) "Foundation School Program" means the program established under Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in this state.

(3) "Paying agent" means the financial institution that is designated by a school district as the district's agent for the payment of the principal of and interest on bonds for which credit enhancement is provided under this subchapter.

Sec. 45.252. INTERCEPT CREDIT ENHANCEMENT PROGRAM. (a) If a school district's application for guarantee of district bonds by the corpus and income of the permanent school fund as provided by Subchapter C is rejected, the district may apply under this subchapter for credit enhancement of bonds described by Section 45.054 by money appropriated for the Foundation School Program, other than money that is appropriated to school districts specifically:

(1) as required under the Texas Constitution; or

(2) for assistance in paying debt service.

(b) The same school district bonds may not benefit under both Subchapter C and this subchapter.

(c) Notwithstanding any amendment of this subchapter or other law, the credit enhancement provided under this subchapter for school district bonds remains in effect until the date those bonds mature or are defeased in accordance with state law.

Sec. 45.253. LIMITATION ON INTERCEPT CREDIT ENHANCEMENT. (a) In each month of each fiscal year, the commissioner shall determine the amount of funds available to make payments under this subchapter from the Foundation School Program through the end of the fiscal year and the amounts due under this code to public schools from the Foundation School Program through the end of the fiscal year. The commissioner may revise a determination under this subsection during the fiscal year as appropriate.

(b) The commissioner may not endorse particular bonds for credit enhancement under this subchapter until the commissioner has:

(1) made the determinations required under Subsection (a); and

(2) determined that the endorsement will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement under this subchapter to exceed the lesser of:

(A) one-half of the amount of funds due to public schools from the Foundation School Program for the remainder of the fiscal year; or

(B) one-half of the amount of funds anticipated to be on hand in the Foundation School Program to make payments for the remainder of the fiscal year.

(c) The commissioner may not endorse particular bonds for credit enhancement under this subchapter unless the commissioner has determined that the maximum annual debt service on the bonds during any state fiscal year will not exceed the lesser of:

(1) one-half of the amount of funds due to public schools from the Foundation School Program for the current fiscal year; or

(2) one-half of the amount of funds anticipated to be on hand in the Foundation School Program to make payments for the current fiscal year.

Sec. 45.254. ELIGIBILITY. To be eligible for approval by the commissioner for credit enhancement under this subchapter:

(1) bonds must be issued in the manner provided by Section 45.054; and

(2) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year.

Sec. 45.254I. INTERCEPT OF FOUNDATION SCHOOL PROGRAM APPROPRIATIONS AS CREDIT ENHANCEMENT. (a) Money appropriated for the Foundation School Program that may be used for the purpose under this subchapter and under any other law, rule, or regulation shall be used to provide credit enhancement for eligible bonds as provided by this subchapter, the General Appropriations Act, and board rule if using the permanent school fund to guarantee particular bonds would result in:

(1) a total amount of outstanding bonds guaranteed by the permanent school fund exceeding the amount authorized under:

(A) Section 45.053; or

(B) federal law or regulations; or

(2) the use of a portion of the cost value of the permanent school fund reserved under Section 45.0531, as determined by the board.

(b) If Foundation School Program appropriations are not sufficient in any year to pay principal or interest that becomes due on bonds for which credit enhancement is provided under this subchapter, the payment shall be made from the following year's Foundation School Program appropriations that may be used for the purpose under this subchapter before those appropriations are used for any other Foundation School Program purpose.

Sec. 45.255. APPLICATION FOR CREDIT ENHANCEMENT. (a) A school district seeking credit enhancement of eligible bonds under this subchapter shall apply to the commissioner using a form adopted by the commissioner for the purpose. The commissioner may adopt a single form on which a district seeking guarantee or credit enhancement of eligible bonds may apply simultaneously first for a guarantee under Subchapter C and then, if that guarantee is rejected, for credit enhancement under this subchapter.

(b) An application under Subsection (a) must:

(1) include the information required by Section 45.055(b); and

(2) be accompanied by a fee set by board rule in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds.

Sec. 45.256. INVESTIGATION. (a) Following receipt of an application under Section 45.255, the commissioner shall conduct an investigation of the applicant school district as provided for an investigation under Section 45.056(a).

(b) If following the investigation under Subsection (a) the commissioner is satisfied that the school district's bonds should be guaranteed under Subchapter C or provided credit enhancement under this subchapter, as applicable, the commissioner shall endorse the bonds.

Sec. 45.257. CREDIT ENHANCEMENT ENDORSEMENT. (a) The commissioner shall endorse bonds approved for credit enhancement under this subchapter in substantially the same manner provided under Section 45.057 for endorsing bonds approved under Subchapter C.

(b) The credit enhancement is not effective unless the attorney general approves the bonds under Section 45.005.

Sec. 45.258. NOTICE OF FAILURE OR INABILITY TO PAY. Immediately following a determination that a school district will be or is unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided under this subchapter, but not later than the 10th day before maturity date, the school district shall notify the commissioner.

Sec. 45.259. PAYMENT FROM INTERCEPTED FUNDS. (a) Immediately following receipt of notice under Section 45.258, the commissioner shall instruct the comptroller to transfer to the district's paying agent from appropriations to the Foundation School Program that may be used for the purpose under Section 45.252 and other law the amount necessary to pay the maturing or matured principal or interest.

(b) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due.

(c) The procedures prescribed by Subsections (a) and (b) apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased in accordance with state law.

(d) If money appropriated for the Foundation School Program is used for purposes of this subchapter and as a result there is insufficient money to fully fund the Foundation School Program, the commissioner shall, to the extent necessary, reduce each school district's foundation school fund allocations, other than any portion appropriated from the available school fund, in the same manner provided by Section 42.253(h) for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, a district's entitlement under Section 42.253 is increased by an amount equal to the reduction under this subsection.

(e) A payment made under this section by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this subchapter creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds.

(f) This section does not create a debt of the state under the Texas Constitution or, except to the extent provided by this subchapter, create a payment obligation.

Sec. 45.260. BONDS NOT ACCELERATED ON FAILURE TO PAY. If a school district fails to pay principal or interest on a bond for which credit enhancement is provided under this subchapter when the amount matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's failure to pay amounts matured.

Sec. 45.261. REIMBURSEMENT OF FOUNDATION SCHOOL PROGRAM.

(a) If the commissioner orders payment from the money appropriated to the Foundation School Program on behalf of a school district that is not required to reduce its wealth per student under Chapter 41, the commissioner shall direct the comptroller to withhold the amount paid from the first state money payable to the district. If the commissioner orders payment from the money appropriated to the Foundation School Program on behalf of a school district that is required to reduce its wealth per student under Chapter 41, the commissioner shall increase amounts due from the district under that chapter in a total amount equal to the amount of payments made on behalf of the district under this subchapter. Amounts withheld or received under this subsection shall be used for the Foundation School Program.

(b) In accordance with commissioner rules, the commissioner may authorize reimbursement of the Foundation School Program in a manner other than that provided by this section.

(c) The commissioner may order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to:

(1) provide reimbursement under this section; and

(2) pay the remaining principal of and interest on the bonds as the principal and interest become due.

(d) If a school district fails to comply with the commissioner's order under Subsection (c), the commissioner may impose any sanction on the district authorized to be imposed on a district under Subchapter G, Chapter 39, including appointment of a board of managers or annexation to another district, regardless of the district's accreditation status or the duration of a particular accreditation status.

(e) Any part of a school district's tax rate attributable to producing revenue for purposes of Subsection (c)(1) is considered part of the district's:

(1) current debt rate for purposes of computing a rollback tax rate under Section 26.08, Tax Code; and

(2) interest and sinking fund tax rate.

(f) On reimbursement by a school district as required by this section, the commissioner shall pay to the district any amount withheld under this section.

Sec. 45.262. REPEATED FAILURE TO PAY. (a) If a total of two or more payments are made under Subchapter C or this subchapter on the bonds of a school district and the commissioner determines that the district is acting in bad faith under the guarantee program under Subchapter C or the credit enhancement program under this subchapter, the commissioner may request the attorney general to institute appropriate legal action to compel the district and the district's officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.

(b) Jurisdiction of proceedings under this section is in district court in Travis County.

Sec. 45.263. RULES. (a) The commissioner shall adopt rules necessary for the administration of the bond credit enhancement program under this subchapter.

(b) In adopting rules under Subsection (a), the commissioner shall establish an annual deadline by which a school district must pay the debt service on bonds for which credit enhancement is provided under this subchapter. The deadline established may not be later than the 10th day before the date specified under Section 42.259 for payment to school districts of the final Foundation School Program installment for a state fiscal year.

SUBCHAPTER J. OPEN-ENROLLMENT CHARTER SCHOOL FACILITIES  
CREDIT ENHANCEMENT PROGRAM

Sec. 45.301. DEFINITIONS. In this subchapter:

(1) "Charter holder" has the meaning assigned by Section 12.1012.

(2) "Program" means the open-enrollment charter school facilities credit enhancement program established under this subchapter.

Sec. 45.302. ESTABLISHMENT OF PROGRAM. (a) The commissioner by rule may establish an open-enrollment charter school facilities credit enhancement program to assist charter holders in obtaining financing for the purchase, repair, or renovation of real property, including improvements to real property, for facilities of open-enrollment charter schools.

(b) The commissioner may adopt a structure and procedures for the program that are substantially similar to the structure and procedures for the credit enhancement program for school district bonds under Subchapter I.

Sec. 45.303. LIMITATION ON PARTICIPATION; MINIMUM REQUIREMENTS FOR DEBT SERVICE RESERVE. In adopting rules under Section 45.302, the commissioner may:

(1) limit participation in the program to charter holders who hold charters for open-enrollment charter schools that meet standards established by the commissioner, including standards for financial stability, compliance with applicable state and federal program requirements, and student academic performance; and

(2) impose minimum requirements for a debt service reserve to secure repayment of obligations for which credit enhancement is provided under this subchapter.

Sec. 45.304. ALLOCATION OF PORTION OF FOUNDATION SCHOOL PROGRAM FUNDS FOR CREDIT ENHANCEMENT. (a) The commissioner may allocate not more than one percent of the amount appropriated for the Foundation School Program for purposes of the program under this subchapter.

(b) The funds allocated under this section may not be considered available for purposes of any other credit enhancement program.

(c) Only those Foundation School Program funds allocated under this section may be committed to the program under this subchapter.

Sec. 45.305. PRIVATE MATCHING FUNDS REQUIRED; USE OF OTHER STATE FUNDS. (a) The commissioner may not implement the program unless private funds in an amount at least equal to the amount of state funds allocated under Section 45.304 are obligated to the program for at least the first 10 years of the term of obligations for which credit enhancement is provided under the program.

(b) The commissioner may use state funds allocated under Section 45.304 to pay any amount due for credit enhancement under the program and, subject to the terms of the applicable private credit obligation agreement, provide for payment of private funds to the Foundation School Program in an amount equal to at least one-half of the amount of the state funds paid. The commissioner may also use any other state funds available for the purpose to make payments under this subchapter or to reimburse the Foundation School Program for payments made under this subchapter from Foundation School Program funds.

Sec. 45.306. REPAYMENT; LIEN. (a) If a charter holder on behalf of which the state makes a payment under the program does not immediately repay the Foundation School Program the amount of the payment, the commissioner shall withhold any funds due from the state to the charter holder as necessary to recover the total amount of state and private funds paid on behalf of the charter holder under the program.

(b) If a charter holder is for any reason, including revocation or surrender of a charter or bankruptcy, unable to repay any amount due under this subchapter, any loss of funds shall be shared equally between the Foundation School Program and the person providing the private funds obligated for credit enhancement under this subchapter.

(c) A charter holder for which credit enhancement is provided under this subchapter to purchase, repair, or renovate real property for open-enrollment charter school facilities must agree to execute a lien on that real property in a form prescribed by the commissioner and approved by the attorney general to secure repayment of all amounts due to the state from the charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this subchapter.

(d) A lien under this section must be filed in the real property records of each county in which the real property is located. A lien under this section has priority over any other claim against the real property except a lien granted to the holders of obligations issued to finance the acquisition of the real property and any security interest or lien existing before credit enhancement is provided under this subchapter.

(e) The commissioner shall notify a charter holder of any amount determined to be due to the state, including federal funds. If the full amount due to the state has not been repaid or recovered by the commissioner from other funds due to the charter holder within the current and subsequent school year, the commissioner may request the attorney general to file an action to foreclose on a lien under this section. Funds recovered from foreclosure of a lien under this section shall be credited first to any security interest or lien with priority over the lien under this section, then to the charter holder's obligation under this section, and then to any other program to which the funds are due.

(f) Venue for a suit under this section is in Travis County.

Sec. 45.307. STATUS OF PROGRAM. (a) The program is separate from and does not create any claim to the credit enhancement program for school district bonds under Subchapter I.

(b) This subchapter does not create a debt of the state under the Texas Constitution or, except to the extent provided by this subchapter, create a payment obligation.

Sec. 45.308. RULES. If the commissioner establishes a program under this subchapter, the commissioner shall adopt rules to administer the program.

SECTION \_\_\_\_\_.02. Section 45.052, Education Code, is amended to read as follows:

Sec. 45.052. GUARANTEE. (a) On approval by the commissioner, bonds issued under Subchapter A, including refunding bonds, are guaranteed by the corpus and income of the permanent school fund.

(b) Notwithstanding any amendment of this subchapter or other law, the guarantee under this subchapter of school district bonds remains in effect until the date those bonds mature or are defeased in accordance with state law.

SECTION \_\_\_\_\_.03. Subsections (a), (b), and (c), Section 45.053, Education Code, are amended to read as follows:

(a) Except as provided by Subsection (d), the commissioner may not approve bonds for guarantee under this subchapter if the approval would result in the total amount of outstanding guaranteed bonds under this subchapter exceeding an amount equal to 2-1/2 times the cost value of the permanent school fund, as estimated by the board and certified by the state auditor.

(b) Each year, the state auditor shall analyze the status of guaranteed bonds under this subchapter as compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the amount of bonds guaranteed under this subchapter is within the limit prescribed by this section.

(c) The commissioner shall prepare and the board shall adopt an annual report on the status of the guaranteed bond program under this subchapter.

SECTION \_\_\_\_\_.04. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0531 to read as follows:

Sec. 45.0531. ADDITIONAL LIMITATION: RESERVATION OF PERCENTAGE OF PERMANENT SCHOOL FUND VALUE. (a) In addition to the limitation on the approval of bonds for guarantee under Section 45.053, the board by rule may establish a percentage of the cost value of the permanent school fund to be reserved from use in guaranteeing bonds under this subchapter.

(b) If the board has reserved a portion of the permanent school fund under Subsection (a), each year, the state auditor shall analyze the status of the reserved portion compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the portion of the permanent school fund reserved from use in guaranteeing bonds under this subchapter satisfies the reserve percentage established.

(c) If the board has reserved a portion of the permanent school fund under Subsection (a), the board shall at least annually consider whether to change the reserve percentage established to ensure that the reserve percentage allows compliance with federal law and regulations and serves to enable bonds guaranteed under this subchapter to receive the highest available credit rating, as determined by the board.

(d) This section may not be construed in a manner that impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

SECTION \_\_\_\_\_.05. Section 45.055, Education Code, is amended to read as follows:

Sec. 45.055. APPLICATION FOR GUARANTEE. (a) A school district seeking ~~the~~ guarantee of eligible bonds under this subchapter shall apply to the commissioner using a form adopted by the commissioner for the purpose. The commissioner may adopt a single form on which a district seeking guarantee or credit enhancement of eligible bonds may apply simultaneously first for guarantee under this subchapter and then, if that guarantee is rejected, for credit enhancement under Subchapter I.

(b) An ~~The~~ application under Subsection (a) must include:

(1) the name of the school district and the principal amount of the bonds to be issued;

(2) the name and address of the district's paying agent for those bonds; and

(3) the maturity schedule, estimated interest rate, and date of the bonds.

(c) An ~~The~~ application under Subsection (a) must be accompanied by a fee set by rule of the board in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds ~~[program].~~

SECTION \_\_\_\_\_.06. Subsection (b), Section 45.056, Education Code, is amended to read as follows:

(b) If following the investigation the commissioner is satisfied that the school district's bonds should be guaranteed under this subchapter or provided credit enhancement under Subchapter I, as applicable, the commissioner shall endorse the bonds.

SECTION \_\_\_\_\_.07. Section 45.061, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The commissioner may order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to:

(1) provide reimbursement under this section; and

(2) pay the principal of and interest on district bonds as the principal and interest become due.

(d) If a school district fails to comply with the commissioner's order under Subsection (c), the commissioner may impose any sanction on the district authorized to be imposed on a district under Subchapter G, Chapter 39, including appointment of a board of managers or annexation to another district, regardless of the district's accreditation status or the duration of a particular accreditation status.

SECTION \_\_\_\_\_.08. Subsection (a), Section 45.062, Education Code, is amended to read as follows:

(a) If a total of two or more payments ~~[from the permanent school fund]~~ are made under this subchapter or Subchapter I on the ~~[guaranteed]~~ bonds of a school district and the commissioner determines that the school district is acting in bad faith under the guarantee program under this subchapter or the credit enhancement program under Subchapter I, the commissioner may request the attorney general to institute appropriate legal action to compel the school district and its officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.

SECTION \_\_\_\_\_.09. Section 42.259, Education Code, is amended by adding Subsection (g) to read as follows:

(g) The commissioner shall make all annual Foundation School Program payments under this section for purposes described by Sections 45.252(a)(1) and (2) before the deadline established under Section 45.263(b) for payment of debt service on bonds. Notwithstanding any other provision of this section, the commissioner may make Foundation School Program payments under this section after the deadline established under Section 45.263(b) only if the commissioner has not received notice under Section 45.258 concerning a district's failure or inability to pay matured principal or interest on bonds.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 5**

Amend **CSHB 3646** (Senate committee printing) as follows:

(1) Add the following appropriately numbered ARTICLE and renumber subsequent ARTICLES of the bill accordingly:

#### ARTICLE \_\_. STATE VIRTUAL SCHOOL NETWORK

SECTION \_\_.01. Subsection (b), Section 1.001, Education Code, is amended to read as follows:

(b) Except as provided by Chapter 18, Chapter 19, Subchapter A ~~of~~ Chapter 29, ~~or~~ Subchapter E ~~of~~ Chapter 30, or Chapter 30A, this code does not apply to students, facilities, or programs under the jurisdiction of the Department of Aging and Disability Services, the Department of State Health Services, the Health and Human Services Commission, the Texas Youth Commission, the Texas Department of Criminal Justice, a Job Corps program operated by or under contract with the United States Department of Labor, or any juvenile probation agency.

SECTION \_\_.02. Section 30A.002, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A student is eligible to enroll full-time in courses provided through the state virtual school network only if:

~~(1)~~ the student was enrolled in a public school in this state in the preceding school year.

(c) Notwithstanding Subsection (a)(3) or (b), a student is eligible to enroll in one or more courses provided through the state virtual school network or enroll full-time in courses provided through the network if:

~~(1)~~ the student:

(1) ~~(A)~~ is a dependent of a member of the United States military;

(2) ~~(B)~~ was previously enrolled in high school in this state; and

(3) ~~(C)~~ does not reside in this state due to a military deployment or

transfer.

SECTION \_\_.03. Section 30A.004, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Requirements imposed by or under this chapter do not apply to a virtual course provided by a school district only to district students if the course is not provided as part of the state virtual school network.

SECTION \_\_.04. Subchapter A, Chapter 30A, Education Code, is amended by adding Section 30A.006 to read as follows:

Sec. 30A.006. AUTHORIZATION FOR CERTAIN ELECTRONIC COURSES AND PROGRAMS. (a) An electronic course or program that was offered or could have been offered during the 2008-2009 school year under Section 29.909, as that section existed on January 1, 2009, may be offered during a subsequent school year through the state virtual school network.

(b) The commissioner may by rule modify any provision of this chapter necessary to provide for the transition of an electronic course or program from the authority to operate under former Section 29.909 to the authority to operate under this chapter.

SECTION \_\_.05. Subsection (b), Section 30A.101, Education Code, is amended to read as follows:

(b) An open-enrollment charter school campus is eligible to act as a provider school under this chapter only if the campus [school] is rated recognized or higher under Section 39.072, except that a campus may act as a provider school to students receiving educational services under the supervision of a juvenile probation department, the Texas Youth Commission, or the Texas Department of Criminal Justice if the campus is rated academically acceptable or higher. A campus [and] may serve as a provider school only:

(1) to a student within the school district in which the campus [school] is located or within its service area, whichever is smaller; or

(2) to another student in the state:

(A) through an agreement with the school district in which the student resides; or

(B) if the student receives educational services under the supervision of a juvenile probation department, the Texas Youth Commission, or the Texas Department of Criminal Justice, through an agreement with the applicable agency [administering authority under Section 30A.153].

SECTION \_\_.06. Section 30A.104, Education Code, is amended to read as follows:

Sec. 30A.104. COURSE ELIGIBILITY IN GENERAL. A course offered through the state virtual school network must:

(1) be in a specific subject that is part of the required curriculum under Section 28.002(a);

(2) be aligned with the essential knowledge and skills identified under Section 28.002(c) for a grade level at or above grade level three; and

(3) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during:

(A) a semester of 90 instructional days; and

(B) a school day that meets the minimum length of a school day required under Section 25.082.

SECTION \_\_.07. Subsections (c) and (d), Section 30A.105, Education Code, are amended to read as follows:

(c) The agency shall ~~[A school district, open enrollment charter school, or public or private institution of higher education that submits an electronic course to the administering authority for approval must]~~ pay ~~[a fee in an amount established by the commissioner as sufficient to recover]~~ the reasonable costs of ~~[to the administering authority in]~~ evaluating and approving electronic courses. If funds available to the agency for that purpose are insufficient to pay the costs of evaluating and approving all electronic courses submitted for evaluation and approval, the agency shall give priority to paying the costs of evaluating and approving the following courses:

(1) courses that satisfy high school graduation requirements;

(2) courses that would likely benefit a student in obtaining admission to a postsecondary institution;

(3) courses, including dual credit courses, that allow a student to earn college credit or other advanced credit;

(4) courses in subject areas most likely to be highly beneficial to students receiving educational services under the supervision of a juvenile probation department, the Texas Youth Commission, or the Texas Department of Criminal Justice; and

(5) courses in subject areas designated by the commissioner as commonly experiencing a shortage of teachers.

(d) If the agency determines that the costs of evaluating and approving a submitted electronic course will not be paid by the agency due to a shortage of funds available for that purpose, the ~~[The administering authority shall waive the fee required by Subsection (c) if a]~~ school district, open-enrollment charter school, or public or private institution of higher education that submitted the ~~[applies for approval of an electronic]~~ course for evaluation and approval may pay the costs in order to ensure that evaluation of the course occurs ~~[that was developed independently by the district, school, or institution. For purposes of this subsection, an electronic course is developed independently by a district, school, or institution if a district, school, or institution employee is responsible for developing substantially each aspect of the course, including:~~

~~[(1) determining the curriculum elements to be included in the course;~~

~~[(2) selecting any instructional materials for the course;~~

~~[(3) determining the manner in which instruction is to be delivered;~~

~~[(4) creating a lesson plan or similar description of the instructional aspects of the course;~~

~~[(5) determining any special projects or assignments a student in the course must complete; and~~

~~[(6) determining the manner in which a student's progress in the course will be measured].~~

SECTION \_\_.08. Subchapter C, Chapter 30A, Education Code, is amended by adding Section 30A.1051 to read as follows:

Sec. 30A.1051. ELECTRONIC COURSE PORTABILITY. A student who transfers from one educational setting to another after beginning enrollment in an electronic course is entitled to continue enrollment in the course.

SECTION \_\_.09. Subsection (a), Section 30A.107, Education Code, is amended to read as follows:

(a) A provider school district or school may offer electronic courses to:

(1) students who reside in this state; and

(2) students who reside outside this state and who meet the eligibility requirements under Section 30A.002(c) [30A.002(b)].

SECTION \_\_.10. Section 30A.109, Education Code, is amended to read as follows:

Sec. 30A.109. COMPULSORY ATTENDANCE. The commissioner by rule shall adopt procedures for reporting and verifying the attendance of a student enrolled in an electronic course provided through the state virtual school network. The rules may modify the application of Sections 25.085, 25.086, and 25.087 for a student enrolled in an electronic course but must require participation in an educational program equivalent to the requirements prescribed by those sections.

SECTION \_\_.11. Section 30A.111, Education Code, is amended to read as follows:

Sec. 30A.111. TEACHER AND INSTRUCTOR QUALIFICATIONS. (a) Each teacher of an electronic course offered by a school district or open-enrollment charter school through the state virtual school network must:

(1) be certified under Subchapter B, Chapter 21, to teach that course and grade level; and

(2) successfully complete the appropriate professional development course provided under Section 30A.112(a) or 30A.1121 before teaching an electronic course offered through the network.

(b) The commissioner by rule shall establish procedures for verifying successful completion by a teacher of the appropriate professional development course required by Subsection (a)(2).

(c) The commissioner by rule shall establish qualifications and professional development requirements applicable to college instructors providing instruction in dual credit courses through the state virtual school network that allow a student to earn high school credit and college credit or other credit.

SECTION \_\_.12. Subchapter C, Chapter 30A, Education Code, is amended by adding Section 30A.1121 to read as follows:

Sec. 30A.1121. ALTERNATIVE EDUCATOR PROFESSIONAL DEVELOPMENT. (a) Subject to Subsection (b), a school district or open-enrollment charter school may provide professional development courses to teachers seeking to become authorized to teach electronic courses provided through the state virtual school network. A district or school may provide a professional development course that is approved under Subsection (b) to any interested teacher, regardless of whether the teacher is employed by the district or school.

(b) The agency shall review each professional development course sought to be provided by a school district or open-enrollment charter school under Subsection (a) to determine if the course meets the quality standards established under Section 30A.113. If a course meets those standards, the district or school may provide the course for purposes of enabling a teacher to comply with Section 30A.111(a)(2).

SECTION \_\_.13. Section 30A.151, Education Code, is amended by adding Subsection (f) to read as follows:

(f) For an electronic course program offered through the state virtual school network for a grade level at or above grade level three but not above grade level eight, a school district or open-enrollment charter school is entitled to receive federal, state, and local funding for a student enrolled in the program in an amount equal to the funding the district or school would otherwise receive for a student enrolled in the district or school. The district or school may calculate the average daily attendance of a student enrolled in the program based on:

- (1) hours of contact with the student;
- (2) the student's successful completion of a course; or
- (3) a method approved by the commissioner.

SECTION \_\_.14. Section 30A.155, Education Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (a-1) and (c-1) to read as follows:

(a) A school district or open-enrollment charter school may charge a fee for enrollment in an electronic course provided through the state virtual school network to a student who resides in this state and:

(1) is enrolled in a school district or open-enrollment charter school as a full-time student; and

(2) is enrolled in a course load greater than that normally taken by students in the equivalent grade level in other school districts or open-enrollment charter schools~~;~~ ~~and~~

~~[(3) does not qualify for accelerated student funding under Section 30A.154].~~

(a-1) A school district or open-enrollment charter school may charge a fee for enrollment in an electronic course provided through the state virtual school network during the summer.

(c) The amount of a fee charged a student under Subsection (a), (a-1), or (b) for each electronic course in which the student enrolls through the state virtual school network may not exceed the lesser of:

- (1) the cost of providing the course; or
- (2) \$400.

(c-1) A school district or open-enrollment charter school that is not the provider school district or school may charge a student enrolled in the district or school a nominal fee, not to exceed the amount specified by the commissioner, if the student enrolls in an electronic course provided through the state virtual school network that exceeds the course load normally taken by students in the equivalent grade level. A juvenile probation department or state agency may charge a comparable fee to a student under the supervision of the department or agency.

(d) Except as provided by this section ~~[Subsection (a) or (b)]~~, the state virtual school network may not charge a fee to students for electronic courses provided through the network.

SECTION \_\_.15. The Texas Education Agency shall evaluate whether providers of different types of electronic courses offered through the state virtual school network established under Chapter 30A, Education Code, should receive

varying amounts of state funding based on the type of course provided. Not later than January 1, 2011, the agency shall submit a report of its findings and recommendations to the legislature.

SECTION \_\_\_\_.16. The Texas Education Agency shall investigate the feasibility of making language acquisition courses available through the state virtual school network by obtaining state subscriptions or pursuing other possible means of access. Not later than January 1, 2011, the agency shall submit a report of its findings to the legislature. If the agency determines that it is feasible to make language acquisition courses available through the network, the report must include recommended mechanisms for ensuring progress towards language proficiency of students enrolled in those courses.

SECTION \_\_\_\_.17. (a) The Texas Education Agency shall investigate the feasibility of creating one or more series of courses to be provided through the state virtual school network that focus on the educational needs of students in alternative education settings, including students in disciplinary alternative education programs under Section 37.008, Education Code, students in juvenile justice alternative education programs under Section 37.011, Education Code, and students under the supervision of a juvenile probation department, the Texas Youth Commission, or the Texas Department of Criminal Justice. The series of courses to be investigated must include a series that would constitute a full-time educational program, a series that would offer only supplemental courses, and a series that would offer courses through which students could recover academic credit for courses in which the students were previously unsuccessful.

(b) Not later than January 1, 2011, the agency shall submit a report of its findings to the legislature.

(2) In SECTION 1.18 of the bill, in the introductory language (page 7, line 12), strike "Section 42.160" and substitute "Sections 42.159 and 42.160".

(3) In SECTION 1.18 of the bill, immediately preceding added Section 42.160, Education Code (page 7, between lines 12 and 13), insert the following:

Sec. 42.159. STATE VIRTUAL SCHOOL NETWORK ALLOTMENTS. (a) In this section:

(1) "Electronic course" means a course that is a semester in length.

(2) "Normal course load" means the number of classes or credit hours generally required to be taken by a student to generate the full amount of funding provided under this chapter for a student in average daily attendance, as determined by the commissioner.

(3) "State virtual school network" means the system established under Chapter 30A.

(b) For each student who successfully completes an electronic course that satisfies a curriculum requirement for graduation adopted under Section 28.025 and is provided through the state virtual school network as part of a normal course load:

(1) the school district or open-enrollment charter school that provided the course is entitled to an allotment of \$400; and

(2) the school district or open-enrollment charter school in which the student is enrolled is entitled to an allotment of \$80 to reimburse the district or school for associated administrative costs.

(c) A juvenile probation department or state agency is entitled to receive state funding comparable to the funding described by Subsection (b)(2) for students under the supervision of the department or agency.

(d) For each student who successfully completes an electronic course that satisfies a curriculum requirement for graduation adopted under Section 28.025, is provided through the state virtual school network, and exceeds a normal course load, including an electronic course offered during the summer, the school district or open-enrollment charter school that provided the course may be entitled to an allotment in an amount determined by the commissioner based on the amount of funds appropriated for purposes of this subsection.

(e) The commissioner may set aside an amount not to exceed 50 percent of the total funds appropriated for allotments under Subsection (d) and use that amount to pay the costs of providing through the state virtual school network electronic courses through which students may recover academic credit for courses in which the students were previously unsuccessful. The commissioner may reserve a portion of the set-aside amount for payment of the costs of providing electronic courses described by this subsection to students in alternative education settings. For purposes of this subsection, students in alternative education settings include students in disciplinary alternative education programs under Section 37.008, students in juvenile justice alternative education programs under Section 37.011, and students under the supervision of a juvenile probation department, the Texas Youth Commission, or the Texas Department of Criminal Justice.

(f) The commissioner may not provide partial funding under this section to a school district or open-enrollment charter school under Subsection (b) or (d) on the basis of a student who successfully completes one or more modules of an electronic course but does not successfully complete the entire course.

(g) Amounts received by a school district or open-enrollment charter school under this section are in addition to any amounts to which the district or school is entitled to receive or retain under Chapter 12 or 41 or this chapter and are not subject to reduction under any provision of those chapters.

(h) The commissioner shall adopt rules necessary to implement this section. The rules must include provisions:

(1) requiring a school district or open-enrollment charter school that receives funding for an electronic course under Subsection (d) to reduce the amount of any fee charged for the course in accordance with Section 30A.155 by an amount equal to the amount of funding provided under Subsection (d);

(2) prohibiting a school district or open-enrollment charter school that receives funding for an electronic course under Subsection (d) from charging a fee for the course in accordance with Section 30A.155 that is higher than would otherwise be charged; and

(3) addressing division and distribution of the allotment described by Subsection (b)(2) in circumstances in which a student transfers from one school district, school, or other educational setting to another after beginning enrollment in an electronic course.

(4) In SECTION 1.23 of the bill, in amended Section 42.302(a), Education Code (page 13, line 4), between "42.158" and "or 42.160", insert ", 42.159,".

(5) In SECTION 3.01(a) of the bill (page 19, lines 14-20), add the following appropriately numbered subdivisions and renumber subsequent subdivisions accordingly:

- ( ) Section 29.909;
- ( ) Subsection (d), Section 30A.151;
- ( ) Section 30A.153;
- ( ) Section 30A.154;

(6) In SECTION 3.01 of the bill (page 19, between lines 24 and 25), add the following:

(d) Section 3, Chapter 1337 (S.B. 1788), Acts of the 80th Legislature, Regular Session, 2007, is repealed.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 6**

Amend **CSHB 3646** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 3(5), Cultural Education Facilities Finance Corporation Act (Article 1528m, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Cultural facility" means any capital expenditure by a user. The term includes:

(A) real property or an interest in real property, including buildings and improvements, or equipment, furnishings, or other personal property that:

(i) is found by the board to be necessary or convenient to finance, refinance, acquire, construct, enlarge, remodel, renovate, improve, furnish, or equip for cultural education or community benefit;

(ii) is made available for use by the general public, the user, or community groups; and

(iii) is used for a purpose described by Section 2(a)(1) of this Act; ~~and~~

(B) a facility in which any of the following entities engage in any activity in which the entity is permitted to engage:

(i) a nonprofit corporation exempt from the state franchise tax under Section 171.063, Tax Code;

(ii) an organization described in Section 11.18, Tax Code; or

(iii) an organization described in Section 501(c)(3), Internal Revenue Code of 1986; and

(C) facilities incidental, subordinate, or related to or appropriate in connection with property described by Paragraph (A) or (B) of this subdivision, ~~located within the state,~~ regardless of the date of construction or acquisition.

SECTION \_\_\_\_\_. Section 4, Cultural Education Facilities Finance Corporation Act (Article 1528m, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) The corporation shall be created and organized in the same manner as a health facilities development corporation under Chapter 221, Health and Safety Code, and has the same powers, authority, and rights:

(1) with respect to cultural facilities and health facilities that a health facilities development corporation has with respect to health facilities under Chapter 221, Health and Safety Code; and

(2) with respect to educational facilities, housing facilities, and other facilities incidental, subordinate, or related to those facilities that a nonprofit corporation created under Section 53.35(b), Education Code, or an authority created under Section 53.11, Education Code, has under Chapter 53, Education Code.

(e) Regardless of any other provision in Chapter 221, Health and Safety Code, or Chapter 53, Education Code, the corporation may exercise its powers on behalf of a user outside of this state if the user also conducts lawful activities in this state.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

Senator Lucio offered the following amendment to the bill:

#### **Floor Amendment No. 7**

Amend **CSHB 3646** (Senate committee printing) by striking Section 42.160 (on page 7, lines 13 through 29) and substituting the following:

Sec. 42.160. HIGH SCHOOL ALLOTMENT. (a) A school district is entitled to an annual allotment in an amount determined by the commissioner under Subsection (a-1) for each student in weighted average daily attendance in grades 9 through 12 in the district. For purposes of this subsection, the number of students in weighted average daily attendance is calculated by multiplying the number of students in average daily attendance in grades 9 through 12 in the district by the ratio for the district of the number of students in weighted average daily attendance to the number of students in average daily attendance.

(a-1) The commissioner shall determine the amount of the allotment provided under Subsection (a) so that the total state cost of funding the allotment equals the total state cost of funding the allotment that would have resulted if the allotment were provided in the amount of \$275 for each student in average daily attendance in grades 9 through 12 in the district.

(b) School district that is required to take action under Chapter 41 to reduce its wealth per student to the equalized wealth level is entitled to a credit, in the amount of the allotment to which the district is entitled under this section, against the total amount required under Section 41.093 for the district to purchase attendance credits. A school district that is otherwise ineligible for state aid under this chapter is entitled to receive allotments under this section.

The amendment to **CSHB 3646** was read.

On motion of Senator Shapiro, Floor Amendment No. 7 was tabled by the following vote: Yeas 23, Nays 8.

Yeas: Averitt, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Watson, Wentworth, West, Williams.

Nays: Davis, Gallegos, Lucio, Nichols, Uresti, Van de Putte, Whitmire, Zaffirini.

Senator Nichols offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 3646** (Senate committee printing) in SECTION 1.25 of the bill as follows:

(1) In the subchapter heading to added Subchapter I, Chapter 42, Education Code (page 13, line 65), strike "WEIGHTS" and substitute "ALLOTMENTS, WEIGHTS,".

(2) In the section heading to added Section 42.451, Education Code (page 13, line 67), strike "WEIGHTS" and substitute "ALLOTMENTS, WEIGHTS,".

(3) Strike added Section 42.451(a), Education Code (page 13, line 67, through page 14, line 1), and substitute the following:

(a) The Select Committee on Public School Finance Allotments, Weights, and Adjustments is established to conduct a comprehensive review of allotments, weights, and adjustments under the public school finance system.

(4) In added Section 42.451(b), Education Code (page 14, line 2), strike "15" and substitute "18".

(5) In added Section 42.451(b), Education Code (page 14, lines 9-13), strike added Subdivision (4) and substitute the following:

(4) two public school teachers, two public school principals, and two public school district superintendents, each currently employed in this state and each appointed jointly by the lieutenant governor and the speaker of the house of representatives;

(6) In added Section 42.451, Education Code (page 14, between lines 26 and 27), insert the following:

(b-1) The lieutenant governor and speaker of the house of representatives shall ensure that the percentage of the total number of members appointed under Subsections (b)(4) and (5) who are employed by districts not required to take action under Chapter 41 is proportionate to the percentage of the total number of school districts in this state that are not required to take action under Chapter 41.

(7) In added Subchapter I, Chapter 42, Education Code (page 14, between lines 55 and 56), insert the following new Section 42.455 and renumber subsequent sections in Subchapter I accordingly:

Sec. 42.455. OBJECTIVES OF REVIEW. (a) The committee shall conduct a comprehensive review of the public school finance system with emphasis on the adequacy and equity of the allotments, formulas, weights, and adjustments.

(b) The review must include a thorough study of:

(1) the basic allotment, its adequacy in providing a basic accredited program of education, and the levels of the allotment necessary to fund various percentages of students and school districts at amounts above the target revenue guaranteed under Section 42.2516;

(2) how closely and appropriately each of the following elements reflect and provide financing for costs beyond the control of school districts:

(A) the adjustments for costs related to the geographic variation in known resource costs and costs of education, controlling for the impact of unequalized wealth, including hold-harmless provisions, and properly reflecting the impact of high concentrations of poverty on the compensation that school districts must pay to attract and retain teachers of comparable or appropriate quality;

(B) the adjustments for costs related to the size and diseconomies of scale of school districts;

(C) the adjustments for costs related to the varying instructional needs and characteristics of students and the extent to which they provide each student with access to programs and services that are appropriate to the student's educational needs;

(D) other factors in addition to economic status that correlate to student at-risk status and the need for compensatory education, and the degree to which those factors correspond to additional educational costs; and

(E) the manner in which these adjustments are applied to and impact the overall finance system;

(3) the extent to which the finance system promotes the achievement of the public education mission, objectives, and goals provided by Chapter 4 and the policy and purposes provided by this chapter;

(4) the extent to which the finance system is aligned with preparing each student to meet the requirements prescribed by the No Child Left Behind Act of 2001 (20 U.S.C. Section 6301 et seq.);

(5) the extent to which the finance system is aligned with preparing each student to meet the requirements prescribed by the accountability system under Subtitle H and the impact of the finance system on student achievement;

(6) the extent to which the finance system, including the individual and district-level adjustments and the overall adequacy of the system, is aligned with preparing each student for college readiness, or where appropriate, for skilled workforce and technical readiness;

(7) the extent to which the finance system is aligned with the state policy of providing substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences, including the extent to which non-formula funding from both state and local sources affects the achievement of that policy;

(8) the extent to which the finance system is aligned with the state policy of providing access to a substantially equalized program of financing in excess of basic costs;

(9) the extent to which existing inequity in the finance system correlates to student achievement and the performance of districts and campuses on other important indicators and aspects of the educational process;

(10) the extent to which the finance system adequately and equitably assists school districts with financing the purchase, construction, and maintenance of appropriate facilities and major capital items; and

(11) the extent to which the finance system appropriately adjusts for the impact of different market costs, student demographics, growth rates, age and condition of existing facilities, and other factors beyond the control of school districts affecting the cost of facilities.

(8) In added Section 42.455(a), Education Code (page 14, line 58), strike "weights" and substitute "allotments, weights,".

The amendment to **CSHB 3646** was read.

On motion of Senator Shapiro, Floor Amendment No. 8 was tabled by the following vote: Yeas 19, Nays 11.

Yeas: Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapiro, Watson, Wentworth.

Nays: Davis, Ellis, Gallegos, Huffman, Nichols, Shapleigh, Van de Putte, West, Whitmire, Williams, Zaffirini.

Absent: Uresti.

Senator Gallegos offered the following amendment to the bill:

### **Floor Amendment No. 9**

Amend **CSHB 3646** (Senate committee printing) as follows:

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

SECTION 1.\_\_\_\_. Subchapter Z, Chapter 44, Education Code, is amended by adding Section 44.908 to read as follows:

Sec. 44.908. USE OF CAMPUS DISCRETIONARY FUNDS. (a) In this section, "campus discretionary funds" means money raised at a public school campus through vending machines or other sources specifically associated with the campus.

(b) Campus discretionary funds may be used only to:

(1) directly benefit the general welfare and educational development and morale of students enrolled at the campus; or

(2) provide professional development for campus educators, including teachers, administrators, counselors, and librarians, that:

(A) deepens and broadens knowledge of content;

(B) provides a strong foundation in the pedagogy of particular

disciplines;

(C) provides knowledge about the teaching and learning processes;

(D) is based on and reflects the best available research;

(E) is aligned with the standards and curriculum used in the school

district;

(F) contributes to measurable improvement in student achievement;

(G) deepens and broadens knowledge and understanding of strategies needed to promote college and career readiness; and

(H) provides opportunities to build proficiency in data-driven decision-making.

(c) Subject to Subsection (b), the board of trustees of the district has authority over the specific use of campus discretionary funds.

(d) Subsection (b) does not apply to campus discretionary funds that are deposited into a school district's general fund.

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

SECTION 3. \_\_\_\_ Section 44.908, Education Code, as added by this Act, applies to any expenditure of campus discretionary funds that occurs on or after September 1, 2009, regardless of the date on which the funds were raised.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9 except as follows:

Nays: Williams.

Senator Shapleigh offered the following amendment to the bill:

#### **Floor Amendment No. 10**

Amend **CSHB 3646** by adding the following sections to the bill, numbered appropriately, and by renumbering any subsequent sections of the bill accordingly:

SECTION \_\_\_\_ Section 29.915, Education Code, is amended by amending Subsection (d) and adding Subsection (f) to read as follows:

(d) The agency shall develop an application and selection process for selecting school districts to participate in the program. The agency may select not more than 100 [25] school districts to participate in the program.

(f) Not later than January 1, 2011, the agency shall provide each member of the legislature with a report relating to the implementation and effectiveness of the program. This subsection expires February 1, 2011.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10.

Senator Shapleigh offered the following amendment to the bill:

#### **Floor Amendment No. 11**

Amend **CSHB 3646** by adding the following sections to the bill, numbered appropriately, and by renumbering any subsequent sections of the bill accordingly:

SECTION \_\_\_\_ Subsection (d), Section 8.051, Education Code, is amended to read as follows:

(d) Each regional education service center shall maintain core services for purchase by school districts and campuses. The core services are:

(1) training and assistance in:

(A) teaching each subject area assessed under Section 39.023; and  
(B) providing instruction in personal financial literacy as required under  
Section 28.0021;

(2) training and assistance in providing each program that qualifies for a funding allotment under Section 42.151, 42.152, 42.153, or 42.156;

(3) assistance specifically designed for a school district rated academically unacceptable under Section 39.072(a) or a campus whose performance is considered unacceptable based on the indicators adopted under Section 39.051;

(4) training and assistance to teachers, administrators, members of district boards of trustees, and members of site-based decision-making committees;

(5) assistance specifically designed for a school district that is considered out of compliance with state or federal special education requirements, based on the agency's most recent compliance review of the district's special education programs; and

(6) assistance in complying with state laws and rules.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11.

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 12**

Amend **CSHB 3646** (Senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (d), Section 11.1513, Education Code, is amended to read as follows:

(d) The employment policy must provide that not later than the 10th school day before the date on which a district fills a vacant position for which a certificate or license is required as provided by Section 21.003, other than a position that affects the safety and security of students as determined by the board of trustees, the district must provide to each current district employee:

(1) notice of the position by posting the position on:

(A) a bulletin board at:

(i) a place convenient to the public in the district's central administrative office; and

(ii) the central administrative office of each campus in the district during any time the office is open; or ~~and~~

(iii) ~~(D)~~ the district's Internet website, if the district has a website; and

(2) a reasonable opportunity to apply for the position.

SECTION \_\_\_\_\_. Section 25.112, Education Code, is amended by amending Subsection (d) and adding Subsections (e), (f), and (g) to read as follows:

(d) On application of a school district, the commissioner may except the district from the limit in Subsection (a) if the commissioner finds the limit works an undue hardship on the district. An exception expires at the end of the school year ~~[semester]~~ for which it is granted~~], and the commissioner may not grant an exception for:~~

~~[(1) more than one semester at a time].~~

(e) A school district seeking an exception under Subsection (d) shall notify the commissioner and apply for the exception not later than the later of:

(1) October 1; or

(2) the 30th day after the first school day the district exceeds the limit in

Subsection (a).

(f) If a school district repeatedly fails to comply with this section, the commissioner may take any appropriate action authorized to be taken by the commissioner under Section 39.131.

(g) Not later than January 1, 2011, the agency shall report to the legislature the number of applications for exceptions under Subsection (d) submitted by each school district and for each application indicate whether the application was granted or denied. This subsection expires February 1, 2011.

SECTION \_\_\_\_\_. Subsection (b), Section 34.0021, Education Code, is amended to read as follows:

(b) A school district shall conduct the school bus emergency evacuation training at least once ~~[twice]~~ each school year. The training may be conducted by video. A video used for training under this subsection may be produced by students~~], with one training session occurring in the fall and one training session occurring in the spring. A portion of the training session must occur on a school bus and the training session must last for at least one hour].~~

SECTION \_\_\_\_\_. Section 44.902, Education Code, is amended to read as follows:

Sec. 44.902. LONG-RANGE ENERGY PLAN ~~[GOAL]~~ TO REDUCE CONSUMPTION OF ELECTRIC ENERGY. (a) The board of trustees of a school district shall establish a long-range energy plan ~~[goal]~~ to reduce the ~~[school]~~ district's annual electric consumption by five percent beginning with the 2008 ~~[each]~~ state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan ~~[for six years beginning September 1, 2007].~~

(b) The plan required under Subsection (a) must include:

(1) strategies for achieving energy efficiency that:

(A) result in net savings for the district; or

(B) can be achieved without financial cost to the district; and

(2) for each strategy identified under Subdivision (1), the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

(c) In determining under Subsection (b) whether a strategy may result in financial cost to the district, the board of trustees shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

(d) The board of trustees may submit the plan required under Subsection (a) to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office are available to the district.

SECTION \_\_\_\_\_. Subsection (b), Section 44.903, Education Code, is amended to read as follows:

(b) A school district is encouraged to ~~shall~~ purchase for use in each type of light fixture in an instructional facility the commercially available model of light bulb that:

(1) uses the fewest watts for the necessary luminous flux or light output;

(2) is compatible with the light fixture; and

(3) is the most cost-effective, considering the factors described by Subdivisions (1) and (2).

SECTION \_\_\_\_\_. Subsection (b), Section 44.901, Education Code, is repealed.

SECTION \_\_\_\_\_. This Act applies beginning with the 2009-2010 school year.

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 3646** 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.

Senator Duncan offered the following amendment to the bill:

### **Floor Amendment No. 13**

Amend **CSHB 3646** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 28.009, Education Code, is amended by adding Subsection (a-2) to read as follows:

(a-2) A school district is not required to pay a student's tuition or other associated costs for taking a course under this section.

SECTION \_\_\_\_\_. Section 42.005(g), Education Code, is amended to read as follows:

(g) If a student may receive course credit toward the student's high school academic requirements and toward the student's higher education academic requirements for a single course, including a course provided under Section 28.009 by a public institution of higher education, the time during which the student attends the course shall be counted as part of the minimum number of instructional hours required for a student to be considered a full-time or part-time student in average daily attendance for purposes of this section, regardless of whether the district or the student pays the tuition or other associated costs for the course.

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 13.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 14**

Amend **CSHB 3646** by adding the following SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 26.08, Tax Code, is amended by adding Subsection (p) to read as follows:

(p) Notwithstanding Subsections (i), (n), and (o), if for the preceding tax year a school district adopted a maintenance and operations tax rate that was less than the district's effective maintenance and operations tax rate for that preceding tax year, the rollback tax rate of the district for the current tax year is calculated as if the district adopted a maintenance and operations tax rate for the preceding tax year that was equal to the district's effective maintenance and operations tax rate for that preceding tax year.

(b) Subsection (a), Section 45.001, Education Code, is amended to read as follows:

(a) The governing board of an independent school district, including the city council or commission that has jurisdiction over a municipally controlled independent school district, the governing board of a rural high school district, and the commissioners court of a county, on behalf of each common school district under its jurisdiction, may:

(1) issue bonds for:

(A) the construction, acquisition, and equipment of school buildings in the district;

(B) the acquisition of property or the refinancing of property financed under a contract entered under Subchapter A, Chapter 271, Local Government Code, regardless of whether payment obligations under the contract are due in the current year or a future year;

(C) the purchase of the necessary sites for school buildings; and

(D) the purchase of new school buses; and

(2) may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to Section 45.003.

(c) The change in law made by this section applies to the ad valorem tax rate of a school district beginning with the 2009 tax year, except as provided by Subsection (d) of this section.

(d) If the governing body of a school district adopted an ad valorem tax rate for the school district for the 2009 tax year before the effective date of this section, the change in law made by this section applies to the ad valorem tax rate of that school district beginning with the 2010 tax year, and the law in effect when the tax rate was adopted applies to the 2009 tax year with respect to that school district.

(e) 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 **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 14.

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

**Floor Amendment No. 15**

Amend **CSHB 3646** (Senate committee printing) by inserting the following SECTIONS where appropriate and renumbering accordingly:

SECTION \_\_. Section 11.168, Education Code, is amended to read as follows:

Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR CERTAIN PURPOSES. Except as provided by Section 45.109(a-1) and (a-2), the [The] board of trustees of a school district may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

SECTION \_\_. Section 45.109, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) An independent school district and an institution of higher education, as defined by Section 61.003, located wholly or partially in the boundaries of the county in which the district is located may contract for the district to contribute district resources to pay a portion of the costs of the design or construction of an instructional facility or a stadium or other athletic facilities owned by or under the control of the institution of higher education. A district may contribute district resources under this subsection only if the district and the institution of higher education enter into a written agreement authorizing the district to use that facility.

(a-2) One or more independent school districts and an institution of higher education, as defined by Section 61.003, may contract for the district to contribute district resources to pay a portion of the costs of the design, improvment, or construction of an instructional facility owned by or under the control of the institution of higher education. A district may contribute district resources under this subsection only if the district and the institution of higher education enter into a written agreement authorizing the district to use that facility, including authorizing the enrollment of district students in courses offered at that facility.

VAN DE PUTTE  
DUNCAN

The amendment to **CSHB 3646** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 15 except as follows:

Nays: Patrick.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 16**

Amend **CSHB 3646** (Senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 12.101, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The State Board of Education, after thoroughly investigating and evaluating an applicant, may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner under this subchapter. The State Board of Education may not grant ~~[a total of]~~ more than 10 new [245] charters for an open-enrollment charter school each state fiscal year.

(b-1) A charter holder may establish one or more new open-enrollment charter school campuses under a charter without applying for authorization from the State Board of Education if:

(1) 90 percent or more of the open-enrollment charter school campuses operating under the charter have been rated as academically acceptable or higher under Subchapter D, Chapter 39, for the two preceding school years;

(2) either no campus operating under the charter has been rated as academically unacceptable for any two of the three preceding school years or such a campus has been closed;

(3) the charter holder satisfies generally accepted accounting standards of fiscal management;

(4) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to the State Board of Education and the commissioner of the establishment of any campus under this subsection; and

(5) not later than the 90th day after the date the charter holder provides written notice under Subdivision (4), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

SECTION \_\_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1011 to read as follows:

Sec. 12.1011. AUTHORIZATION FOR GRANT OF CHARTERS FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The State Board of Education may grant under Section 12.101 a charter on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. A charter granted under this section is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a charter is granted under Section 12.101.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability.

SECTION \_\_\_\_\_. Section 12.104, Education Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, and G, Chapter 39, except as provided by Subsection (e);

(M) the requirement under Section 21.006 to report an educator's misconduct; and

(N) intensive programs of instruction under Section 28.0213.

(e) In computing dropout and completion rates for an open-enrollment charter school, the commissioner may:

(1) exclude students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate; and

(2) exclude students who were previously reported to the state as dropouts.

SECTION \_\_\_\_\_. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a charter for an open-enrollment charter school under Section 12.110 or on receipt by the board and the commissioner of notice of the establishment of a campus as authorized under Section 12.101(b-1):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION \_\_\_\_\_. Subsection (a), Section 12.111, Education Code, is amended to read as follows:

(a) Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) specify the period for which the charter or, consistent with Section 12.116(b-1), any charter renewal is valid;

(3) provide that continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1) [~~acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter~~];

(4) [~~establish the level of student performance that is considered acceptable for purposes of Subdivision (3);~~

~~(5)~~ specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked [~~or on which renewal of the charter may be denied~~];

~~(6)~~ prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

~~(7)~~ specify the grade levels to be offered;

~~(8)~~ describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

~~(9)~~ specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

~~(10)~~ specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

~~(11)~~ describe the process by which the person providing the program will adopt an annual budget;

(11) ~~(12)~~ describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(12) ~~(13)~~ describe the facilities to be used;

(13) ~~(14)~~ describe the geographical area served by the program; and

(14) ~~(15)~~ specify any type of enrollment criteria to be used.

SECTION \_\_\_\_\_. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION~~;~~ ~~OR DENIAL OF RENEWAL~~. (a) The commissioner may modify, place on probation, or revoke~~;~~ ~~or deny renewal of~~ the charter of an open-enrollment charter school if the commissioner determines that the charter holder:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; or

(4) failed to comply with this subchapter or another applicable law or rule.

(b) The action the commissioner takes under Subsection (a) shall be based on:

(1) the best interest of the school's students;

(2) ~~7~~ the severity of the violation~~;~~ and any previous violation the school has committed; and

(3) the accreditation status of the school under Section 39.072.

SECTION \_\_\_\_\_. Section 12.116, Education Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsection (b) to read as follows:

(a-1) The commissioner shall revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) if, after all information required for determining a performance rating has been considered, the commissioner determines that the school is insolvent as a result of recovery of overallocated state funds under Section 42.258(a).

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.1324(d), (e), or (f) ~~[procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated].~~

(b-1) The procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school must provide that the charter automatically renews unless the school's charter is revoked under Subchapter G, Chapter 39, before the expiration of a charter term. The term for which a charter is renewed shall not be less than 10 years.

SECTION \_\_\_\_\_. Subsection (a), Section 12.118, Education Code, is amended to read as follows:

(a) The commissioner shall designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

SECTION \_\_\_\_\_. Subsection (c), Section 12.119, Education Code, is amended to read as follows:

(c) On request, the State Board of Education shall provide the information required by this section and Section 12.111(a)(7) [12.111(8)] to a member of the public. The board may charge a reasonable fee to cover the board's cost in providing the information.

SECTION \_\_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.134 and 12.135 to read as follows:

Sec. 12.134. COLOCATION AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL. (a) This section applies to a school district that:

(1) leases a district facility for the operation of an open-enrollment charter school to be colocated on a district campus; and

(2) enters into an agreement with the charter school as provided by Subsection (d).

(b) The board of trustees of a school district may elect to have data regarding the academic performance of students enrolled in the open-enrollment charter school combined with comparable data of the colocated district campus in determining the performance of the campus and the district.

(c) The board of trustees of a school district that elects under Subsection (b) to have academic data combined shall annually file with the agency a copy of the lease and agreement described by Subsection (a).

(d) The agreement between the school district and the open-enrollment charter school:

(1) shall establish terms for sharing instructional or other specified resources, such as professional development;

(2) shall for each year specify factors for identifying a student who will be served by the charter school in the leased facilities, which may include:

(A) the student's attendance at a specified district campus or campuses;

(B) the student's need for specific academic services;

(C) the student's academic performance in previous school years; or

(D) other objective factors determined by the district and the charter

school;

(3) may prohibit the charter school from enrolling students at the leased facilities other than those identified under factors designated in the agreement; and

(4) shall require the district and the charter school to adopt measures, as required by commissioner rule, such as using different numerical codes for reporting information through the Public Education Information Management System (PEIMS), so that data remains identifiable as that of the district or of the school, as applicable.

Sec. 12.135. EDUCATIONAL SERVICES AGREEMENT BETWEEN SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL.

(a) Notwithstanding Chapter 41 or 42, and in addition to any other funds to which a school district may be entitled, if the board of trustees of the district enters into an agreement under this section with an open-enrollment charter school for the charter school to provide educational services to a student enrolled in school in the district, the district is entitled to receive the greater of the following amounts:

(1) the amount the charter school would receive under Section 12.106 if the student were enrolled in the charter school; or

(2) the amount to which the district is entitled under Chapters 41 and 42 for the student.

(b) The board of trustees of a school district that enters into an agreement described by Subsection (a) with an open-enrollment charter school may elect to have the state and federal funds attributable to the students educated by the charter school paid directly to the charter school. A school district that makes such an election must make an annual declaration of the election to the agency in a manner determined by the commissioner. The district remains responsible for any overallocation or audit recovery of state or federal funds as determined by the commissioner.

SECTION \_\_\_\_. Sections 39.202 and 39.203, Education Code, are amended to read as follows:

Sec. 39.202. DEVELOPMENT AND IMPLEMENTATION. (a) The commissioner shall, in consultation with the comptroller, develop and implement a financial accountability rating system for school districts and open-enrollment charter schools in this state that:

(1) distinguishes among school districts and open-enrollment charter schools based on levels of financial performance; and

(2) includes procedures to:

(A) provide additional transparency to public education finance; and

(B) enable the commissioner and school district and open-enrollment charter school administrators to provide meaningful financial oversight and improvement.

(b) The system must include uniform indicators adopted by the commissioner by which to measure a district's or open-enrollment charter school's financial management performance.

Sec. 39.203. REPORTING. (a) The commissioner shall develop, as part of the system, a reporting procedure under which:

(1) each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report; and

(2) the public is provided an opportunity to comment on the report at a hearing.

(b) The annual financial management report must include:

(1) a description of the district's or school's financial management performance based on a comparison, provided by the agency, of the district's or school's performance on the indicators adopted under Section 39.202(b) to:

(A) state-established standards; and

and (B) the district's or school's previous performance on the indicators;

(2) any descriptive information required by the commissioner.

(c) The report may include:

(1) information concerning, if applicable, the district's or school's:

(A) financial allocations;

(B) tax collections;

(C) financial strength;

(D) operating cost management;

(E) personnel management;

(F) debt management;

(G) facility acquisition and construction management;

(H) cash management;

(I) budgetary planning;

(J) overall business management;

(K) compliance with rules; and

(L) data quality; and

(2) any other information the board of trustees determines to be necessary or useful.

(d) The board of trustees of each school district and the governing body of each open-enrollment charter school shall hold a public hearing on the report. The board shall give notice of the hearing to, as applicable, owners of real property in the district and to parents of district students or to owners of real property in the district in which the open-enrollment charter school is located and to the parents of school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district; and

(2) through electronic mail to media serving the district.

(e) After the hearing, the report shall be disseminated in the district or in the district in which the open-enrollment charter school is located in the manner prescribed by the commissioner.

SECTION \_\_\_\_\_. Subsection (b), Section 12.113, Education Code is repealed.

SECTION \_\_\_\_\_. This Act applies beginning with the 2009-2010 school year.

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.

SECTION \_\_\_\_\_. Except as provided by Section 14 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009, except as provided by Section 14 of this Act.

The amendment to **CSHB 3646** 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 3646** 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 3646** 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. 17.

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

**CSHB 3646** 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 3646 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 **CSHB 3646** be placed on its third reading and final passage.

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

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

**REMARKS ORDERED PRINTED**

On motion of Senator Duncan and by unanimous consent, the exchange between Senators Shapiro and Duncan regarding **CSHB 3646** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Duncan:** Senator, I think you've, you're aware of this. There's a little intent language that I think we needed to discuss, with regard to Section 42.251, for the Education Code. This section delivers \$75 a month to districts to pay for active educator insurance. The bill, House Bill 3646, under House Bill 3646, these dollar amounts are intended to be rolled into a district's hold harmless level of funding. This section also delivers health insurance funding to the Education Service Center employees, however, the ESCs do not receive hold harmless funding. And I want to make sure that by repealing this section, we're not intending to eliminate health insurance funding for the Education Service Center.

**Senator Shapiro:** Absolutely not. In fact, what you're, what we're doing is taking that section that's outside of the formula, and we're putting it into, and it, I have every intention of it including the health insurance for those personnel.

**Senator Duncan:** Thank you very much.

**Senator Shapiro:** Thank you.

**MESSAGES FROM THE HOUSE****HOUSE CHAMBER**

Austin, Texas

May 26, 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:**

**SB 835**, Relating to powers of the Port of Corpus Christi Authority of Nueces County, Texas, pertaining to land in and adjacent to Naval Station Ingleside.

**SB 873**, Relating to a requirement that certain appraisal districts provide for electronic filing of and electronic communications regarding a protest of appraised value by the owner of a residence homestead.

**SB 892**, Relating to inclusion in a public school campus improvement plan of goals and objectives for the campus coordinated health program.

**SB 904**, Relating to prescriptions issued for certain controlled substances.  
(Amended)

**SB 909**, Relating to designating the first week of October as Monarch Butterfly Week.

**SB 911**, Relating to the certification and regulation of pain management clinics.  
(Amended)

**SB 926**, Relating to the imposition of a civil penalty against the owner of an authorized emergency vehicle for a violation recorded by a photographic traffic signal enforcement system.

**SB 1033**, Relating to the purposes and powers of the Temple Health and Bioscience Economic Development District.

**SB 1034**, Relating to allowing the governing bodies of certain municipalities to order a local option election relating to the sale of alcoholic beverages.  
(Committee Substitute)

**SB 1053**, Relating to the appointment or removal of guardians of incapacitated persons.

**SB 1056**, Relating to authorizing a criminal justice agency to disclose certain criminal history record information to the Guardianship Certification Board and offices of the county clerk.  
(Amended)

**SB 1057**, Relating to criminal history record information relating to persons who are certified to provide guardianship services.

- SB 1058**, Relating to reporting requirements for health occupation regulatory agencies.
- SB 1080**, Relating to compliance with federal occupational safety and health standards in environmental enforcement.
- SB 1081**, Relating to access to criminal history record information by the office of the attorney general.
- SB 1082**, Relating to the storage, maintenance, and distribution of mammography medical records.
- SB 1095**, Relating to the licensing and regulation of used automotive parts recyclers; providing penalties.  
(Committee Substitute)
- SB 1207**, Relating to the use of municipal hotel occupancy tax revenue to finance a convention center hotel in certain municipalities.
- SB 1208**, Relating to the creation of an appellate judicial system for the Seventh Court of Appeals District.
- SB 1218**, Relating to the collection of data by the Texas Department of Transportation regarding bridge collapses.
- SB 1093**, Relating to the operation of a commercial motor vehicle.  
(Amended)
- SB 1223**, Relating to the creation, administration, powers, duties, and operation of the Riverbend Water Resources District; providing authority to issue bonds and exercise the power of eminent domain.
- SB 1290**, Relating to authorization for school districts to provide mentors for teachers assigned to a new subject or grade level.  
(Committee Substitute)
- SB 1325**, Relating to the creation of a mental health intervention program for military veterans.
- SB 1328**, Relating to a study on the feasibility of providing vaccines to first responders deployed to a disaster area.
- SB 1332**, Relating to the placement of certain children who are in the managing conservatorship of the state.
- SB 1344**, Relating to an alcohol awareness component of the health curriculum used in public schools.
- SB 1359**, Relating to forfeiture of remedy for nonpayment of ad valorem taxes.
- SB 1368**, Relating to the creation of a county ethics commission in certain counties; providing civil and criminal penalties.  
(Committee Substitute/Amended)
- SB 1402**, Relating to requiring certain political subdivisions to enter a contract with the county elections administrator to perform election services.  
(Committee Substitute)

**SB 1403**, Relating to changing the Texas Health Insurance Risk Pool to the Texas Health Insurance Pool, and to the operation of that pool.

**SB 1474**, Relating to compensation for certain emergency services personnel.

**SB 1485**, Relating to the sale of surplus or salvage property and firefighting equipment by an emergency services district.

**SB 1514**, Relating to child support arrearages and a credit based on certain disability payments.

**SB 1522**, Relating to the exemption of certain school districts from the drainage charge imposed by a municipal drainage utility system.

**SB 1526**, Relating to the composition, administration, and duties, including reporting requirements, of the Border Health Institute.  
(Committee Substitute)

**SB 1574**, Relating to the requirement that the county clerk of certain counties prepare a written records management and preservation services plan.

**SB 1575**, Relating to the random assignment of criminal and civil cases in district courts in Hidalgo County.

**SB 1586**, Relating to the establishment of a shared database for deer breeder reporting requirements.  
(Committee Substitute)

**SB 1617**, Relating to the titling and registration of certain motor vehicles.

**SB 1620**, Relating to the regulation of property tax lenders.  
(Amended)

**SB 1646**, Relating to the creation of the Council on Children and Families.  
(Committee Substitute)

**SB 1652**, Relating to the transfer of certain state property from the Texas Department of Criminal Justice to Mitchell County.

**SB 1670**, Relating to the transfer of certain state property from the Texas Department of Transportation to Polk County.

**SB 1676**, Relating to fees charged by certain counties near international borders for issuing certain utility certificates.

**SB 1693**, Relating to the regulation of poultry facilities and poultry litter.  
(Amended)

**SB 1699**, Relating to consistency among certain secretary of state filings.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### HOUSE BILL 319 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 319** at this time on its second reading:

**HB 319**, Relating to an exemption from jury service for certain persons with legal custody of a child.

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 319 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 319** 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 3389 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 3389** at this time on its second reading:

**CSHB 3389**, Relating to the continuation and functions of the Texas Commission on Law Enforcement Officer Standards and Education.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

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

Amend **CSHB 3389** (Senate committee printing), in SECTION 22 of the bill, in added Section 1701.507(a), Occupations Code (page 7, line 64) by striking "person who" and substituting "law enforcement agency or governmental entity that".

The amendment to **CSHB 3389** was read and was adopted by a viva voce vote.

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

Senator West offered the following amendment to the bill:

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

Amend **CSHB 3389** (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle ~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle [traffic] stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle [traffic] stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle [traffic] stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE [TRAFFIC AND PEDESTRIAN] STOPS. (a) In this article, "race[~~±~~

~~(1) "Race~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any [each] person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description [the type] of the contraband or evidence [discovered];

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle [existed and the facts supporting the existence of that probable cause];

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop; including a description of the warning or a statement of the violation charged].

SECTION \_\_\_\_ . Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) [means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~local~~ law enforcement agency shall submit a report containing the incident-based data [information] compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency [in a manner approved by the agency].

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities [determine the prevalence of racial profiling by peace officers employed by the agency]; and

(B) examine the disposition of motor vehicle [traffic and pedestrian] stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION \_\_\_\_\_. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle ~~[traffic and pedestrian]~~ stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle ~~[traffic and pedestrian]~~ stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle ~~[traffic and pedestrian]~~ stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle ~~[traffic or pedestrian]~~ stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION \_\_\_\_\_. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION \_\_\_\_\_. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION \_\_\_\_\_. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . ~~\$50~~ ~~[\$5]~~; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION \_\_\_\_\_. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION \_\_\_\_\_. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION \_\_\_\_\_. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

- (1) this chapter;
- (2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or
- (3) a commission rule.

SECTION \_\_\_\_\_. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment to **CSHB 3389** was read and was adopted by a viva voce vote.

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

Senator West offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSHB 3389** (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 3389** was read and was adopted by a viva voce vote.

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

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

**CSHB 3389** 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 3389 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 3389** 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 2917 ON SECOND READING

The President laid before the Senate **HB 2917** by Senator Shapiro on its second reading. The bill had been read second time, amended, and further consideration postponed to a time certain of 3:30 p.m. today:

**HB 2917**, Relating to authorizing the Department of State Health Services to obtain criminal history record information for certain applicants for employment.

Question — Shall **HB 2917** be passed to third reading?

Senator Huffman offered the following amendment to the bill:

#### Floor Amendment No. 3

Amend **HB 2917** (Senate committee report version), by inserting the following and renumbering the subsequent sections appropriately:

SECTION \_\_\_\_\_. Subdivision (7), Section 108.002, Health and Safety Code, is amended to read as follows:

(7) "Department" means the ~~[Texas]~~ Department of State Health Services.

SECTION \_\_\_\_\_. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter, a reference to the Texas Health Care Information Council means the Department of State Health Services.

SECTION \_\_\_\_\_. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department ~~[council]~~ shall coordinate data collection with the data submission formats used by hospitals and other providers. The department ~~[council]~~ shall accept data in the format developed by the American National Standards Institute ~~[National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA 1500]~~ or its successor ~~[their successors]~~ or other nationally ~~[universally]~~ accepted standardized forms that hospitals and other providers use for other complementary purposes.

SECTION \_\_\_\_\_. Section 108.013, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and adding Subsections (k), (l), (m), and (n) to read as follows:

(a) The data received by the department under this chapter ~~[council]~~ shall be used by the department ~~[council]~~ for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner ~~[council]~~ rule, the department ~~[council]~~ shall make determinations on requests for information in favor of access.

(b) The executive commissioner [~~council~~] by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department [~~council~~] may not release and a person or entity may not gain access to any data obtained under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the department under this chapter [~~council~~] in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all [All] data collected and used by the department [~~and the council~~] under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(g) Unless specifically authorized by this chapter, the department [~~The council~~] may not release data elements in a manner that will reveal the identity of a patient. The department [~~council~~] may not release data elements in a manner that will reveal the identity of a physician.

(i) Notwithstanding any other law, the [~~council and the~~] department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner [~~council~~] shall by rule [~~with the assistance of the advisory committee under Section 108.003(g)(5).~~] develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any program within the department if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a program within the department remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department program:

- (1) Section 81.103;
- (2) Sections 108.010(g) and (h);
- (3) Sections 108.011(e) and (f);
- (4) Section 311.037; and
- (5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

SECTION \_\_\_\_\_. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner of the Health and Human Services Commission [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION \_\_\_\_\_. Subdivision (5), Section 108.002, Health and Safety Code, is repealed.

The amendment to **HB 2917** 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 Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2917** 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 2917 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 2917** 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 3065 ON SECOND READING

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 3065** at this time on its second reading:

**CSHB 3065**, Relating to municipal registration of vacant buildings in certain counties; providing a penalty.

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 Davis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3065** (Senate committee report) in SECTION 1 of the bill, in added Sec. 214.233(a), Local Government Code (page 1, line 39), by striking "2.2" and substituting "1.5".

The amendment to **CSHB 3065** 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 West offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3065** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering appropriately numbered SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter Z, Chapter 214, Local Government Code, is amended by adding Section 214.907 to read as follows:

Sec. 214.907. LIMITATION ON MUNICIPAL REQUIREMENTS OF LICENSE OR PERMIT TO OCCUPY DWELLING UNIT. A municipality may not require a tenant to acquire a license or permit issued by the municipality as a condition for occupying or leasing an individual dwelling unit in a single-family, duplex, or multifamily structure. This section does not prohibit a municipality from requiring a license or permit relating to the nonresidential use or the condition of a dwelling unit.

The amendment to **CSHB 3065** 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: Williams.

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

**CSHB 3065** 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 3065 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 3065** 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)

**HOUSE BILL 3676 ON SECOND READING**

Senator Seliger moved to suspend the regular order of business to take up for consideration **HB 3676** at this time on its second reading:

**HB 3676**, Relating to the Texas Economic Development Act.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Uresti, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Hinojosa, Ogden, Shapleigh, Van de Putte.

The bill was read second time.

Senator Seliger offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 3676** as follows:

(1) Strike "2015" on page \_\_, line \_\_ and substitute "2014".

(2) Add the following SECTION to the bill, appropriately numbered:

SECTION \_\_\_\_\_. Section 403.302, Government Code, is amended by adding Subsection (m) to read as follows:

(m) Subsection (d)(10) does not apply to property that was the subject of an application under Subchapter B or C, Chapter 313, Tax Code, made after May 1, 2009, that the comptroller recommended should be disapproved.

(3) Add the following SECTION to the bill, appropriately numbered:

SECTION \_\_\_\_\_. The Legislative Budget Board shall conduct an effectiveness and efficiency review of the economic development program established under Chapter 313, Tax Code, and report the results of the review to the legislature not later than January 1, 2011.

The amendment to **HB 3676** was read and was adopted by a viva voce vote.

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

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3676** (Senate committee printing) between SECTION 13 and SECTION 14 (page 10, between lines 49 and 50) by adding the following new SECTION 14, and renumbering the remaining sections appropriately:

SECTION 14. Amend Section 552.003(1)(B), Government Code, as follows:

(B) does not include:

(i) the judiciary; or

(ii) a nonprofit corporation that is organized for the purposes of a chamber of commerce and provides economic development services to a governmental body.

The amendment to **HB 3676** was read.

Senator Wentworth withdrew 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 3676** 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: Hinojosa, Ogden, Shapleigh, Van de Putte.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 51 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 51** at this time on its second reading:

**CSHB 51**, Relating to measures to enhance and maintain the quality of state universities, including funding and incentives to support emerging public research universities in developing and maintaining programs of the highest tier, to the abolition of the higher education fund, and to the institutional groupings under the Texas Higher Education Coordinating Board's accountability system.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 51** as follows:

On page 7, lines 11 through 12 in added Section 62.149, strike "permitted activities include the use of the money to:" and substitute "the use of the money shall be limited to the following permitted activities:"

The amendment to **CSHB 51** 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 Duncan offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 51** (Senate committee printing) as follows:

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

SECTION \_\_\_\_\_. Section 62.021, Education Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (e), and (f) to read as follows:

(a) In each state fiscal year beginning with the state fiscal year ending August 31, 2011 [~~2008~~], an eligible institution is entitled to receive an amount allocated in accordance with this section from the funds appropriated for that year by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. An eligible institution may not present a claim to be paid [~~The comptroller may not issue a warrant~~] from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation for the Texas State Technical College System. The annual amounts allocated by the formula are as follows:

- (1) \$3,559,433 [~~\$3,434,348~~] to Midwestern State University;
- (2) \$27,846,476 [~~\$26,137,233~~] to the University of North Texas;
- (3) \$8,771,265 [~~\$8,139,391~~] to the University of North Texas Health Science Center at Fort Worth;
- (4) \$12,311,123 [~~\$12,882,348~~] to The University of Texas–Pan American;
- (5) \$5,057,420 [~~\$4,186,790~~] to The University of Texas at Brownsville;
- (6) \$8,425,937 [~~\$7,025,771~~] to Stephen F. Austin State University;
- (7) to the following component institutions of the Texas State University

System:

- (A) \$8,330,933 [~~\$11,210,508~~] to Lamar University;
- (B) \$2,332,463 to the Lamar Institute of Technology;
- (C) \$1,235,752 [~~\$1,115,048~~] to Lamar State College–Orange;
- (D) \$1,244,694 [~~(C) \$1,190,119~~] to Lamar State College–Port Arthur;
- (E) \$11,893,110 [~~(D) \$9,916,306~~] to Sam Houston State University;
- (F) \$21,863,258 [~~(E) \$19,799,276~~] to Texas State University–San

Marcos;

- (G) \$1,625,061 [~~(F) \$2,043,772~~] to Sul Ross State University; and
- (H) \$445,380 [~~(G) \$379,831~~] to Sul Ross State University–Rio Grande

College;

- (8) \$8,894,700 [~~\$11,156,463~~] to Texas Southern University;
- (9) to the following component institutions of the Texas Tech University

System:

- (A) \$23,936,088 [~~\$26,829,477~~] to Texas Tech University;

(B) \$16,973,569 [~~\$17,849,441~~] to Texas Tech University Health Sciences Center; and

(C) \$3,743,027 [~~\$3,585,802~~] to Angelo State University;

(10) \$10,169,695 [~~\$8,424,209~~] to Texas Woman's University;

(11) to the following component institutions of the University of Houston

System:

(A) \$35,885,768 [~~\$35,276,140~~] to the University of Houston;

(B) \$2,393,921 [~~\$2,282,883~~] to the University of Houston–Victoria;

(C) \$5,214,167 [~~\$6,001,337~~] to the University of Houston–Clear Lake;

and

(D) \$7,435,238 [~~\$9,628,151~~] to the University of Houston–Downtown;

(12) to the following component institutions of The Texas A&M University

System:

(A) \$7,139,067 [~~\$8,278,993~~] to Texas A&M University–Corpus

Christi;

(B) \$3,796,436 [~~\$3,130,211~~] to Texas A&M International University;

(C) \$5,046,885 [~~\$5,052,232~~] to Texas A&M University–Kingsville;

(D) \$4,652,995 [~~\$4,776,890~~] to West Texas A&M University;

(E) \$5,193,232 [~~\$5,345,678~~] to Texas A&M University–Commerce;

and

(F) \$1,307,907 [~~\$1,646,352~~] to Texas A&M University–Texarkana; and

(13) \$5,775,000 to the Texas State Technical College System Administration and the following component campuses, but not its extension centers or programs:

(A) Texas State Technical College–Harlingen;

(B) Texas State Technical College–Marshall;

(C) Texas State Technical College–West Texas; and

(D) Texas State Technical College–Waco.

(a-1) This subsection applies only to the state fiscal years ending August 31, 2009, and August 31, 2010, and is intended as a correction necessary to ensure an equitable distribution of the funds appropriated by Section 17(a), Article VII, Texas Constitution, for the five-year period ending August 31, 2010, in accordance with the equitable formula prescribed by Section 17(d), Article VII, Texas Constitution. In each state fiscal year to which this subsection applies, an eligible institution is entitled to receive an amount allocated in accordance with this subsection from the funds appropriated for each of those years by Section 17(a), Article VII, Texas Constitution. The comptroller shall distribute funds allocated under this subsection only on presentation of a claim and issuance of a warrant in accordance with Section 403.071, Government Code. An eligible institution may not present a claim to be paid from any funds allocated under this subsection before the delivery of goods or services described in Section 17, Article VII, Texas Constitution, except for the payment of principal or interest on bonds or notes or for a payment for a book or other published library material as authorized by Section 2155.386, Government Code. The allocation of funds under this subsection is made in accordance with an equitable formula

consisting of the following elements: space deficit, facilities condition, institutional complexity, and a separate allocation for the Texas State Technical College System. The annual amounts allocated by the formula are as follows:

- (1) \$3,810,377 to Midwestern State University;
- (2) \$27,122,687 to the University of North Texas;
- (3) \$7,994,676 to the University of North Texas Health Science Center at

Fort Worth;

- (4) \$13,176,800 to The University of Texas–Pan American;
- (5) \$4,284,677 to The University of Texas at Brownsville;
- (6) \$6,907,643 to Stephen F. Austin State University;
- (7) to the following component institutions of the Texas State University

System:

- (A) \$8,028,333 to Lamar University;
- (B) \$1,825,332 to the Lamar Institute of Technology;
- (C) \$1,140,745 to Lamar State College–Orange;
- (D) \$1,217,124 to Lamar State College–Port Arthur;
- (E) \$10,184,001 to Sam Houston State University;
- (F) \$20,258,248 to Texas State University–San Marcos;
- (G) \$2,090,896 to Sul Ross State University; and
- (H) \$388,203 to Sul Ross State University–Rio Grande College;
- (8) \$11,283,387 to Texas Southern University;
- (9) to the following component institutions of the Texas Tech University

System:

- (A) \$27,446,656 to Texas Tech University;
- (B) \$14,854,762 to Texas Tech University Health Sciences Center; and
- (C) \$3,667,497 to Angelo State University;
- (10) \$8,615,167 to Texas Woman's University;
- (11) to the following component institutions of the University of Houston

System:

- (A) \$36,091,538 to the University of Houston;
- (B) \$2,335,692 to the University of Houston–Victoria;
- (C) \$5,355,874 to the University of Houston–Clear Lake; and
- (D) \$9,548,995 to the University of Houston–Downtown;
- (12) to the following component institutions of The Texas A&M University

System:

- (A) \$8,471,116 to Texas A&M University–Corpus Christi;
- (B) \$3,202,241 to Texas A&M International University;
- (C) \$5,167,540 to Texas A&M University–Kingsville;
- (D) \$4,886,159 to West Texas A&M University;
- (E) \$5,684,047 to Texas A&M University–Commerce; and
- (F) \$1,684,587 to Texas A&M University–Texarkana; and
- (13) \$5,775,000 to the Texas State Technical College System

Administration and the following component campuses, but not its extension centers or programs:

- (A) Texas State Technical College–Harlingen;
- (B) Texas State Technical College–Marshall;

(C) Texas State Technical College–West Texas; and

(D) Texas State Technical College–Waco.

(a-2) This subsection and Subsection (a-1) expire September 1, 2010.

(e) Whereas the University of North Texas at Dallas was created as an institution of higher education by Chapter 25 (S.B. 576), Acts of the 77th Legislature, Regular Session, 2001, which was approved by a vote of more than two-thirds of the membership of each house of the legislature, the University of North Texas at Dallas is entitled to participate in the funding provided by Section 17, Article VII, Texas Constitution, as soon as the University of North Texas at Dallas operates as a general academic teaching institution.

(f) Pursuant to the annual allocation amounts shown in Subsections (a) and (a-1) for each year of the remaining 10-year allocation period established under Section 17(d), Article VII, Texas Constitution, that ends in 2015, the comptroller shall distribute to the Lamar Institute of Technology a portion of the total annual appropriation under Section 17(a), Article VII, Texas Constitution.

SECTION \_\_\_\_\_. Section 62.024, Education Code, is amended to read as follows:

Sec. 62.024. AMOUNT OF ALLOCATION INCREASED. In accordance with Section 17(a), Article VII, Texas Constitution, for each state fiscal year beginning with the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsection is increased to \$262.5 million. [~~Before the state fiscal year ending August 31, 2008, the amount of the annual constitutional appropriation under that subsection is \$175 million.~~]

(2) In SECTION 13 of the bill, strike Subsection (a) of that section (page 7, lines 68 and 69), and substitute the following:

(a) Except as provided by Subsections (b), (c), (d), and (e) of this section, this Act takes effect September 1, 2009.

(3) At the end of SECTION 13 of the bill (page 8, immediately following line 19), add the following:

(e) The sections of this Act amending Sections 62.021, and 62.024, Education Code, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, those sections takes effect September 1, 2009. Subsection (d) of this section does not apply to the sections of this Act that amend Sections 62.021 and 62.024, Education Code.

The amendment to **CSHB 51** was read.

Senator Williams offered the following amendment to Floor Amendment No. 2:

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

Amend Floor Amendment No. 2 by Duncan to **CSHB 51** by adding the following appropriately numbered SECTIONS to the amendment and renumbering subsequent SECTIONS of the amendment accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 96.703, Education Code, is amended to read as follows:

(a) In the city of Beaumont, the [The] board shall establish and maintain a lower-division institution of higher education [an educational center of Lamar University] as a separate degree-granting institution to be known as Lamar Institute of Technology.

SECTION \_\_\_\_\_. Subsection (c), Section 96.703, Education Code, is repealed.

The amendment to Floor Amendment No. 2 to **CSHB 51** was read and was adopted by a viva voce vote.

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

Question recurring on the adoption of Floor Amendment No. 2 to **CSHB 51**, 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 as amended.

Senator Watson offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 51** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS appropriately:

SECTION \_\_\_\_\_. INTERIM STUDY REGARDING TECHNOLOGY RESEARCH DATA COLLECTION. (a) A select interim committee is created to study the feasibility of collecting data and maintaining a searchable electronic database, search engine, or other collection of data (data collection) relating to specialized technology research projects that are developed or conducted at public universities in this state, research facilities of public universities in this state, or other facilities operated by a state agency, in order to facilitate coordination among the universities and facilities on the projects and improve access to and awareness of the specialized research and technologies developed at those institutions and facilities.

(b) The study must consider:

(1) appropriate entities to administer the data collection, including nonprofit organizations, public universities in this state, or state agencies;

(2) the extent of legislative oversight required for an entity that would maintain the data collection;

(3) compliance with state and federal laws regarding access to public information; and

(4) the information the data collection would include, such as:

(A) a list of projects involving one or more of the following areas:

(i) energy research, including methods of creation, storage, distribution, and conservation of energy;

(ii) biomedical science research, including research that involves stem cells or human cloning;

(iii) nanotechnology research, including nanomedicine; and

(iv) other specialized technology research;

(B) for each project listed under Paragraph (A) of this subdivision, a brief description of the project, including the field of technology involved, the entity involved with the project, and additional comments regarding the research the Texas Higher Education Coordinating Board considers appropriate; and

(C) other relevant information and available resources in this state relating to specialized technology research, including:

(i) expert faculty or research personnel;

(ii) available technology and patents obtained;

(iii) the location of and policies for the use of available research equipment;

(iv) public grants or contracts awarded; and

(v) the process through which any stem cells and stem cell lines utilized were derived.

(c) The study shall examine the current state of access to public information about specialized technology research projects and shall assess the best methods of facilitating access to the information. In addition, the study shall consider what information should be accessible by the general public and what information, if any, should have restricted access.

(d) The committee shall be composed of:

(1) representatives of the following institutions, with one member named by each institution: The University of Texas at Austin, Texas A&M University, Texas Tech University, the University of Houston, the University of North Texas, The University of Texas at Arlington, The University of Texas at Dallas, The University of Texas at El Paso, and The University of Texas at San Antonio; and

(2) a number of members appointed by the Texas Higher Education Coordinating Board as the coordinating board considers appropriate to represent the coordinating board, data collection providers, and the technology industry.

(e) On the request of the committee, a general academic institution of higher education, research facility of a general academic institution of higher education, or other facility operated by a state agency shall provide to the Texas Higher Education Coordinating Board or advisory committee any information necessary for the board or advisory committee to perform its duties under this section.

SECTION \_\_\_\_\_. COMMITTEE REPORT. Not later than December 1, 2010, the committee shall report the committee's findings and recommendations to the lieutenant governor, the speaker of the house of representatives, and the governor. The committee shall include in its recommendations specific legislation that the committee considers desirable to address the need for and feasibility of establishing a data collection as determined by the committee's findings.

SECTION \_\_\_\_\_. ABOLITION OF COMMITTEE. The committee is abolished and this Act expires January 16, 2011.

SECTION \_\_\_\_\_. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment to **CSHB 51** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

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

**CSHB 51** 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 51 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 51** 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.

**VOTE RECONSIDERED ON  
COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 14**

On motion of Senator Duncan and by unanimous consent, the vote by which **CSHJR 14** was finally passed was reconsidered.

Question — Shall **CSHJR 14** be finally passed?

Senator Duncan offered the following amendment to the resolution:

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

Amend **CSHJR 14** (Senate committee printing) on third reading as follows:

(1) Designate the existing SECTIONS of the resolution as ARTICLE 1 and renumber its SECTIONS as SECTION 1.01 and 1.02.

(2) In renumbered SECTION 1.02, strike "This proposed constitutional amendment" and substitute "The constitutional amendment proposed by this article".

(3) Insert the following ARTICLE 2 to the resolution:

ARTICLE 2

SECTION 2.01. Article VII, Texas Constitution, is amended by adding Section 20 to read as follows:

Sec. 20. (a) There is established the national research university fund for the purpose of providing a dedicated, independent, and equitable source of funding to enable emerging research universities in this state to achieve national prominence as major research universities.

(b) The fund consists of money transferred or deposited to the credit of the fund and any interest or other return on the investment assets of the fund. The legislature may dedicate state revenue to the credit of the fund.

(c) The legislature shall provide for administration of the fund, which shall be invested in the manner and according to the standards provided for investment of the permanent university fund. The expenses of managing the investments of the fund shall be paid from the fund.

(d) In each state fiscal biennium, the legislature may appropriate as provided by Subsection (f) of this section all or a portion of the total return on all investment assets of the fund to carry out the purposes for which the fund is established.

(e) The legislature biennially shall allocate the amounts appropriated under this section, or shall provide for a biennial allocation of those amounts, to eligible state universities to carry out the purposes of the fund. The money shall be allocated based on an equitable formula established by the legislature or an agency designated by the legislature. The legislature shall review and as appropriate adjust, or provide for a review and adjustment, of the allocation formula at the end of each state fiscal biennium.

(f) The portion of the total return on investment assets of the fund that is available for appropriation in a state fiscal biennium under this section is the portion necessary to provide as nearly as practicable a stable and predictable stream of annual distributions to eligible state universities and to maintain over time the purchasing power of fund investment assets. If the purchasing power of fund investment assets for any rolling 10-year period is not preserved, the legislature may not appropriate money from the fund until the purchasing power of the fund investment assets is restored. The amount appropriated from the fund in any fiscal year may not exceed an amount equal to seven percent of the average net fair market value of the investment assets of the fund.

(g) The legislature shall establish criteria by which a state university may become eligible to receive a portion of the distributions from the fund. A state university that becomes eligible to receive a portion of the distributions from the fund in a state fiscal biennium remains eligible to receive additional distributions from the fund in any subsequent state fiscal biennium. The University of Texas at Austin, Texas A&M University, and Prairie View A&M University are not eligible to receive money from the fund.

(h) An eligible state university may use distributions from the fund only for the support and maintenance of educational and general activities that promote increased research capacity at the university.

SECTION 2.02. Subsection (i), Section 17, Article VII, Texas Constitution, is repealed.

SECTION 2.03. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund.

(b) The amendment to add Section 20 to Article VII of this constitution and to repeal Section 17(i), Article VII, of this constitution takes effect January 1, 2010.

(c) On January 1, 2010, any amount in or payable to the credit of the higher education fund established by Section 17(i), Article VII, Texas Constitution, shall be transferred to the credit of the national research university fund.

(d) This temporary provision expires January 1, 2011.

SECTION 2.04. The constitutional amendment proposed by this Article 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 establishing the national research university fund to enable emerging research universities in this state to achieve national prominence as major research universities and transferring the balance of the higher education fund to the national research university fund."

The amendment to **CSHJR 14** 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 Duncan and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

**CSHJR 14** as amended was again finally passed by the following vote: Yeas 31, Nays 0.

### **COMMITTEE SUBSTITUTE HOUSE BILL 4586 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4586** at this time on its second reading:

**CSHB 4586**, Relating to making supplemental appropriations and reductions in appropriations and giving direction and adjustment authority and prescribing limitations regarding appropriations.

The bill was read second time.

Senator Ogden moved to postpone further consideration of the bill to a time certain of 11:15 a.m. tomorrow.

The motion prevailed.

Question — Shall **CSHB 4586** be passed to third reading?

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 26, 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:

**SB 252**, Relating to the authority of a municipality with a population of less than 10,000 to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain revitalization or redevelopment programs to prohibit ad valorem tax increases on the owner's property for a limited period.

**SB 281**, Relating to the confidentiality of the home address information of the spouses of certain federal judges and certain state judges.

**SB 291**, Relating to hepatitis B vaccination for students enrolled in certain health-related courses of study at an institution of higher education.

**SB 413**, Relating to the prosecution of a Class C misdemeanor offense for which the defendant does not appear.

**SB 414**, Relating to conducting by electronic means a hearing to determine a defendant's ability to discharge certain fines and court costs.

**SB 415**, Relating to the court in which certain persons charged with misdemeanors punishable by fine only may be arraigned.

**SB 576**, Relating to the implementation of a project plan or financing plan for a reinvestment zone under the Tax Increment Financing Act and the granting of exemptions from ad valorem taxes imposed on real property in a reinvestment zone under that Act.

**SB 798**, Relating to refunds of overpayments or erroneous payments of ad valorem taxes.

**SB 801**, Relating to the appraisal for ad valorem tax purposes of land used for wildlife management.

**SB 927**, Relating to tampering with a direct recording electronic voting machine.

**SB 940**, Relating to the regulation of the public practice of geoscience.

**SB 1055**, Relating to reporting and application requirements regarding certain public and private guardians.

**SB 1107**, Relating to the requirement that driver education curriculum include information regarding distractions while driving.

**SB 1134**, Relating to the authority for certain high school students to serve as election clerks.

**SB 1142**, Relating to the authority with whom campaign finance reports must be filed in connection with a judicial district office filled by the voters of only one county.

**SB 1235**, Relating to the sale and use of unregistered vehicles, including the issuance and use of temporary tags on vehicles and the collection of sales taxes.  
(Amended)

**SB 1354**, Relating to the licensing and regulation of plumbers.

**SB 1367**, Relating to parking placard or specialty license plate applications by persons with a mobility problem caused by an impairment of vision.

**SB 1377**, Relating to the administration of the compensation to victims of crime fund and the compensation to victims of crime auxiliary fund.

**SB 1701**, Relating to the franchise arrangements excluded from the Business Opportunity Act.

**SB 1712**, Relating to the authority of the Matagorda County Hospital District of Matagorda County, Texas, to lease property.

**SB 1760**, Relating to the administration of the Texas Save and Match Program to assist qualifying beneficiaries under the state's prepaid tuition plans and college savings plans and to the treatment of a beneficiary's assets under prepaid tuition plans and college savings plans in determining eligibility for student financial assistance and other assistance programs.

(Amended)

**SB 1771**, Relating to the availability and continuation of certain health benefit plan coverage.

**SB 1795**, Relating to the filing by political committees of reports of political contributions and expenditures in connection with a runoff election.

**SB 1807**, Relating to the method of delivery of notices relating to sworn complaints filed with the Texas Ethics Commission.

**SB 1826**, Relating to the status of liquefied natural gas marine terminals.

**SB 1833**, Relating to county participation in the enterprise zone program.  
(Committee Substitute)

**SB 1876**, Relating to the administration and powers of a coordinated county transportation authority.

**SB 1896**, Relating to the grievance procedure for firefighters and police officers in certain municipalities.

(Amended)

**SB 1930**, Relating to the use of a confidential identity for the plaintiff in a civil action involving sexual abuse of a minor.

**SB 1940**, Relating to the fund for veterans' assistance.  
(Amended)

**SB 1941**, Relating to the administration and operation of the state's programs for prepaying or saving toward the costs of attending an institution of higher education.

**SB 1945**, Relating to the issuance of a citation to an owner of real property for a violation of a county or municipal rule or ordinance.

(Amended)

**SB 1992**, Relating to the regulation of automotive wrecking and salvage yards in certain counties; providing a civil penalty.

**SB 1997**, Relating to the designation of Farm-to-Market Road 1015 in Hidalgo County as the Bill Summers International Boulevard.

**SB 2048**, Relating to the establishment of a centralized sex offender registration authority in certain counties in this state.

**SB 2058**, Relating to the Harris County Road Law.

**SB 2072**, Relating to contracting with the secretary of state for the filing of personal financial statements by officers and employees of certain counties.

**SB 2093**, Relating to the North Wheeler County Hospital District.

**SB 2182**, Relating to an environmental service fee at public institutions of higher education.

**SB 2197**, Relating to fees paid to a constable for serving civil process.  
(Committee Substitute)

**SB 2217**, Relating to the designation of a judicial district in Harris County as the district court for domestic violence cases in that county.

**SB 2312**, Relating to eligibility for funds from the water infrastructure fund from the Texas Water Development Board.

**SB 2314**, Relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.  
(Committee Substitute)

**SB 2412**, Relating to the authority of Las Lomas Municipal Utility Districts Nos. 3 and 4 of Kaufman County to undertake road projects.

**SB 2438**, Relating to imposing a duty on a sheriff to report certain warrant or capias information to a national database.

**SB 2445**, Relating to the disposal of sewage by certain boats.

**SB 2462**, Relating to the powers and duties of the Falcon's Lair Utility and Reclamation District relating to the issuance of bonds.

**SB 2465**, Relating to the payment of certain costs associated with educational programs of the John Ben Shepperd Public Leadership Institute of The University of Texas of the Permian Basin.

**SB 2519**, Relating to the Clear Creek Watershed Authority.

**SB 2534**, Relating to the creation of an interagency task force on economic growth and endangered species; providing information and direction regarding endangered species issues in certain areas of the state.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:07 p.m. agreed to adjourn, in memory of Elizabeth Perkins Prothro, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

**ORDERED NOT PRINTED**

On motion of Senator Ogden and by unanimous consent, the Conference Committee Report on **SB 1** was ordered not printed in the *Senate Journal*.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 26, 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 1** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN  
HINOJOSA  
SHAPIRO  
WEST  
WILLIAMS

PITTS  
RAYMOND  
MCCLENDON  
OTTO  
ZERWAS

On the part of the Senate

On the part of the House

The Conference Committee Report on **SB 1** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2196**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas  
May 26, 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 2196** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL  
LUCIO  
NICHOLS

TRUITT  
DARBY  
HERRERO

SELIGER  
ZAFFIRINI  
On the part of the Senate

ISETT  
ROSE  
On the part of the House

The Conference Committee Report on **HB 2196** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 2423**

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 **SB 2423** 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.

DEUELL  
SHAPIRO  
URESTI

GONZALEZ TOUREILLES  
HOPSON  
GONZALES  
ZERWAS

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the transfer or sale of patient information or prescription drug history by discount health care programs; providing penalties.

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

SECTION 1. Subdivisions (3) and (4), Section 76.001, Health and Safety Code, are amended to read as follows:

(3) "Discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product regulated by the Texas Department of Insurance or a self-funded or self-insured employee benefit plan. For purposes of this subsection, consideration includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

(4) "Discount health care program operator" means a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount

health care program operators to offer access to health care services at a discount and determines the charge to members. For purposes of this subsection, consideration includes patient information or patient prescription drug history provided by members, if the person engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

SECTION 2. Section 76.053, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) If a program operator engages in the transfer or sale of a member's patient information or patient prescription drug history, the program operator shall, before enrollment, provide each prospective member disclosure materials describing the program operator's practices regarding such transfer or sale.

(b) A marketer shall use disclosure materials that comply with this section ~~[Subsection (a)].~~

SECTION 3. Title 21, Insurance Code, is amended by adding Chapter 7002 to read as follows:

CHAPTER 7002. SUPPLEMENTAL PROVISIONS RELATING TO DISCOUNT  
HEALTH CARE OPERATORS

Sec. 7002.001. DEFINITION. For purposes of Chapters 562 and 7001, Insurance Code, consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

Sec. 7002.002. REQUIRED DISCLOSURE. If a discount health care program operator engages in the transfer or sale of a member's patient information or patient prescription drug history, the program operator shall, before enrollment, provide each prospective member disclosure materials describing the program operator's practices regarding such transfer or sale.

Sec. 7002.003. VIOLATION; PENALTIES. A violation of this chapter may be enforced in the same manner as a violation of Chapter 562 or 7001.

SECTION 4. (a) Sections 1 and 2 of this Act take effect only if HB 4341 or SB 2339, Acts of the 81st Legislature, Regular Session, 2009, or another Act of the 81st Legislature, Regular Session, 2009, enacting Chapter 562 and Title 21, Insurance Code, concerning discount health care programs is not enacted or does not become law.

(b) Section 3 of this Act takes effect only if HB 4341 or SB 2339, Acts of the 81st Legislature, Regular Session, 2009, or another Act of the 81st Legislature, Regular Session, 2009, enacting Chapter 562 and Title 21, Insurance Code, concerning discount health care programs is enacted and becomes law.

SECTION 5. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 2423** was filed with the Secretary of the Senate.

## RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

### Memorial Resolutions

**SR 1015** by Whitmire, In memory of Eleanor Hall "Puddie" Pitcock of Houston.

**SR 1022** by Estes, In memory of Elizabeth Perkins Prothro of Wichita Falls.

**SR 1025** by Lucio, In memory of Jonathan David Chatham.

### Congratulatory Resolutions

**SR 1016** by West, Recognizing Charles and Beverly Terrell on the occasion of their 50th wedding anniversary.

**SR 1017** by Huffman, Commending Craig Brandenberger for achieving the rank of Eagle Scout.

**SR 1018** by Nichols, Commemorating the convening of the 2009 Forest Summit by the Texas Forestry Association.

**SR 1019** by Hegar, Commending Carl Briscoe Bentley for his service during World War II.

**SR 1020** by Zaffirini, Recognizing Mary Speer Garza and David Garza on the occasion of their retirement as educators.

**SR 1021** by Watson, Recognizing Debbie Peterson on the occasion of her retirement from the Department of Aging and Disability Services.

**SR 1023** by Watson, Recognizing the University Interscholastic League on the occasion of its 100th anniversary.

**SR 1024** by Lucio, Recognizing Elma R. Perez of San Benito on the occasion of her 90th birthday.

**SR 1026** by Lucio, Commending Antonio Orendain for his contributions to civil rights and farm workers' rights in our state.

**SR 1027** by Lucio, Commending Gloria Reyes Garcia of Raymondville for her achievements.

## RECESS

On motion of Senator Whitmire, the Senate at 11:08 p.m. recessed until 9:00 a.m. tomorrow 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 26, 2009

STATE AFFAIRS — **HB 3419**

FINANCE — **CSHB 3144, CSHB 3454, CSHB 4765**

INTERGOVERNMENTAL RELATIONS — **HJR 85, HB 4106**

ECONOMIC DEVELOPMENT — **CSHB 4525**

HIGHER EDUCATION — **HB 999**

**RESOLUTIONS ENROLLED**

May 25, 2009

**SCR 5, SCR 10, SCR 11, SCR 22, SCR 64, SR 989, SR 996, SR 997, SR 999, SR 1000, SR 1001, SR 1002, SR 1003, SR 1004, SR 1005, SR 1006, SR 1007, SR 1008, SR 1009, SR 1010**

**SIGNED BY GOVERNOR**

May 26, 2009

**SB 63, SB 254, SB 1506, SB 1661, SCR 58**

**FILED WITHOUT SIGNATURE OF GOVERNOR**

May 26, 2009

**SB 446**

