

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTY-NINTH DAY

(Continued)

(Friday, May 29, 2009)

AFTER RECESS

The Senate met at 11:20 a.m. and was called to order by Senator Eltife.

The Reverend Don Long, former Senate Doorkeeper, offered the invocation as follows:

Heavenly Father, let the first thoughts we have this day be on You. Let our first impulse be to worship You by being obedient to Your blessed will as we seek the relief of others who are in need. You have entrusted to these who are in the Senate Chamber today the responsibility of preserving the freedoms and liberties which our Texas forefathers gave much time, energy, and some even their lives to establish. Endue these who labor here in this Texas legislative body the wisdom and courage to be good stewards, good statesmen, and good stateswomen in order that the precious treasures You have given to our state may be available for our children and our children's children. Let this be the prayer of our hearts today: When I have come to the end of the road, I should like to look back and see that I have done my very best with the trust that's placed in me. I should like to know I never have by action, word, or deed betrayed a confidence given or forsaken a friend in need. I should like the consolation, when I've traveled the very last mile, to know I've meant something to someone and caused those in sorrow to smile. I know that I shall be happy if in the heart of each one, I can leave a lingering memory of something good I've done. Amen.

PHYSICIAN OF THE DAY

Senator Duncan was recognized and presented Dr. Tom Stephen Carter of Childress as the Physician of the Day.

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

SENATE RESOLUTION 1058

Senator Whitmire offered the following resolution:

WHEREAS, The Texas Senate takes sincere pride in recognizing the outstanding service of the resolute individuals who came together in a moment of need to render lifesaving assistance to Representative Edmund Kuempel on the night of May 12, 2009; and

WHEREAS, The actions of Jennifer Irby, Trooper Edwin Carpenter, Trooper Antonio Rico, Trooper Diane Riojas, and Representative John Zerwas saved the life of Representative Kuempel when he was stricken by cardiac arrest while working at the Capitol; and

WHEREAS, Representative Kuempel was discovered collapsed and unconscious in a Capitol Extension elevator by Jennifer Irby, a messenger employed in the sergeant-at-arms office in the House; Jennifer's quick thinking was the beginning of a lifesaving process that unfolded in the Capitol shortly after 10:00 p.m.; and

WHEREAS, Responding swiftly to the severity of the situation and thinking that she would be able to locate a trooper on the first floor of the Capitol for assistance, Jennifer remained with Representative Kuempel and pushed the first floor elevator button; upon arriving on the first floor, she alerted Trooper Carpenter, who immediately began to attend to Representative Kuempel, and, after ascertaining that emergency medical services had been called, used his radio to ask for more assistance from other Texas Department of Public Safety personnel; and

WHEREAS, Trooper Rico, one of the officers who responded to the call, brought an automated external defibrillator to the scene, and he and Trooper Carpenter made the proper preparations for its use; Trooper Rico began to operate the defibrillator while Trooper Diane Riojas administered rescue breathing to Representative Kuempel; Representative John Zerwas, an anesthesiologist, had been alerted to the emergency and had quickly arrived at the scene; he began chest compressions on Representative Kuempel while giving guidance to the others who were working to save Representative Kuempel's life; and

WHEREAS, Each of these individuals worked hastily, yet with great care; maintaining their composure in the face of a struggle to save another's life, they persevered in their efforts toward reviving Representative Kuempel, even after most would have considered the situation to be hopeless; because of their courage, sound judgment, quick thinking, and tenacity, Representative Kuempel received the emergency aid that was necessary to save his life; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby pay tribute to Jennifer Irby, Trooper Edwin Carpenter, Trooper Antonio Rico, Trooper Diane Riojas, and Representative John Zerwas for their successful lifesaving efforts and commend them for the determined spirit and perseverance with which they handled this potentially tragic event; and, be it further

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

SR 1058 was read and was adopted without objection.

GUESTS PRESENTED

Senator Whitmire, joined by Senator Gallegos, was recognized and introduced to the Senate Jennifer Irby, House Messenger; Trooper Diane Riojas; Trooper Antonio Rico; Trooper Edwin Carpenter; Representative John Zerwas; and Colonel Lamar Beckworth, Director, Department of Public Safety.

The Senate welcomed its guests.

SENATE RESOLUTION 1013

Senator Ogden offered the following resolution:

WHEREAS, The citizens of Texas lost a passionate leader and dynamic trailblazer with the death of Richard F. "Ric" Williamson on December 30, 2007, at the age of 55; and

WHEREAS, Mr. Williamson was a brilliant and visionary leader whose extraordinary efforts on behalf of this state were as grand as Texas itself; a man who cared deeply about the well-being of his community and his state, he epitomized the "Spirit of Texas" with his bold ideas for the betterment of this state and his wholehearted efforts to put them into practice; and

WHEREAS, Born on January 25, 1952, in Abilene, Mr. Williamson attended The University of Texas in Austin, where he married a fellow Longhorn, Mary Ann Welsch, in 1973 and earned his bachelor's degree in 1974; the couple settled in Weatherford and raised three beautiful daughters, Melissa, Katherine, and Sara, and they had two grandchildren; and

WHEREAS, Mr. Williamson was an avid hunter and a devoted fan of women's fast-pitch softball; he was a cofounder of RAW Energy, and he and his wife established MKS Consulting Corporation; and

WHEREAS, Mr. Williamson began his service to the State of Texas in 1985 when he was elected to the Texas House of Representatives, where he served for 14 years; and

WHEREAS, While serving as Vice Chairman of the Appropriations Committee, Mr. Williamson, a proponent of performance budgeting, became fondly known as one of the "Pit Bulls," conservative lawmakers who seriously questioned state spending practices; and

WHEREAS, Professional and legislative accomplishments earned Mr. Williamson many awards through the years; he was particularly proud of his recognition by *Texas Monthly* magazine in both 1989 and 1991 as one of Texas' "Ten Best Legislators"; and

WHEREAS, In 2001, Mr. Williamson was appointed to serve on the Texas Transportation Commission, and in January of 2004, he became chairman of the commission, a position he held until his death; and

WHEREAS, Mr. Williamson was a longtime close friend and trusted advisor to Governor Rick Perry, and he contributed immeasurably to the growth and progress of the state through his dedication to public service, his ambitious and farsighted planning, and his steadfast leadership; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby honor the memory of Ric Williamson, a great Texan and a cherished friend to many, whose legacy will continue to shape the state's infrastructure and inspire the lives of others for years to come; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family, and that when the Senate adjourns this day, it do so in memory of Richard F. "Ric" Williamson.

SR 1013 was read and was adopted by a rising vote of the Senate.

GUESTS PRESENTED

Senator Ogden, joined by Senators Deuell, Nelson, Shapleigh, Whitmire, Nichols, Lucio, West, and Harris, was recognized and introduced to the Senate the widow of Richard F. "Ric" Williamson, Mary Ann Williamson; their daughter, Melissa Meyer; and his brother-in-law, Linden Welsch.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Ellis, joined by Senator West, was recognized and introduced to the Senate Dallas County District Attorney Craig Watkins, accompanied by Terri Moore, First Assistant District Attorney; Michael Moore, Assistant District Attorney, and Chief, Conviction Integrity Unit; Michelle Moore, Assistant Public Defender, Dallas County Public Defender's Office; and Jim Hammond, Investigator, Criminal District Attorney's Office.

The Senate welcomed its guests.

SENATE BILL 282 WITH HOUSE AMENDMENT

Senator Nelson called **SB 282** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 282** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to grant and outreach programs to provide nutrition education to children.

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

SECTION 1. Chapter 12, Agriculture Code, is amended by adding Section 12.0027 to read as follows:

Sec. 12.0027. NUTRITION OUTREACH PROGRAM. (a) The department may develop an outreach program to promote better health and nutrition programs and prevent obesity among children in this state.

(b) The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The department may adopt rules as necessary to administer an outreach program established under this section.

SECTION 2. Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.026 to read as follows:

Sec. 38.026. GRANT PROGRAM FOR BEST PRACTICES IN NUTRITION EDUCATION. (a) The Department of Agriculture shall develop a program under which the department awards grants to public school campuses for best practices in nutrition education.

(b) The Department of Agriculture may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The Department of Agriculture may adopt rules as necessary to administer a grant program established under this section.

SECTION 3. Chapter 33, Human Resources Code, is amended by adding Section 33.028 to read as follows:

Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a) The Department of Agriculture shall develop a program under which the department awards grants to:

(1) participants in the Child and Adult Care Food Program, Head Start program, or other early childhood education programs to operate nutrition education programs for children who are at least three years of age but younger than five years of age; and

(2) community and faith-based initiatives that provide recreational, social, volunteer, leadership, mentoring, or developmental programs to incorporate nutrition education into programs provided for children younger than 19 years of age.

(b) The Department of Agriculture may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The Department of Agriculture may adopt rules as necessary to administer the grant programs established under this section.

SECTION 4. (a) 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.

(b) It is the intent of the legislature that not more than \$4 million may be appropriated for the implementation of this Act for the state fiscal biennium beginning September 1, 2009.

SECTION 5. 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 was read.

Senator Nelson moved to concur in the House amendment to **SB 282**.

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

Absent: Ogden.

SENATE BILL 271 WITH HOUSE AMENDMENT

Senator Harris called **SB 271** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 271** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION _____. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.076 to read as follows:

Sec. 161.076. INFORMAL CAREGIVER SERVICES. (a) In this section:

(1) "Area agency on aging" has the meaning assigned by Section 161.075.

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older or disabled persons and their caregivers.

(b) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) The department shall perform the following duties to assist a local entity with outreach efforts under this section:

(1) expand an existing department website to provide a link through which a local entity may post and access best practices information regarding informal caregiver support; and

(2) create a document template that a local entity may adapt as necessary to reflect resources available to informal caregivers in the area supported by the entity.

(d) The department shall create or modify a form to be included in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program and, to the extent considered feasible by the department, may include a form in systems for other long-term care support services. The department shall use the form to identify informal caregivers for the purpose of enabling the department to refer the caregivers to available support services. The form may be based on an existing form, may include optional questions for an informal caregiver, or may include questions from similar forms used in other states.

(e) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to develop and implement a protocol to evaluate the needs of certain informal caregivers. The protocol must:

(1) provide guidance on the type of caregivers who should receive an assessment; and

(2) include the use of a standardized assessment tool that may be based on similar tools used in other states, including the Tailored Caregiver Assessment and Referral process.

(f) The department shall require area agencies on aging and, to the extent considered feasible by the department, other local entities to use the protocol and assessment tool under Subsection (e) and report the data gathered from the assessment tool to the department.

(g) The department shall analyze the data reported under Subsection (f) and collected from the form under Subsection (d) and shall submit a report not later than December 1 of each even-numbered year to the governor and the Legislative Budget Board that summarizes the data analysis.

(g-1) Notwithstanding Subsection (g), the department shall submit the initial report required by that subsection not later than December 1, 2012. This subsection expires January 1, 2013.

(h) The department shall use the data analyzed under Subsection (g) to:

(1) evaluate the needs of assessed informal caregivers;

(2) measure the effectiveness of certain informal caregiver support interventions;

(3) improve existing programs;

(4) develop new services as necessary to sustain informal caregivers; and

(5) determine the effect of informal caregiving on employment and employers.

SECTION _____. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 271**.

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

SENATE BILL 283 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 283** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 283** (House committee report) as follows:

(1) In SECTION 1 of the bill, in the introductory language, on page 1, line 6, strike "Subsection (d)" and substitute "Subsections (d) and (i)".

(2) In SECTION 1 of the bill, in the introductory language, on page 1, line 6, between "(d-1)," and "(m)," insert "(i-1),".

(3) In SECTION 1 of the bill, between added Sections 28.004(d-1) and (m), Education Code (page 2, between lines 2 and 3), insert the following:

(i) Before each school year, a [A] school district shall provide written notice to [notify] a parent of each student enrolled in the district of the board of trustees' decision regarding whether the district will provide human sexuality instruction to district students. If instruction will be provided, the notice must include:

(1) a summary of the basic content of the district's human sexuality instruction to be provided to the student, including a statement informing the parent of the instructional requirements under state law; [and]

(2) a statement of the parent's right to:

(A) review curriculum materials as provided by Subsection (j); and
(B) remove the student from any part of the district's human sexuality instruction without subjecting the student to any disciplinary action, academic penalty, or other sanction imposed by the district or the student's school; and

(3) information describing the opportunities for parental involvement in the development of the curriculum to be used in human sexuality instruction, including information regarding the local school health advisory council established under Subsection (a).

(i-1) A parent may use the grievance procedure adopted under Section 26.011 concerning a complaint of a violation of Subsection (i).

Floor Amendment No. 2

Amend **SB 283** (House committee report) in SECTION 1 of the bill, in amended Section 28.004(d), Education Code (page 1, line 8), between "appoint" and "members" by inserting "at least five".

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 283**.

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

SENATE BILL 229 WITH HOUSE AMENDMENT

Senator West called **SB 229** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 229** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the procurement methods authorized for public projects by certain local governments.

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

SECTION 1. Section 271.182, Local Government Code, is amended to read as follows:

Sec. 271.182. APPLICABILITY. ~~This [(a) Before September 1, 2009, this subchapter applies to a local governmental entity with a population of 500,000 or more within its geographic boundaries or service area.~~

~~[(b) On or after September 1, 2009, and before September 1, 2011, this] subchapter applies to a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area.~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 229**.

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

SENATE BILL 627 WITH HOUSE AMENDMENTS

Senator Carona called **SB 627** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 627** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the liability of in-home service companies and residential delivery companies for negligent hiring.

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

SECTION 1. Section 145.001, Civil Practice and Remedies Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Residence" means a person's principal or ordinary home or dwelling place and includes:

(A) any garage that is attached to the home or dwelling place; and

(B) any construction area that is attached to and accessible from the inhabited area or the attached garage of the home or dwelling place.

SECTION 2. Chapter 145, Civil Practice and Remedies Code, is amended by adding Section 145.0015 to read as follows:

Sec. 145.0015. SHORT TITLE. This chapter may be cited as the Sue Weaver Act.

SECTION 3. Section 145.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. Before associating with or hiring an officer, employee, or prospective employee in a position whose duties include entry into another person's residence an ~~an~~ in-home service company or residential delivery company shall:

(1) obtain from the Department of Public Safety or a private vendor approved by the department and offering services comparable to the services offered by the department all criminal history record information relating to the ~~an~~ officer, employee, or prospective employee; or

(2) ascertain that the person holds in good standing an occupational license issued by a licensing authority in this state that has, before issuing or renewing the license, performed a criminal history background check ~~[of the company whose job duties require or will require entry into another person's residence].~~

SECTION 4. Sections 145.003(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) This section applies only to an action against an in-home service company or residential delivery company that:

(1) arises out of a criminal act or omission by an officer or employee of the company as to whom the company has obtained ~~[is required to obtain]~~ criminal history record information under Section 145.002(1) ~~[145.002]~~;

(2) is brought by or on behalf of a person whose home the officer or employee entered while in the performance of the employee's job duties, without regard to where the criminal act or omission occurred; and

(3) seeks damages from the company for the negligent hiring of the officer or employee.

(b) In an action to which this section applies, an in-home service company or residential delivery company is rebuttably presumed to have not acted negligently if:

(1) at the time a person was hired, the company obtained criminal history record information regarding the officer or employee under Section 145.002(1); and

(2) the criminal history record information shows that, in the 20 years preceding the date the information was obtained for a felony or in the 10 years preceding the date the information was obtained for a Class A or Class B misdemeanor, the officer or employee had not been convicted of, or placed on deferred adjudication for:

(A) an offense in this state classified as:

- (i) an offense against the person or the family;
- (ii) an offense against property; or
- (iii) public indecency; or

(B) an offense in another jurisdiction that would be classified in a category described by Paragraph (A) if the offense had occurred in this state.

SECTION 5. Section 411.1181(b), Government Code, is amended to read as follows:

(b) An in-home service company or residential delivery company is entitled to obtain from the Department of Public Safety ~~[or a private vendor approved by the department and offering services comparable to the services offered by the department]~~ criminal history record information maintained by the department that relates to:

(1) an officer of or person employed by the company whose job duties require entry into another person's residence; or

(2) an applicant to whom an offer of employment is made for a position of employment with the company, the job duties of which require entry into another person's residence.

SECTION 6. (a) The changes in law made by Sections 1 and 4 of this Act to Sections 145.001 and 145.003, Civil Practice and Remedies Code, apply 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 that date, and that law is continued in effect for that purpose.

(b) Sections 3 and 5 of this Act apply only to criminal history background check information obtained by an in-home service company or residential delivery company on or after the effective date of this Act. Criminal history background check information obtained 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.

SECTION 7. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 627**, in SECTION 3 of the bill, amending Section 145.002, Civil Practice and Remedies Code (House committee report, page 2, lines 1-5), by striking Subdivision (1) and substituting the following:

(1) obtain from the Department of Public Safety or a private vendor ~~[approved by the department and offering services comparable to the services offered by the department]~~ all criminal history record information relating to an officer, employee, or prospective employee; or

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 627**.

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

SENATE BILL 860 WITH HOUSE AMENDMENT

Senator Hegar called **SB 860** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 860** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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.

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

SECTION 1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8329 to read as follows:

CHAPTER 8329. FORT BEND-WALLER COUNTIES MUNICIPAL UTILITY
DISTRICT NO. 2

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8329.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Fort Bend-Waller Counties Municipal Utility

District No. 2.

Sec. 8329.002. NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 8329.003. CONFIRMATION AND DIRECTORS' ELECTION REQUIRED. The temporary directors shall hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code.

Sec. 8329.004. CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8329.003 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. 8329.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) The district is created to serve a public purpose and benefit.

(b) The district is created to accomplish the purposes of:

(1) a municipal utility district as provided by general law and Section 59, Article XVI, Texas Constitution; and

(2) Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8329.006. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

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

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose a tax; or

(4) legality or operation.

[Sections 8329.007-8329.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8329.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b) Except as provided by Section 8329.052, directors serve staggered four-year terms.

Sec. 8329.052. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) Suzanne Corbin;

(2) Carolyn Davis;

(3) Jeff Hayes;

(4) Sharon Wallingford; and

(5) Ray Deyoe.

(b) Temporary directors serve until the earlier of:

(1) the date permanent directors are elected under Section 8329.003; or

(2) the fourth anniversary of the effective date of the Act creating this chapter.

(c) If permanent directors have not been elected under Section 8329.003 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

(1) the date permanent directors are elected under Section 8329.003; or

(2) the fourth anniversary of the date of the appointment or reappointment.

(d) If Subsection (c) applies, the owner or owners of a majority of the assessed value of the real property in the district may submit a petition to the commission requesting that the commission appoint as successor temporary directors the five persons named in the petition. The commission shall appoint as successor temporary directors the five persons named in the petition.

[Sections 8329.053-8329.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8329.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 8329.102. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8329.103. AUTHORITY FOR ROAD PROJECTS. Under Section 52, Article III, Texas Constitution, the district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8329.104. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Sec. 8329.105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION. The district shall comply with all applicable requirements of any ordinance or resolution that is adopted under Section 54.016 or 54.0165, Water Code, and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 8329.106. LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district to acquire a site or easement for:

- (1) a road project authorized by Section 8329.103; or
- (2) a recreational facility as defined by Section 49.462, Water Code.

[Sections 8329.107-8329.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8329.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by:

- (1) revenue other than ad valorem taxes; or
- (2) contract payments described by Section 8329.153.

(b) The district must hold an election in the manner provided by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c) The district may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

Sec. 8329.152. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8329.151, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

Sec. 8329.153. CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

[Sections 8329.154-8329.200 reserved for expansion]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 8329.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. 8329.202. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. 8329.203. BONDS FOR ROAD PROJECTS. At the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed value of the real property in the district.

SECTION 2. The Fort Bend-Waller Counties Municipal Utility District No. 2 initially includes all the territory contained in the following area:

FIELD NOTES FOR A 472.573 ACRE TRACT OF LAND IN THE THOMAS CRESOP SURVEY, ABSTRACT 405, WALLER COUNTY, TEXAS, ABSTRACT 369, FORT BEND COUNTY, TEXAS, AND THE P. M. CUNY SURVEY, ABSTRACT 355, WALLER COUNTY, TEXAS, THE ROBERT T. VAN SLYKE SURVEY, ABSTRACT 395, WALLER COUNTY, TEXAS, AND THE W. W. BAINS SURVEY, ABSTRACT 385, WALLER COUNTY, TEXAS, SAID 472.573 ACRE TRACT BEING COMPRISED OF THAT CERTAIN CALLED 137.322 ACRE TRACT RECORDED IN VOLUME 1131, PAGE 26, OFFICIAL RECORDS,

WALLER COUNTY, TEXAS, THAT CERTAIN CALLED 54.00 ACRE TRACT RECORDED IN VOLUME 1130, PAGE 776, OFFICIAL RECORDS, WALLER COUNTY, TEXAS, THAT CERTAIN CALLED 136.8 ACRE TRACT (TRACT ONE) AND THAT CERTAIN CALLED 135.5 ACRE TRACT (TRACT TWO) RECORDED UNDER COUNTY CLERK'S FILE NUMBER 2008102246, OFFICIAL PUBLIC RECORD, FORT BEND COUNTY, TEXAS, THAT CERTAIN CALLED 8.429 ACRE TRACT RECORDED IN VOLUME 0727, PAGE 840, OFFICIAL RECORDS, WALLER COUNTY, TEXAS, AND THAT CERTAIN CALLED 0.506 ACRE TRACT RECORDED UNDER COUNTY CLERK'S FILE NUMBER 2002053393, OFFICIAL PUBLIC RECORDS, FORT BEND COUNTY, TEXAS, WITH ALL BEARINGS BASED UPON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD83, BASED UPON GPS OBSERVATIONS OF NGS TRIANGULATION STATION "BROOKSHIRE".

BEGINNING at a 3/4 inch iron rod found at the intersection of the south right-of-way line U. S. Highway 90 (100-foot wide) with the east line of a 40-foot wide private road (marked Alt Lane) for the northwest corner of said called 137.322 acre tract, and the most westerly northwest corner and Place of Beginning of the herein described tract, said point bears North 88 degrees 21 minutes 47 seconds East, 39.90 feet from a 5/8 inch iron rod with cap marked "Tri-Tech";

THENCE North 88 degrees 44 minutes 46 seconds East along the north line of the herein described tract and the north line of said called 137.322 acre tract, same being the south right-of-way line U. S. Highway 90, 2,037.44 feet to a 5/8 inch iron rod with cap marked "3438" found for the northeast corner of the herein described tract, same being the northwest corner of an adjoining called 0.0971 acre tract described in deed recorded in Volume 0966, Page 132, Official Records, Waller County, Texas;

THENCE South 04 degrees 55 minutes 35 seconds East along the east line of the herein described tract, same being the west line of said adjoining called 0.0971 acre tract, 411.10 feet to a 3/4 inch iron pipe found for a reentry corner to the herein described tract, same being the south corner of said adjoining called 0.0971 acre tract, the southwest corner of an adjoining called 5.00 acre tract described in deed recorded in Volume 0595, Page 540, Official Records, Waller County, Texas, and the northwest corner of the aforementioned called 54.00 acre tract, said point also being a reentry corner of said W. W. Bains Survey, Abstract 385, same being the upper northwest corner of the Robert T. Van Slyke Survey, Abstract 395, and an angle point in the east line of said called 137.322 acre tract;

THENCE North 88 degrees 17 minutes 20 seconds East along a north line of the herein described tract, the north line of said called 54.00 acre tract, the north line of said Robert T. Van Slyke Survey, Abstract 395, and the north line of said Thomas Cresop Survey, Abstract 405, same being the south line of said W. W. Bains Survey, Abstract 385, and the south line of said adjoining called 5.00 acre tract, 533.04 feet to a 3/4 inch iron rod found for an angle point in the north line of the herein described tract, being the southeast corner of said adjoining called 5.00 acre tract, same being the southwest corner of an adjoining called 1.417 acre tract described in Volume 0609, Page 784, Official Records, Waller County, Texas;

THENCE North 88 degrees 07 minutes 31seconds East along a north line of the herein described tract, the north line of said called 54.00 acre tract, and the north line of said Thomas Cresop Survey, Abstract 405, same being the south line of said W. W. Bains Survey, Abstract 385, same being the south line of said adjoining called 1.417 acre tract, the south line of an adjoining called 2.0 acre tract recorded in Volume 0562, Page 757, Official Records, Waller County, Texas, and the south line of an adjoining called 1.0 acre tract (Tract 2) and an adjoining called 1.0 acre tract (Tract 1) recorded in Volume 0519, Page 703, Official Records, Waller County, Texas, at 152.37 feet pass a 3/4 inch iron pipe found on said line for the southeast corner of said adjoining called 1.417 acre tract, same being the southwest corner of said adjoining called 2.0 acre tract, at 410.73 feet pass a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found for the northeast corner of said called 54.00 acre tract, same being the lower northwest corner of said called 136.8 acre tract, and continuing for a total distance of 586.81 feet to a railroad iron found for a reentry corner to the herein described tract and a reentry corner to said called 136.8 acre tract, being the southeast corner of said adjoining called 1.0 acre tract (Tract 1), and the upper southeast corner of said W. W. Bains Survey, Abstract 385, same being the southwest corner of the aforementioned P. M. Cuny Survey, Abstract 355, said point also being in the west right-of-way line of Apache Road (60-foot wide);

THENCE North 02 degrees 06 minutes 10 seconds West along the upper west line of the herein described tract, the upper west line of said called 136.8 acre tract, and the west line of said P. M. Cuny Survey, Abstract 355, same being the east line of said adjoining called 1.0 acre tract (Tract 1), and the upper east line of said W. W. Bains Survey, Abstract 385, 399.97 feet to a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found for a northwest corner of the herein described tract, and a northwest corner of said called 136.8 acre tract, same being the northeast corner of said adjoining called 1.0 acre tract (Tract 1), said point also being in the south right-of-way line of U. S. Highway 90 (100-foot wide);

THENCE North 88 degrees 43 minutes 13 seconds East along the upper north line of the herein described tract and the north line of said called 136.8 acre tract, same being the south right-of-way line of U. S. Highway 90, 60.00 feet to a 1-inch iron pipe found for the most westerly northeast corner of the herein described tract and the upper northeast corner of said called 136.8 acre tract, same being the upper northwest corner of the adjoining Katy West Business Park, according to map or plat thereof recorded in Volume 348, Page 221, Deed Records, Waller County, Texas;

THENCE South 02 degrees 06 minutes 10 seconds East along the common line of the herein described tract and said adjoining Katy West Business Park, being the east right-of-way line of Apache Road, 395.44 feet to a 1/2 inch iron pipe found for angle point;

THENCE South 09 degrees 00 minutes 01 second East continuing along said common line, 56.44 feet to a 1/2 inch iron pipe found for corner, said point being the upper southeast corner of said called 136.8 acre tract, same being a reentry corner to said adjoining Katy West Business Park;

THENCE South 80 degrees 59 minutes 59 seconds West continuing along said common line, departing said east right-of-way line of Apache Road, 60.00 feet to a 1/2 inch iron pipe found for a reentry corner to the herein described tract and a reentry

corner to said called 136.8 acre tract, being the lower northwest corner of said adjoining Katy West Business Park, and being in the west right-of-way line of Apache Road;

THENCE South 09 degrees 00 minutes 01 second East continuing along said common line, 1,124.04 feet to a 5/8 inch iron rod found for a reentry corner to the herein described tract and a reentry corner to said called 136.8 acre tract, same being the southwest corner of said adjoining Katy West Business Park, and being at the intersection of the west right-of-way line of Apache Road with the south right-of-way line of Comanche Road (60-foot wide);

THENCE North 88 degrees 03 minutes 14 seconds East continuing along said common line, 1,060.64 feet to a 3/4 inch iron rod found for a reentry corner to the herein described tract and a reentry corner to said called 136.8 acre tract, same being the southeast corner of said adjoining Katy West Business Park;

THENCE North 01 degree 56 minutes 47 seconds West continuing along said common line, 1,561.00 feet to a 3/4 inch iron pipe found for the most easterly northwest corner of the herein described tract and a northwest corner of said called 136.8 acre tract, same being the northeast corner of said adjoining Katy West Business Park, and being in the south right-of-way line of U. S. Highway 90;

THENCE North 88 degrees 42 minutes 48 seconds East along the most easterly north line of the herein described tract, and the north line of said called 136.8 acre tract, same being the south right-of-way line of U. S. Highway 90, 1,828.82 feet to a 1/2 inch iron rod with cap marked "RPLS 2085" found for the most easterly northeast corner of the herein described tract and the most easterly northeast corner of said called 136.8 acre tract, same being the northwest corner of an adjoining called 1.924 acre tract recorded in Volume 0727, Page 844, Official Records, Waller County, Texas;

THENCE South 01 degree 12 minutes 15 seconds East along the common line of the herein described tract and said adjoining called 1.924 acre tract, 183.46 feet to a 1/2 inch iron rod with cap marked "RPLS 2085" found for corner;

THENCE South 62 degrees 41 minutes 42 seconds East continuing along said common line, 383.31 feet to a 1/2 inch iron rod with cap marked "RPLS 2085" found for a reentry corner to the herein described tract, being the south corner of said adjoining called 1.924 acre tract, and east corner of said called 136.8 acre tract, and being in the northwest line of the aforementioned called 8.429 acre tract, said point being in a curve to the left;

THENCE along said curve to the left having a central angle of 10 degrees 56 minutes 03 seconds, a radius of 940.00 feet, an arc length of 179.39 feet, and a chord bearing North 15 degrees 16 minutes 58 seconds East, 179.11 feet to a point in the centerline of Snake Creek for corner, being the east corner of said adjoining called 1.924 acre tract, and being in the southwest line of an adjoining called 5.6687 acre tract recorded in Volume 478, Page 631, Deed Records, Waller County, Texas;

THENCE along the centerline of Snake Creek, being the northeast line of the herein described tract, the northeast line of said called 8.426 acre tract, and the northeast line of the aforementioned called 135.5 acre tract, same being the southwest line of said adjoining called 5.6687 acre tract, the southwest line of an adjoining called 1.6327 acre tract described in deed recorded in Volume 0785, Page 649,

Official Records, Waller County, Texas, the southwest line of an adjoining called 3.673 acre tract described in deed recorded in Volume 0519, Page 75, Official Records, Waller County, Texas, and the southwest line of an adjoining called 24.356 acre tract recorded in Volume 0970, Page 131, Official Records, Waller County, Texas, with the following meanders:

South 55 degrees 05 minutes 56 seconds East, 131.02 feet;

South 54 degrees 20 minutes 06 seconds East, 550.23 feet

South 64 degrees 50 minutes 22 seconds East, 329.51 feet

South 55 degrees 03 minutes 33 seconds East, 61.69 feet

South 45 degrees 08 minutes 57 seconds East, 128.52 feet

South 46 degrees 52 minutes 01 second East, 1,243.02 feet

South 49 degrees 37 minutes 43 seconds East, 273.13 feet to a point in the

centerline of Snake Creek for the lower northeast corner of the herein described tract and the northeast corner of said called 135.5 acre tract, same being the southeast corner of said adjoining called 24.356 acre tract, the southwest corner of an adjoining called 1.035 acre tract recorded in Volume 251, Page 228, Deed Records, Waller County, Texas, and the lower northwest corner of the adjoining residue of a called 5.418 acre tract recorded in Volume 218, Page 223, Volume 219, Page 327, and Volume 219, Page 241, Deed Records, Waller County, Texas, and Volume 539, Page 471, Deed Records, Fort Bend County, Texas, from which point a found 1/2 inch iron pipe with cap marked "Kalkomey Surveying" bears North 01 degree 44 minutes 58 seconds West, 49.62 feet;

THENCE South 01 degree 45 minutes 28 seconds East along the upper east line of the herein described tract and the east line of said called 135.5 acre tract, same being the west line of said adjoining residue of a called 5.418 acre tract, at 589.52 feet pass a 1/2 inch iron rod found on said line, and continuing for a total distance of 629.50 feet to a 1/2 inch iron rod found for the upper southeast corner of the herein described tract and the upper southeast corner of said called 135.5 acre tract, same being the southwest corner of said adjoining residue of a called 5.418 acre tract, the northwest corner of an adjoining called 3.204 acre tract recorded in Volume 522, Page 647, Deed Records, Fort Bend County, Texas, and the northeast corner of an adjoining called 1.2086 acre tract recorded under County Clerk's File Number 2005006745, Official Public Records, Fort Bend County, Texas;

THENCE South 88 degrees 04 minutes 25 seconds West along the upper south line of the herein described tract and the upper south line of said called 135.5 acre tract, same being the north line of said adjoining called 1.2086 acre tract, at 119.83 feet pass a 1-1/4 inch iron pipe found on said line for the northwest corner of said adjoining called 1.2086 acre tract, same being the northeast corner of an adjoining called 5.07 acre tract recorded under County Clerk's File Number 2002092170, Official Public Records, Fort Bend County, Texas, and continuing for a total distance of 775.68 feet to a 1-1/4 inch iron pipe found on said line for a reentry corner to the herein described tract and a reentry corner to said called 135.5 acre tract, same being the northwest corner of said adjoining called 5.07 acre tract;

THENCE South 01 degree 43 minutes 48 seconds East along the lower east line of the herein described tract and the lower east line of said called 135.5 acre tract, same being the west line of said adjoining called 5.07 acre tract, 338.08 feet to a

1-inch iron pipe found on said line at its intersection with the north right-of-way line of Interstate Highway 10 (320-foot wide), for the lower southeast corner of the herein described tract and the lower southeast corner of said called 135.5 acre tract, same being the southwest corner of said adjoining called 5.07 acre tract;

THENCE South 88 degrees 14 minutes 06 seconds West along the south line of the herein described tract and the south line of said called 135.5 acre tract, being the north right-of-way line of Interstate Highway 10, 103.78 feet to a concrete monument found on said line for angle point;

THENCE South 87 degrees 19 minutes 06 seconds West continuing along said line, 2,169.25 feet to a concrete monument found on said line at the beginning of a curve to the right;

THENCE along said curve to the right, being the south line of the herein described tract, the south line of said called 135.5 acre tract, the south line of the aforementioned called 0.506 acre tract, the south line of the aforementioned called 8.429 acre tract, and the south line of the aforementioned called 136.8 acre tract, being the north right-of-way line of Interstate Highway 10, having a central angle of 04 degrees 36 minutes 42 seconds, a radius of 11,299.16 feet, an arc length of 909.48 feet, and a chord bearing South 89 degrees 39 minutes 23 seconds West, 909.24 feet to a concrete monument found at the end of said curve;

THENCE North 88 degrees 02 minutes 16 seconds West continuing along the south line of the herein described tract and the south line of said called 136.8 acre tract, being the north right-of-way line of Interstate Highway 10, 304.68 feet to a 3/4 inch iron pipe found on said line for angle point;

THENCE North 88 degrees 04 minutes 11 seconds West along the south line of the herein described tract and the south line of said called 136.8 acre tract, being the north right-of-way line of Interstate Highway 10, 325.07 feet to a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found on said line at the beginning of a curve to the left, from which point a found concrete monument bears South 56 degrees 15 minutes 06 seconds East, 0.36 feet;

THENCE along said curve to the left having a central angle of 03 degrees 38 minutes 39 seconds, a radius of 11,619.16 feet, an arc length of 739.01 feet, and a chord bearing North 89 degrees 53 minutes 30 seconds West, 738.89 feet to a concrete monument found at the end of said curve;

THENCE South 88 degrees 17 minutes 10 seconds West continuing along the south line of the herein described tract and the south line of said called 136.8 acre tract, being the north right-of-way line of Interstate Highway 10, at 319.40 feet pass a 1/2 inch iron pipe with cap marked "Kalkomey Surveying" found on said line for the southeast corner of the aforementioned called 54.00 acre tract, and continuing for a total distance of 1,263.18 feet to a 1/2 inch iron rod found for angle point, said point being the southeast corner of the aforementioned called 137.322 acre tract, same being the southwest corner of said called 54.00 acre tract, and being in the west line of the aforementioned Robert T. Van Slyke Survey, Abstract 407, same being the east line of the aforementioned W. W. Bains Survey, Abstract 385;

THENCE South 88 degrees 17 minutes 40 seconds West along the south line of the herein described tract and the south line of said called 137.322 acre tract, same being the north right-of-way line of Interstate Highway 10, 2,054.95 feet to a 1/2 inch

iron rod found for the southwest corner of the herein described tract and the southwest corner of said called 137.322 acre tract, same being the southeast corner of an adjoining called 2.4915 acre tract recorded in Volume 0854, Page 039, Official Records, Waller County, Texas, described in Volume 424, Page 435, Deed Records, Waller County, Texas, from which point a found 1-1/4 inch iron pipe bears South 82 degrees 00 minutes 55 seconds West, 10.60 feet;

THENCE North 02 degrees 01 minute 18 seconds West along the west line of the herein described tract and the west line of said called 137.322 acre tract, same being the east line of said adjoining called 2.4915 acre tract, and along the east line of the aforementioned adjoining 40-foot wide private road (marked Alt Lane), at 119.02 feet (adjoiner called 120.13 feet) pass a 5/8 inch iron rod found 0.23 feet right of said line, and continuing for a total distance of 2,918.57 feet to the Place of Beginning and containing 472.573 acres of land, more or less, with 95.187 acres within Fort Bend County, Texas, and 377.386 acres within Waller County, Texas.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 860**.

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

SENATE BILL 866 WITH HOUSE AMENDMENT

Senator Harris called **SB 866** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 866** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the rights and liabilities of the parties in a suit for dissolution of a marriage and certain post-dissolution proceedings.

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

SECTION 1. Subsection (d), Section 3.007, Family Code, is amended to read as follows:

(d) A spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

(1) if the option or stock was granted to the spouse before marriage but required continued employment during marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the sum of:

(i) the period from the date the option or stock was granted until the date of marriage; and

(ii) if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed; and

(2) if the option or stock was granted to the spouse during the marriage but required continued employment following the date of dissolution of the [after] marriage before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which:

(A) the numerator is the period from the date of dissolution [~~or termination~~] of the marriage until the date the grant could be exercised or the restriction removed; and

(B) the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed.

SECTION 2. The heading to Subchapter E, Chapter 3, Family Code, is amended to read as follows:

SUBCHAPTER E. CLAIMS FOR [~~ECONOMIC CONTRIBUTION AND~~]
REIMBURSEMENT

SECTION 3. Section 3.402, Family Code, is amended to read as follows:

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS [~~ECONOMIC CONTRIBUTION~~]. (a) For purposes of this subchapter, a claim for reimbursement includes:

(1) payment by one marital estate of the unsecured liabilities of another marital estate;

(2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;

(3) [~~"economic contribution" is the dollar amount of:~~

~~(3)~~ the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;

~~(4)~~ ~~(2)~~ the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed at the time the property was received;

~~(5)~~ ~~(3)~~ the reduction of the principal amount of that part of a debt, including a home equity loan:

(A) incurred during a marriage;

(B) secured by a lien on property; and

(C) incurred for the acquisition of, or for capital improvements to, property;

~~(6)~~ ~~(4)~~ the reduction of the principal amount of that part of a debt:

(A) incurred during a marriage;

(B) secured by a lien on property owned by a spouse;

(C) for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached; and

(D) incurred for the acquisition of, or for capital improvements to, property;

~~(7)~~ ~~(5)~~ the refinancing of the principal amount described by Subdivisions ~~(3)-(6)~~ ~~(1)-(4)~~, to the extent the refinancing reduces that principal amount in a manner described by the applicable ~~[appropriate]~~ subdivision; ~~and~~

~~(8)~~ ~~(6)~~ capital improvements to property other than by incurring debt; and

~~(9)~~ the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses.

(b) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate, except that the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate.

(d) Reimbursement for funds expended by a marital estate for improvements to another marital estate shall be measured by the enhancement in value to the benefited marital estate.

(e) The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset ["Economic contribution" does not include the dollar amount of:

~~(1) expenditures for ordinary maintenance and repair or for taxes, interest, or insurance; or~~

~~(2) the contribution by a spouse of time, toil, talent, or effort during the marriage].~~

SECTION 4. Subsection (b), Section 3.404, Family Code, is amended to read as follows:

(b) A ~~The~~ claim for reimbursement ~~[economic contribution created]~~ under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the contributing estate. The claim matures on dissolution of the marriage or the death of either spouse.

SECTION 5. Subsections (a) and (b), Section 3.406, Family Code, are amended to read as follows:

(a) On dissolution of a marriage, the court may ~~shall~~ impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against ~~[economic contribution in]~~ that property by a contributing ~~[another]~~ marital estate.

(b) On the death of a spouse, a court may ~~shall~~, on application for a claim for reimbursement ~~[of economic contribution]~~ brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Section 3, Texas Probate Code, impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property ~~[economic contribution]~~ by a contributing marital estate.

SECTION 6. Section 3.410, Family Code, is amended to read as follows:

Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A premarital or marital property agreement, whether executed before, on, or after September 1, 2009 ~~[1999]~~, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009 ~~[1999]~~, unless the agreement provides otherwise.

SECTION 7. Section 7.007, Family Code, is amended to read as follows:

Sec. 7.007. DISPOSITION OF CLAIM FOR ~~[ECONOMIC CONTRIBUTION OR CLAIM FOR]~~ REIMBURSEMENT. ~~[(a) In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for economic contribution as provided by Subchapter E, Chapter 3, and in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage, shall:~~

~~[(1) order a division of a claim for economic contribution of the community marital estate to the separate marital estate of one of the spouses;~~

~~[(2) order that a claim for an economic contribution by one separate marital estate of a spouse to the community marital estate of the spouses be awarded to the owner of the contributing separate marital estate; and~~

~~[(3) order that a claim for economic contribution of one separate marital estate in the separate marital estate of the other spouse be awarded to the owner of the contributing marital estate.~~

~~[(b)]~~ In a decree of divorce or annulment, the court shall determine the rights of both spouses in a claim for reimbursement as provided by Subchapter E, Chapter 3, and shall apply equitable principles to:

(1) determine whether to recognize the claim after taking into account all the relative circumstances of the spouses; and

(2) order a division of the claim for reimbursement, if appropriate, in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage.

SECTION 8. Section 9.014, Family Code, is amended to read as follows:

Sec. 9.014. ATTORNEY'S FEES. The court may award reasonable attorney's fees ~~as costs~~ in a proceeding under this subchapter. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

SECTION 9. Subchapter B, Chapter 9, Family Code, is amended by adding Section 9.106 to read as follows:

Sec. 9.106. ATTORNEY'S FEES. In a proceeding under this subchapter, the court may award reasonable attorney's fees incurred by a party to a divorce or annulment against the other party to the divorce or annulment. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

SECTION 10. Section 9.205, Family Code, is amended to read as follows:

Sec. 9.205. ATTORNEY'S FEES. In a proceeding to divide property previously undivided in a decree of divorce or annulment as provided by this subchapter, the court may award reasonable attorney's fees ~~as costs~~. The court may order the attorney's fees to be paid directly to the attorney, who may enforce the order in the attorney's own name by any means available for the enforcement of a judgment for debt.

SECTION 11. The following laws are repealed:

- (1) Subsections (a), (b), and (f), Section 3.007, Family Code;
- (2) Subdivisions (1), (2), and (3), Section 3.401, Family Code;
- (3) Section 3.403, Family Code;
- (4) Subsection (c), Section 3.406, Family Code; and
- (5) Sections 3.407 and 3.408, Family Code.

SECTION 12. The changes in law made by this Act to Section 3.007, Family Code, apply to:

(1) a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act; and

(2) the estate of a person who dies on or after the effective date of this Act.

SECTION 13. (a) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, the changes in law made by this Act to that subchapter apply only to a claim made in a suit filed on or after the effective date of this Act. A claim made in a suit 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) In regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, the changes in law made by this Act to that subchapter apply only to a claim arising from a death that occurs on or after the effective date of this Act. A claim arising from a death that occurs before the effective date of this Act is governed by the law in effect on the date of death, and the former law is continued in effect for that purpose.

SECTION 14. The changes in law made by this Act to Chapter 9, Family Code, apply only to a proceeding commenced under that chapter on or after the effective date of this Act. A proceeding commenced under Chapter 9, Family Code, before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect September 1, 2009.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 866**.

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

SENATE BILL 703 WITH HOUSE AMENDMENT

Senator Nelson called **SB 703** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 703** (House committee printing) by inserting the following appropriately numbered SECTIONS and renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Section 191.028, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) Not later than the 30th business day after the date the department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing.

SECTION _____. This Act applies only to amending certificates filed on or after the effective date of this Act. Amending certificates filed before the effective date of this Act are governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 703**.

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

SENATE BILL 654 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 654** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **SB 654** (House committee report) as follows:

(1) After SECTION 4 of the bill (page 5, between lines 11 and 12), insert the following:

SECTION 5. Section 172.003(3) is amended to read as follows:

(3) "Political Subdivision" means a county, municipality, special district, school district, junior college district, housing authority, or other political subdivision of this [the] state or any other state.

(2) Renumber SECTIONS of the bill appropriately.

Floor Amendment No. 2

Amend **SB 654** as follows:

(1) Add the following appropriately numbered SECTION to the bill (page 1, between lines 22 and 23):

SECTION _____. Chapter 175, Local Government Code, is amended by adding Section 175.0015 to read as follows:

Sec. 175.0015. DEFINITION. In this chapter, "early retiree" means a person who retires from county or municipal employment before the person is eligible for federal Medicare benefits.

(2) In SECTION 3 of the bill, in the recital for that section (page 1, lines 23 and 24), strike "Subsections (a) and (b), Section 175.002, Local Government Code, are amended" and substitute "Section 175.002, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2)".

(3) In SECTION 3 of the bill, in amended Section 175.002(a), Local Government Code (page 2, line 5), strike "The" and substitute "Except as provided by Subsections (a-1) and (a-2), the [The]".

(4) In SECTION 3 of the bill, in amended Section 175.002, Local Government Code (page 2, between lines 8 and 9), insert the following:

(a-1) In addition to providing health benefits coverage for early retirees under a group health insurance plan or group health coverage plan offered to active employees, a county or municipality may provide coverage for early retirees under:

(1) a fully insured health benefits plan or a self-insured health benefits plan that is separate from the plans offered to its active employees; or

(2) a group health insurance plan or group health coverage plan offered by a pool established under Chapter 172 or a health benefits plan issuer authorized to do business in this state and designated by the municipality or county as exclusively for early retirees.

(a-2) Participation by an early retiree in the health benefits coverage provided under Subsection (a-1) is at the early retiree's discretion. An early retiree may not be forced to change coverage from a group health insurance plan or group health coverage plan offered to active employees. An early retiree may elect to return to participation in the active employee group health insurance plans during open enrollment.

(5) In SECTION 4 of the bill, in amended Section 175.003(b), Local Government Code (page 2, line 27, through page 3, line 2), strike "is the same level of coverage provided to current employees of the political subdivision [~~county or municipality~~] at that time." and substitute the following:
is:

(1) for persons other than early retirees who do not choose to use the early retiree health benefits coverage provided under Section 175.002(a-1), the same level of coverage provided to current employees of the political subdivision [~~county or municipality~~] at that time; and

(2) for early retirees, a level of coverage that is comparable to the level of coverage provided to active employees of the political subdivision, as determined by the governing body of the political subdivision for each enrollment period.

(b-1) For purposes of Subsection (b)(2), "comparable" means the health benefits defined in the contract and summary plan description do not limit the choices of the person or the person's health care provider in any way that is not also limited for active employees.

(6) In SECTION 5 of the bill, immediately after Subsection (b) of that section (page 5, between lines 24 and 25), insert the following:

(c) Sections 175.002 and 175.003, Local Government Code, as amended by this Act, apply to a person who retires from county or municipal employment regardless of the date on which the person retires.

Floor Amendment No. 1 on Third Reading

Amend **SB 654** on third reading as follows:

(1) Strike the SECTION of the bill that adds Section 175.0015, Local Government Code, as added by amendment No. 2 by Guillen.

(2) In the recital to the SECTION of the bill that amends Section 175.002, Local Government Code, strike "Section 175.002, Local Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2)" and substitute "Subsections (a) and (b), Section 175.002, Local Government Code, are amended".

(3) In amended Section 175.002(a), Local Government Code, strike "Except as provided by Subsection (a-1) and (a-2), the [~~The~~]" and substitute "The".

(4) In amended Section 175.002, Local Government Code, strike Subsections (a-1) and (a-2), as added by amendment No. 2 by Guillen.

(5) In amended Section 175.003(b), Local Government Code, strike "is:

(1) for persons other than early retirees who do not choose to use the early retiree health benefits coverage provided under Section 175.002(a-1), the same level of coverage provided to current employees of the political subdivision [~~county or municipality~~] at that time; and

(2) for early retirees, a level of coverage that is comparable to the level of coverage provided to active employees of the political subdivision, as determined by the governing body of the political subdivision for each enrollment period.

(b-1) For purposes of Subsection (b)(2), "comparable" means the health benefits defined in the contract and summary plan description do not limit the choices of the person or the person's health care provider in any way that is not also limited for active employees." and substitute the following:

"is the same level of coverage provided to current employees of the political subdivision [county or municipality] at that time."

(6) Strike the following provision as added by amendment No. 2 by Guillen:

(c) Sections 175.002 and 175.003, Local Government Code, as amended by this Act, apply to a person who retires from county or municipal employment regardless of the date on which the person retires.

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 654**.

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

SENATE BILL 476 WITH HOUSE AMENDMENT

Senator Nelson called **SB 476** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 476** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to staffing, overtime, and other employment protections for nurses.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapters 257 and 258 to read as follows:

CHAPTER 257. NURSE STAFFING

Sec. 257.001. DEFINITIONS. In this chapter:

(1) "Committee" means a nurse staffing committee required by this chapter.

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

(3) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(4) "Patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment;

(2) nurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity;

(3) nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and

(4) hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, the legislature intends to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The policy must include a process for:

(1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;

(2) adopting, implementing, and enforcing an official nurse services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(3) using the official nurse services staffing plan as a component in setting the nurse staffing budget;

(4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(5) protecting from retaliation nurses who provide input to the committee;
and

(6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission relating to nurse staffing.

(b) The official nurse services staffing plan adopted under Subsection (a) must:

(1) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(2) set minimum staffing levels for patient care units that are:

(A) based on multiple nurse and patient considerations; and

(B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards;

(3) include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and

(4) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) The hospital shall:

(1) use the official nurse services staffing plan:

(A) as a component in setting the nurse staffing budget; and

(B) to guide the hospital in assigning nurses hospital-wide; and

(2) make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital shall establish a nurse staffing committee as a standing committee of the hospital.

(b) The committee shall be composed of members who are representative of the types of nursing services provided in the hospital.

(c) The chief nursing officer of the hospital is a voting member of the committee.

(d) At least 60 percent of the members of the committee must be registered nurses who:

(1) provide direct patient care during at least 50 percent of their work time; and

(2) are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) The committee shall meet at least quarterly.

(f) Participation on the committee by a hospital employee as a committee member is part of the employee's work time, and the hospital shall compensate that member for that time accordingly. The hospital shall relieve a committee member of other work duties during committee meetings.

(g) The committee shall:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(h) In evaluating the effectiveness of the official nurse services staffing plan, the committee shall consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT. (a) A hospital shall annually report to the department on:

(1) whether the hospital's governing body has adopted a nurse staffing policy as required by Section 257.003;

(2) whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section;

(3) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and

(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(b) Information reported under Subsection (a) is public information.

(c) To the extent possible, the department shall collect the data required under Subsection (a) as part of a survey required by the department under other law.

CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITEDSec. 258.001. DEFINITIONS. In this chapter:(1) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(2) "Nurse" means a registered nurse or vocational nurse licensed under Chapter 301, Occupations Code.

(3) "On-call time" means time spent by a nurse who is not working but who is compensated for availability.

Sec. 258.002. MANDATORY OVERTIME. For purposes of this chapter, "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included.

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(b) This section does not prohibit a nurse from volunteering to work overtime.

(c) A hospital may not use on-call time as a substitute for mandatory overtime.

Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that:

(A) does not regularly occur;

(B) increases the need for health care personnel at the hospital to provide safe patient care; and

(C) could not prudently be anticipated by the hospital; or

(4) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

(b) If a hospital determines that an exception exists under Subsection (a)(3), the hospital shall, to the extent possible, make a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Sec. 258.005. RETALIATION PROHIBITED. A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

SECTION 2. Subchapter H, Chapter 301, Occupations Code, is amended by adding Section 301.356 to read as follows:

Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal by a nurse to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, does not constitute patient abandonment or neglect.

SECTION 3. Subsections (b), (c), and (e), Section 301.413, Occupations Code, are amended to read as follows:

(b) A person may not suspend, ~~or~~ terminate ~~[the employment of]~~, or otherwise discipline or discriminate against~~[-]~~ a person who:

(1) reports, without malice, under this subchapter; ~~or~~

(2) requests, in good faith, a nursing peer review committee determination under Section 303.005; or

(3) refuses to engage in conduct as authorized by Section 301.352.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005 has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) \$5,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person ~~[person's employment]~~ was suspended, ~~or~~ terminated, or otherwise disciplined or discriminated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, or for requesting a peer review committee determination under Section 303.005 if:

(1) the person was suspended, ~~or~~ terminated, or otherwise disciplined or discriminated against within 60 days after the date the report, refusal, or request was made; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) made without malice;

(B) the request for a peer review committee determination that is the subject of the cause of action was:

(i) authorized under Section 303.005; and

(ii) made in good faith; or

(C) the refusal to engage in conduct was authorized by Section 301.352.

SECTION 4. It is not the intent of the legislature that the executive commissioner of the Health and Human Services Commission rewrite the current rules of the Department of State Health Services relating to nurse staffing except to the extent the current rules conflict with this Act.

SECTION 5. (a) The executive commissioner of the Health and Human Services Commission shall adopt rules for the Department of State Health Services as required by this Act as soon as practicable after the effective date of this Act, but not later than January 1, 2010.

(b) The change in law made by this Act to Section 301.413, Occupations Code, applies to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act 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 6. This Act takes effect September 1, 2009.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 476**.

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

SENATE BILL 39 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 39** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 39** (engrossed version) as follows:

(1) On page 3, between lines 20 and 21, insert the following and reletter the subsequent sections accordingly:

(D) for a specified disease or diseases;

Floor Amendment No. 2

Amend **SB 39** (House committee report) as follows:

In Section 1 of the bill, strike Sec. 1379.002(c) (page 2, lines 19-22).

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 39**.

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

SENATE BILL 891 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 891** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 891** (House committee printing) as follows:

(1) On page 1, line 5, between "Subsection (d)" and "to", insert "and amending Subsection (l)".

(2) On page 2, between lines 26 and 27, insert the following:

(1) A school district shall require a student enrolled in full-day prekindergarten, in kindergarten, or in a grade level below grade six to participate in moderate or vigorous daily physical activity for at least 30 minutes throughout the school year as

part of the district's physical education curriculum or through structured activity during a school campus's daily recess. To the extent practicable, a school district shall require a student enrolled in prekindergarten on less than a full-day basis to participate in the same type and amount of physical activity as a student enrolled in full-day prekindergarten. A school district shall require students enrolled in grade levels six, seven, and eight to participate in moderate or vigorous daily physical activity for at least 30 minutes for at least four semesters during those grade levels as part of the district's physical education curriculum. If a school district determines, for any particular grade level below grade six, that requiring moderate or vigorous daily physical activity is impractical due to scheduling concerns or other factors, the district may as an alternative require a student in that grade level to participate in moderate or vigorous physical activity for at least 135 minutes during each school week. Additionally, a school district may as an alternative require a student enrolled in a grade level for which the district uses block scheduling to participate in moderate or vigorous physical activity for at least 225 minutes during each period of two school weeks. A school district must provide for an exemption for:

(1) any student who is unable to participate in the required physical activity because of illness or disability; and

(2) a middle school or junior high school student who participates in an extracurricular activity with a moderate or vigorous physical activity component that is considered a structured activity under rules adopted by the commissioner.

(3) On page 3, between lines 13 and 14, insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS accordingly:

SECTION _____. Section 28.002(l), Education Code, as amended by this Act, applies beginning with the 2009-2010 school year.

Floor Amendment No. 1 on Third Reading

Amend **SB 891** on third reading as follows:

(1) In SECTION 2 of the bill, in added Section 25.114, Education Code (House committee report, page 3, line 3), strike "CLASSES." and substitute "CLASSES; CLASS SIZE. (a)".

(2) In SECTION 2 of the bill, in added Section 25.114, Education Code (House committee report, page 3, between lines 13 and 14), immediately following Subdivision (2), insert the following:

(b) If a district establishes a student to teacher ratio greater than 45 to 1 in a physical education class, the district shall specifically identify the manner in which the safety of the students will be maintained.

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 891**.

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

SENATE BILL 1827 WITH HOUSE AMENDMENT

Senator Huffman called **SB 1827** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1827** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the constituting of certain sales of a used motor vehicle as a private disposition for purposes of Chapter 9, Business & Commerce Code.

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

SECTION 1. Subchapter B, Chapter 503, Transportation Code, is amended by adding Section 503.040 to read as follows:

Sec. 503.040. SALES OF CERTAIN USED MOTOR VEHICLES CONSTITUTE PRIVATE DISPOSITION. (a) This section applies only to the sale of a used motor vehicle that constitutes collateral by a secured party acting under Chapter 9, Business & Commerce Code, and occurs at an auction conducted by an independent motor vehicle dealer:

(1) at which neither the debtor nor the secured party is permitted to bid; and

(2) for which there has been no advertisement or public notice before the sale that specifically describes the collateral to be sold, other than the inclusion of the motor vehicle in a list of the vehicles to be offered at the auction made available to potential bidders at the auction.

(b) The sale of the used motor vehicle constitutes a private disposition for purposes of Chapter 9, Business & Commerce Code.

SECTION 2. The change in law made by Section 503.040, Transportation Code, as added by this Act, applies only to a sale of collateral consisting of a used motor vehicle that occurs on or after the effective date of this Act. A sale of such collateral that occurs before the effective date of this Act is governed by the law applicable to the sale immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2009.

The amendment was read.

Senator Huffman moved to concur in the House amendment to **SB 1827**.

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

SENATE BILL 1878 WITH HOUSE AMENDMENT

Senator Nelson called **SB 1878** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1878** (Senate engrossed version) in SECTION 1 of the bill as follows:

(1) In added Section 2306.1092(b)(4)(A), Government Code (page 2, lines 12-14), strike "an advisory committee to the Department of Aging and Disability Services that promotes independence for older adults and persons with disabilities" and substitute "the Health and Human Services Commission Promoting Independence Advisory Committee".

(2) In added Section 2306.1092(b)(5)(D), Government Code (page 2, line 21), between "nonprofit organizations" and the underlined semicolon, insert "that advocate for affordable housing and consumer-directed long-term services and support".

(3) In added Section 2306.1092(c)(2), Government Code (page 3, line 5), strike "that integrate" and substitute "that coordinate integrated".

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1878**.

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

SENATE BILL 2197 WITH HOUSE AMENDMENT

Senator Williams called **SB 2197** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2197** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to fees paid to a constable for serving civil process.

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

SECTION 1. Section 86.021(d), Local Government Code, is amended to read as follows:

(d) Regardless of the Texas Rules of Civil Procedure, all civil process may be served by a constable in the constable's county or in a county contiguous to the constable's county, except that a constable who is a party to or interested in the outcome of a suit may not serve any process related to the suit. All civil process served by a constable at any time or place is presumed to be served in the constable's official capacity if under the law the constable may serve that process in the constable's official capacity. A constable may not under any circumstances retain a fee paid for serving civil process in the constable's official capacity other than the constable's regular salary or compensation. Any fee paid to a constable for serving civil process in the constable's official capacity shall be deposited with the county treasurer of the constable's county.

SECTION 2. The change in law made by this Act applies only to civil process served by a constable on or after the effective date of this Act. Civil process served by a constable 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.

SECTION 3. This Act takes effect September 1, 2009.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 2197**.

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

SENATE BILL 839 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 839** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 839** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the punishment for a capital felony committed by a juvenile whose case is transferred to criminal court.

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

SECTION 1. Section 12.31, Penal Code, is amended to read as follows:

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice ~~[institutional division]~~ for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice ~~[institutional division]~~ for:

(1) life, if the individual's case was transferred to the court under Section 54.02, Family Code; or

(2) life without parole.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case was transferred to the court under Section 54.02, Family Code; or

(2) a sentence of life imprisonment without parole is mandatory on conviction of the capital felony.

SECTION 2. Section 508.145, Government Code, is amended by adding Subsection (b) to read as follows:

(b) An inmate serving a life sentence under Section 12.31(a)(1), Penal Code, for a capital felony is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years.

SECTION 3. The change in law made 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.

SECTION 4. This Act takes effect September 1, 2009.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 839**.

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

Nays: Huffman.

SENATE BILL 1526 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 1526** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1526** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the composition, administration, and duties, including reporting requirements, of the Border Health Institute.

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

SECTION 1. Section 151.002(b), Education Code, is amended to read as follows:

(b) The institute shall operate in a manner that facilitates and assists the activities of international, national, regional, or local health-related institutions working in the Texas-Mexico border region [to:

~~[(1) create and fund centers or component units within the institute to facilitate research in fields of study affecting public health in the border region, including research related to diabetes, Hispanic health issues, infectious diseases, emerging infections, environmental health issues, and children's health issues;~~

~~[(2) deliver health care or provide health education to persons living in the border region; and~~

~~[(3) conduct and facilitate research in fields of study affecting public health in the border region, including research related to diabetes, Hispanic health issues, infectious diseases, emerging infections, environmental health issues, and children's health issues].~~

SECTION 2. Section 151.003(a), Education Code, is amended to read as follows:

(a) Subject to Subsection (b), the [The] institute is [initially] composed of the following institutions:

(1) The University of Texas at El Paso;

(2) Texas Tech University Health Sciences Center at El Paso;

(3) El Paso Community College District;

(4) R. E. Thomason General Hospital;

(5) El Paso City/County Health District;

(6) Department of State Health Services; and

(7) Medical Center of the Americas Foundation [The University of Texas Health Science Center at Houston, School of Public Health;

~~[(7) El Paso County Medical Society;~~

~~[(8) Paso del Norte Health Foundation; and
 [(9) the Texas Department of Health].~~

SECTION 3. Section 151.008, Education Code, is amended to read as follows:

Sec. 151.008. BIENNIAL [ANNUAL] REPORTING. (a) Not later than December 1 of each even-numbered [Each] year, each member of the institute shall provide a long-term strategic plan for that member to:

- (1) each member of the governing board of the institute;
- (2) [and to] each member of the legislature whose district includes any portion of a county where the Border Health Institute is established or operating; and
- (3) the Texas Higher Education Coordinating Board [an annual audited financial statement and a status report of each project undertaken by the institute].

(b) The long-term strategic plan for each member must include a statement of the member's goals and objectives for:

- (1) providing health care services to persons living in the border region;
 - (2) providing health care education to persons living in the border region;
- and
- (3) conducting research into issues affecting public health in the border region, including research related to:

- (A) diabetes;
- (B) health issues of particular concern to persons of Hispanic descent;
- (C) infectious diseases;
- (D) emerging infections;
- (E) trauma care;
- (F) environmental health; and
- (G) children's health.

SECTION 4. Sections 151.004(d), 151.006, 151.007, and 151.010, Education Code, are repealed.

SECTION 5. 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 was read.

Senator Shapleigh moved to concur in the House amendment to **SB 1526**.

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

SENATE BILL 643 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 643** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 643** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the protection and care of individuals with mental retardation; providing criminal penalties.

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

SECTION 1. Section 261.105, Family Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Notwithstanding Subsections (b) and (c), if a report under this section relates to a child with mental retardation receiving services in a state supported living center as defined by Section 531.002, Health and Safety Code, or the ICF-MR component of the Rio Grande State Center, the department shall proceed with the investigation of the report as provided by Section 261.404.

SECTION 2. Section 261.109(b), Family Code, is amended to read as follows:

(b) An offense under this section is a Class A ~~[B]~~ misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the child was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

SECTION 3. Section 261.401(b), Family Code, is amended to read as follows:

(b) Except as provided by Section 261.404, a ~~[A]~~ state agency that operates, licenses, certifies, or registers a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

SECTION 4. Section 261.404, Family Code, is amended to read as follows:

Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN WITH MENTAL ILLNESS OR ~~[IN FACILITIES UNDER DEPARTMENT OF MENTAL HEALTH AND]~~ MENTAL RETARDATION. (a) The department shall, to the extent provided by this section, investigate a report of abuse, neglect, or exploitation of a child receiving services:

(1) in a facility operated by the ~~[Texas]~~ Department of Aging and Disability Services or a mental health facility operated by the Department of State ~~[Mental] Health Services ~~[and Mental Retardation]~~;~~

(2) in or from a community center, a local mental health authority, or a local mental retardation authority; ~~[or]~~

(3) through a program providing services to that child by contract with a facility operated by the ~~[Texas]~~ Department of Aging and Disability Services, a mental health facility operated by the Department of State ~~[Mental] Health Services ~~[and Mental Retardation]~~, a community center, a local mental health authority, or a local mental retardation authority;~~

(4) from a provider of home and community-based services who contracts with the Department of Aging and Disability Services; or

(5) in a facility licensed under Chapter 252, Health and Safety Code.

(b) The department shall investigate the report under rules developed by the executive commissioner of the Health and Human Services Commission with the advice and assistance of ~~[jointly between]~~ the department, ~~[and]~~ the ~~[Texas]~~ Department of Aging and Disability Services, and the Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~.

(c) If a report under this section relates to a child with mental retardation receiving services in a state supported living center or the ICF-MR component of the Rio Grande State Center, the department shall, within one hour of receiving the report:

(1) notify the facility in which the child is receiving services of the allegations in the report;

(2) forward a copy of the initial intake report to the commission's office of inspector general for evaluation and investigation as provided by Subchapter D, Chapter 555, Health and Safety Code; and

(3) place the department's investigation under this section on hold.

(d) The department is required to proceed with and complete an investigation of a report related to a child described by Subsection (c) only if, not more than 24 hours after the department forwards a report to the commission's office of inspector general, the office of inspector general notifies the department that the office of inspector general does not have cause to investigate a possible criminal offense related to the report.

(e) The department may provide assistance, including assistance in conducting interviews, to the commission's office of inspector general when the office of inspector general conducts an investigation of a report of abuse, neglect, or exploitation at a state supported living center or the ICF-MR component of the Rio Grande State Center.

(f) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a child with mental retardation described by Subsection (c) has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker or supervisor shall:

(1) immediately notify the commission's office of inspector general;

(2) in a timely manner provide the commission's office of inspector general with the evidence collected by the department during the investigation; and

(3) place the department's investigation on hold and proceed with the investigation only in accordance with Subsection (d).

(g) The definitions of "abuse" and "neglect" prescribed by Section 261.001 do not apply to an investigation under this section.

(h) ~~(d)~~ In this section:

(1) ~~[r]~~ "Community ~~[community]~~ center," "local mental health authority," ~~[and]~~ "local mental retardation authority," and "state supported living center" have the meanings assigned by Section 531.002, Health and Safety Code.

(2) "Provider" has the meaning assigned by Section 48.351, Human Resources Code.

SECTION 5. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1144 to read as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE SUPPORTED LIVING CENTERS. (a) The Department of State Health Services and the Department of Aging and Disability Services are entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency; or

(D) an applicant for a volunteer position with the agency; and

(2) who would be placed in direct contact with a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center.

(b) Criminal history record information obtained by an agency under Subsection (a) may not be released or disclosed to any person except:

(1) on court order;

(2) with the consent of the person who is the subject of the criminal history record information;

(3) for purposes of an administrative hearing held by the agency concerning the person who is the subject of the criminal history record information; or

(4) as provided by Subsection (c).

(c) An agency is not prohibited from releasing criminal history record information obtained under Subsection (a) or (d) to the person who is the subject of the criminal history record information.

(d) Subject to Section 411.087, the Department of State Health Services and the Department of Aging and Disability Services are entitled to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

(e) This section does not prohibit an agency from obtaining and using criminal history record information as provided by other law.

SECTION 6. Chapter 531, Government Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Sec. 531.851. MORTALITY REVIEW. (a) The executive commissioner shall establish an independent mortality review system to review the death of a person with a developmental disability who, at the time of the person's death:

(1) resided in or received services from:

(A) an intermediate care facility for persons with mental retardation (ICF-MR) operated or licensed by the Department of Aging and Disability Services or a community center; or

(B) the ICF-MR component of the Rio Grande State Center; or

(2) received residential assistance through a Section 1915(c) waiver program serving individuals who are eligible for ICF-MR services in a residence in which residential assistance is provided to three or more persons and in which the waiver program provider has a property interest.

(b) A review under this subchapter must be conducted in addition to any review conducted by the facility in which the person resided or the facility, agency, or provider from which the person received services. A review under this subchapter must be conducted after any investigation of alleged or suspected abuse, neglect, or exploitation is completed.

(c) The executive commissioner shall contract with a patient safety organization certified in accordance with 42 C.F.R. Part 3, as effective on January 19, 2009, to conduct independent mortality reviews required by this subchapter. The contract must require the patient safety organization to conduct an independent mortality review using a team consisting of:

(1) a physician with expertise regarding the medical treatment of individuals with mental retardation;

(2) a registered nurse with expertise regarding the medical treatment of individuals with mental retardation;

(3) a clinician or other professional with expertise in the delivery of services and supports for individuals with mental retardation; and

(4) any other appropriate person as provided by the executive commissioner.

(d) The executive commissioner shall adopt rules regarding the manner in which the death of a person described by Subsection (a) must be reported to the patient safety organization by a facility or waiver program provider described by that subsection.

(e) To ensure consistency across mortality review systems, a review under this section must collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with mental retardation.

Sec. 531.852. ACCESS TO INFORMATION. (a) A patient safety organization may request information and records regarding a deceased person as necessary to carry out the patient safety organization's duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) adult or child protective services information and records.

(b) On request of the patient safety organization, the custodian of the relevant information and records relating to a deceased person shall provide those records to the patient safety organization at no charge.

Sec. 531.853. MORTALITY REVIEW REPORT. The patient safety organization shall, to the extent allowed by federal law, submit:

(1) to the Department of Aging and Disability Services, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers, and the commission's office of inspector general a report of the findings of the mortality review; and

(2) semiannually to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and house of representatives with primary jurisdiction over the Department of Aging and Disability Services a report that contains:

(A) aggregate information regarding the deaths for which the patient safety organization performed an independent mortality review;

(B) trends in the causes of death identified by the patient safety organization; and

(C) any suggestions for system-wide improvements to address conditions that contributed to deaths reviewed by the patient safety organization.

Sec. 531.854. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) The commission may use or publish information under this subchapter only to advance statewide practices regarding the treatment and care of individuals with developmental disabilities. A summary of the data in the patient safety organization's reports or a statistical compilation of data reports may be released by the commission for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is patient safety work product.

(b) Information and records acquired by the patient safety organization in the exercise of its duties under this subchapter are confidential and exempt from disclosure under the open records law, Chapter 552, and may be disclosed only as necessary to carry out the patient safety organization's duties.

(c) The identity of a person whose death was reviewed in accordance with this subchapter is confidential and may not be revealed.

(d) The identity of a health care provider or the name of a facility or agency that provided services to or was the residence of a person whose death was reviewed in accordance with this subchapter is confidential and may not be revealed.

(e) Reports, information, statements, memoranda, and other information furnished under this subchapter and any findings or conclusions resulting from a review by the patient safety organization are privileged.

Sec. 531.855. LIMITATION ON LIABILITY. A health care provider or other person is not civilly or criminally liable for furnishing information to the patient safety organization or to the commission for use by the patient safety organization in accordance with this subchapter unless the person acted in bad faith or knowingly provided false information to the patient safety organization or the commission.

SECTION 7. Subchapter B, Chapter 252, Health and Safety Code, is amended by adding Section 252.0311 to read as follows:

Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this section, "controlling person" means a person who, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or a person who operates a facility. The term includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a facility;

(2) a person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b) A controlling person described by Subsection (a)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(c) The executive commissioner of the Health and Human Services Commission may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) A person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with Chapter 250.

SECTION 8. Section 252.039, Health and Safety Code, is amended to read as follows:

Sec. 252.039. POSTING. Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the facility;

(4) a concise summary of the most recent inspection report relating to the facility; ~~and~~

(5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to the Department of Family and Protective Services; and

(6) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

SECTION 9. The heading to Subchapter E, Chapter 252, Health and Safety Code, is amended to read as follows:

SUBCHAPTER E. INVESTIGATIONS ~~[REPORTS]~~ OF ABUSE, ~~[AND]~~ NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION

SECTION 10. Sections 252.121, 252.122, 252.125, and 252.126, Health and Safety Code, are amended to read as follows:

Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE ~~[DEFINITION]~~. (a) A person, including an owner or employee of a facility, who has cause to believe that [In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of] a resident is being or has been subjected to [who is the subject of a report of] abuse, [or] neglect, or exploitation shall report the suspected abuse, neglect, or exploitation to the Department of Family and Protective Services, as required by Chapter 48, Human Resources Code, or Chapter 261, Family Code, as appropriate. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation in the manner provided by Chapter 48, Human Resources Code, or Section 261.404, Family Code, as applicable.

(b) If the department receives a report of suspected abuse, neglect, or exploitation of a resident of a facility licensed under this chapter, the department shall immediately refer the report to the Department of Family and Protective Services for investigation.

Sec. 252.122. NOTIFICATION OF DUTY TO REPORT ~~[REPORTING OF]~~ ABUSE, [AND] NEGLECT, AND EXPLOITATION. ~~[(a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect to the department, to a designated agency, or to both the department and the designated agency, as specified in department rules.~~

~~[(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse, [or] neglect, or exploitation.~~

~~[(c) A person shall make an oral report immediately on learning of abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.]~~

Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT ~~[INVESTIGATION AND REPORT OF RECEIVING AGENCY]~~. ~~[(a) The department or the designated agency shall make a thorough investigation promptly after receiving either the oral or written report.~~

~~[(b) The primary purpose of the investigation is the protection of the resident.~~

~~[(c) In the investigation, the department or the designated agency shall determine:~~

- ~~[(1) the nature, extent, and cause of the abuse or neglect;~~
- ~~[(2) the identity of the person responsible for the abuse or neglect;~~
- ~~[(3) the names and conditions of the other residents;~~
- ~~[(4) an evaluation of the persons responsible for the care of the residents;~~

- ~~[(5) the adequacy of the facility environment; and
 [(6) any other information required by the department.~~

~~[(d) The investigation may include a visit to the resident's facility and an interview with the resident, if considered appropriate by the department.~~

~~[(e) If the department attempts to carry out an on site investigation and it is shown that admission to the facility or any place where a resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow admission for the investigation and any interview with the resident.~~

~~[(f) Before the completion of the investigation by the Department of Family and Protective Services, the department shall file a petition for temporary care and protection of a [the] resident if the department determines, based on information provided to the department by the Department of Family and Protective Services, that immediate removal is necessary to protect the resident from further abuse, ~~or~~ neglect, or exploitation.~~

~~[(g) The department or the designated agency shall make a complete written report of the investigation and submit the report and its recommendations to the district attorney and the appropriate law enforcement agency and, if necessary, to the department on the department's request.]~~

Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION REPORT. (a) A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only as provided by Chapter 48, Human Resources Code, Chapter 261, Family Code, or this section ~~[for purposes consistent with the rules adopted by the board or the designated agency].~~

(b) The Department of Family and Protective Services shall provide a copy of a completed investigation report to the department and may disclose information related to the investigation at any time to the department as necessary to protect a resident of a facility from abuse, neglect, or exploitation.

SECTION 11. Section 252.132(h), Health and Safety Code, is amended to read as follows:

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122 ~~[252.122(b)]~~. If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

SECTION 12. Section 253.001(4), Health and Safety Code, is amended to read as follows:

(4) "Facility" means:

(A) a facility;

(i) licensed by the department; or

(ii) licensed under Chapter 252;

(B) an adult foster care provider that contracts with the department; or

(C) a home and community support services agency licensed by the department under Chapter 142.

SECTION 13. Section 253.002, Health and Safety Code, is amended to read as follows:

Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the department receives a report that an employee of a facility, other than a facility licensed under Chapter 252, committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

(b) If the Department of Aging and Disability Services receives a report that an employee of a facility licensed under Chapter 252 committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.

SECTION 14. Section 531.002(17), Health and Safety Code, is amended to read as follows:

(17) "State supported living center [~~school~~]" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services [~~department~~] to provide to clients with mental retardation a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

SECTION 15. Chapter 531, Health and Safety Code, is amended by adding Section 531.0021 to read as follows:

Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

(a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

SECTION 16. Section 532.001(b), Health and Safety Code, is amended to read as follows:

(b) The Department of Aging and Disability Services and the Department of State Health Services [~~department~~] also include [~~includes~~] community services operated by those departments [~~the department~~] and the following facilities, as appropriate:

- (1) the central office of each [~~the~~] department;
- (2) the Austin State Hospital;
- (3) the Big Spring State Hospital;
- (4) the Kerrville State Hospital;
- (5) the Rusk State Hospital;
- (6) the San Antonio State Hospital;
- (7) the Terrell State Hospital;
- (8) the North Texas State Hospital;
- (9) the Abilene State Supported Living Center [~~School~~];
- (10) the Austin State Supported Living Center [~~School~~];
- (11) the Brenham State Supported Living Center [~~School~~];
- (12) the Corpus Christi State Supported Living Center [~~School~~];
- (13) the Denton State Supported Living Center [~~School~~];
- (14) the Lubbock State Supported Living Center [~~School~~];
- (15) the Lufkin State Supported Living Center [~~School~~];
- (16) the Mexia State Supported Living Center [~~School~~];

- (17) the Richmond State Supported Living Center [~~School~~];
- (18) the San Angelo State Supported Living Center [~~School~~];
- (19) the San Antonio State Supported Living Center [~~School~~];
- (20) the El Paso State Supported Living Center;
- (21) the Rio Grande State Center; and
- (22) the Waco Center for Youth.

SECTION 17. Section 551.022, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to a state supported living center or the director of a state supported living center.

SECTION 18. Subchapter B, Chapter 551, Health and Safety Code, is amended by adding Section 551.0225 to read as follows:

Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING CENTER DIRECTOR. (a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

- (1) oversee the admission and discharge of residents and clients;
- (2) keep a register of all residents and clients admitted to or discharged from the center;
- (3) ensure that the civil rights of residents and clients of the center are protected;
- (4) ensure the health, safety, and general welfare of residents and clients of the center;
- (5) supervise repairs and improvements to the center;
- (6) ensure that center money is spent judiciously and economically;
- (7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;
- (8) keep a full record of the center's operations;
- (9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and
- (10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

- (1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;
- (2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and
- (3) dismiss a subordinate officer, teacher, or employee.

SECTION 19. Subtitle B, Title 7, Health and Safety Code, is amended by adding Chapter 555 to read as follows:

CHAPTER 555. STATE SUPPORTED LIVING CENTERSSUBCHAPTER A. GENERAL PROVISIONSSec. 555.001. DEFINITIONS. In this chapter:

(1) "Alleged offender resident" means a person with mental retardation who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-MR component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-MR component of the Rio Grande State Center.

(4) "Client" means a person with mental retardation who receives ICF-MR services from a state supported living center or the ICF-MR component of the Rio Grande State Center.

(5) "Commission" means the Health and Human Services Commission.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-MR component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

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

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with mental retardation who resides in a state supported living center or the ICF-MR component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTER. (a) The department shall establish a separate forensic state supported living center for the care apart from other clients and residents of high-risk alleged offender residents. The department shall designate the Mexia State Supported Living Center for this purpose.

(b) In establishing the forensic state supported living center, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to the forensic state supported living center;

(2) place high-risk alleged offender residents in separate homes at the forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place all alleged offender residents, at the time the residents are initially committed to or transferred to a center, in the forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents for whom a determination has not been completed under Section 555.003, from the forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of the forensic state supported living center.

(c) An alleged offender resident committed to the forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that the forensic state supported living center:

(1) complies with the requirements for ICF-MR certification under the Medicaid program, as appropriate; and

(2) has additional center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to the forensic state supported living center, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Youth Commission or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER STATUS. (a) Not later than the 30th day after the date an alleged offender resident is first committed to the forensic state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

(1) the department;

(2) the director of the forensic state supported living center;

(3) the independent ombudsman;

(4) the alleged offender resident or the alleged offender resident's parent if

the resident is a minor; and

(5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

[Sections 555.004-555.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES AND VOLUNTEERS OF CENTERS. (a) The department and the Department of State Health Services shall perform a state and federal criminal history background check on a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency; or

(D) an applicant for a volunteer position with the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department and the Department of State Health Services shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee or volunteer of the agency and continues to have direct contact with a resident or client.

Sec. 555.022. DRUG TESTING; POLICY. (a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental retardation; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental retardation;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with mental retardation who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental retardation;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub.

L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of

residents and clients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination;

(7) seizure safety;

(8) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(9) working with aging residents and clients;

(10) assisting residents and clients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(11) communicating with residents and clients who use augmentative and alternative devices for communication;

(12) assisting residents and clients with personal hygiene;

(13) recognizing appropriate food textures;

(14) using proper feeding techniques to assist residents and clients with

meals;

(15) physical and nutritional management plans; and

(16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an intermediate care facility for persons with mental retardation licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with mental retardation to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

(1) a bedroom;

(2) a bathroom;

(3) a place in which a resident or client receives medical or nursing services;

(4) a place in which a resident or client meets privately with visitors; or

(5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) The department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-MR certification.

[Sections 555.026-555.050 reserved for expansion]

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-MR component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Sec. 555.052. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with mental retardation.

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with mental retardation.

Sec. 555.055. CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

Sec. 555.056. REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, and the speaker of the house of representatives any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation;

or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

- (1) may be in person, by mail, or by any other means; and
- (2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an unusual incident;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-MR standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

Sec. 555.059. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-MR standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging an unusual incident to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(8) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(9) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(10) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(11) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(12) make appropriate referrals under any of the duties and powers listed in this subsection; and

(13) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the inspector general or from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Sec. 555.060. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

[Sections 555.062-555.100 reserved for expansion]

SUBCHAPTER D. INSPECTOR GENERAL INVESTIGATIONS

Sec. 555.101. CONDUCTING AND ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. (a) The inspector general shall employ and commission peace officers for the purpose of conducting criminal investigations relating to a center and assisting a state or local law enforcement agency in the investigation of an alleged criminal offense relating to a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

(b) The inspector general shall immediately initiate a prompt and thorough evaluation to determine whether the inspector general has cause to investigate a possible criminal offense related to a report submitted to the inspector general by:

(1) the Department of Family and Protective Services in accordance with Chapter 48, Human Resources Code, or Chapter 261, Family Code, regarding an allegation of abuse, neglect, or exploitation of a resident or client; or

(2) the independent ombudsman in accordance with Subchapter C, regarding an unusual incident relating to a center.

(c) If the inspector general determines, not later than 24 hours after receiving a report under Subsection (b), that there is not a reason to investigate a possible criminal offense related to the report, the inspector general shall provide notice of that determination and a copy of any report to:

(1) the Department of Family and Protective Services and the department if the report relates to the alleged abuse, neglect, or exploitation of a resident or client after which notice the Department of Family and Protective Services shall proceed with and complete the investigation of the report; or

(2) the independent ombudsman and the department if the report does not relate to the alleged abuse, neglect, or exploitation of a resident or client.

(d) If the inspector general determines that there is cause to investigate a possible criminal offense related to the report submitted under Subsection (b) or if, not later than 24 hours after receiving the report, the inspector general cannot determine whether there is cause to investigate a possible criminal offense related to the report, the inspector general shall conduct or assist a law enforcement agency in conducting an investigation of the report in the manner provided by this section and other law and regulations applicable to investigations of abuse, neglect, or exploitation that would apply to a similar investigation performed by the Department of Family and Protective Services.

(e) In making a determination or conducting an investigation regarding a report under this section, the inspector general shall:

(1) within one hour of determining the identity of an alleged perpetrator of abuse, neglect, or exploitation or another criminal offense, notify the center and the department;

(2) within one hour of determining that there is cause to believe that a criminal offense relating to a center occurred:

(A) notify the appropriate local law enforcement agency; and

(B) provide the local law enforcement agency with information or assistance as needed;

(3) complete and provide an investigative report that is redacted as necessary as provided by the memorandum of understanding adopted under Section 48.007, Human Resources Code, to:

(A) the appropriate center not later than the fifth working day after the date the inspector general receives a report of alleged abuse, neglect, or exploitation for which the inspector general conducts an investigation; and

(B) the appropriate center, the Department of Family and Protective Services, the department, and the assistant independent ombudsman for the appropriate center not later than the 14th day after the date the inspector general receives a report of alleged abuse, neglect, or exploitation for which the inspector general conducts an investigation;

(4) if the inspector general believes that a criminal prosecution is appropriate, refer the findings of an investigation conducted and the evidence obtained by the inspector general:

(A) to the appropriate local prosecuting attorney; or

(B) if the appropriate local prosecuting attorney does not proceed with a prosecution before the 30th day after the date the inspector general refers findings and evidence to the local prosecuting attorney under this section, to the attorney general; and

(5) refer the inspector general's findings and the evidence obtained to the department if the evidence indicates that employee misconduct occurred.

(f) The attorney general, if requested to do so by a local prosecuting attorney, may assist the local prosecuting attorney in the prosecution of an offense involving a center.

(g) The inspector general shall ensure that an investigation report completed by the inspector general conforms to the requirements of the Department of Family and Protective Services single tracking system for reports and investigations established under Section 48.256, Human Resources Code.

(h) The inspector general shall analyze each report received under Subsection (b), regardless of whether the inspector general investigates the report, in order to detect patterns indicating abuse, neglect, or exploitation at a center. The inspector general may investigate patterns identified under this subsection that indicate possible criminal offenses and may recommend additional action or investigation related to those patterns, as appropriate, to the department, the Department of Family and Protective Services, the appropriate center, and the independent ombudsman.

Sec. 555.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed by the inspector general in conducting the investigation;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) commissioner of the department;

(3) commissioner of the Department of Family and Protective Services;

(4) Aging and Disability Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(9) state auditor;

(10) the independent ombudsman and the assistant ombudsman for the center involved in the report; and

(11) the alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation conducted by the inspector general, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted by the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of the department;

(3) commissioner of the Department of Family and Protective Services;

(4) Aging and Disability Services Council;

(5) Family and Protective Services Council;

(6) governor;

(7) lieutenant governor;

(8) speaker of the house of representatives;

(9) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(10) state auditor; and

(11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Sec. 555.104. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

SECTION 20. Section 40.001, Human Resources Code, is amended by adding Subdivision (6) to read as follows:

(6) "State supported living center" has the meaning assigned by Section 531.002, Health and Safety Code.

SECTION 21. Section 40.0315(b), Human Resources Code, is amended to read as follows:

(b) An investigator in the unit shall determine whether an elderly or disabled person who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify:

(1) the commission's office of inspector general if the disabled person who is the subject of the report resides in a state supported living center or the ICF-MR component of the Rio Grande State Center; or

(2) the appropriate law enforcement agency.

SECTION 22. Subchapter A, Chapter 48, Human Resources Code, is amended by adding Section 48.007 to read as follows:

Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The Health and Human Services Commission, the department, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers, and the Health and Human Services Commission's office of inspector general shall enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-MR component of the Rio Grande State Center that delineates the responsibilities of each agency under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as necessary to reflect changes in those responsibilities. The Health and Human Services Commission is the final arbiter of any dispute regarding the memorandum of understanding under this section.

SECTION 23. Sections 48.051(a) and (b), Human Resources Code, are amended to read as follows:

(a) Except as prescribed by Subsection (b), a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation, including a disabled person receiving services as described by Section 48.252, shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly or disabled person, other than a disabled person receiving services as described by Section 48.252, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency [~~other than the Texas Department of Mental Health and Mental Retardation~~], the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

SECTION 24. Section 48.052(a), Human Resources Code, is amended to read as follows:

(a) A person commits an offense if the person has cause to believe that an elderly or disabled person has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report in accordance with this chapter. An offense under this subsection is a Class A misdemeanor, except that the

offense is a state jail felony if it is shown on the trial of the offense that the disabled person was a person with mental retardation who resided in a state supported living center, the ICF-MR component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the disabled person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

SECTION 25. Section 48.1522, Human Resources Code, is amended to read as follows:

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if [H] during the course of the department's or another state agency's investigation of reported abuse, neglect, or exploitation a caseworker of the department or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly or disabled person has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker or supervisor shall:

(1) immediately notify an appropriate law enforcement agency; and

(2) provide the law enforcement agency with a copy of the investigation report of the department or other state agency, as applicable, in a timely manner.

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a disabled person who is a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker or supervisor shall:

(1) immediately notify the commission's office of inspector general;

(2) in a timely manner provide the commission's office of inspector general with the evidence collected by the department during the investigation; and

(3) place the department's investigation on hold and proceed with the investigation only in accordance with Section 48.252(d).

SECTION 26. The heading to Subchapter F, Chapter 48, Human Resources Code, is amended to read as follows:

SUBCHAPTER F. INVESTIGATIONS IN CERTAIN [~~TDMI~~] FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL RETARDATION [~~MHMR~~] AUTHORITIES

SECTION 27. Section 48.252, Human Resources Code, is amended to read as follows:

Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN [~~MHMR~~] FACILITIES AND IN COMMUNITY CENTERS. (a) The department shall receive and investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services:

(1) in:

(A) a mental health facility operated by the [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental Retardation~~]; or

(B) a facility licensed under Chapter 252, Health and Safety Code;

(2) in or from a community center, a local mental health authority, or a local mental retardation authority; or

(3) through a program providing services to that person by contract with a mental health facility operated by the [~~Texas~~] Department of State [~~Mental~~] Health Services [~~and Mental Retardation~~], a community center, a local mental health authority, or a local mental retardation authority.

(b) The department shall receive and, to the extent provided by this section, shall investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services:

(1) in a state supported living center or the ICF-MR component of the Rio Grande State Center; or

(2) through a program providing services to that person by contract with a state supported living center or the ICF-MR component of the Rio Grande State Center.

(c) The department shall, within one hour of receiving a report relating to an individual described by Subsection (b):

(1) notify the facility in which the individual is receiving services of the allegations in the report;

(2) forward a copy of the initial intake report to the commission's office of inspector general for evaluation and investigation as provided by Subchapter D, Chapter 555, Health and Safety Code; and

(3) place the department's investigation under this chapter on hold.

(d) The department is required to proceed with and complete an investigation of a report relating to an individual described by Subsection (b) only if, not more than 24 hours after the department forwards a report to the commission's office of inspector general, the office of inspector general notifies the department that the office of inspector general does not have cause to investigate a possible criminal offense related to the report.

(e) The department may provide assistance, including assistance in conducting interviews, to the commission's office of inspector general when the office of inspector general conducts an investigation of a report of abuse, neglect, or exploitation at a state supported living center or the ICF-MR component of the Rio Grande State Center.

(f) The department by rule shall define who is "an individual with a disability receiving services."

(g) ~~(e)~~ In this section, "community center," "local [mental health authority]," and "local mental retardation authority" have the meanings assigned by Section 531.002, Health and Safety Code.

SECTION 28. Section 48.254, Human Resources Code, is amended to read as follows:

Sec. 48.254. FORWARDING OF CERTAIN REPORTS [~~COMPLETED INVESTIGATION REPORT~~]. In accordance with department rules, the [~~The~~] department shall forward a copy of the initial intake report and a copy of the completed investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate [~~a state mental health or mental retardation~~] facility, [a

community center, ~~[a]~~ mental health authority, ~~[a]~~ mental retardation authority, or ~~[a]~~ program providing mental health or mental retardation services under contract with the ~~[such a]~~ facility, community center, or authority[~~±~~

~~[(1) a copy of any report the department receives relating to alleged or suspected abuse, neglect, or exploitation of an individual receiving services from that facility, community center, authority, or program; and~~

~~[(2) a copy of the department's investigation findings and report].~~

SECTION 29. Section 48.255, Human Resources Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsection (c-1) to read as follows:

(a) The department, the Department of Aging and Disability Services, and the ~~[Texas]~~ Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ shall develop joint rules to facilitate investigations in state mental health facilities and state supported living centers ~~[mental retardation facilities]~~.

(b) The department, the Department of Aging and Disability Services, and the ~~[Texas]~~ Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ by joint rules shall establish procedures for resolving disagreements between the department and the ~~[Texas]~~ Department of Aging and Disability Services or the Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ concerning the department's investigation findings.

(c) The department, the Department of Aging and Disability Services, and the ~~[Texas]~~ Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ shall develop joint rules to facilitate investigations in community centers, mental health authorities, and mental retardation authorities.

(c-1) The executive commissioner shall adopt rules regarding investigations in a facility licensed under Chapter 252, Health and Safety Code, to ensure that those investigations are as consistent as practicable with other investigations conducted under this subchapter.

(d) A confirmed investigation finding by the department may not be changed by a superintendent of a state mental health ~~[or mental retardation]~~ facility, by a director of a state supported living center, by a director of a community center, or by a mental health authority or mental retardation authority.

SECTION 30. Section 48.256, Human Resources Code, is amended to read as follows:

Sec. 48.256. SINGLE TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The department, ~~[and]~~ the ~~[Texas]~~ Department of Aging and Disability Services, and the Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ shall jointly develop and implement a single system to track reports and investigations under this subchapter ~~[section]~~.

(b) To facilitate implementation of the system, the department, ~~[and]~~ the ~~[Texas]~~ Department of Aging and Disability Services, and the Department of State ~~[Mental]~~ Health Services ~~[and Mental Retardation]~~ shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter ~~[section]~~.

(c) The department shall inform the commission's office of inspector general of the methods used to measure the number and outcomes of reports and investigations under this section. The commission's office of inspector general shall ensure that the same methods are used for investigations performed by the office under this chapter and Chapter 261, Family Code.

SECTION 31. Sections 48.301(a) and (c), Human Resources Code, are amended to read as follows:

(a) If the department receives a report of suspected abuse, neglect, or exploitation of [under this section relating to] an elderly or disabled person, other than a disabled person receiving services as described by Section 48.252, in a facility operated, licensed, certified, or registered by a state agency [other than the Texas Department of Mental Health and Mental Retardation], the department shall refer the report to that agency.

(c) Each state agency that may receive reports under this section [other than the Texas Department of Mental Health and Mental Retardation, that operates, licenses, certifies, or registers a facility in which elderly or disabled persons are located] shall adopt rules relating to the investigation and resolution of reports received under this section.

SECTION 32. Sections 48.401(1) and (4), Human Resources Code, are amended to read as follows:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code; ~~[or]~~

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code; or

(C) a facility licensed under Chapter 252, Health and Safety Code.

(4) "Executive director" means the commissioner ~~[executive director]~~ of the Department of Family and Protective ~~[and Regulatory]~~ Services.

SECTION 33. Subchapter C, Chapter 161, Human Resources Code, is amended by adding Section 161.0515 to read as follows:

Sec. 161.0515. ASSISTANT COMMISSIONER OF STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall employ an assistant commissioner of state supported living centers. The assistant commissioner must be selected based on education, training, experience, and demonstrated ability.

(b) The assistant commissioner reports directly to the commissioner.

(c) The assistant commissioner shall supervise the operation of the state supported living centers. As part of that duty, the assistant commissioner shall:

(1) verify that quality health and medical services are being provided in state supported living centers;

(2) verify and certify employee qualifications for employees of a state supported living center; and

(3) work with the commissioner to create administrative guidelines for proper implementation of federal and state statutory law and judicial decisions.

(d) The assistant commissioner shall coordinate with the appropriate staff of the Department of State Health Services to ensure that the ICF-MR component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) The assistant commissioner shall consult with the appropriate staff at the Department of State Health Services to ensure that an individual with a dual diagnosis of mental illness and mental retardation who is a resident of a state supported living center or the ICF-MR component of the Rio Grande State Center is provided with appropriate care and treatment.

SECTION 34. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.076 and 161.077 to read as follows:

Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At least every 12 months, the department shall conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

Sec. 161.077. INVESTIGATION DATABASE. (a) The department, in consultation with the Department of Family and Protective Services and the commission's office of inspector general, shall develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with mental retardation who reside in a publicly or privately operated intermediate care facility for persons with mental retardation or in a group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services and the results of regulatory investigations or surveys performed by the department regarding those facilities or providers.

(b) The information collected in the database regarding investigations must be detailed, be easily retrievable, and include information relating to abuse, neglect, and exploitation investigations performed by either department and the commission's office of inspector general and regulatory investigations performed by the department that are capable of being sorted by home, provider, and facility.

(c) The database must facilitate the entry of required information and the sharing of information between the department and the Department of Family and Protective Services. At a minimum, the database must include the following information regarding investigations of abuse, neglect, or exploitation:

(1) the number of allegations of abuse, neglect, or exploitation received relating to a facility or group home, other than a foster home; and

(2) the number of allegations relating to a facility or group home, other than a foster home, substantiated through an investigation.

(d) Each allegation involving a unique individual in a facility or group home, other than a foster home, is considered a separate allegation for purposes of Subsection (c).

(e) The department shall ensure that information related to findings concerning failure to comply with regulatory standards directly related to the prevention of abuse, neglect, or exploitation in a facility or group home, other than a foster home, is collected and stored in the database and may be disaggregated by home, provider, and facility.

(f) The department and the Department of Family and Protective Services may not release or distribute information in the database in a form that contains personally identifiable information related to an individual in a facility or group home or to a victim of abuse, neglect, or exploitation.

SECTION 35. Section 22.04(f), Penal Code, is amended to read as follows:

(f) An offense under Subsection (a)(3) or (a-1)(3) or (4) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

SECTION 36. (a) Sections 252.123, 252.124, 252.127, 252.128, 252.129, 252.130, and 252.131, Health and Safety Code, are repealed.

(b) Section 5(c), Chapter 693 (S.B. 1248), Acts of the 75th Legislature, Regular Session, 1997, is repealed.

SECTION 37. (a) Not later than December 1, 2009, the Health and Human Services Commission, the Department of Family and Protective Services, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers, and the Health and Human Services Commission's office of inspector general shall enter into a memorandum of understanding as required by Section 48.007, Human Resources Code, as added by this Act.

(b) Notwithstanding any other provision of this Act, the changes in law made by this Act relating to the investigation of suspected abuse, neglect, or exploitation involving a state supported living center or the ICF-MR component of the Rio Grande State Center apply only to a report of suspected abuse, neglect, or exploitation involving a state supported living center or the ICF-MR component of the Rio Grande State Center that is made on or after January 1, 2010.

(c) Notwithstanding any other provision of this Act, the changes in law made by this Act relating to the investigation of suspected abuse, neglect, or exploitation involving a facility licensed under Chapter 252, Health and Safety Code, apply only to a report of suspected abuse, neglect, or exploitation involving a facility licensed under Chapter 252, Health and Safety Code, that is made on or after June 1, 2010.

SECTION 38. (a) The Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation is established to study the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity. The committee's study must include an analysis of:

(1) the advantages and disadvantages of the existing system for criminal commitments of individuals with mental retardation or individuals with a dual diagnosis of mental illness and mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity;

(2) the number of individuals with mental retardation who are criminally committed on an annual basis and the number of individuals with mental retardation who are found to be violent or dangerous through the criminal commitment process;

(3) whether the criminal commitment process should be modified to provide for the commitment of certain individuals with mental retardation who are found to be violent or dangerous to a mental retardation facility instead of to a mental health facility; and

(4) the costs associated with modifying the criminal commitment process as described by Subdivision (3) of this subsection.

(b) The committee is composed of six members as follows:

(1) the chairs of the following standing committees of the house of representatives:

- (A) criminal jurisprudence;
- (B) human services; and
- (C) public health; and

(2) the chairs of the following standing committees of the senate:

- (A) criminal justice;
- (B) health and human services; and
- (C) state affairs.

(c) The co-presiding officers of the committee are the chair of the Senate Health and Human Services Committee and the chair of the House Committee on Human Services.

(d) The committee has all other powers and duties provided to a special or select committee by the rules of the senate and house of representatives, by Subchapter B, Chapter 301, Government Code, and by policies of the senate and house committees on administration.

(e) From the contingent expense fund of the senate and the contingent expense fund of the house of representatives equally, the members of the committee are entitled to reimbursement for expenses incurred in carrying out this section in accordance with the rules of the senate and house of representatives and the policies of the senate and house committees on administration.

(f) Not later than December 1, 2010, the committee shall report the committee's findings and recommendations resulting from the study to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

SECTION 39. The Department of Aging and Disability Services shall evaluate and determine the types of training that an employee or owner of a facility licensed by the department under Chapter 252, Health and Safety Code, or an employee or owner of a provider licensed or certified by the department as a Section 1915(c) waiver program provider needs and whether that training is available. Not later than December 1, 2010, the department shall provide a report to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with mental retardation regarding:

- (1) the types of training identified as necessary by the department;
- (2) the availability of that training in this state; and
- (3) recommended legislation or actions necessary to ensure the appropriate training is received by the persons described by this section.

SECTION 40. On the effective date of this Act, an individual who is an employee of the Department of Aging and Disability Services and who performs duties primarily related to consumer rights and services at state schools is required to reapply for an employment position with the department and may apply for a position as an assistant independent ombudsman.

SECTION 41. (a) The commissioner of the Department of Aging and Disability Services shall employ an assistant commissioner of state supported living centers as soon as possible after the effective date of Section 161.0515, Human Resources Code, as added by this Act. On the date the assistant commissioner is employed, the position of section director over state schools is eliminated.

(b) As soon as practicable after the effective date of this Act, the Department of Aging and Disability Services shall develop the database required by Section 161.077, Human Resources Code, as added by this Act.

(c) Not later than December 1, 2009, the Health and Human Services Commission's office of inspector general shall begin employing and commissioning peace officers as required by Section 555.101, Health and Safety Code, as added by this Act.

(d) Not later than December 1, 2009, the executive commissioner shall contract for mortality review services as required by Subchapter U, Chapter 531, Government Code, as added by this Act.

(e) Not later than September 1, 2009, the governor shall appoint the independent ombudsman as required by Section 555.053, Health and Safety Code, as added by this Act.

(f) Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall require the Department of Aging and Disability Services, and any facility the department licenses under Chapter 252, Health and Safety Code, to conduct a criminal history check on each employee and shall require the department or licensed facility to discharge any person whose criminal history check reveals a conviction of an offense that bars employment under Chapter 250, Health and Safety Code.

(g) Not later than January 1, 2010, the Department of Aging and Disability Services shall develop the training required by Section 555.024, Health and Safety Code, as added by this Act.

(h) The Department of Aging and Disability Services shall ensure that each center employee and direct care employee receives the training required by Section 555.024, Health and Safety Code, as added by this Act, regardless of when the employee was hired, not later than September 1, 2010.

(i) Not later than September 1, 2011, the Department of Aging and Disability Services shall begin operating the Mexia State Supported Living Center as the forensic state supported living center as required by Section 555.002, Health and Safety Code, as added by this Act.

SECTION 42. (a) Not later than September 1, 2011, the Department of Aging and Disability Services shall ensure that an interdisciplinary team has completed a determination in the manner provided by Section 555.003, Health and Safety Code, as added by this Act, for each alleged offender resident residing in a state supported living center or the ICF-MR component of the Rio Grande State Center on the effective date of this Act.

(b) An alleged offender resident for whom a determination is completed in accordance with Subsection (a) of this section and who is classified as a high-risk alleged offender resident is entitled to:

(1) an administrative hearing and appeal provided by Section 555.003, Health and Safety Code, as added by this Act, regarding that determination and classification; and

(2) an administrative hearing regarding the resident's proposed transfer to the forensic state supported living center as provided by Section 594.014, Health and Safety Code.

(c) The Department of Aging and Disability Services may not transfer an alleged offender resident residing in a state supported living center or the ICF-MR component of the Rio Grande State Center on the effective date of this Act to the forensic state supported living center while the resident is pursuing the administrative remedies listed in Subsection (b) of this section.

(d) Except as provided by Subsection (c) of this section, the department shall transfer an alleged offender resident classified as a high-risk alleged offender resident to the forensic state supported living center on the date the Mexia State Supported Living Center begins operating as the forensic state supported living center, or as soon as possible after that date.

(e) This section expires September 1, 2013.

SECTION 43. (a) The changes in law made by this Act to Section 261.109, Family Code, Section 48.052, Human Resources Code, and Section 22.04, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) Section 411.1144, Government Code, as added by this Act, and Section 555.021, Health and Safety Code, as added by this Act, apply only to background and criminal history checks performed on or after the effective date of this Act.

(c) The change in law made by Section 551.022(e), Health and Safety Code, as added by this Act, and the change in law made by Section 551.0225, Health and Safety Code, as added by this Act, apply to the dismissal of an officer, teacher, or other employee of a state developmental center hired before, on, or after the effective date of this Act.

SECTION 44. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 45. 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.

Floor Amendment No. 1

Amend **CSSB 643** (House committee printing) as follows:

(1) In SECTION 4 of the bill, in amended Section 261.404(a), Family Code (page 2, lines 12 and 13), strike "to the extent provided by this section,".

(2) In SECTION 4 of the bill, strike amended Sections 261.404(c), (d), (e), and (f), Family Code (page 3, line 11, through page 4, line 23), substitute the following, and reletter subsequent subsections accordingly:

(c) If a report under this section relates to a child with mental retardation receiving services in a state supported living center or the ICF-MR component of the Rio Grande State Center, the department shall, within one hour of receiving the report, notify the facility in which the child is receiving services of the allegations in the report.

(d) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a child with mental retardation described by Subsection (c) has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

(3) In SECTION 19 of the bill, in added Section 555.057(b)(2), Health and Safety Code (page 36, line 27), strike "unusual incident" and substitute "alleged criminal offense".

(4) In SECTION 19 of the bill, in added Section 555.059(a)(5), Health and Safety Code (page 38, lines 19 and 20), strike "an unusual incident to the inspector general" and substitute "a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general".

(5) In SECTION 19 of the bill, in added Section 555.059(a)(13), Health and Safety Code (page 40, line 11), strike "from the inspector general or".

(6) In SECTION 19 of the bill, in the heading to added Subchapter D, Chapter 555, Health and Safety Code (page 41, line 19), strike "INVESTIGATIONS" and substitute "DUTIES".

(7) In SECTION 19 of the bill, strike added Section 555.101, Health and Safety Code (page 41, line 20, through page 45, line 11), and substitute the following:

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

(8) In SECTION 19 of the bill, in added Section 555.102(a), Health and Safety Code (page 45, line 13), between "conducted" and "under this subchapter", insert "with the assistance of the inspector general".

(9) In SECTION 19 of the bill, in added Section 555.102(b)(1), Health and Safety Code (page 45, lines 18 and 19), strike "by the inspector general in conducting the investigation" and substitute "during an investigation for which the inspector general provided assistance".

(10) In SECTION 19 of the bill, in added Section 555.102(d), Health and Safety Code (page 46, line 23), strike "conducted by the inspector general".

(11) In SECTION 19 of the bill, in added Section 555.103(b)(1), Health and Safety Code (page 47, line 7), strike "by" and substitute "with the assistance of".

(12) In SECTION 25 of the bill, strike added Section 48.1522(b), Human Resources Code (page 51, line 16, through page 52, line 4), and substitute the following:

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a disabled person who is a resident or client of a state supported living center or the ICF-MR component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, the caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

(13) In SECTION 27 of the bill, in amended Section 48.252(b), Human Resources Code (page 53, lines 2 and 3), strike ", to the extent provided by this section, shall".

(14) In SECTION 27 of the bill, strike added Sections 48.252(c), (d), and (e), Human Resources Code (page 53, line 11, through page 54, line 6), and reletter subsequent subsections accordingly.

(15) In SECTION 30 of the bill, strike added Section 48.256(c), Human Resources Code (page 56, lines 21 through 26).

(16) In SECTION 34 of the bill, in added Section 161.077(a), Human Resources Code (page 59, line 13), strike "and the commission's office of inspector general".

(17) In SECTION 34 of the bill, in added Section 161.077(b), Human Resources Code (page 59, lines 26 and 27), strike "and the commission's office of inspector general".

Floor Amendment No. 2

Amend **CSSB 643** (House committee printing) as follows:

(1) In SECTION 19 of the bill, in added Section 555.002(b)(3), Health and Safety Code (page 24, line 20), strike "all alleged offender residents," and substitute "alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense,".

(2) In SECTION 19 of the bill, in added Section 555.002(b)(4), Health and Safety Code (page 24, line 26), between "residents" and "for" insert "described by Subdivision (3) and".

(3) In SECTION 19 of the bill, in added Section 555.002(e), Health and Safety Code (page 25, lines 18 and 19), strike "the forensic state supported living center" and substitute "state supported living centers".

(4) In SECTION 19 of the bill, in added Section 555.003(a), Health and Safety Code (page 26, line 8), strike "the forensic" and substitute "a".

(5) In SECTION 19 of the bill, in added Section 555.003(c)(2), Health and Safety Code (page 26, line 24), strike "forensic".

Floor Amendment No. 4

Amend **CSSB 643** (House committee report) in SECTION 19 of the bill, in added Section 555.056(c), Health and Safety Code (page 36, lines 2 and 3), strike "and the speaker of the house of representatives" and substitute "the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services".

Floor Amendment No. 6

Amend **CSSB 643** (House committee report) by inserting into the bill the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 29, Education Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. SCHOOL DISTRICT PROGRAM FOR RESIDENTS OF FORENSIC STATE SUPPORTED LIVING CENTER

Sec. 29.451. DEFINITIONS. In this subchapter, "alleged offender resident," "interdisciplinary team," and "state supported living center" have the meanings assigned by Section 555.001, Health and Safety Code.

Sec. 29.452. APPLICABILITY. This subchapter applies only to an alleged offender resident of the forensic state supported living center established under Section 555.002, Health and Safety Code.

Sec. 29.453. SCHOOL DISTRICT SERVICES. (a) A school district shall provide educational services, including services required under Subchapter A, to each alleged offender resident who is under 22 years of age and otherwise eligible under Section 25.001 to attend school in the district. The district shall provide educational services to each alleged offender resident who is 21 years of age on September 1 of the school year and otherwise eligible to attend school in the district until the earlier of:

- (1) the end of that school year; or
- (2) the student's graduation from high school.

(b) The educational placement of an alleged offender resident and the educational services to be provided by a school district to the resident shall be determined by the resident's admission, review, and dismissal committee consistent with federal law and regulations regarding the placement of students with disabilities in the least restrictive environment. The resident's admission, review, and dismissal committee shall:

- (1) inform the resident's interdisciplinary team of a determination the committee makes in accordance with this subsection; and
- (2) consult, to the extent practicable, with the resident's interdisciplinary team concerning such a determination.

Sec. 29.454. BEHAVIOR MANAGEMENT; BEHAVIOR SUPPORT SPECIALISTS. (a) The discipline of an alleged offender resident by a school district is subject to Sections 37.0021 and 37.004 and to federal law governing the discipline of students with disabilities.

(b) A school district in which alleged offender residents are enrolled shall employ one or more behavior support specialists to serve the residents while at school. A behavior support specialist must:

- (1) hold a baccalaureate degree;
- (2) have training in providing to students positive behavioral support and intervention, as determined by the commissioner of education; and
- (3) meet any other requirement jointly determined by the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(c) A behavior support specialist shall conduct for each alleged offender resident enrolled in the school district a functional behavioral assessment that includes:

- (1) data collection, through interviews with and observation of the resident;
- (2) data analysis; and
- (3) development of an individualized school behavioral intervention plan for the resident.

(d) Each behavior support specialist shall:

(1) ensure that each alleged offender resident enrolled in the school district is provided behavior management services under a school behavioral intervention plan based on the resident's functional behavioral assessment, as described by Subsection (c);

(2) communicate and coordinate with the resident's interdisciplinary team to ensure that behavioral intervention actions of the district and of the forensic state supported living center do not conflict;

(3) in the case of a resident who regresses:

(A) ensure that necessary corrective action is taken in the resident's individualized education program or school behavioral intervention plan, as appropriate; and

(B) communicate with the resident's interdisciplinary team concerning the regression and encourage the team to aggressively address the regression;

(4) participate in the resident's admission, review, and dismissal committee meetings in conjunction with:

(A) developing and implementing the resident's school behavioral intervention plan; and

(B) determining the appropriate educational placement for each resident, considering all available academic and behavioral information;

(5) coordinate each resident's school behavioral intervention plan with the resident's program of active treatment provided by the forensic state supported living center to ensure consistency of approach and response to the resident's identified behaviors;

(6) provide training for school district staff and, as appropriate, state supported living center staff in implementing behavioral intervention plans for each resident; and

(7) remain involved with the resident during the school day.

(e) Section 22.0511 applies to a behavior support specialist employed under this section by a school district.

Sec. 29.455. MEMORANDUM OF UNDERSTANDING. (a) A school district in which alleged offender residents are enrolled in school and the forensic state supported living center shall enter into a memorandum of understanding to:

(1) establish the duties and responsibilities of the behavior support specialist to ensure the safety of all students and teachers while educational services are provided to a resident at a school in the district; and

(2) ensure the provision of appropriate facilities for providing educational services and of necessary technological equipment if a resident's admission, review, and dismissal committee determines that the resident must receive educational services at the forensic state supported living center.

(b) A memorandum of understanding under Subsection (a) remains in effect until superseded by a subsequent memorandum of understanding between the school district and the forensic state supported living center or until otherwise rescinded.

Sec. 29.456. FAILURE OF SCHOOL DISTRICT AND CENTER TO AGREE.

(a) If a school district in which alleged offender residents are enrolled in school and the forensic state supported living center fail to agree on the services required for residents or responsibility for those services, the district or center may refer the issue in disagreement to the commissioner of education and the commissioner of the Department of Aging and Disability Services.

(b) If the commissioner of education and the commissioner of the Department of Aging and Disability Services are unable to bring the school district and forensic state supported living center to agreement, the commissioners shall jointly submit a written request to the attorney general to appoint a neutral third party knowledgeable in special education and mental retardation issues to resolve each issue on which the district and the center disagree. The decision of the neutral third party is final and may not be appealed. The district and the center shall implement the decision of the neutral third party. The commissioner of education or the commissioner of the Department of Aging and Disability Services shall ensure that the district and the center implement the decision of the neutral third party.

Sec. 29.457. FUNDING. (a) In addition to other funding to which a school district is entitled under this code, each district in which alleged offender residents attend school is entitled to an annual allotment of \$5,100 for each resident in average daily attendance or a different amount for any year provided by appropriation.

(b) Not later than December 1 of each year, a school district that receives an allotment under this section shall submit a report accounting for the expenditure of funds received under this section to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of representatives with primary jurisdiction regarding persons with mental retardation and public education, and each member of the legislature whose district contains any portion of the territory included in the school.

Sec. 29.458. RULES. The commissioner may adopt rules as necessary to administer this subchapter.

SECTION _____. Subchapter L, Chapter 29, Education Code, as added by this Act, applies beginning with the school year in which the Department of Aging and Disability Services begins operating the Mexia State Supported Living Center as the forensic state supported living center as required by Section 555.002, Health and Safety Code, as added by this Act.

Floor Amendment No. 9

Amend **CSSB 643** (House committee printing) on page 21, line 26, between "employee" and the period, by inserting "for good cause".

Floor Amendment No. 10

Amend **CSSB 643** (House committee report) in SECTION 22 of the bill, in added Section 48.007, Human Resources Code (page 49, line 19), between "responsibilities." and "The" insert the following:

During the negotiation of the memorandum of understanding, the agencies shall jointly determine whether the forensic training received by relevant staff of the Department of Family and Protective Services is adequate. Specifically, the agencies shall assess and, if necessary, develop a plan to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense.

Floor Amendment No. 11

Amend **CSSB 643** (House committee report) in SECTION 19 of the bill, in added Section 555.059(a), Health and Safety Code, immediately following added Subdivision (6) (page 39, line 1), by adding the following new Subdivision (7) and renumbering the current Subdivision (7) and subsequent subdivisions in that subsection accordingly:

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

Floor Amendment No. 12

Amend **CSSB 643** (House committee printing), in SECTION 39 of the bill, (page 64, between lines 23 and 24), by adding the following new Subdivision (1) to the section and renumbering subsequent subdivisions accordingly:

(1) the types of training required by federal law;

Floor Amendment No. 2 on Third Reading

Amend **CSSB 643** (House committee printing) on third reading by adding the following SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Article 38.072, Code of Criminal Procedure, is amended to read as follows:

Art. 38.072. HEARSAY STATEMENT OF CERTAIN [~~CHILD~~] ABUSE VICTIMS [VICTIM]

Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child 12 years of age or younger or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

Sec. 2. (a) This article applies only to statements that describe the alleged offense that:

(1) were made by the child or person with a disability against whom the offense was allegedly committed; and

(2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense.

(b) A statement that meets the requirements of Subsection (a) [~~of this article~~] is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability testifies or is available to testify at the proceeding in court or in any other manner provided by law.

Sec. 3. In this article, "person with a disability" means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

SECTION ____ . Section 54.031, Family Code, is amended to read as follows:

Sec. 54.031. HEARSAY STATEMENT OF CERTAIN [~~CHILD~~] ABUSE VICTIMS [~~VICTIM~~]. (a) This section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a violation of any of the following provisions of the Penal Code, if a child 12 years of age or younger or a person with a disability is the alleged victim of the violation:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

(b) This section applies only to statements that describe the alleged violation that:

(1) were made by the child or person with a disability who is the alleged victim of the violation; and

(2) were made to the first person, 18 years of age or older, to whom the child or person with a disability made a statement about the violation.

(c) A statement that meets the requirements of Subsection (b) ~~[of this section]~~ is not inadmissible because of the hearsay rule if:

(1) on or before the 14th day before the date the hearing begins, the party intending to offer the statement:

(A) notifies each other party of its intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the juvenile court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability who is the alleged victim testifies or is available to testify at the hearing in court or in any other manner provided by law.

(d) In this section, "person with a disability" means a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

SECTION _____. The changes in law made by Article 38.072, Code of Criminal Procedure, as amended by this Act, and Section 54.031, Family Code, as amended by this Act, apply only to a criminal proceeding that commences on or after the effective date of this Act. A criminal proceeding that commences before the effective date of this Act is governed by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 643** on third reading, in added Section 551.0225, Health and Safety Code (SECTION 18, House committee report), by adding the following new Subsection (e) to that section:

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 643**.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 29, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 673 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 1138 (140 Yeas, 0 Nays, 1 Present, not voting)

HB 1633 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 1841 (146 Yeas, 0 Nays, 1 Present, not voting)

HB 2932 (141 Yeas, 1 Nays, 1 Present, not voting)

HB 3635 (141 Yeas, 0 Nays, 1 Present, not voting)

HB 3785 (143 Yeas, 0 Nays, 1 Present, not voting)

HB 4435 (123 Yeas, 21 Nays, 1 Present, not voting)

HB 4456 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 4461 (143 Yeas, 0 Nays, 1 Present, not voting)

HB 4755 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 4759 (141 Yeas, 0 Nays, 1 Present, not voting)

HB 4778 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 4799 (140 Yeas, 0 Nays, 1 Present, not voting)

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

HB 2682 (non-record vote)

House Conferees: Alvarado - Chair/Bohac/Guillen/McClendon/Merritt

HB 2908 (non-record vote)

House Conferees: Paxton - Chair/Giddings/Isett/King, Phil/Menendez

HB 3768 (non-record vote)

House Conferees: Paxton - Chair/Gonzalez Toureilles/Hughes/King, Phil/Kleinschmidt

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 58 (145 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1368 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 1368** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 1368** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a county ethics commission in certain counties; providing civil and criminal penalties.

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

SECTION 1. Subtitle B, Title 5, Local Government Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county that:

- (1) has a population of 650,000 or more;
- (2) is located on the international border; and
- (3) before September 1, 2009, had a county ethics board appointed by the

commissioners court.

Sec. 161.002. DEFINITIONS. In this chapter:

(1) "Commission" means a county ethics commission created under this chapter.

(2) "Commission staff" means county employees assigned to provide administrative support to the commission.

(3) "Communicates directly with" has the meaning assigned by Section 305.002, Government Code.

(4) "County affiliate" means a person described and determined by order of the commissioners court on recommendation of the commission. As determined by the commissioners court, the term includes:

(A) any person whose goods and services are purchased under the terms of a purchase order or contractual agreement with the county; and

(B) as determined by the county, any other persons doing business with the county.

(5) "County employee" means a person employed by the county or a county officer and includes a person employed in the judicial branch of the county government who is not subject to the Code of Judicial Conduct. The term does not include a county officer.

(6) "County office" means a position held by a county officer.

(7) "County officer" means a county judge, county commissioner, county attorney, sheriff, county tax assessor-collector, county clerk, district clerk, county treasurer, county auditor, county purchasing agent, and constable.

(8) "County public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for or assumed the duties of office:

(A) a county officer or county employee;

(B) a person appointed by the commissioners court or a county officer to a position on one of the following, whether the position is compensated or not:

(i) an authority, board, bureau, commission, committee, council, department, district, division, or office of the county; or

(ii) a multi-jurisdictional board;

(C) an attorney at law or notary public when participating in the performance of a governmental function;

(D) a candidate for nomination or election to an elected county office;
or

(E) a person who is performing a governmental function under a claim of right although the person is not legally qualified or authorized to do so.

(9) "Lobbyist" means a person who, for compensation in excess of an amount established by the commission, communicates directly with a county officer or county employee to influence official action. The term does not include an attorney who communicates directly with a county officer or county employee to the extent that such communication relates to the attorney's representation of a party in a civil or criminal proceeding.

Sec. 161.003. CONFLICT WITH CIVIL SERVICE AGREEMENT. (a) This chapter may not be construed to affect:

(1) the terms of an agreement authorized by Chapter 174 between the county and county employees; or

(2) any provision of a civil service statute applicable to a county employee.

(b) If an agreement authorized by Chapter 174 or a civil service statute applicable to a county employee conflicts with this chapter or an ethics code adopted or enforced under this chapter, the agreement or civil service statute prevails.

[Sections 161.004-161.050 reserved for expansion]

SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION MEMBERS

Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) The commissioners court of a county, by an order adopted by a majority of the court's full membership, may create a county ethics commission.

(b) A copy of an order adopted under this section shall be placed in the minutes of the court's proceedings. The copy of the order is public information.

Sec. 161.052. CREATION OF COMMISSION BY ELECTION. (a) A county ethics commission may be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) The commissioners court by order may call an election on the question of the creation of a county ethics commission.

(c) The commissioners court shall hold the election called under this section on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for publication of the notice required by Subsection (d) and for compliance with any other requirements established by law.

(d) In addition to the notice required by Chapter 4, Election Code, the commissioners court must publish in a newspaper of general circulation in the county, and on the home page of the county's Internet website, a substantial copy of the order calling the election. The first newspaper publication must be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks, and the notice on the county's Internet website shall remain on the home page each day beginning not later than the 16th day before the election and ending on the date of the election.

Sec. 161.053. BALLOT. The commissioners court shall order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county ethics commission."

Sec. 161.054. RESULT OF ELECTION. If the proposition is approved, the commissioners court shall declare the result and by order create the county ethics commission. A copy of the order creating the commission shall be placed in the minutes of the court's proceedings.

Sec. 161.055. APPOINTMENT OF COMMISSION. (a) The commission is composed of:

(1) five members, each of whom is appointed by the county judge or a county commissioner; and

(2) five members appointed by the commissioners court, with one member appointed from a list of nominees submitted by each of the following entities:

(A) the county civil service commission;

(B) a bar association in the county;

(C) the sheriff's civil service commission;

(D) a dispute resolution center in the county that is affiliated with a council of governments; and

(E) a human resources management association in the county.

(a-1) The commissioners court shall designate the entities described by Subsections (a)(2)(B), (D), and (E) that may submit nominees for membership on the commission. If a designated entity does not wish to submit nominees, the commissioners court shall select a similar entity that has experience with grievance or mediation structures or processes.

(b) Not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or Section 161.054:

(1) the county judge and each county commissioner shall each appoint one member of the commission; and

(2) each entity described by Subsection (a)(2) or alternate entity designated under Subsection (a-1) shall deliver to the commissioners court the entity's nominees for membership on the commission.

(c) The commissioners court shall set the date for the first meeting of the initial members. The first meeting must be set not earlier than the 60th day after the date of the order creating the commission and not later than the 90th day after the date of that order.

Sec. 161.056. ELIGIBILITY. (a) To be eligible for appointment to the commission, a person must:

(1) be at least 18 years old;

(2) be a property tax payer in the county; and
(3) have resided in the county for the two years immediately preceding the date on which the person's term will begin.

(b) A person is not eligible for appointment to the commission if the person is:

(1) an elected officer;

(2) a county employee;

(3) a county affiliate;

(4) a person employed as a lobbyist;

(5) a person convicted of a misdemeanor involving moral turpitude or a felony; or

(6) a person who is delinquent in payment of local, state, or federal taxes.

Sec. 161.057. TERMS. (a) Members of the commission serve terms of two years beginning on February 1 of each odd-numbered year.

(b) A member may serve more than one term.

Sec. 161.058. VACANCIES. (a) A vacancy on the commission shall be filled for the remainder of the unexpired term as follows:

(1) if the vacancy involves a member appointed by the county judge or a county commissioner, the vacancy is filled, except as provided by Subsection (b), by appointment of that officer or the officer's successor in office; or

(2) if the vacancy involves a member appointed under Section 161.055(a)(2), the vacancy is filled as provided by that section for an appointment to a full term.

(b) If the county judge or county commissioner, as applicable, does not fill the vacancy before the 60th day after the date the position becomes vacant, the commission may fill the vacancy by a majority vote of the remaining members.

Sec. 161.059. MEETINGS. (a) The commission shall meet on a regular basis.

(b) The commission is a governmental body for purposes of Chapter 551, Government Code.

(c) Except as otherwise provided by this chapter, a majority of the commission constitutes a quorum.

Sec. 161.059I. CHAIR. (a) The position of chair alternates every six months between members appointed under Section 161.055(a)(1) and members appointed under Section 161.055(a)(2) and rotates so that each position on the commission serves as chair, as follows:

(1) the rotation of members appointed under Section 161.055(a)(1) begins with the member appointed by the county judge, followed by the members appointed by the county commissioners in order of precinct number; and

(2) the rotation of members appointed under Section 161.055(a)(2) begins with the member appointed under Section 161.055(a)(2)(A), followed by the members appointed under Sections 161.055(a)(2)(B), (C), (D), and (E) in that order.

(b) The member serving as chair may not vote on a matter before the commission except to break a tie vote.

Sec. 161.060. REMOVAL OF COMMISSION MEMBER. A member of the commission is a county officer described by Section 87.012(15) and may be removed as provided by Chapter 87 if, after a trial, the jury finds good cause for removal, including:

- (1) failure to pay local, state, or federal taxes when due;
- (2) violation of the ethics code adopted by the commission;
- (3) conviction of a felony or misdemeanor;
- (4) excessive absenteeism as determined by the commission; and
- (5) official misconduct.

Sec. 161.061. LEGAL REPRESENTATION. The county attorney, or district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the commission in all legal matters.

[Sections 161.062-161.100 reserved for expansion]

SUBCHAPTER C. POWERS

Sec. 161.101. GENERAL POWERS. (a) The commission shall adopt, publish, and enforce an ethics code governing county public servants.

(b) The commission may adopt or use as a guide any ethics law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county. For purposes of Section 161.002(9), in determining the applicable amount of compensation of a person who communicates directly with a county officer or employee to influence official action and engages in such communication as part of the person's regular employment, the commission shall adopt rules that are substantially similar to the rules or interpretations of the Texas Ethics Commission under Chapter 305, Government Code, to calculate the compensation.

(c) The commission may adopt bylaws, rules, forms, policies, or procedures to assist in the administration of the commission's duties under this chapter. The commission may be guided by Robert's Rules of Order to the extent that it does not conflict with the constitution and laws of the United States and this state or conflict with other guidelines adopted by the commission.

(d) The commission shall be assigned staff by the county and provided access to county resources to assist in its duties.

(e) The commission shall develop and implement policies that provide the public with information on the commission and the ethics code.

(f) The commission shall enforce the provisions of the ethics code by issuing appropriate orders or recommendations or by imposing appropriate penalties.

Sec. 161.102. ADVISORY OPINIONS. On the request of any person covered by the ethics code adopted by the commission, the commission may issue a written ethics advisory opinion regarding the application of the ethics code to a specified existing or hypothetical factual situation. The commission may not issue an opinion that includes the name of any person who may be affected by the opinion. The name of the person requesting the opinion shall be deemed confidential.

Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) The commission shall develop plain-language materials as described by this section. The commission shall post the information on the county's Internet website and make the information otherwise available to the public.

(b) The materials must include:

(1) a description of:

(A) the commission's responsibilities;

(B) the types of conduct that constitute a violation of the ethics code adopted by the commission;

(C) the types of sanctions the commission may impose;

(D) the commission's policies and procedures relating to complaint investigation and resolution; and

(E) the duties of a person filing a complaint with the commission; and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(c) The commission shall provide the materials described by this section to each complainant and respondent.

(d) The commission shall adopt a policy to effectively distribute materials as required by this section.

Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING. (a) Not later than the 60th day after the date a person is appointed to the commission, the person must complete training on the following matters:

(1) the legislation that created the commission;

(2) the role and functions of the commission; and

(3) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code; and

(C) other laws relating to public officials, including conflict-of-interest

laws.

(b) A member of the commission must complete subsequent training programs on the following matters:

(1) the ethics code adopted by the commission; and

(2) the procedural rules adopted by the commission.

(c) Other than the initial appointees and public representatives, a person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE. (a) The commission and commission staff shall provide periodic training for persons covered by the ethics code adopted by the commission on at least a quarterly basis.

(b) The training program must provide information regarding:

(1) the ethics code;

(2) the role and functions of the commission; and

(3) plain-language materials as further described by Section 161.103.

(c) In addition to the qualifications under Subchapter C, Chapter 262, before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, an officer, principal, or other person with the authority to bind the vendor shall complete training on the ethics code.

(d) A lobbyist intending to meet with a person covered by the ethics code shall complete training on the ethics code.

Sec. 161.106. CERTAIN DISCUSSIONS OF PENDING COMPLAINTS PROHIBITED. Until a sworn complaint alleging a violation of the ethics code is resolved:

(1) a member of the commission appointed under Section 161.055(a)(1) may not discuss the complaint with the member of the commissioners court who appointed the commission member; and

(2) a member of the commission appointed under Section 161.055(a)(2) may not discuss the complaint with any member of the commissioners court.

[Sections 161.107-161.150 reserved for expansion]

SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

Sec. 161.151. DEFINITIONS. In this subchapter:

(1) "Category One violation" means a violation of the ethics code adopted by the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:

(A) the failure by a person required to file a statement or report required under the ethics code to:

(i) file the statement or report in a manner that complies with applicable requirements; or

(ii) file the statement or report in a timely manner;

(B) a misrepresentation in a report required under the ethics code; or

(C) a failure to respond in a timely manner to a written notice under Section 161.156(b).

(2) "Category Two violation" means a violation of the ethics code adopted by the commission that is not a Category One violation.

Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. The commission shall adopt the complaint procedures and hearings set forth in this subchapter. The commission may adopt additional procedures not in conflict with this subchapter.

Sec. 161.153. HEARINGS AND SETTLEMENT. (a) The commission may:

(1) hold a hearing on a sworn complaint and render a decision on a complaint or report of a violation as provided by this chapter; and

(2) agree to the settlement of issues.

(b) The commission may not:

(1) consider a complaint or vote to investigate a matter outside the commission's jurisdiction; or

(2) investigate any matter except in response to a sworn complaint.

Sec. 161.154. CATEGORIZATION OF VIOLATIONS. An allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the commission at any time determines that:

(1) the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or

(2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 161.159(a).

Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) An individual may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. The commission shall make the complaint form available on the county website.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) the name of the complainant;

(2) the street or mailing address of the complainant;

(3) the name of each respondent;

(4) the position or title of each respondent;

(5) the nature of the alleged violation, including if possible the specific rule or provision of the ethics code alleged to have been violated;

(6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

(c) The complaint must be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of the ethics code.

Sec. 161.1551. STANDING PRELIMINARY REVIEW COMMITTEE. (a) The standing preliminary review committee shall perform the actions prescribed by this subchapter in conducting a preliminary review of each sworn complaint filed with the commission.

(b) The standing preliminary review committee consists of:

(1) two members of the commission, determined as provided by Subsection

(c); and

(2) a review officer selected and retained by the commission.

(c) The initial standing preliminary review committee consists of one commission member, chosen by lot, from the members of the commission appointed under Section 161.055(a)(1), and one commission member, chosen by lot, from the members appointed under Section 161.055(a)(2).

(d) A commission member serves on the standing preliminary review committee for six months. After the end of a commission member term on the standing preliminary review committee, service on the committee rotates as provided by

Section 161.0591 for the rotation of the chair, except that the rotation begins with the initial members of the standing preliminary review committee chosen under Subsection (c).

(e) The review officer must be a practicing attorney or former judge.

Sec. 161.156. PROCESSING OF COMPLAINT. (a) The standing preliminary review committee shall determine whether a sworn complaint filed with the commission complies with the form requirements of Section 161.155.

(b) Not later than the 10th business day after the date a complaint is filed, the standing preliminary review committee shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of Section 161.155 and include the information required by Section 161.158(c).

(c) If the standing preliminary review committee determines that the complaint does not comply with the form requirements, the committee shall send the complaint to the complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint not later than the 21st day after the date the notice under Subsection (b) is mailed. If the standing preliminary review committee determines that the complaint is not resubmitted within the 21-day period, the committee shall:

(1) dismiss the complaint; and

(2) not later than the 10th business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the standing preliminary review committee determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, the committee shall send the notice required under Subsection (c), and the complainant may resubmit the complaint under that subsection.

(e) If the standing preliminary review committee determines that a complaint returned to the complainant under Subsection (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, the committee shall send the written notice under Subsection (b).

(f) If a complaint filed with the commission is within the jurisdiction of the commission but may also be brought under the provisions of a collective bargaining agreement authorized by Chapter 174, a civil service rule under Section 158.0025, or a rule of the sheriff's department, the commission shall defer jurisdiction over the complaint to the sheriff for disposition. The sheriff may return a complaint deferred under this subsection to the commission for additional proceedings as the commission determines appropriate if the sheriff determines that the conduct alleged in the complaint is not within the scope of the collective bargaining agreement, civil service rule, or sheriff's department rule. The sheriff may not return a complaint deferred under this section if:

(1) the sheriff disciplines the employee under the collective bargaining agreement, civil service rule, or sheriff's department rule for the conduct alleged in the sworn complaint; or

(2) the sheriff determines that the employee did not commit the conduct alleged in the sworn complaint.

Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) The county may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.

(b) The county may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.

(c) A commission created by a county under this chapter is a part of the "local governmental entity" for purposes of Section 554.002, Government Code.

(d) An ethics code adopted by a commission pursuant to this chapter is a "law" as defined by Section 554.001, Government Code.

Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) The standing preliminary review committee shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 161.155.

(b) The standing preliminary review committee shall determine in writing whether the commission has jurisdiction over the violation of the ethics code provision alleged in a sworn complaint processed under Section 161.156.

(c) If the standing preliminary review committee determines that the commission has jurisdiction, the committee shall issue a notice under Section 161.156(b) that must include:

(1) a statement that the commission has jurisdiction over the violation alleged in the complaint;

(2) a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 161.154;

(3) the date by which the respondent is required to respond to the notice;

(4) a copy of the complaint and the rules of procedure of the commission;

(5) a statement of the rights of the respondent;

(6) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(7) a statement that a failure to timely respond to the notice will be treated as a separate violation.

(d) If the standing preliminary review committee determines that the commission does not have jurisdiction over the violation alleged in the complaint, the committee shall:

(1) dismiss the complaint; and

(2) not later than the 10th business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT. (a) If the alleged violation is a Category One violation:

(1) the respondent must respond to the notice required by Section 161.156(b) not later than the 10th business day after the date the respondent receives the notice; and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 161.156(b), the standing preliminary review committee shall set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted.

(b) If the alleged violation is a Category Two violation:

(1) the respondent must respond to the notice required by Section 161.156(b) not later than the 25th business day after the date the respondent receives the notice under Section 161.156(b); and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 161.156(b), the standing preliminary review committee shall set the matter for a preliminary review hearing to be held at the next committee meeting for which notice has not yet been posted.

(c) A respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a Category One violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) If the standing preliminary review committee sets the matter for a preliminary review hearing, the committee shall promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. The commission shall adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The procedures must include:

(1) a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and

(2) the tolling or extension of otherwise applicable deadlines where:

(A) the commission issues a subpoena and the standing preliminary review committee's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines;
or

(B) the commission determines that, despite the standing preliminary review committee's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the committee's investigation or the rights of the respondent.

Sec. 161.162. PRELIMINARY REVIEW HEARING: PROCEDURE. (a) The standing preliminary review committee shall conduct a preliminary review hearing if:

(1) following the preliminary review, the standing preliminary review committee and the respondent cannot agree to the disposition of the complaint; or

(2) the respondent in writing requests a hearing.

(b) The standing preliminary review committee shall provide written notice to the complainant and the respondent of the date, time, and place the committee will conduct the preliminary review hearing.

(c) At or after the time the standing preliminary review committee provides notice of a preliminary review hearing, the committee may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. After receiving answers to any questions submitted to the complainant under this subsection and before the preliminary review hearing, the committee shall provide the respondent both the questions and the answers to the questions submitted by the complainant. This subsection may not be construed to require a person to give evidence that violates the person's right against self-incrimination under the United States Constitution or the Texas Constitution.

(d) On the request of the respondent, the standing preliminary review committee shall request that any information in the possession or control of the complainant, including exculpatory information, that is directly related to the complaint be provided the respondent and the committee.

(e) During a preliminary review hearing, the standing preliminary review committee:

(1) may consider all submitted evidence related to the complaint;

(2) may review any documents or material related to the complaint; and

(3) shall determine whether there is credible evidence that provides cause for the committee to conclude that a violation within the jurisdiction of the commission has occurred.

(f) During a preliminary review hearing, the respondent may appear before the standing preliminary review committee with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION. (a) As soon as practicable after the completion of a preliminary review hearing, the standing preliminary review committee by vote shall issue a decision stating:

(1) whether there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis; or

(2) that there is insufficient evidence for the committee to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation has occurred, the committee shall resolve and settle the complaint to the extent possible. If the

committee successfully resolves and settles the complaint, not later than the 10th business day after the date of the final resolution of the complaint, the committee shall send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the resolution and the terms of the resolution. If the committee is unsuccessful in resolving and settling the complaint, the committee shall:

(1) order a formal hearing to be held in accordance with Sections 161.164 through 161.167; and

(2) not later than the 10th business day after the date of the order, send to the complainant and the respondent:

(A) a copy of the order;

(B) written notice of the date, time, and place of the formal hearing;

(C) a statement of the nature of the alleged violation;

(D) a description of the evidence of the alleged violation;

(E) a copy of the complaint;

(F) a copy of the commission's rules of procedure; and

(G) a statement of the rights of the respondent.

(c) If the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has not occurred, the committee shall:

(1) dismiss the complaint; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the standing preliminary review committee determines that there is insufficient credible evidence for the committee to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or order a formal hearing under Sections 161.164 through 161.167. Not later than the fifth business day after the date of the committee's determination under this subsection, the committee shall send to the complainant and the respondent a copy of the decision stating the committee's determination and written notice of the grounds for the determination.

Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE. During a formal hearing, the commission shall determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES. (a) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Except as provided by Section 161.166(a)(1), the commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing, subject to the rules of evidence applicable to a contested case under Section 2001.081, Government Code.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, commission staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

(1) request to appear personally before the commission to testify in the person's own behalf; or

(2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing must be sworn.

Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, the commission shall provide to the respondent:

(1) a list of proposed witnesses to be called at the hearing;

(2) copies of all documents expected to be introduced as exhibits at the hearing; and

(3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001, Government Code.

Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) Not later than the 30th business day after the date of the formal hearing, the commission shall convene a meeting and by motion shall issue:

(1) a final decision stating the resolution of the formal hearing; and

(2) a written report stating the commission's findings of fact, conclusions of law, and recommendation of imposition of a civil penalty, if any.

(b) Six members of the commission are required for a quorum at a formal hearing.

(c) Not later than the 10th business day after the date the commission issues the final decision and written report, the commission shall:

(1) send a copy of the decision and report to the complainant and to the respondent; and

(2) make a copy of the decision and report available to the public during reasonable business hours.

Sec. 161.168. STATUS OF COMPLAINT. (a) The commission shall keep an information file about each sworn or other complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

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

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

and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) In addition to the notice required by Sections 161.156 and 161.167, the commission, at least quarterly until final disposition of a complaint, shall notify the person who filed the complaint and each person who is a subject of the complaint of the status of the sworn complaint.

(d) The commission shall resolve a complaint within six months of its receipt unless it makes a determination that additional time is required to resolve the matter. On a determination that additional time is required, the commission may extend the investigation in three-month increments. Each extension requires separate approval by the commission.

(e) If the commission does not resolve the matter within six months or within an authorized extension, the complaint shall be deemed to have been dismissed without prejudice.

Sec. 161.169. EXTENSION OF DEADLINE. The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, preliminary review hearing, or formal hearing.

Sec. 161.170. SUBPOENA. (a) In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(b) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least five members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

(1) is likely to be determinative as to whether the subject of an investigation has violated a provision of the ethics code;

(2) can be determined from the documents or is known by the witnesses;

and

(3) is not reasonably available through a less intrusive means.

(c) The commission shall adopt procedures for the issuance of subpoenas under this section.

(d) Section 2001.089, Government Code, applies to a subpoena issued under this subchapter. On the request of the respondent, the commission shall subpoena any information in the possession or control of any person identified in the request, including exculpatory information, that is directly related to the complaint and provide the information to the respondent.

(e) A copy of a subpoena issued under this section must be delivered to the respondent.

(f) At the written request of at least five members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(g) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission shall report that fact to a district court in the county. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(h) A respondent has the right to quash a subpoena in a district court in the county as provided by law.

(i) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

Sec. 161.171. STATUS OF COMPLAINANT. The complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Except as provided by Section 161.173(b), Chapter 552, Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint.

(b) Chapter 551, Government Code, does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint, but does apply to a formal hearing held under Sections 161.164 through 161.167.

(c) Subchapters C through H, Chapter 2001, Government Code, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Except as provided by Subsection (b), (c), or (m), proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(c) Commission staff may, for the purpose of investigating a sworn complaint, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

(1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;

(2) the employee's determination under Subdivision (1) is objectively reasonable;

(3) the commission specifically authorizes the disclosure; and

(4) the employee discloses only the information necessary to conduct the investigation.

(d) A person commits an offense if the person intentionally:

(1) destroys, mutilates, or alters information obtained under this chapter; or

(2) removes information obtained under this chapter without permission as provided by this chapter.

(e) An offense under Subsection (d) is a misdemeanor punishable by:

(1) a fine of not less than \$25 or more than \$4,000;

(2) confinement in the county jail for not less than three days or more than three months; or

(3) both the fine and confinement.

(f) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(g) A person who obtains access to confidential information under this chapter commits an offense if that person knowingly:

(1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including solicitation of political contributions or solicitation of clients;

(2) permits inspection of the confidential information by a person who is not authorized to inspect the information; or

(3) discloses the confidential information to a person who is not authorized to receive the information.

(h) An offense under Subsection (f) or (g) is a misdemeanor punishable by:

(1) a fine of not more than \$1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(i) If conduct that constitutes an offense under this section also constitutes an offense under the Penal Code, including under Section 37.10 or 39.06 of that code, the person may be prosecuted under this section or the Penal Code, as applicable.

(j) A violation under this section constitutes official misconduct.

(k) In addition to other penalties, the respondent may commence a civil action for damages on the respondent's own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Any action under this chapter must be brought in a district court in the county. The court may award costs and attorney's fees.

(l) A county employee is subject to discipline, including termination of employment, for disclosing confidential information under this chapter.

(m) The commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under this section.

(n) A county employee who discloses confidential information in compliance with Subsection (c) or (m) is not subject to Subsections (d)-(l).

Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON INTERNET.

(a) As soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet:

- (1) a copy of the commission's order stating the determination; or
- (2) a summary of the commission's order.

(b) This section does not apply to a determination of a violation that is technical or de minimis.

[Sections 161.175-161.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 161.201. ORDER. The commission may:

- (1) issue and enforce a cease and desist order to stop a violation;
- (2) issue an affirmative order to require compliance with the laws administered and enforced by the commission; and
- (3) issue an order of public censure with or without a civil penalty imposed under Section 161.202.

Sec. 161.202. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) The commission may impose a civil penalty of not more than \$500 for each delay in complying with a commission order.

(b) The commission may impose a civil penalty of not more than \$4,000 for a violation of the ethics code adopted by the commission.

(c) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

(d) This section is cumulative of any other available sanctions under this chapter.

Sec. 161.203. WAIVER OR REDUCTION OF PENALTY. (a) A person may request the waiver or reduction of a civil penalty by submitting an affidavit to the commission that states the filer's reasons for requesting a waiver or reduction.

(b) The commission may waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. The commission shall consider the following before acting to waive or reduce a civil penalty:

- (1) the facts and circumstances supporting the person's request for a waiver or reduction;
- (2) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty;
- (3) any history of previous violations by the person;
- (4) the demonstrated good faith of the person, including actions taken to rectify the consequences of the violation;
- (5) the penalty necessary to deter future violations; and
- (6) any other matter that justice may require.

(c) After hearing the waiver request, the commission may affirm, reduce, or waive the civil penalty.

Sec. 161.204. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY. The commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, or the State Bar of Texas, of a violation of the ethics code adopted by the commission.

Sec. 161.205. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT. (a) The commission may impose a civil penalty of not more than \$4,000 for the filing of a frivolous or bad-faith complaint. In this subsection, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.

(b) In addition to other penalties, the respondent may commence a civil action on the respondent's own behalf against any person who filed a frivolous complaint against the respondent. Any action under this chapter shall be brought in a district court in the county. The court may award costs and attorney's fees.

(c) A person may file a sworn complaint with the commission, in accordance with Section 161.155, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. A complaint may be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. The commission shall act on a complaint made under this subsection as provided by Subchapter D.

Sec. 161.206. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION. The commission shall consider the following factors in assessing a sanction:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(2) the history and extent of previous violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;

(4) the penalty necessary to deter future violations; and

(5) any other matters that justice may require.

Sec. 161.207. APPEALS. (a) A respondent may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

(c) If the district court renders judgment for the petitioner, and the petitioner is a county employee, the court may order reinstatement of the county employee, payment of back pay, or other appropriate relief.

(d) If the district court renders judgment for the petitioner, the court may order appropriate relief, including costs and attorney's fees.

Sec. 161.208. DELIVERY OF RECORD TO REVIEWING COURT. (a) After service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, the commission shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review.

(b) The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation.

(c) The court may require or permit later corrections or additions to the record.

Sec. 161.209. COST OF PREPARING COMMISSION RECORD. (a) The commission may require a party who appeals a final decision under Section 161.207 to pay one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Sec. 161.210. COLLECTIONS. The county attorney may collect a fine or other penalty imposed by the commission under this chapter in the same manner as provided for the collection of a debt owed to the county.

[Sections 161.211-161.300 reserved for expansion]

SUBCHAPTER F. DISSOLUTION OF COMMISSION

Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. If, after an ethics commission created pursuant to Section 161.052 has been in effect for at least one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the commission, the commissioners court shall call an election to determine whether the commission will be dissolved.

Sec. 161.302. DISSOLUTION ELECTION. (a) An election under this subchapter must be held in the manner provided for an election to create a county ethics commission.

(b) The ballot for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the county ethics commission."

Sec. 161.303. DISSOLUTION OF COMMISSION. If the proposition is approved by a majority of the qualified voters voting at the election, the commissioners court shall declare the result and by order dissolve the ethics commission. A copy of the order dissolving the commission shall be placed in the minutes of the court's proceedings.

Sec. 161.304. SAVING PROVISIONS. The dissolution of a county ethics commission under this subchapter does not affect:

(1) the prior operation of the ethics code adopted by the commission or any prior action taken under it; or

(2) any penalty, forfeiture, or punishment incurred for a violation of the ethics code before the effective date of the dissolution.

SECTION 2. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 1368** (House committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 161.104(c), Local Government Code (page 12, lines 8 and 9), strike "Other than the initial appointees and public representatives, a" and substitute "A".

(2) In SECTION 1 of the bill, strike added Section 161.106, Local Government Code (page 13, lines 4-12), and substitute the following:

Sec. 161.106. CERTAIN DISCUSSIONS OF PENDING COMPLAINTS PROHIBITED. Until a sworn complaint alleging a violation of the ethics code is resolved, a member of the commission may not discuss the complaint with a member of the commissioners court.

The amendments were read.

Senator Shapleigh moved to concur in the House amendments to **SB 1368**.

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

SENATE BILL 1945 WITH HOUSE AMENDMENT

Senator West called **SB 1945** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 1945** as follows:

On page 1, line 12 strike second business and replace with fifth calendar.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1945**.

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

SENATE BILL 1402 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 1402** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1402** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to requiring certain political subdivisions to enter a contract with the county elections administrator to perform election services.

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

SECTION 1. Subchapter D, Chapter 31, Election Code, is amended by adding Section 31.0925 to read as follows:

Sec. 31.0925. REQUEST FOR SERVICES REQUIRED. (a) This section applies only to a political subdivision:

(1) that is located entirely in a county:

(A) with a population of more than 500,000 that is served by a county elections administrator; and

(B) that does not contain a municipality with a population of more than 150,000; and

(2) that is not an irrigation district created under the authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution.

(b) The governing body of a political subdivision shall request an election services contract with the county elections administrator to perform all duties and functions of the political subdivision in relation to an election that may be transferred under this subchapter if the political subdivision receives a petition requesting the contract signed by a number of registered voters residing in the political subdivision that is equal to or exceeds one percent of all votes cast in the most recent general election held by the political subdivision.

(c) A petition under this section must be submitted to the clerk of the political subdivision before January 1 of the year in which the election to be administered under the requested election services contract will be held.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 1402**.

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

SENATE BILL 911 WITH HOUSE AMENDMENT

Senator Williams called **SB 911** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 911** (House committee printing) in SECTION 1 of the bill as follows:

(1) At the end of proposed Section 167.002(6), Occupations Code (page 2, line 1), strike "or".

(2) At the end of proposed Section 167.002(7), Occupations Code (page 2, line 5), strike "patients." and substitute "patients; or".

(3) Immediately following proposed Section 167.002(7), Occupations Code (page 2, between lines 5 and 6), insert the following:

(8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and uses other forms of treatment with the issuance of a prescription for a majority of the patients.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 911**.

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

SENATE BILL 2570 WITH HOUSE AMENDMENT

Senator Lucio called **SB 2570** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2570** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the board of directors of the Kenedy County Groundwater Conservation District.

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

SECTION 1. Chapter 1152, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 9A to read as follows:

Sec. 9A. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) As soon as practicable after the effective date of the Act by which this section is enacted into law, the board shall:

(1) divide the district into five single-member districts for electing directors;
and

(2) assign each of the existing board positions to one of the new single-member districts.

(b) In dividing the district into single-member districts under Subsection (a) of this section, the board shall:

(1) take into account the existing at-large board position elected by the voters of the Santa Gertrudis Independent School District; and

(2) draw the single-member districts in a manner that retains the existing district lines as closely as possible.

(c) If the district annexes territory, the annexed territory becomes part of one or more of the single-member districts as determined by the board.

(d) One director shall be elected from each single-member district.

(e) To be a candidate for or to serve as a director, a person must be a registered voter in the single-member district the person represents or seeks to represent.

(f) A person shall indicate on the application for a place on the ballot the single-member district the person seeks to represent.

(g) After each federal decennial census or as needed, the board may redraw the single-member districts to reflect population changes. A director in office on the effective date of a change in the boundaries of a single-member district, or a director elected or appointed before the effective date of the change whose term of office begins on or after the effective date of the change, shall serve for the remainder of the director's term in the single-member district to which elected or appointed even though the change in boundaries places the director's residence outside the district to which the director was elected or appointed.

SECTION 2. Chapter 1162, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 8A to read as follows:

Sec. 8A. METHOD OF ELECTING DIRECTORS: SINGLE-MEMBER DISTRICTS. (a) As soon as practicable after the effective date of the Act by which this section is enacted into law, the board shall:

(1) divide the district into five single-member districts for electing directors; and

(2) assign each of the existing board positions to one of the new single-member districts.

(b) In dividing the district into single-member districts under Subsection (a) of this section, the board shall:

(1) take into account the existing at-large board position elected by the voters of the Santa Gertrudis Independent School District; and

(2) draw the single-member districts in a manner that retains the existing district lines as closely as possible.

(c) If the district annexes territory, the annexed territory becomes part of one or more of the single-member districts as determined by the board.

(d) One director shall be elected from each single-member district.

(e) To be a candidate for or to serve as a director, a person must be a registered voter in the single-member district the person represents or seeks to represent.

(f) A person shall indicate on the application for a place on the ballot the single-member district the person seeks to represent.

(g) After each federal decennial census or as needed, the board may redraw the single-member districts to reflect population changes. A director in office on the effective date of a change in the boundaries of a single-member district, or a director elected or appointed before the effective date of the change whose term of office begins on or after the effective date of the change, shall serve for the remainder of the director's term in the single-member district to which elected or appointed even though the change in boundaries places the director's residence outside the district to which the director was elected or appointed.

SECTION 3. The following laws are repealed:

(1) Section 9, Chapter 1152, Acts of the 78th Legislature, Regular Session, 2003; and

(2) Section 8, Chapter 1162, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 4. (a) The change in law made by this Act applies only to a director elected or appointed to serve on the board of directors of the Kenedy County Groundwater Conservation District on or after the effective date of this Act.

(b) The change in law made by this Act does not affect the term of office of a director serving on the board of directors of the Kenedy County Groundwater Conservation District on the effective date of this Act.

SECTION 5. 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 was read.

Senator Lucio moved to concur in the House amendment to **SB 2570**.

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

SENATE BILL 1646 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1646** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1646** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Council on Children and Families.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. COUNCIL ON CHILDREN AND FAMILIES

Sec. 531.801. DEFINITION. In this subchapter, "council" means the Council on Children and Families.

Sec. 531.802. COUNCIL ON CHILDREN AND FAMILIES. (a) The Council on Children and Families is established to:

(1) coordinate the state's health, education, and human services systems to ensure that children and families have access to needed services;

(2) improve coordination and efficiency in state agencies, advisory councils on issues affecting children, and local levels of service;

(3) prioritize and mobilize resources for children; and

(4) facilitate an integrated approach to providing services for children and youth.

(b) The council shall:

(1) promote a common vision of desired outcomes for children and youth and of family and community supports;

(2) promote shared accountability for outcomes for children and youth; and

(3) align allocations of resources with policies for children and youth.

(c) Subject to Subsection (d), the council is composed of the following:

(1) the executive commissioner;

(2) the commissioner of state health services;

(3) the commissioner of the Department of Family and Protective Services;

(4) the commissioner of aging and disability services;

(5) the commissioner of assistive and rehabilitative services;

(6) the commissioner of education;

(7) the executive director of the Texas Juvenile Probation Commission;

(8) the executive commissioner of the Texas Youth Commission;

(9) the executive director of the Texas Workforce Commission;

(10) the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(11) two public representatives who are parents of children who have received services from an agency represented on the council, appointed by the executive commissioner; and

(12) two representatives who are young adults or adolescents who have received services from an agency represented on the council, appointed by the executive commissioner.

(d) An individual listed in Subsections (c)(1)-(10) may designate another individual as having authority to act on behalf of the individual at council meetings and with respect to council functions.

(e) The members of the council annually shall elect one member to serve as the presiding officer.

(f) Council meetings are held at the call of the presiding officer.

(g) The council is administratively attached to the commission but is independent of direction by the commission or the executive commissioner. The commission, through the commission's Office of Program Coordination for Children and Youth, shall provide administrative support and resources to the council as necessary to enable the council to perform its duties.

(h) The agencies represented on the council shall provide periodic staff support of specialists as needed to the council.

(i) The council is not subject to Chapter 2110.

Sec. 531.803. DUTIES. (a) The council shall:

(1) analyze the biennial legislative appropriations requests of members of the council for services provided to children and their families and identify appropriations that, through the coordination of members of the council, could be modified in the next legislative appropriation request to eliminate waste or increase available services and, not later than May 1 of each even-numbered year, prepare a report recommending those modifications for consideration during the development of the next biennial legislative appropriations request;

(2) investigate opportunities to increase flexible funding for health, education, and human services provided to children and their families;

(3) identify methods to remove barriers to local coordination of health, education, and human services provided to children and their families;

(4) identify methods to ensure that children and youth receive appropriate assessment, diagnoses, and intervention services;

(5) develop methods to prevent unnecessary parental relinquishment of custody of children;

(6) prioritize assisting children in family settings rather than institutional settings; and

(7) make recommendations about family involvement in the provision and planning of health, education, and human services for a child, including family partner and liaison models.

(b) The state agency members of the council may, as appropriate, enter into memoranda of understanding with other agencies to implement any method, process, policy, or recommendation identified or developed under Subsection (a). Before a method, process, policy, or recommendation is implemented, the council shall:

(1) identify:

(A) the timeline and proposed outcome of implementing the method, process, policy, or recommendation; and

(B) benchmarks that may be used to measure the success of the implementation of the method, process, policy, or recommendation; and

(2) assign to the appropriate members of the council responsibility for implementing the method, process, policy, or recommendation.

(c) The council may collect data necessary to conduct the council's duties or implement the council's recommendations and shall use any reports or information produced by other entities related to children, youth, and families to inform the council.

Sec. 531.804. REPORT BY COUNCIL REGARDING CHILD WELFARE. Not later than December 1 of each even-numbered year, the council shall submit a report to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature that contains:

(1) the requests, plans, and recommendations of the council, including recommendations of any legislation that is needed to further develop and maintain a statewide system of quality health, education, and human services for children and families; and

(2) information regarding the implementation by the members of the council of any method, process, policy, or recommendation, including information regarding whether the implementation has proceeded in accordance with the timeline, outcome, and benchmarks identified by the council.

Sec. 531.805. SUNSET PROVISION. The Council on Children and Families is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this subchapter expires September 1, 2019.

SECTION 2. The Council on Children and Families established by Section 531.802, Government Code, as added by this Act, shall convene its initial meeting not later than October 1, 2009.

SECTION 3. 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 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1646**.

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

Absent: Williams.

SENATE BILL 1592 WITH HOUSE AMENDMENT

Senator Fraser called **SB 1592** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Eltife in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1592** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the assignment of security interests in certain collateral.

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

SECTION 1. Section 261.004(a), Business & Commerce Code, is amended to read as follows:

(a) Subject to Subsection (b), the filing with the secretary of state of a utility security instrument executed by a utility and described by Section 261.003(1) and payment of the filing fee prescribed by Section 261.008:

(1) constitute perfection of a security interest created by the instrument in any personal property:

(A) in which a security interest may be perfected by filing under Chapter 9, including any goods that are or will become a fixture;

(B) that is located in this state; and

(C) that was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed; ~~and~~

(2) if the instrument is proven, acknowledged, or certified as otherwise required by law for the recording of real property mortgages, serve as notice to all persons of the existence of the instrument and the security interest granted by the instrument in any real property, or in any fixture on or to be placed on the property, that:

(A) is located in this state; and

(B) was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed; and

(3) result in priority of the secured party reflected on the utility security instrument and assignees under Section 261.012 over the rights of a lien creditor, as defined by Section 9.102, for so long as the lien is recorded on the utility security instrument.

SECTION 2. Chapter 261, Business & Commerce Code, is amended by adding Section 261.012 to read as follows:

Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A secured party may assign a security interest recorded under Section 261.004 without making any filing or giving any notice under this chapter. The security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the debtor utility, including lien creditors, as defined by Section 9.102.

(b) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under Section 261.004, apply to the secretary of state for the assignee to be reflected as secured party on the utility security instrument and notify the debtor utility of the assignment. Failure to make application under this section or notify a debtor utility of an assignment does not create a cause of action against the secured party reflected on the utility security instrument, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the debtor utility, including lien creditors, as defined by Section 9.102.

SECTION 3. Section 31.052, Parks and Wildlife Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Except as provided by this section and Section 31.050(c), ~~in Subsection (e) of Section 31.050 of this code~~ and except for statutory liens, security interests in a vessel or outboard motor shall be noted on the certificate of title of the vessel or outboard motor to which the security interest applies. On recordation of a security interest on the certificate of title, the recorded security interest owner and assignees under Subsection (c) obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business & Commerce Code, for so long as the security interest is recorded on the certificate of title.

(c) A security interest owner may assign a security interest recorded under this chapter without making any filing or giving any notice under this chapter. The security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

(d) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under this chapter, apply to the department or a county assessor-collector for the assignee to be named as security interest owner on the certificate of title and notify the debtor of the assignment. Failure to make application under this subsection or notify a debtor of an assignment does not create a cause of action against the recorded security interest owner, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

SECTION 4. Section 501.113(b), Transportation Code, is amended to read as follows:

(b) For purposes of Chapter 9, Business & Commerce Code, the time of recording a lien under this chapter is considered to be the time of filing the security interest, and on such recordation, the recorded lienholder and assignees under Section 501.114 obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business & Commerce Code, for so long as the lien is recorded on the certificate of title.

SECTION 5. Section 501.114, Transportation Code, is amended to read as follows:

Sec. 501.114. ASSIGNMENT OF LIEN. (a) A lienholder may assign a lien recorded under Section 501.113 without making any filing or giving any notice under this chapter. The lien assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

(b) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the lien assigned, as evidence of the assignment of a lien recorded under Section 501.113 [by]:

(1) apply [applying] to the county assessor-collector for the assignee to be named as lienholder on the certificate of title [assignment of the lien]; and

(2) notify [notifying] the debtor of the assignment.

(c) Failure [(b) A lienholder's failure] to make application under Subsection (b) or notify a debtor of an assignment does not create a cause of action against the recorded lienholder, the assignor, or the assignee or affect the continuation of the perfected status of the assigned lien in favor of the assignee against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

(d) [(e)] An application under Subsection (b) [(a)] must be:

(1) signed by the assignee [person to whom the lien is assigned]; and

(2) accompanied by:

(A) the applicable fee;

(B) a copy of the assignment agreement executed by the parties; and

(C) the certificate of title on which the lien to be assigned is recorded.

(e) [(d)] On receipt of the completed application and fee, the department:

(1) may amend the department's records to substitute the assignee [subsequent lienholder] for the recorded [previous] lienholder; and

(2) shall issue a new certificate of title as provided by Section 501.027.

(f) [(e)] The issuance of a certificate of title under Subsection (e) [(d)] is recordation of the assignment.

(g) Regardless of whether application is made for the assignee to be named as lienholder on the certificate of title, the [The] time of the recordation of a lien assigned under this section is considered to be the time the lien was initially recorded under Section 501.113.

(h) Notwithstanding Subsections (a) through (g), and procedures that may be conducted under those subsections, the assignment of a lien does not affect the procedures applicable to the foreclosure of a worker's lien under Chapter 70, Property Code, or the rights of the holder of a worker's lien. Notice given to the last known lienholder of record, as provided by that chapter, is adequate to allow foreclosure under that chapter.

(i) Notwithstanding Subsections (a) through (g), and the procedures that may be conducted under those subsections, the assignment of a lien does not affect the procedures applicable to the release of a holder's lien under Section 348.408, Finance Code.

SECTION 6. This Act is intended to clarify that under existing law, an assignment of a recorded security interest may be recorded on the title, but does not have to be recorded on the title to retain the validity, perfection, and priority of the security interest securing the obligation assigned to the assignee.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Fraser moved to concur in the House amendment to **SB 1592**.

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

SENATE BILL 1717 WITH HOUSE AMENDMENT

Senator West called **SB 1717** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1717** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION ____ . Subchapter L, Chapter 2306, Government Code, is amended by adding Section 2306.2631 to read as follows:

Sec. 2306.2631. REPORTS BY SPONSORS OF CERTAIN MULTIFAMILY HOUSING DEVELOPMENTS. (a) This section applies only to a housing sponsor of a multifamily housing development that:

(1) receives financial assistance from the state;

(2) receives financial assistance from the federal government, including an allocation of low incoming housing tax credits; or

(3) is subject to a land use restriction agreement.

(b) The department by rule shall require the housing sponsor of a multifamily housing development to submit a quarterly report to the department. The report must include information that identifies:

(1) the number of vacant units in the development at the time of the report;

and

(2) the number of days that each unit has been vacant.

(c) The department shall provide to each member of the legislature, on request of that member, a report that disaggregates the information collected under Subsection (b) by zip code in the member's district.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1717**.

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

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

Nays: Ogden, Patrick, Seliger.

SENATE BILL 1940 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1940** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 1940**, on third reading, by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subtitle E, Title 7, Health and Safety Code, is amended by adding Chapter 617 to read as follows:

Sec. 617.001. VETERANS COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "veterans court program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5) careful monitoring of treatment and services provided to program participants;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) development of partnerships with public agencies and community organizations, including the United States Department of Veterans Affairs.

(b) If a defendant successfully completes a veterans court program, as authorized under Section 76.011, Government Code, after notice to the attorney representing the state and a hearing in the veterans court at which that court determines that a dismissal is in the best interest of justice, the court in which the criminal case is pending shall dismiss the criminal action against the defendant.

Sec. 617.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

(a) The commissioners court of a county may establish a veterans court program for persons arrested for or charged with any misdemeanor or felony offense. A defendant is eligible to participate in a veterans court program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant:

(1) is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard; and

(2) suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that:

(A) resulted from the defendant's military service in a combat zone or other similar hazardous duty area; and

(B) materially affected the defendant's criminal conduct at issue in the case.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the veterans court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the court in which the criminal case is pending in any form the court determines to be appropriate, including military service and medical records, previous determinations of a disability by a veteran's organization or by the United States Department of Veterans Affairs, testimony or affidavits of other veterans or service members, and prior determinations of eligibility for benefits by any state or county veterans office. The court's findings must accompany any docketed case.

Sec. 617.003. DUTIES OF VETERANS COURT. (a) A veterans court program established under this chapter must:

(1) ensure a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow a participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant; and

(4) ensure that the jurisdiction of the veterans court continues for a period of not less than six months but does not continue beyond the period of community supervision for the offense charged.

(b) A veterans court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside.

(c) This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

Sec. 617.004. ESTABLISHMENT OF REGIONAL PROGRAM. The commissioners courts of two or more counties may elect to establish a regional veterans court program under this chapter for the participating counties.

Sec. 617.005. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of veterans court programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a veterans court program established under this chapter.

(c) A veterans court program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to that division on request.

Sec. 617.006. FEES. (a) A veterans court program established under this chapter may collect from a participant in the program:

(1) a reasonable program fee not to exceed \$1,000; and

(2) a testing, counseling, and treatment fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b) Fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the program. The fees must be:

(1) based on the participant's ability to pay; and

(2) used only for purposes specific to the program.

SECTION _____. Subsection (a), Article 55.01, Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, and:

(i) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02; or

(ii) the court finds that the indictment or information was dismissed or quashed because the person completed a pretrial intervention program authorized under Section 76.011, Government Code, or because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor; and

(C) the person has not been convicted of a felony in the five years preceding the date of the arrest.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1940**.

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

SENATE BILL 2456 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 2456** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 2456** (House committee printing) on third reading as follows:

(1) In SECTION 1 of the bill, on Page 3, line 11, between "(7)" and ";" strike "William P. Goranson" and insert "A person appointed by the Commissioners Courts of Brooks and Jim Hogg Counties within 60 days of the effective date of this Act".

(2) In SECTION 1 of the bill, on Page 4, line 12, between "(5)" and ";" strike "William P. Goranson" and insert "A person appointed by the Commissioners Courts of Brooks and Jim Hogg Counties".

(3) In SECTION 2 of the bill, on Page 15, line 14, between "area" and ":" insert "and which is not located within the Kenedy County Groundwater Conservation District as of the effective date of this Act".

Floor Amendment No. 2 on Third Reading

Amend **SB 2456** (House committee printing) on third reading in SECTION 1 of the bill, following added Section 8852.026, Special Districts Local Laws Code (page 8, line 5), by striking the reservation clause and substituting the following:

Sec. 8852.027. LIMITATION OF POWERS OF TEMPORARY BOARD. (a) The temporary board may exercise only the powers described by Sections 8852.022, 8852.023, and 8852.025.

(b) Except as required by a law or rule relating to participation in a groundwater management area in which the district is located, the temporary board may not:

(1) adopt rules, including rules regarding wells; or

(2) develop a draft or final management plan.

[Sections 8852.028-8852.050 reserved for expansion]

The amendments were read.

Senator Hinojosa moved to concur in the House amendments to **SB 2456**.

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

SENATE BILL 1034 WITH HOUSE AMENDMENT

Senator Fraser called **SB 1034** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1034** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to allowing the governing bodies of certain municipalities to order a local option election relating to the sale of alcoholic beverages.

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

SECTION 1. The heading to Section 501.021, Election Code, is amended to read as follows:

Sec. 501.021. ELECTION TO BE HELD BY PETITION.

SECTION 2. Subchapter B, Chapter 501, Election Code, is amended by adding Section 501.0211 to read as follows:

Sec. 501.0211. ELECTION CALLED BY GOVERNING BODY OF MUNICIPALITY. (a) This section applies only to a municipality:

(1) with a population of at least 112,000 located in a county with a population of not more than 135,000;

(2) in which the sale of one or more types or classifications of alcoholic beverage is legal in the municipality as a result of a local option election held in the municipality; and

(3) that, after the election is held, annexes territory in which the sale of one or more of those types or classifications of alcoholic beverage is not legal.

(b) After holding a public hearing, the governing body of a municipality described by Subsection (a) may, by resolution, order a local option election to be held in the municipality on the ballot issue the passage of which would legalize the sale of the same types and classifications of alcoholic beverages the sale of which was legalized by the results of the local option election described by Subsection (a).

(c) The resolution ordering the election must state in its heading and text that the local option election to be held is for the purpose of legalizing the sale of the alcoholic beverages and set out the ballot issue to be voted on in the election.

(d) An election ordered by the governing body of a municipality under this section shall be conducted by the municipality instead of the county. For the purposes of an election conducted under this section, a reference in this code:

(1) to the county is considered to refer to the municipality;

(2) to the commissioners court is considered to refer to the governing body of the municipality;

(3) to the county clerk or registrar of voters is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) to the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

(e) The municipality shall pay the expense of the election.

(f) This section expires September 1, 2015.

SECTION 3. This Act takes effect September 1, 2009.

The amendment was read.

Senator Fraser moved to concur in the House amendment to **SB 1034**.

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

SENATE BILL 768 WITH HOUSE AMENDMENT

Senator Hegar called **SB 768** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 768** (House committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 6), strike "Sections 1951.058, 1951.059, and 1951.060" and substitute "Sections 1951.058 and 1951.059".

(2) In SECTION 1 of the bill, strike added Section 1951.059, Occupations Code (page 1, line 23, through page 2, line 9).

(3) In SECTION 1 of the bill, in added Section 1951.060, Occupations Code (page 2, line 10), strike "Sec. 1951.060" and substitute "Sec. 1951.059".

(4) In SECTION 1 of the bill, in added Section 1951.060(a), Occupations Code (page 2, line 12), between "chapter" and "if", insert ", other than a requirement under Section 1951.212,".

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 768**.

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

SENATE BILL 1374 WITH HOUSE AMENDMENT

Senator West called **SB 1374** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1374** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

Relating to annual reports by the Texas Juvenile Probation Commission on the operations and conditions of probation services in this state.

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

SECTION 1. Subsection (a), Section 141.024, Human Resources Code, is amended to read as follows:

(a) The commission shall report annually to the governor and the legislature on the commission's operations and the condition of probation services in the state during the previous year. The report:

(1) may include recommendations; and

(2) must include:

(A) an evaluation of the effectiveness of the community-based programs operated under Section 54.0401, Family Code; and

(B) information comparing the cost of a child participating in a program described by Paragraph (A) with the cost of committing the child to the Texas Youth Commission.

SECTION 2. This Act takes effect September 1, 2009.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1374**.

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

SENATE BILL 1091 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1091** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1091** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of the capital writs committee and the office of capital writs and to the appointment and compensation of certain counsel for indigent defendants in a capital case.

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

SECTION 1. Subtitle F, Title 2, Government Code, is amended by adding Chapter 78 to read as follows:

CHAPTER 78. CAPITAL WRITS COMMITTEE AND OFFICE OF CAPITAL WRITS

SUBCHAPTER A. CAPITAL WRITS COMMITTEE

Sec. 78.001. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital writs committee established under this subchapter.

(2) "Office of capital writs" means the office of capital writs established under Subchapter B.

Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The capital writs committee is established.

(b) The committee shall recommend to the Court of Criminal Appeals as provided by Section 78.004 a director for the office of capital writs when a vacancy exists for the position of director.

Sec. 78.003. APPOINTMENT AND COMPOSITION OF COMMITTEE. (a) The committee is composed of the following five members who are appointed by the president of the State Bar of Texas, with ratification by the executive committee of the State Bar of Texas:

(1) three attorneys who are members of the State Bar of Texas and who are not employed as prosecutors or law enforcement officials, all of whom must have criminal defense experience with death penalty proceedings in this state; and

(2) two state district judges, one of whom serves as presiding judge of an administrative judicial region.

(b) The committee shall elect one member of the committee to serve as the presiding officer of the committee.

(c) The committee members serve at the pleasure of the president of the State Bar of Texas, and the committee meets at the call of the presiding officer of the committee.

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF OFFICE OF CAPITAL WRITS. (a) The committee shall submit to the Court of Criminal Appeals, in order of the committee's preference, a list of the names of not more than five persons the committee recommends that the court consider in appointing the director of the office of capital writs when a vacancy exists for the position of director. If the committee finds that three or more persons under the committee's consideration are qualified to serve as the director of the office of capital writs, the committee must include at least three names in the list submitted under this subsection.

(b) Each person recommended to the Court of Criminal Appeals by the committee under Subsection (a):

(1) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases, as described by the Guidelines and Standards for Texas Capital Counsel, as published by the State Bar of Texas; and

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case.

(c) When a vacancy for the position exists, the Court of Criminal Appeals shall appoint from the list of persons submitted to the court under Subsection (a) the director of the office of capital writs.

[Sections 78.005-78.050 reserved for expansion]

SUBCHAPTER B. OFFICE OF CAPITAL WRITS

Sec. 78.051. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital writs committee established under Subchapter A.

(2) "Office" means the office of capital writs established under this subchapter.

Sec. 78.052. ESTABLISHMENT; FUNDING. (a) The office of capital writs is established and operates under the direction and supervision of the director of the office.

(b) The office shall receive funds for personnel costs and expenses:

(1) as specified in the General Appropriations Act; and

(2) from the fair defense account under Section 71.058, in an amount sufficient to cover personnel costs and expenses not covered by appropriations described by Subdivision (1).

Sec. 78.053. DIRECTOR; STAFF. (a) The Court of Criminal Appeals shall appoint a director to direct and supervise the operation of the office. The director serves a four-year term and continues to serve until a successor has been appointed and qualified. The Court of Criminal Appeals may remove the director only for good cause. The director may be reappointed for a second or subsequent term.

(b) The director shall employ attorneys and employ or retain licensed investigators and other personnel necessary to perform the duties of the office. To be employed by the director, an attorney may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case.

(c) The director and any attorney employed by the office may not:

(1) engage in the private practice of criminal law; or

(2) accept anything of value not authorized by law for services rendered under this subchapter.

Sec. 78.054. POWERS AND DUTIES. (a) The office may not accept an appointment under Article 11.071, Code of Criminal Procedure, if:

(1) a conflict of interest exists;

(2) the office has insufficient resources to provide adequate representation for the defendant;

(3) the office is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or

(4) other good cause is shown for not accepting the appointment.

(b) The office may not represent a defendant in a federal habeas review. The office may not represent a defendant in an action or proceeding in state court other than an action or proceeding that:

(1) is conducted under Article 11.071, Code of Criminal Procedure;

(2) is collateral to the preparation of an application under Article 11.071, Code of Criminal Procedure; or

(3) concerns any other post-conviction matter in a death penalty case other than a direct appeal, including an action or proceeding under Article 46.05 or Chapter 64, Code of Criminal Procedure.

(c) Notwithstanding Article 26.04(p), Code of Criminal Procedure, the office may independently investigate the financial condition of any person the office is appointed to represent. The office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this section.

Sec. 78.055. COMPENSATION OF OTHER APPOINTED ATTORNEYS. If it is necessary that an attorney other than an attorney employed by the office be appointed, that attorney shall be compensated as provided by Articles 11.071 and 26.05, Code of Criminal Procedure.

Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges of the administrative judicial regions shall maintain a statewide list of competent counsel available for appointment under Section 2(f), Article 11.071, Code of Criminal Procedure, if the office does not accept or is prohibited from accepting an appointment under Section 78.054. Each attorney on the list:

(1) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases; and

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case.

(b) The Office of Court Administration of the Texas Judicial System and the Task Force on Indigent Defense shall provide administrative support necessary under this section.

SECTION 2. Sections 2(b), (c), (e), and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(b) If a defendant is sentenced to death the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus. If the defendant desires appointment of counsel for the purpose of a writ of habeas corpus, the court shall appoint the office of capital writs to represent the defendant as provided by Subsection (c).

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint the office of capital writs or, if the office of capital writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, other competent counsel under Subsection (f), unless the applicant elects to proceed pro se or is represented by retained counsel. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(e) If the court of criminal appeals denies an applicant relief under this article, an attorney appointed under this section to represent the applicant shall, not later than the 15th day after the date the court of criminal appeals denies relief or, if the case is filed and set for submission, the 15th day after the date the court of criminal appeals issues a mandate on the initial application for a writ of habeas corpus under this article, move for the appointment of [to be appointed as] counsel in federal habeas review under 18 U.S.C. Section 3599 [21 U.S.C. Section 848(q) or equivalent provision or, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision]. The attorney shall immediately file a copy of the motion with the court of criminal appeals, and if the attorney fails to do so, the court may take any action to ensure that the applicant's right to federal habeas review is protected, including initiating contempt proceedings against the attorney.

(f) If the office of capital writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the [The] convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code. The convicting court shall reasonably compensate as provided by Section 2A an

attorney appointed under this section, other than an attorney employed by the office of capital writs, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

SECTION 3. Section 2A(a), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(a) The state shall reimburse a county for compensation of counsel under Section 2, other than for compensation of counsel employed by the office of capital writs, and for payment of expenses under Section 3, regardless of whether counsel is employed by the office of capital writs. The total amount of reimbursement to which a county is entitled under this section for an application under this article may not exceed \$25,000. Compensation and expenses in excess of the \$25,000 reimbursement provided by the state are the obligation of the county.

SECTION 4. Section 3, Article 11.071, Code of Criminal Procedure, is amended by adding Subsection (f) to read as follows:

(f) This section applies to counsel's investigation of the factual and legal grounds for the filing of an application for a writ of habeas corpus, regardless of whether counsel is employed by the office of capital writs.

SECTION 5. Sections 4A(e) and (f), Article 11.071, Code of Criminal Procedure, are amended to read as follows:

(e) Sections 2A and 3 apply to compensation and reimbursement of counsel appointed under Subsection (b)(3) in the same manner as if counsel had been appointed by the convicting court, unless the attorney is employed by the office of capital writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

(f) Notwithstanding any other provision of this article, the court of criminal appeals shall appoint counsel and establish a new filing date for application, which may be no later than the 270th day after the date on which counsel is appointed, for each applicant who before September 1, 1999, filed an untimely application or failed to file an application before the date required by Section 4(a) or (b). Section 2A applies to the compensation and payment of expenses of counsel appointed by the court of criminal appeals under this subsection, unless the attorney is employed by the office of capital writs, in which case the compensation of that attorney is governed by Subchapter B, Chapter 78, Government Code.

SECTION 6. Article 26.04(b), Code of Criminal Procedure, is amended to read as follows:

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable [the] requirements under Articles 11.071 and [Article] 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

SECTION 7. Article 26.044(a), Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

(3) "Office of capital writs" means the office of capital writs established under Subchapter B, Chapter 78, Government Code.

SECTION 8. Article 26.044, Code of Criminal Procedure, is amended by adding Subsection (n) to read as follows:

(n) An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus only if:

(1) an attorney employed by the office of capital writs is not appointed in the case; and

(2) the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code.

SECTION 9. Article 26.05(a), Code of Criminal Procedure, is amended to read as follows:

(a) A counsel, other than an attorney with a public defender or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

SECTION 10. Section 71.058, Government Code, is amended to read as follows:

Sec. 71.058. FAIR DEFENSE ACCOUNT. The fair defense account is an account in the general revenue fund that may be appropriated only to:

(1) the Task Force on Indigent Defense for the purpose of implementing this subchapter; and

(2) the office of capital writs for the purpose of implementing Subchapter B, Chapter 78.

SECTION 11. Section 2(d), Article 11.071, Code of Criminal Procedure, is repealed, effective January 1, 2010.

SECTION 12. (a) Not later than January 1, 2010, in accordance with Section 78.056, Government Code, as added by this Act, the presiding judges of the administrative judicial regions shall complete the statewide list of competent counsel available for appointment to represent defendants in applications for writs of habeas corpus.

(b) Not later than January 15, 2010, the president of the State Bar of Texas shall appoint the members of the capital writs committee.

(c) Not later than May 15, 2010, the capital writs committee shall submit to the Court of Criminal Appeals the list of candidates for the position of the director of the office of capital writs.

(d) Not later than September 1, 2010, the Court of Criminal Appeals shall appoint the director of the office of capital writs under Chapter 78, Government Code, as added by this Act.

SECTION 13. This Act takes effect September 1, 2009.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1091**.

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

SENATE BILL 1290 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1290** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1290** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to authorization for school districts to provide mentors for teachers assigned to a new subject or grade level.

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

SECTION 1. Section 21.458(a), Education Code, is amended to read as follows:

(a) Each school district may assign a mentor teacher to each classroom teacher who has less than two years of teaching experience in the subject or grade level to which the teacher is assigned. A teacher assigned as a mentor must:

(1) to the extent practicable, teach in the same school;

(2) to the extent practicable, teach the same subject or grade level, as applicable; and

(3) meet the qualifications prescribed by commissioner rules adopted under Subsection (b).

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1290**.

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

SENATE BILL 2169 WITH HOUSE AMENDMENT

Senator Ellis called **SB 2169** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 2169** (House committee printing) as follows:

(1) In SECTION 1 of the bill, strike added Sections 2060.002(a)(11) and (12), Government Code (page 2, lines 1 through 3), and substitute the following:

(11) the Texas Education Agency;

(12) the Texas Water Development Board; and

(13) other state or regional agencies considered necessary by the co-presiding officers of the work group.

(2) In SECTION 1 of the bill, in added Section 2060.003(b), Government Code (page 2, lines 13 and 14), strike "consider and develop policies" and substitute "make recommendations to the legislature".

(3) In SECTION 1 of the bill, immediately following added Section 2060.004, Government Code (page 3, between lines 12 and 13), insert the following:

Sec. 2060.005. EXPIRATION. This chapter expires August 31, 2013.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 2169**.

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

SENATE BILL 1410 WITH HOUSE AMENDMENTS

Senator Jackson called **SB 1410** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1410** (House committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 6), strike "Subdivision (9-a)" and substitute "Subdivisions (5-a) and (9-a)".

(2) In SECTION 1 of the bill, in amended Section 1301.002, Occupations Code, between amended Subdivisions (5) and (6) of that section (page 2, between lines 25 and 26), insert the following:

(5-a) "Multipurpose residential fire protection sprinkler specialist" means a person who holds an endorsement issued under Section 1301.3565.

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

SECTION _____. Section 1301.352, Occupations Code, is amended to read as follows:

Sec. 1301.352. EXAMINATION REQUIRED. The board shall issue a license or endorsement as a master plumber, journeyman plumber, plumbing inspector, tradesman plumber-limited license holder, medical gas piping installation endorsement holder, ~~[o*]~~ water supply protection specialist, or multipurpose residential fire protection sprinkler specialist to a person who demonstrates the fitness, competence, and qualifications to receive the license or endorsement by passing a uniform, reasonable examination.

SECTION _____. Subchapter G, Chapter 1301, Occupations Code, is amended by adding Section 1301.3565 to read as follows:

Sec. 1301.3565. ENDORSEMENT: MULTIPURPOSE RESIDENTIAL FIRE PROTECTION SPRINKLER SPECIALIST. (a) A person may not engage in the installation of a multipurpose residential fire protection sprinkler system that uses a single piping system to provide potable water for fire protection sprinklers and for domestic plumbing fixtures and appliances unless the person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(b) The board shall issue an endorsement as a multipurpose residential fire protection sprinkler specialist to a person who:

(1) holds the license described by Subsection (a);

(2) applies to the board on a form prescribed by the board;

(3) pays a fee set by the board;

(4) presents evidence satisfactory to the board of successful completion of a training program approved by the board that provides the training necessary for the proper installation of a multipurpose residential fire protection sprinkler system as required by the applicable codes and standards recognized by the state; and

(5) passes an examination required by the board.

(c) An endorsement issued under this section is valid until the third anniversary of the date of issuance and may be renewed on compliance with any requirements prescribed by board rule.

(d) A person who holds an endorsement under this section may represent to the public that the person is a multipurpose residential fire protection sprinkler specialist.

(e) Notwithstanding any other law, a person who holds an endorsement under this section is not required to hold a license or registration issued by another state agency in order to install a multipurpose residential fire protection sprinkler system.

(f) A plumbing inspector who meets the requirements of the board may inspect a multipurpose residential fire protection sprinkler installation.

SECTION _____. The Texas State Board of Plumbing Examiners shall collaborate with the state fire marshal in adopting rules necessary to implement Section 1301.3565, Occupations Code, as added by this Act.

SECTION _____. (a) Not later than February 1, 2010, the Texas State Board of Plumbing Examiners shall adopt rules necessary to implement Section 1301.3565, Occupations Code, as added by this Act.

(b) Not later than March 1, 2010, the Texas State Board of Plumbing Examiners shall begin administering examinations and issuing multipurpose residential fire protection sprinkler specialist endorsements under Section 1301.3565, Occupations Code, as added by this Act.

(4) Strike SECTION 12 of the bill (page 8, line 10) and substitute the following appropriately numbered SECTION:

SECTION _____. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Section 1301.3565(a), Occupations Code, as added by this Act, takes effect June 1, 2010.

Floor Amendment No. 3

Amend Amendment No. 1 by Chisum to **SB 1410** on page 2, line 31 by inserting the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1301.551, Occupations Code is amended by adding subsections (e) and (f) to read as follows:

(e) Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one or two-family dwelling. A municipality may adopt an ordinance, bylaw, order, or rule allowing a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one or two-family dwelling.

(f) A multipurpose residential fire protection sprinkler specialist may install a multipurpose residential fire protection sprinkler system in a new or existing one or two-family dwelling in municipality described by subsections (a) and (b).

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 1410**.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Davis, Gallegos, Huffman, Shapleigh, Van de Putte, Watson.

SENATE BILL 1235 WITH HOUSE AMENDMENT

Senator Davis called **SB 1235** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1235** (House committee printing) by striking SECTIONS 16 and 17 of the bill and renumber subsequent SECTIONS accordingly.

The amendment was read.

Senator Davis moved to concur in the House amendment to **SB 1235**.

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

Absent: Ogden.

SENATE BILL 660 WITH HOUSE AMENDMENT

Senator Hegar called **SB 660** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 660** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

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.

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

SECTION 1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8307 to read as follows:

CHAPTER 8307. CALDWELL COUNTY MUNICIPAL UTILITY DISTRICT
NO. 1

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8307.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Caldwell County Municipal Utility District No. 1.

Sec. 8307.002. NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 8307.003. CONFIRMATION AND DIRECTORS' ELECTION REQUIRED. The temporary directors shall hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code.

Sec. 8307.004. CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8307.003 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. 8307.005. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) The district is created to serve a public purpose and benefit.

(b) The district is created to accomplish the purposes of:

(1) a municipal utility district as provided by general law and Section 59, Article XVI, Texas Constitution; and

(2) Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8307.006. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

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

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3) right to impose a tax; or

(4) legality or operation.

[Sections 8307.007-8307.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8307.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b) Except as provided by Section 8307.052, directors serve staggered four-year terms.

Sec. 8307.052. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) Joseph John Mazzola III;

(2) Hunter Wallace Dehn;

(3) Seth Thatcher;

(4) Scott Guesner; and

(5) Mark Solomon.

(b) Temporary directors serve until the earlier of:

(1) the date permanent directors are elected under Section 8307.003; or

(2) the fourth anniversary of the effective date of the Act creating this

chapter.

(c) If permanent directors have not been elected under Section 8307.003 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

(1) the date permanent directors are elected under Section 8307.003; or

(2) the fourth anniversary of the date of the appointment or reappointment.

(d) If Subsection (c) applies, the owner or owners of a majority of the assessed value of the real property in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as successor temporary directors the five persons named in the petition. The commission shall appoint as successor temporary directors the five persons named in the petition.

[Sections 8307.053-8307.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8307.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 8307.102. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8307.103. AUTHORITY FOR ROAD PROJECTS. Under Section 52, Article III, Texas Constitution, the district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8307.104. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Sec. 8307.105. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION. The district shall comply with all applicable requirements of any ordinance or resolution that is adopted under Section 54.016 or 54.0165, Water Code, and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 8307.106. LIMITATION ON CONSTRUCTION AND DEVELOPMENT IN DISTRICT. A developer may not begin construction or development of a project in the district unless the developer has entered into a contract with an appropriate entity for the provision of water and sewer services for the project.

Sec. 8307.107. LOCAL ROADWAY IMPROVEMENT. A developer who undertakes a project in the district shall enter into an agreement with the Texas Department of Transportation, the commissioners court of any county in whose jurisdiction the district is located, or another appropriate entity to make improvements in the roads surrounding the district to mitigate any problems with traffic the proposed project is anticipated to cause or create.

Sec. 8307.108. LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district to acquire a site or easement for:

- (1) a road project authorized by Section 8307.103; or
- (2) a recreational facility as defined by Section 49.462, Water Code.

Sec. 8307.109. DIVISION OF DISTRICT. (a) The district may be divided into two or more new districts only if the district:

(1) has no outstanding bonded debt; and

(2) is not imposing ad valorem taxes.

(b) This chapter applies to any new district created by the division of the district, and a new district has all the powers and duties of the district.

(c) Any new district created by the division of the district may not, at the time the new district is created:

(1) contain any land outside the area described by Section 2 of the Act creating this chapter; or

(2) contain less than 100 acres.

(d) The board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district according to the most recent certified appraisal roll for each county in which the district is located, may adopt an order dividing the district.

(e) The board may adopt an order dividing the district before or after the date the board holds an election under Section 8307.003 to confirm the district's creation.

(f) An order dividing the district shall:

(1) name each new district;

(2) include the metes and bounds description of the territory of each new district;

(3) appoint temporary directors for each new district; and

(4) provide for the division of assets and liabilities between or among the new districts.

(g) On or before the 30th day after the date of adoption of an order dividing the district, the district shall file the order with the Texas Commission on Environmental Quality and record the order in the real property records of each county in which the district is located.

(h) Any new district created by the division of the district shall hold a confirmation and directors' election as required by Section 8307.003.

(i) Any new district created by the division of the district must hold an election as required by this chapter to obtain voter approval before the district may impose a maintenance tax or issue bonds payable wholly or partly from ad valorem taxes.

(j) Any new district created by the division of the district may divide into two or more districts as provided by this section.

[Sections 8307.110-8307.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8307.151. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by:

(1) revenue other than ad valorem taxes; or

(2) contract payments described by Section 8307.153.

(b) The district must hold an election in the manner provided by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c) The district may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

Sec. 8307.152. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8307.151, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

Sec. 8307.153. CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

[Sections 8307.154-8307.200 reserved for expansion]

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 8307.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. 8307.202. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. 8307.203. BONDS FOR ROAD PROJECTS. At the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed value of the real property in the district.

SECTION 2. The Caldwell County Municipal Utility District No. 1 initially includes all the territory contained in the following area:

TRACT 1 - 3473.37 ACRES

All that certain tract or parcel of land situated in Caldwell County, Texas out of the Eason Tyson Survey, Abstract No. 291 and the Almerion Dickinson Survey, Abstract No. 5, Caldwell County, Texas and being those tracts described as 256.38 acres in a Special Warranty Deed granted to Don Ray George, et ux, and recorded in Volume 81, Page 50, Official Public Records of Caldwell County, Texas, and 339.33 acres in a Special Warranty Deed with Vendor's Lien granted to Don Ray George, et ux, and recorded in Volume 81, Page 558, of said official public records and 1638.30 acres in a Special Warranty Deed granted to Don Ray George, et ux, and recorded in Volume 80, Page 901, of said official public records and 384-1/4 acres (First Tract), 157 acres (Tract One of Second Tract), 200 acres (Tract Two of Second Tract), Tract Four of Second Tract, 100 acres (Tract Two of Third Tract), 100 acres (Tract One of Third Tract), 100 acres (Tract Three of Second Tract), and 200 acres (Seventh Tract) in a

Deed granted to Sidney Camille Brewster Young, and recorded in Volume 342, Page 454, Deed Records of Caldwell County, Texas, and further described by metes and bounds as follows:

BEGINNING at a 1/2" iron pin found at the intersection of the northeast line of Highway 80, a.k.a. San Marcos Highway, right-of-way varies, and the northwest line of County Road 110, a.k.a. Long Road, right-of-way varies, for the southwest corner of said Don Ray George, et ux tract (81/50) and this tract;

THENCE, with the northeast line of said Highway 80 and the southwest line of said Don Ray George, et ux tracts (81/50), (81/558), and (80/901) and this tract in the following twenty one (21) courses;

1. N 25°59'34" W 115.79 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
2. N 61°10'25" E 15.80 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
3. N 25°58'07" W 597.09 feet to a concrete monument found,
4. S 70°49'29" W 15.15 feet to a 1/2" iron pin found,
5. N 25°56'19" W 997.88 feet to a concrete monument,
6. N 66°58'22" E 5.66 feet to a concrete monument,
7. N 25°59'32" W 399.21 feet to a concrete monument,
8. S 77°04'13" W 6.02 feet to a concrete monument,
9. N 25°53'15" W at 1298.67 feet and 0.17 feet to the left passing a concrete monument found, in all 1364.69 feet to a 1/2" iron pin found for the northwest corner of said Don Ray George, et ux tract (81/50) and the southwest corner of said Don Ray George, et ux tract (81/558),
10. N 25°51'03" W 1331.32 feet to a concrete monument,
11. N 63°37'33" E 9.12 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
12. N 26°05'30" W 200.05 feet to a concrete monument found,
13. S 70°24'55" W 10.36 feet to a concrete monument with a 60d nail found in it,
14. N 25°52'07" W 999.81 feet to a 1/2" pipe found,
15. N 64°06'49" E 139.42 feet to a 1/2" iron pin found,
16. N 26°06'10" W 128.89 feet to a 1/2" pipe found for the northwest corner of said Don Ray George, et ux tract (81/558) and an angle point of said Don Ray George, et ux tract (80/901),
17. N 25°48'08" W 221.34 feet to a 1/2" iron pin found,
18. S 63°52'16" W 130.00 feet to a calculated point inundated by Dickerson Creek,
19. N 25°55'54" W 749.61 feet to a concrete monument,
20. S 68°37'09" W 9.87 feet to a concrete monument,
21. N 25°55'39" W at 1400.02 feet and 0.40 feet to the left passing a right-of-way monument found, in all 1907.70 feet to a 1/2" iron pin found at the intersection of the northeast line of said Highway 80 and the southeast line of County Road 107, a.k.a. Dickerson Road, right-of-way varies, for the northwest corner of said Don Ray George, et ux tract (80/901) and this tract;

THENCE, with the southeast line of said County Road 107 and the northwest line of said Don Ray George, et ux tract (80/901), said Sidney Camille Brewster Young tracts (First Tract), (Tract One of Second Tract), and (Tract Two of Second Tract) and this tract in the following twenty one (21) courses,

1. N 27°50'19" E 99.49 feet to a 1/2" iron pin found,
2. N 48°30'05" E 1090.68 feet to a 1/2" iron pin found,
3. N 48°30'04" E 1359.07 feet to a 1/2" iron pin found,
4. N 48°38'19" E 1936.21 feet to a 1/2" iron pin found,
5. N 48°35'39" E 1168.70 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS,LTD." set,
6. N 49°05'39" E 540.52 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
7. N 73°35'13" E 43.60 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
8. S 84°27'23" E 365.52 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set in the southwest line of that tract described as 607.42 acres in a Special Warranty Deed granted to The Revocable Living Trust of Arthur Don Purswell and Marian Young Purswell and recorded in Volume 177, Page 133, of said official public records and leaving said County Road 107,
9. S 41°29'30" E 275.84 feet to a 1/2" iron pin found for the southwest corner of said Arthur Don Purswell and Marian Young Purswell tract and an interior ell corner of said Don Ray George, et ux tract and this tract,
10. N 48°41'10" E 316.93 feet with the southeast line of said Arthur Don Purswell and Marian Young Purswell tract to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set in the southeast line of said County Road 107,
11. N 48°18'17" E 510.35' feet continuing with the southeast line of said Arthur Don Purswell and Marian Young Purswell tract to a 1/2" iron pin found,
12. N 48°39'36" E 615.14 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
13. N 48°47'27" E 244.10 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
14. N 52°42'18" E 172.20 feet to a 1/2" iron pin found,
15. N 61°58'35" E 114.42 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
16. N 48°18'51" E 689.17 feet to a 1/2" iron pin found,
17. N 48°16'14" E 456.03 feet to a 1/2" iron pin found,
18. N 48°54'32" E 642.45 feet to a 5/8" iron pin found for the northwest corner of said Sidney Camille Brewster Young tract (First Tract) and the northeast corner of said Don Ray George, et ux tract (80/901),
19. N 48°49'02" E 2107.30 feet to a nail found at the top of a post for the northwest corner of said Sidney Camille Brewster Young tract (Tract One of Second Tract) and the northeast of said Sidney Camille Brewster Young tract (First Tract),

20. N 48°24'33" E 844.46 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set for the northwest corner of said Sidney Camille Brewster Young tract (Tract Two of Second Tract) and the northeast corner of said Sidney Camille Brewster Young tract (Tract One of Second Tract),

21. N 47°54'42" E 1089.86 feet to a 5/8" iron pin found for the northwest corner of that tract described as 5.41 acres (First Tract) in a Warranty Deed granted to Nazario Reyna, et al, and recorded in Volume 109, Page 311, of said official public records and the northeast corner of said Sidney Camille Brewster Young tract (Tract Two of Second Tract) and the most westerly northeast corner of this tract,

THENCE, with the southwest line of said Nazario Reyna, et al tract (First Tract) and that tract described as 7.67 acres (Second Tract) in said Nazario Reyna, et al, Warranty Deed and those tracts described as 6.04 acres (Tract One), 6.05 acres (Tract Two), 7.55 acres (Tract Three), and 7.55 acres (Tract Four) in a Warranty Deed with Vendor's Lien granted to Michael Henry and recorded in Volume 66, Page 504, of said official public records and that tract described as 10.29 acres in a Warranty Deed granted to Thomas J. Chrystal, et al, and recorded in Volume 496, Page 677, of said deed records and the northeast line of said Sidney Camille Brewster Young tract (Tract Two of Second Tract) and continuing with the northwest line of this tract in the following seven (7) courses,

1. S 41°22'58" E 700.00 feet to a 1/2" iron pin found for the northwest corner of said Nazario Reyna, et al tract (Second Tract) and the southwest corner of said Nazario Reyna, et al tract (First Tract),

2. S 41°30'13" E 337.71 feet to a 1/2" iron pin found for the northwest corner of said Michael Henry tract (Tract Four) and the southwest corner of said Nazario Reyna, et al tract (Second Tract),

3. S 41°48'01" E 326.67 feet to a 1/2" iron pin found for the northwest corner of said Michael Henry tract (Tract Three) and the southwest corner of said Michael Henry tract (Tract Four),

4. S 42°06'52" E 326.93 feet to a 1/2" iron pin found for the northwest corner of said Michael Henry tract (Tract Two) and the southwest corner of said Michael Henry tract (Tract Three),

5. S 42°11'00" E 262.18 feet to a 1/2" iron pin found for the northwest corner of said Michael Henry tract (Tract One) and the southwest corner of said Michael Henry tract (Tract Two),

6. S 42°21'52" E 261.98 feet to a 1/2" iron pin found for the northwest corner of said Thomas J. Chrystal, et al tract and the southwest corner of said Michael Henry tract (Tract One),

7. S 42°28'15" E 448.18 feet to a 1/2" iron pin found for the northwest corner of said Sidney Camille Brewster Young tract (Tract Two of Third Tract) and the southwest corner of said Thomas J. Chrystal, et al tract and an interior ell corner of this tract;

THENCE, with the southeast line of said Thomas J. Chrystal, et al tract and that tract described as 10.20 acres in a Warranty Deed granted to Anna Lowe, et al, and recorded in Volume 120, Page 785, of said official public records and that tract described as 25.00 acres in a Contract For Deed granted to Wayne Carlton Latham, et

ux, and recorded in Volume 75, Page 46, of said official public records and that tract described as 35.31 acres in a General Warranty Deed granted to Wayne Carlton Latham, et ux, and recorded in Volume 318, Page 900, of said official public records and the northwest line of said Sidney Camille Brewster Young tract (Tract Two of Third Tract) and continuing with the northwest line of this tract in the following nine (9) courses,

1. N 47°59'47" E 399.12 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
2. N 47°59'47" E 399.62 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
3. N 47°51'49" E at 176.33 feet passing a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set for the southwest corner of an unimproved 50 foot roadway, in all 201.32 feet to a 1/2" iron pin with a red cap inscribed "Hinkle Surveyor" found for the southwest corner of said Anna Lowe, et al tract and the southeast corner of said Thomas J. Chrystal, et al tract,
4. N 48°33'39" E at 25.04 feet passing a 60d nail found at the base of a 20" Elm Tree for the southeast corner of said roadway, in all 199.14 feet to a 5/8" iron pin found,
5. N 47°26'44" E 398.26 feet to a 5/8" iron pin found at a 12" Twin Elm Tree,
6. N 47°48'57" E 400.42 feet to a 1/2" iron pin with an aluminum cap inscribed "Burn & Assoc. Surveying" found for the southwest corner of said Wayne Carlton Latham, et ux tract (75/46) and the southeast corner of said Anna Lowe, et al tract,
7. N 48°21'48" E 318.40 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
8. N 48°02'21" E 515.92 feet to a 12" treated fence post found for the southwest corner of said Wayne Carlton Latham, et ux tract (318/900) and the southeast corner of said Wayne Carlton Latham, et ux tract (75/46),
9. N 48°06'50" E 1165.61 feet to a 5/8" iron pin found in the southwest line of that tract described as 433.16 acres in a Deed granted to Everett F. Johnson, et al, and recorded in Volume 320, Page 3, of said deed records for the southeast corner of said Wayne Carlton Latham, et ux tract (318/900) and the northeast corner of said Sidney Camille Brewster Young tract (Tract Two of Third Tract) and the most easterly northeast corner of this tract;

THENCE, with the southwest line of said Everett F. Johnson, et al tract as fenced and that tract described as 97.20 acres in an Extension Agreement granted to Jo Ann Simmons, and recorded in Volume 127, Page 303, of said deed records and the northeast line of said Sidney Camille Brewster Young tracts (Tract Two of Third Tract), (Tract One of Third Tract), (Tract Three of Second Tract), and (Seventh Tract) and this tract as fenced in the following nine (9) courses,

1. S 41°20'59" E 1086.22 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set for the northeast corner of said Sidney Camille Brewster Young tract (Tract One of Third Tract) and the southeast corner of said Sidney Camille Brewster Young tract (Tract Two of Third Tract),
2. S 41°47'44" E 476.92 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set at a fence corner,

3. S 41°55'29" E 609.13 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set for the northeast corner of said Sidney Camille Brewster Young tract (Tract Three of Second Tract) and the southeast corner of said Sidney Camille Brewster Young tract (Tract One of Third Tract),

4. S 41°10'50" E 1091.49 feet to a 1/2" iron pin found for the northwest corner of said Jo Ann Simmons tract and the northeast corner of said Sidney Camille Brewster Young tract (Seventh Tract) and the southeast corner of said Sidney Camille Brewster Young tract (Tract Three of Second Tract),

5. S 41°33'35" E 500.01 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,

6. S 41°55'23" E 500.01 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,

7. S 41°16'46" E 652.96 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,

8. S 42°36'00" E 270.74 feet to a 1/2" iron pin found for the most westerly southwest corner of said Jo Ann Simmons tract,

9. S 41°33'20" E 213.33 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD."

set in the fenced northwest line of said County Road 110 for the southeast corner of said Sidney Camille Brewster Young tract (Seventh Tract) and this tract;

THENCE, with the northwest line of said County Road 110 as occupied and the southeast line of said Sidney Camille Brewster Young tracts (Seventh Tract), (Tract Two of Second Tract), (Tract One of Second Tract), and (First Tract) and said Don Ray George, et ux tracts (80/901) and (81/50) as occupied and this tract in the following thirty (30) courses,

1. S 48°25'35" W 3998.39 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set at a fence corner post for the southeast corner of said Sidney Camille Brewster Young tract (Tract Two of Second Tract) and the southwest corner of said Sidney Camille Brewster Young tract (Seventh Tract),

2. S 47°59'23" W 1101.35 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set for the southeast corner of said Sidney Camille Brewster Young tract (Tract One of Second Tract) and the southwest corner of said Sidney Camille Brewster Young tract (Tract Two of Second Tract),

3. S 48°14'02" W 846.20 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set at a fence corner post for the southeast corner of said Sidney Camille Brewster Young tract (First Tract) and the southwest corner of said Sidney Camille Brewster Young tract (Tract One of Second Tract),

4. S 48°55'00" W 2089.02 feet to a 1/2" iron pin found for the southeast corner of said Don Ray George, et ux tract (80/901) and the southwest corner of said Sidney Camille Brewster Young tract (First Tract),

5. S 47°15'53" W 828.29 feet to a 1/2" iron pin found,

6. S 48°14'38" W 1800.54 feet to a 1/2" iron pin found,

7. S 45°53'08" W 29.28 feet to a 1/2" iron pin found,

8. S 47°42'12" W 1192.83 feet to a concrete monument,

9. S 55°48'36" W 86.13 feet to a 1/2" iron pin found,

10. S 44°50'37" W 86.74 feet to a 1/2" iron pin found,

11. S 46°59'47" W 1025.64 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
12. S 51°14'20" W 63.03 feet to a 1/2" iron pin found,
13. S 48°31'46" W 323.13 feet to a 1/2" iron pin found,
14. S 48°10'15" W 419.02 feet to a 1/2" iron pin found,
15. S 52°57'23" W 267.70 feet leaving said fence to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
16. S 49°27'07" W 266.78 feet to a 1/2" iron pin found,
17. S 41°16'15" E 29.52 feet back to said fence and to a 1/2" iron pin found,
18. S 48°19'28" W 383.14 feet to a 1/2" iron pin found,
19. S 48°20'59" W 761.56 feet to a 1/2" iron pin found,
20. S 48°44'26" W 698.20 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
21. S 48°09'58" W 530.04 feet to a 1/2" iron pin found,
22. S 48°39'32" W 124.20 feet to a 1/2" iron pin found for the southeast corner of said Don Ray George, et ux tract (81/50) and the southwest corner of said Don Ray George, et ux tract (80/901),
23. S 48°27'11" W 825.07 feet to a 1/2" iron pin found,
24. S 52°37'55" W 62.98 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
25. S 48°49'11" W 50.25 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
26. S 41°28'02" W 18.93 feet to a 1/2" iron pin found,
27. S 48°16'14" W 843.13 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
28. S 48°23'56" W 434.47 feet to a 1/2" iron pin found,
29. S 48°28'12" W 1554.39 feet to a 1/2" iron pin with a yellow plastic cap inscribed "CS, LTD." set,
30. S 58°27'42" W 11.24 feet to the Point of Beginning and containing 3473.37 acres of land within this metes and bounds description.

Bearings cited hereon based on Grid North, Texas State Plane Coordinate System (Central Zone) NAD83.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 660**.

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

Absent: Ogden.

SENATE BILL 1259 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 1259** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1259** as follows:

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

SECTION _____. Article 2.21, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (k) to read as follows:

(a) In a criminal proceeding, a clerk of the district or county court shall:

(1) receive and file all papers;

(2) receive all exhibits at the conclusion of the proceeding;

(3) issue all process; ~~and~~

(4) accept and file electronic documents received from the defendant, if the clerk accepts electronic documents from an attorney representing the state;

(5) accept and file digital multimedia evidence received from the defendant, if the clerk accepts digital multimedia evidence from an attorney representing the state; and

(6) perform all other duties imposed on the clerk by law.

(k) In this article, "digital multimedia evidence" means evidence stored or transmitted in a binary form, and includes data representing documents, audio, video metadata, and any other information attached to a digital file.

SECTION _____. Subchapter B, Chapter 51, Government Code, is amended by adding Section 51.1045 to read as follows:

Sec. 51.1045. ELECTRONIC DOCUMENTS AND DIGITAL MULTIMEDIA EVIDENCE. (a) In this section, "digital multimedia evidence" has the meaning assigned by Article 2.21, Code of Criminal Procedure.

(b) The clerk of the court of criminal appeals may accept electronic documents and digital multimedia evidence received from a defendant, an applicant for a writ of habeas corpus, the clerk of the convicting court, a court reporter, or an attorney representing the state.

SECTION _____. Section 51.105(a), Government Code, is amended to read as follows:

(a) In the performance of the duties imposed by Section 51.104, the clerk of the court of criminal appeals may maintain writs and other records and documents in an electronic storage format or on microfilm. A record or document stored electronically or on microfilm in accordance with this section is considered an original record or document. If the clerk [~~electronically~~] stores writs, records, or documents electronically or on microfilm, the clerk may destroy the originals or copies of the writs, records, or documents according to the retention policy described by Subsection (b).

(2) Strike SECTION 3 of the bill and substitute the following appropriately numbered SECTION:

SECTION _____. Sections 51.0045 and 51.205, Government Code, as added by this Act, and Section 51.105, Government Code, as amended by this Act, apply to a record or document maintained by the clerk of the Texas Supreme Court, the clerk of the Texas Court of Criminal Appeals, or the clerk of a court of appeals, as applicable, regardless of whether the record or document was received by the clerk before, on, or after the effective date of this Act.

Floor Amendment No. 2

Amend **SB 1259** (House committee printing) as follows:

(1) On page 1, line 5, between "SECTION 1." and "Subchapter A", insert "(a)".

(2) On page 1, line 6, strike "Section 51.0045" and substitute "Sections 51.0045 and 51.0046".

(3) On page 1, immediately after line 24, insert the following:

Sec. 51.0046. PRIVACY OF CERTAIN RECORDS AND DOCUMENTS; LIABILITY. (a) The supreme court shall adopt rules establishing procedures for protecting personal information contained in records and documents stored by the clerk of an appellate court in an electronic storage format and for accessing those records and documents. The supreme court by rule shall define "personal information" for purposes of this section.

(b) A person who complies with the rules adopted by the supreme court under this section is not liable for damages arising from the disclosure of personal information that is included in records or documents stored in an electronic storage format.

(c) For purposes of this section, "electronic storage" has the meaning assigned by Section 51.105(c).

(b) Notwithstanding any other provision of this Act, Section 51.0046, Government Code, as added by this section, applies to a record or document maintained by a clerk of an appellate court that is received by the clerk after the effective date of the rules adopted in accordance with Section 51.0046, Government Code.

Floor Amendment No. 3

Amend **SB 1259** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter C, Chapter 22, Government Code, is amended by adding Section 22.2081 to read as follows:

Sec. 22.2081. APPELLATE JUDICIAL SYSTEM. (a) The commissioners court of each county in the Seventh Court of Appeals District, by order entered in its minutes, shall establish an appellate judicial system to:

(1) assist the court of appeals for the county in the disposition of appeals filed with the court of appeals from the county courts, statutory county courts, probate courts, and district courts; and

(2) defray costs and expenses incurred by the county under Section 22.208.

(b) To fund the system, the commissioners court shall set a court costs fee of \$5 for each civil suit filed in a county court, statutory county court, probate court, or district court in the county.

(c) The court costs fee does not apply to a suit filed by the county or to a suit for delinquent taxes.

(d) The court costs fee shall be taxed, collected, and paid as other court costs in a suit. The clerk of the court shall collect the court costs fee set under this section and pay it to the county officer who performs the county treasurer's functions. That officer shall deposit the fee in a separate appellate judicial system fund for the court of appeals district. The fund may not be used for any other purpose. The chief justice of the court of appeals has sole discretion as to the use of the fund.

(e) The commissioners court shall monthly order the funds collected under this section to be forwarded to the court of appeals for expenditures by the court of appeals for its appellate judicial system.

(f) The commissioners court shall vest management of the system in the chief justice of the court of appeals.

SECTION _____. Subchapter D, Chapter 101, Government Code, is amended by adding Section 101.06115 to read as follows:

Sec. 101.06115. ADDITIONAL DISTRICT COURT FEES: GOVERNMENT CODE. The clerk of a district court in the Seventh Court of Appeals District shall collect an appellate judicial system filing fee of \$5 under Section 22.2081, Government Code.

SECTION _____. Subchapter E, Chapter 101, Government Code, is amended by adding Section 101.08114 to read as follows:

Sec. 101.08114. ADDITIONAL STATUTORY COUNTY COURT FEES: GOVERNMENT CODE. The clerk of a statutory county court in the Seventh Court of Appeals District shall collect an appellate judicial system filing fee of \$5 under Section 22.2081, Government Code.

SECTION _____. Subchapter F, Chapter 101, Government Code, is amended by adding Section 101.10114 to read as follows:

Sec. 101.10114. ADDITIONAL STATUTORY PROBATE COURT FEES: GOVERNMENT CODE. The clerk of a statutory probate court in the Seventh Court of Appeals District shall collect an appellate judicial system filing fee of \$5 under Section 22.2081, Government Code.

SECTION _____. Subchapter G, Chapter 101, Government Code, is amended by adding Section 101.12123 to read as follows:

Sec. 101.12123. ADDITIONAL COUNTY COURT FEES: GOVERNMENT CODE. The clerk of a county court in a county in the Seventh Court of Appeals District shall collect an appellate judicial system filing fee of \$5 under Section 22.2081, Government Code.

The amendments were read.

Senator Hegar moved to concur in the House amendments to **SB 1259**.

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

Absent: Ogden.

SENATE BILL 1334 WITH HOUSE AMENDMENT

Senator Hegar called **SB 1334** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1334** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to continuation of the intercollegiate athletics fee for students at Prairie View A&M University.

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

SECTION 1. Subsection (f), Section 54.5393, Education Code, is amended to read as follows:

(f) This section expires September 1, 2013, except that this section does not expire if before the end of the 2012-2013 academic year the board of regents issues bonds that are payable wholly or partly from the fee. If the board of regents issues bonds as described by this subsection, the fee authorized by this section may not be imposed in any semester or session beginning after the date on which all of those bonds, including refunding bonds for the bonds, have been fully paid.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 1334**.

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

Absent: Ogden.

SENATE BILL 129 WITH HOUSE AMENDMENT

Senator Ellis called **SB 129** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 129** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the maximum speed limit for a neighborhood electric vehicle being operated on a street or highway.

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

SECTION 1. Subdivision (1), Section 551.301, Transportation Code, as amended by Chapters 281 (H.B. 2702) and 1242 (H.B. 1596), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(1) "Neighborhood electric vehicle" means a vehicle that can attain a maximum speed of 35 miles per hour on a paved level surface and otherwise complies with ~~subject to~~ Federal Motor Vehicle Safety Standard 500 (49 C.F.R. Section 571.500).

SECTION 2. Subsection (a), Section 551.303, Transportation Code, is amended to read as follows:

(a) A neighborhood electric vehicle may be operated only on a street or highway for which the posted speed limit is 45 ~~35~~ miles per hour or less. A neighborhood electric vehicle may cross a road or street at an intersection where the road or street has a posted speed limit of more than 45 ~~35~~ miles per hour. A neighborhood electric vehicle may not be operated on a street or highway at a speed that exceeds the lesser of:

- (1) the posted speed limit; or
- (2) 35 miles per hour.

SECTION 3. Section 521.001(a), Transportation Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Motorcycle" includes an enclosed three-wheeled passenger vehicle that:

- (A) is designed to operate with three wheels in contact with the ground;
- (B) has a minimum unladen weight of 900 lbs.;
- (C) has a single, completely enclosed, occupant compartment;
- (D) at a minimum, is equipped with:

(i) seats that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, 49 C.F.R. Section 571.207;

(ii) a steering wheel used to maneuver the vehicle;

(iii) a propulsion unit located in front of or behind the enclosed occupant compartment;

(iv) a seat belt for each vehicle occupant certified by the manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, 49 C.F.R. Section 571.209;

(v) a windshield and one or more windshield wipers certified by the manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, 49 C.F.R. Section 571.205, and Federal Motor Vehicle Safety Standard No. 104, 49 C.F.R. Section 571.104; and

(vi) a vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, 49 C.F.R. Section 571.216; and

(E) is produced by its manufacturer in a minimum quantity of 300 in any calendar year.

SECTION 4. Section 521.085, Transportation Code, is amended to read as follows:

Sec. 521.085. TYPE OF VEHICLE AUTHORIZED. (a) Unless prohibited by Chapter 522, and except as provided by Subsection (b), the license holder may operate any vehicle of the type for which that class of license is issued and any lesser type of vehicle other than a motorcycle or moped.

(b) Subsection (a) does not prohibit a license holder from operating a lesser type of vehicle that is a motorcycle described by Section 521.001(a)(6-a).

SECTION 5. Section 661.001(1), Transportation Code, is amended to read as follows:

(1) "Motorcycle" means a motor vehicle designed to propel itself with not more than three wheels in contact with the ground, and having a saddle for the use of the rider. The term does not include a tractor or a three-wheeled vehicle equipped with a cab or occupant compartment, seat, and seat belt and designed to contain the operator in the cab or occupant compartment.

SECTION 6. Section 680.013, Transportation Code, is amended to read as follows:

Sec. 680.013. USE OF PREFERENTIAL LANE BY MOTORCYCLE. A motorcycle, including a motorcycle described by Section 521.001(a)(6-a), may be operated in a preferential lane that is not closed to all vehicular traffic.

SECTION 7. This Act takes effect September 1, 2009.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 129**.

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

Absent: Ogden.

SENATE BILL 2526 WITH HOUSE AMENDMENT

Senator Watson called **SB 2526** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2526** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of the Travis County Improvement District No. 1; providing authority to impose an assessment, impose a tax, and issue bonds.

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

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3863 to read as follows:

CHAPTER 3863. TRAVIS COUNTY IMPROVEMENT DISTRICT NO. 1
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3863.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "Director" means a board member.
- (3) "District" means the Travis County Improvement District No. 1.

Sec. 3863.002. NATURE OF DISTRICT. The Travis County Improvement District No. 1 is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. 3863.003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing Travis County and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(c) This chapter and the creation of the district may not be interpreted to relieve Travis County from providing the level of services provided, as of the effective date of the Act enacting this chapter, to the area in the district. The district is created to supplement and not to supplant the county services provided in the area in the district.

Sec. 3863.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center;

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty; and

(4) provide for water, wastewater, drainage, road, and recreational facilities for the district.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3863.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

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

(1) organization, existence, or validity;

(2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on the bond;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. 3863.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code; or

(3) an enterprise zone created under Chapter 2303, Government Code.

Sec. 3863.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3863.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3863.009-3863.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3863.051. GOVERNING BODY; TERMS. The district is governed by a board of five voting directors who serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

Sec. 3863.052. APPOINTMENT OF DIRECTORS. The Texas Commission on Environmental Quality shall appoint voting directors from persons recommended by the board.

Sec. 3863.053. INITIAL VOTING DIRECTORS. (a) On or after the effective date of the Act creating this chapter, the owner or owners of a majority of the assessed value of the real property in the district may submit a petition to the Texas Commission on Environmental Quality requesting that the commission appoint as initial voting directors the five persons named in the petition. The commission shall appoint the five persons named in the petition as initial voting directors by position.

(b) Of the initial voting directors, the terms of directors appointed for positions 1 through 3 expire June 1, 2011, and the terms of directors appointed for positions 4 and 5 expire June 1, 2013.

(c) Section 3863.052 does not apply to the appointment of directors under this section.

(d) This section expires September 1, 2014.

Sec. 3863.054. NONVOTING DIRECTORS. The board may appoint nonvoting directors to serve at the pleasure of the voting directors.

Sec. 3863.055. QUORUM. For purposes of determining the requirements for a quorum of the board, the following are not counted:

(1) a board position vacant for any reason, including death, resignation, or disqualification;

(2) a director who is abstaining from participation in a vote because of a conflict of interest; or

(3) a nonvoting director.

Sec. 3863.056. COMPENSATION. A director is entitled to receive fees of office and reimbursement for actual expenses as provided by Section 49.060, Water Code. Sections 375.069 and 375.070, Local Government Code, do not apply to the board.

[Sections 3863.057-3863.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3863.101. DEVELOPMENT CORPORATION POWERS. The district may exercise the powers given to a development corporation under Chapter 505, Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter.

Sec. 3863.102. AGREEMENTS; GRANTS. (a) The district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

Sec. 3863.103. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES. To protect the public interest, the district may contract with a qualified person, including Travis County, for the provision of law enforcement services in the district for a fee.

Sec. 3863.104. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. 3863.105. ECONOMIC DEVELOPMENT PROGRAMS. (a) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

(1) make loans and grants of public money; and

(2) provide district personnel and services.

(b) The district has all of the powers of a municipality under Chapter 380, Local Government Code.

Sec. 3863.106. STRATEGIC PARTNERSHIP AGREEMENT. The district may negotiate and enter into a written strategic partnership with a municipality under Section 43.0751, Local Government Code.

Sec. 3863.107. NO EMINENT DOMAIN. The district may not exercise the power of eminent domain.

Sec. 3863.108. ANNEXATION OR EXCLUSION OF LAND. (a) The district may annex land as provided by Subchapter J, Chapter 49, Water Code.

(b) The district may exclude land as provided by Subchapter J, Chapter 49, Water Code. Section 375.044(b), Local Government Code, does not apply to the district.

[Sections 3863.109-3863.150 reserved for expansion]
SUBCHAPTER D. PUBLIC PARKING FACILITIES

Sec. 3863.151. PARKING FACILITIES AUTHORIZED; OPERATION BY PRIVATE ENTITY. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including:

(1) lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets; and

(2) equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in parking vehicles.

(b) A parking facility of the district may be leased to or operated on behalf of the district by an entity other than the district.

(c) The district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution.

(d) The district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

Sec. 3863.152. RULES. The district may adopt rules governing the district's public parking facilities.

Sec. 3863.153. FINANCING OF PUBLIC PARKING FACILITIES. (a) The district may use any of its resources, including revenue, assessments, taxes, or grant or contract proceeds, to pay the cost of acquiring or operating public parking facilities.

(b) The district may:

(1) set, charge, impose, and collect fees, charges, or tolls for the use of the district's public parking facilities; and

(2) issue bonds or notes to finance the cost of the district's public parking facilities.

Sec. 3863.154. ROAD IMPROVEMENTS. (a) Before development begins, the district must obtain a traffic impact analysis performed by a qualified independent traffic consultant for the purpose of determining the impact of increased traffic caused by the development of property in the district on Paleface Ranch Road or other major roads connecting the district to State Highway 71. The traffic impact analysis must identify the district's proportionate impact on the roads, based on the daily average number of trips to be generated from the district compared to the total daily average number of trips estimated to be generated from the total service area for the roads at full development.

(b) The district or a developer of land in the district shall pay the district's proportionate share of the costs or design and construct the district's proportionate share necessary to improve roads as needed to maintain the normal level of service on Paleface Ranch Road or any other connector roads. The payments or improvements shall be phased to meet the increased traffic.

(c) This section does not obligate the district to participate in the construction or financing of State Highway 71 or any other state highway.

[Sections 3863.155-3863.200 reserved for expansion]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 3863.201. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3863.202. MONEY USED FOR IMPROVEMENTS OR SERVICES. The district may acquire, construct, finance, operate, or maintain any improvement or service authorized under this chapter or Chapter 375, Local Government Code, using any money available to the district.

Sec. 3863.203. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition filed under Subsection (a) must be signed by the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Travis County.

Sec. 3863.204. METHOD OF NOTICE FOR HEARING. The district may mail the notice required by Section 375.115(c), Local Government Code, by certified or first class United States mail. The board shall determine the method of mailing notice.

Sec. 3863.205. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this chapter in all or any part of the district.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

Sec. 3863.206. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

Sec. 3863.207. RESIDENTIAL PROPERTY. Section 375.161, Local Government Code, does not apply to a tax imposed by the district or to a required payment for a service provided by the district, including water and sewer service.

Sec. 3863.208. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held in accordance with Section 3863.212, the district may impose an annual operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code, for any district purpose, including to:

(1) maintain and operate the district;

(2) construct or acquire improvements; or

(3) provide a service.

(b) The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

(c) Section 49.107(h), Water Code, does not apply to the district.

Sec. 3863.209. CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

Sec. 3863.210. AUTHORITY TO BORROW MONEY AND TO ISSUE BONDS. (a) The district may borrow money on terms and conditions as determined by the board. Section 375.205, Local Government Code, does not apply to a loan, line of credit, or other borrowing from a bank or financial institution secured by revenue other than ad valorem taxes.

(b) The district may issue bonds, notes, or other obligations payable wholly or partly from ad valorem taxes, sales and use taxes, assessments, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources of money, to pay for any authorized district purpose.

(c) The limitation on the outstanding principal amount of bonds, notes, and other obligations set forth in Section 49.4645, Water Code, does not apply to the district.

Sec. 3863.211. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. 3863.212. ELECTIONS REGARDING TAXES AND BONDS. (a) The district may issue, without an election, bonds, notes, and other obligations secured by:

- (1) revenue other than ad valorem taxes; or
- (2) contract payments described by Section 3863.209.

(b) The district must hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, to obtain voter approval before the district may impose an ad valorem tax or sales and use tax or issue bonds payable from ad valorem taxes.

(c) Section 375.243, Local Government Code, does not apply to the district.

(d) All or any part of any facilities or improvements which may be acquired by a district by the issuance of its bonds may be included in one single proposition to be voted on at the election or the bonds may be submitted in several propositions.

Sec. 3863.213. COMPETITIVE BIDDING. Subchapter I, Chapter 49, Water Code, applies to the district. Sections 375.221 and 375.223, Local Government Code, do not apply to the district.

Sec. 3863.214. TAX AND ASSESSMENT ABATEMENTS. The district may grant in the manner authorized by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

[Sections 3863.215-3863.250 reserved for expansion]

SUBCHAPTER F. TAXES FOR CERTAIN DEFINED AREAS AND DESIGNATED PROPERTY

Sec. 3863.251. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. The district may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as a whole.

Sec. 3863.252. PROCEDURE FOR ELECTION. (a) Before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes of the area defined or property designated under Section 3863.251, the board must call and hold an election as provided by Section 3863.212 only in the defined area or in the boundaries of the designated property.

(b) The board may submit the proposition to the voters on the same ballot to be used in another election.

Sec. 3863.253. DECLARING RESULT AND ISSUING ORDER. (a) If a majority of the voters voting at the election approve the proposition or propositions, the board shall declare the results and by order shall establish the defined area and describe it by metes and bounds or designate the specific property.

(b) A court may not review the board's order except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

Sec. 3863.254. TAXES FOR SERVICES, IMPROVEMENTS, AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On voter approval and adoption of the order described in Section 3863.253, the district may apply separately, differently, equitably, and specifically its taxing power and lien authority to the defined area or designated property to provide money to construct, administer, maintain, and operate services, improvements, and facilities that primarily benefit the defined area or designated property.

Sec. 3863.255. ISSUANCE OF BONDS AND IMPOSITION OF TAXES FOR DEFINED AREA OR DESIGNATED PROPERTY. After the order under Section 3863.253 is adopted, the district may issue bonds to provide for any land, improvements, facilities, plants, equipment, and appliances for the defined area or designated property.

[Sections 3863.256-3863.300 reserved for expansion]

SUBCHAPTER G. SALES AND USE TAX

Sec. 3863.301. MEANINGS OF WORDS AND PHRASES. Words and phrases used in this subchapter that are defined by Chapters 151 and 321, Tax Code, have the meanings assigned by Chapters 151 and 321, Tax Code.

Sec. 3863.302. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS.
(a) Except as otherwise provided by this subchapter, Subtitles A and B, Title 2, Tax Code, and Chapter 151, Tax Code, apply to taxes imposed under this subchapter and to the administration and enforcement of those taxes in the same manner that those laws apply to state taxes.

(b) Chapter 321, Tax Code, relating to municipal sales and use taxes, applies to the application, collection, change, and administration of a sales and use tax imposed under this subchapter to the extent consistent with this chapter, as if references in Chapter 321, Tax Code, to a municipality referred to the district and references to a governing body referred to the board.

(c) Sections 321.106, 321.401, 321.402, 321.403, 321.404, 321.406, 321.409, 321.506, 321.507, and 321.508, Tax Code, do not apply to a tax imposed under this subchapter.

Sec. 3863.303. AUTHORIZATION; ELECTION. (a) The district may adopt a sales and use tax to serve the purposes of the district after an election in which a majority of the voters of the district voting in the election authorize the adoption of the tax.

(b) The board by order may call an election to authorize a sales and use tax. The election may be held with any other district election.

(c) The district shall provide notice of the election and shall hold the election in the manner prescribed by Section 3863.212.

(d) The ballots shall be printed to provide for voting for or against the proposition: "Authorization of a sales and use tax in the Travis County Improvement District No. 1 at a rate not to exceed _____ percent."

Sec. 3863.304. ABOLISHING SALES AND USE TAX. (a) Except as provided by Subsection (b), the board may abolish the sales and use tax without an election.

(b) The board may not abolish the sales and use tax if the district has outstanding debt secured by the tax.

Sec. 3863.305. SALES AND USE TAX RATE. (a) On adoption of the tax authorized by this subchapter, there is imposed a tax on the receipts from the sale at retail of taxable items in the district, and an excise tax on the use, storage, or other consumption within the district of taxable items purchased, leased, or rented from a retailer in the district during the period that the tax is in effect.

(b) The board shall determine the rate of the tax, which may be in one-eighth of one percent increments not to exceed the maximum rate authorized by the district voters at the election. The board may decrease the tax rate to the extent it does not impair any outstanding debt or obligations payable from the tax.

(c) The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable item.

[Sections 3863.306-3863.350 reserved for expansion]

SUBCHAPTER H. HOTEL OCCUPANCY TAXES

Sec. 3863.351. HOTEL OCCUPANCY TAX. (a) In this section, "hotel" has the meaning assigned by Section 156.001, Tax Code.

(b) For purposes of this section, a reference in Chapter 351, Tax Code, to a municipality is a reference to the district and a reference in Chapter 351, Tax Code, to the municipality's officers or governing body is a reference to the board.

(c) Except as otherwise provided by this section, Subchapter A, Chapter 351, Tax Code, governs a hotel occupancy tax authorized by this section, including the collection of the tax.

(d) The district may impose a hotel occupancy tax and may use revenue from the tax for any district purpose that is also an authorized use of a municipality's hotel occupancy tax revenue under Chapter 351, Tax Code.

(e) The board by order may impose, repeal, increase, or decrease the rate of a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that:

- (1) is in a hotel located in the district's boundaries;
- (2) costs \$2 or more each day; and
- (3) is ordinarily used for sleeping.

(f) The amount of the tax may not exceed seven percent of the price paid for a room in a hotel.

(g) The district may examine and receive information related to the imposition of hotel occupancy taxes to the same extent as if the district were a municipality.

SECTION 2. The Travis County Improvement District No. 1 initially includes all territory contained in the following area:

TRACT I - 767.09 ACRES

Being a 767.08 acre tract of land out of and a portion of the Maria C. Salinas Survey No. 17, Abstract No. 776, the Grigsby Survey No. 530, Abstract 331, the J. F. Cole Survey no. 303, Abstract 185, the A. M. Maxey Survey No. 344, Abstract No. 2755, and the W. W. Burton Survey No. 15 in Travis and Burnet Counties, Texas; said 735.85 acre tract also being out of and a portion of a called 334.08 acre tract of land as conveyed to Ralph B. Thomas, and Bette P. Thomas as recorded in Warranty Deed Number 0701526 of the Deed Records of Burnet County, Texas, a called 44.998 acre tract of land as conveyed to Ralph Bowman Thomas, as recorded in Volume 592,

Page 107 of the Real Property Records of Travis County, Texas, a called 9.801 acre tract of land as conveyed to Ralph Bowman Thomas, as recorded in Volume 592, Page 110 of the Real Property Records of Travis County, Texas, a 210.197 acre tract of land as conveyed to Ralph Bowman Thomas, as recorded in Volume 592, Page 105 of the Real Property Records of Travis County, Texas, a called 36.724 acre tract of land as conveyed to Ralph Bowman Thomas, as recorded in Volume 592, Page 109 of the Real Property Records of Travis County, Texas, a called 69.996 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Volume 12210, page 1756 of the Real Property Records of Travis County, Texas, a called 31.226 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Clerk's File Number 2008158858 of the Official Public Records of Travis County, Texas, and a called 10.00 acre tract of land as conveyed to Ralph Bowman Thomas; said 767.08 acre tract of land is more particularly described by metes and bounds as follows with all bearings being referenced to the West line of said 334.08 acre tract of land;

BEGINNING at a point for the Northwest corner of said 334.08 acre tract, also being in the South right-of-way line of Haynie Flat Road, said point also being the Northeast corner of a tract of land conveyed to Jayco Holding LTD. as recorded in Volume 1377, Page 647 of the Deed Records of Burnet County, Texas;

THENCE with the South right-of-way line of said Haynie Flat Road as follows:

- South 66° 18' 10" East, 816.87 feet to a point for corner;
- South 83° 32' 58" East, 527.85 feet to a point for corner;
- North 80° 08' 19" East, 755.01 feet to a point for corner;
- South 73° 26' 33" East, 67.66 feet to a point for corner;
- South 50° 03' 15" East, 750.74 feet to a point for corner;

THENCE South 00° 33' 53" East with the East line of said 334.08 acre tract of land, 950.65 feet to a point for corner;

THENCE South 83° 28' 13" East with the North line of said 9.801 acre tract of land, and the South right-of-way line of said Haynie Flat Road, 1,163.56 feet to a point for corner in the West line of said 44.998 acre tract;

THENCE North 01° 22' 41" West, 225.12 feet to a point for corner in the South line of Haynie Flat Road (recording unknown);

THENCE with said Haynie Flat Road as follows:

- South 83° 43' 22" East, 185.35 feet to a point for corner;
- South 69° 05' 13" East, 75.76 feet to a point for corner;
- South 62° 09' 25" East, 141.91 feet to a point for corner;
- South 60° 23' 08" East, 65.71 feet to a point for corner;
- South 52° 23' 59" East, 26.39 feet to a point for corner;
- South 44° 25' 03" East, 128.13 feet to a point for corner;
- South 27° 24' 37" East, 104.89 feet to a point for corner;
- South 16° 42' 01" East, 157.00 feet to a point for corner;
- South 03° 42' 56" East, 10.82 feet to a point for the most Northerly corner of said 69.996 acre tract of land;

- South 35° 04' 47" East, 565.65 feet to a point for corner;
- South 32° 49' 44" East, 262.35 feet to a point for corner;
- South 49° 25' 20" East, 314.18 feet to a point for corner;

- South 53° 20' 30" East, 217.14 feet to a point for corner in the South right-of-way line of Paleface Ranch Road (recording unknown);

THENCE with the South right-of-way line of said Paleface Ranch Road as follows:

- South 63° 04' 11" East, 257.13 feet to a point for corner;
- South 50° 33' 39" East, 139.55 feet to a point for corner;
- South 49° 24' 14" East, 92.98 feet to a point for corner;
- South 47° 28' 19" East, 154.38 feet to a point for corner;
- South 46° 43' 16" East, 256.53 feet to a point for corner;
- South 37° 00' 56" East, 204.96 feet to a point for corner;
- South 37° 37' 10" East, 543.03 feet to a point for the Northeast corner of said

210.197 acre tract of land;

- South 36° 27' 00" East, 699.03 feet to a point for corner;
- South 15° 05' 09" East, 112.12 feet to a point for corner;
- South 04° 45' 26" West, 230.64 feet to a point for corner;
- South 07° 43' 23" West, 840.65 feet to a point for corner;
- South 05° 27' 39" West, 779.99 feet to a point for the Northeast corner of said

10.00 acre tract of land;

THENCE South 05° 17' 38" West, 270.88 feet to a point for corner;

THENCE South 04° 43' 42" West, 34.85 feet to a point for the most Northerly Southeast corner of said 10.00 acre tract and being a Northeast corner of that certain called 1.0 acre tract of land as conveyed to Geneva Hill, et al, in Volume 10450, Page 389 of the Real Property Records of Travis County, Texas;

THENCE with the Northerly South line of said 10.00 acre tract as follows:

- North 71° 03' 46" West, 207.20 feet to a point for corner;
- North 18° 54' 09" East, 182.74 feet to a point for corner;
- North 71° 03' 59" West, 175.03 feet to a point for corner;
- South 18° 53' 12" West, 212.86 feet to a point for the Southwest corner of said

1.00 acre tract, and in the Northerly line of said called 31.226 acre tract of land;

THENCE South 71° 05' 27" East with the Northerly line of said 31.226 acre tract, 389.79 feet to a point for corner in the west right-of-way line of said Paleface Ranch Road;

THENCE with the West right-of-way line of said Paleface Ranch Road as follows:

- South 16° 14' 51" West, 100.14 feet to a point for corner;
- South 35° 57' 30" West, 106.89 feet to a point for corner;
- South 45° 35' 30" West, 359.24 feet to a point for corner;
- South 51° 45' 21" West, 286.13 feet to a point for corner;
- South 62° 05' 35" West, 697.66 feet to a point for corner;
- South 43° 36' 15" West, 131.60 feet to a point for corner;
- South 29° 22' 21" West, 133.33 feet to a point for the Southeasterly corner of

said 31.226 acre tract and the most Southerly Southeast corner of that certain called 26.627 acre tract of land as conveyed to Michael L. Bay-Borelli, and Debra E. Bay-Borelli by Deed recorded in Document Number 2002208295 of the Official Public Records of Travis County, Texas;

THENCE with the Southwesterly line of said 31.226 acre tract as follows:

- North 52° 41' 24" West, 641.65 feet to a point for corner;
- North 34° 11' 39" East, 128.26 feet to a point for corner;
- North 25° 32' 57" West, 610.09 feet to a point for corner;
- North 14° 28' 58" East, 114.85 feet to a point for the most North Westerly corner of said 31.226 acre tract, and in the South line of said 210.197 acre tract;
THENCE North 75° 29' 01" West, 727.40 feet to a point for corner;
THENCE North 49° 35' 26" West, 283.72 feet to a point for corner;
THENCE North 50° 03' 08" West, 523.15 feet to a point for the Southwest corner of said 210.197 acre tract, and the Southeast corner of said 36.724 acre tract of land corner, also being the Southwesterly corner of that certain called tract of land conveyed to State of Texas for Permanent School Funds in Volume 1397, Page 990 of the Deed Records of Burnet County, Texas;

THENCE North 70° 34' 29" West, 743.11 feet to a point for corner in the West line of said State of Texas tract of land;

THENCE North 00° 05' 34" West, 980.07 feet to a point for the Southeast corner of said 334.08 acre tract;

THENCE West, 2,310.76 feet to a point for the Northwest corner of said State of Texas tract, and the Northeast corner of a tract of land as conveyed to Betty Ann Hollingsworth Herbert in Volume 11690, Page 447 of the Deed Records of Travis County, Texas;

THENCE North 89° 47' 18" West with the North line of said Hebert tract, 976.81 feet to a point for the Southeast corner of said Jayco Holding LTD tract, and the Southeast corner of said 334.08 tract;

THENCE North 06° 48' 08" East with the West line of said 334.08 acre tract, 5,223.87 feet to the POINT OF BEGINNING; containing 767.08 acres of land, more or less; SAVE AND EXCEPT, and excluding, any portion of this tract lying within the limits of Burnet County, Texas; with the intent being that this tract lies wholly within the limits of Travis County, Texas.

TRACT II - 482.50 ACRES

Being a 482.50 acre tract of land out of and a portion of the J. F. Cole Survey No. 303, Abstract 185, the V. L. Labenski Survey No. 301, the John Moat Survey No. 412, the R. R. Germany Survey No. 304, the John Ewers Survey No. 410, and the John Ewers Survey No. 308 in Travis County, Texas; said 482.50 acre tract also being out of and a portion of a called 15.241 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Volume 12210, page 1756 of the Real Property Records of Travis County, Texas, a called 287.84 acre tract of land as conveyed to Ralph Bowman Thomas in Volume 12029, Page 0628 of the Real Property Records of Travis County, Texas, a called 7.01 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Volume 12142, Page 3244 of the Real Property Records of Travis County, Texas, a 170.94 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Volume 12122, Page 2518 of the Real Property Records of Travis County, Texas, and a called 1.781 acre tract of land as conveyed to Ralph Bowman Thomas as recorded in Volume 12341, Page 0433 of the Real Property Records of Travis County, Texas; said 482.50 acre tract of land is more particularly described by metes and bounds as follows with all bearings being referenced to the West line of said 287.84 acre tract of land;

BEGINNING at a point for the Southwest corner of said 15.241 acre tract, also being in the South right-of-way line of Haynie Flat Road (recording unknown), and the North right-of-way line of Paleface Ranch Road (recording unknown);

THENCE with said Haynie Flat Road as follows:

- North 30° 23' 08" East, 347.80 feet to a point for corner;
- North 31° 39' 24" East, 108.86 feet to a point for corner;
- North 40° 00' 00" East, 3,271.92 feet to a point for corner;
- South 49° 40' 37" East, 3,050.44 feet to a point for corner at the beginning of a curve to the left;
 - along the arc of said curve to the left, having a chord of South 74° 06' 43" East, 219.54 feet, a radius of 517.92 feet, a central angle of 24° 28' 21", a distance of 221.22 feet to a point for corner;
 - continuing along the arc of said curve to the left, having a chord of North 80° 57' 51" East, 270.58 feet, a radius of 597.67 feet, a central angle of 26° 09' 59", a distance of 272.95 feet to a point for corner;
 - North 67° 47' 51" East, 294.01 feet to a point for corner;
 - North 64° 20' 52" East, 474.60 feet to a point for corner at the beginning of a curve to the left;
 - along the arc of said curve to the left, having a chord of North 51° 32' 52" East, 259.41 feet, a radius of 585.45 feet, a central angle of 25° 35' 59", a distance of 261.58 feet to a point for corner;
 - North 31° 20' 51" East, 5.66 feet to a point for corner;
 - North 45° 18' 55" East, 147.73 feet to a point for corner at the beginning of a curve to the right;
 - along the arc of said curve to the right, having a chord of North 75° 39' 23" East, 483.14 feet, a radius of 490.87 feet, a central angle of 58° 57' 41", a distance of 505.14 feet to a point for corner;
 - South 74° 41' 05" East, 73.93 feet to a point for corner;
 - South 65° 02' 26" East, 242.87 feet to a point for corner;
 - South 67° 46' 10" East, 632.84 feet to a point for corner;
 - South 68° 58' 09" East, 586.34 feet to a point for corner;
 - South 63° 23' 07" East, 234.88 feet to a point for corner at the beginning of a curve to the right;
 - along the arc of said curve to the right, having a chord of South 54° 05' 07" East, 196.29 feet, a radius of 607.30 feet, a central angle of 18° 36' 00", a distance of 197.15 feet to a point for corner;
 - continuing along the arc of said curve to the right, having a chord of South 32° 47' 07" East, 384.80 feet, a radius of 925.40 feet, a central angle of 24° 00' 00", a distance of 387.63 feet to a point for corner;
 - South 20° 47' 07" East, 321.96 feet to a point for corner at the beginning of a curve to the left;
 - along the arc of said curve to the left, having a chord of South 35° 49' 07" East, 313.18 feet, a radius of 603.70 feet, a central angle of 30° 04' 00", a distance of 316.80 feet to a point for corner;
 - South 50° 51' 07" East, 1,129.28 feet to a point for corner at the beginning of a curve to the right;

- along the arc of said curve to the right, having a chord of South 37° 25' 07" East, 429.97 feet, a radius of 925.40 feet, a central angle of 26° 52' 00", a distance of 433.93 feet to a point for corner;

- South 23° 59' 07" East, 53.87 feet to a point for the Northeast corner of said 170.94 acre tract;

THENCE South 38° 52' 11" West with the East line of said 170.94 acre tract, 1,446.00 feet to a point for the Southeast corner of said 170.94 acre tract;

THENCE with the Southerly line of said 170.94 acre tract as follows:

- North 44° 06' 59" West, 301.32 feet to a point for corner;

- North 32° 57' 59" West, 261.60 feet to a point for corner;

- North 27° 31' 59" West, 58.00 feet to a point for corner;

- North 60° 07' 59" West, 144.10 feet to a point for corner;

- North 47° 10' 59" West, 343.10 feet to a point for corner;

- North 42° 40' 59" West, 113.70 feet to a point for corner;

- North 38° 08' 59" West, 191.80 feet to a point for corner;

- North 58° 03' 59" West, 170.20 feet to a point for corner;

- North 47° 44' 59" West, 153.30 feet to a point for corner;

- North 36° 27' 59" West, 111.00 feet to a point for corner;

- North 26° 08' 59" West, 65.60 feet to a point for corner;

- North 42° 37' 59" West, 153.30 feet to a point for corner;

- North 60° 44' 59" West, 103.40 feet to a point for corner;

- North 49° 33' 59" West, 126.50 feet to a point for corner;

- North 35° 31' 59" West, 103.20 feet to a point for corner;

- North 08° 01' 59" West, 33.20 feet to a point for corner;

- North 00° 54' 01" East, 65.60 feet to a point for corner;

- North 32° 16' 01" East, 177.40 feet to a point for corner;

- North 43° 23' 01" East, 182.90 feet to a point for corner;

- North 82° 08' 59" West, 90.50 feet to a point for corner;

- North 49° 46' 59" West, 75.30 feet to a point for corner;

- North 34° 37' 59" West, 144.50 feet to a point for corner;

- South 23° 17' 01" West, 88.20 feet to a point for corner;

- South 08° 53' 01" West, 133.80 feet to a point for corner;

- South 31° 03' 01" West, 65.90 feet to a point for corner;

- South 32° 52' 01" West, 183.90 feet to a point for corner;

- South 53° 24' 01" West, 24.80 feet to a point for corner;

- South 82° 27' 01" West, 44.60 feet to a point for corner;

- North 73° 14' 59" West, 185.70 feet to a point for corner;

- North 66° 44' 59" West, 468.00 feet to a point for corner;

- North 47° 24' 59" West, 277.70 feet to a point for corner;

- North 73° 00' 59" West, 462.10 feet to a point for corner;

- North 79° 19' 59" West, 350.00 feet to a point for corner;

- North 54° 05' 59" West, 40.00 feet to a point for corner;

- North 09° 16' 59" West, 54.10 feet to a point for corner;

- North 08° 39' 01" East, 168.60 feet to a point for corner;

- North 11° 19' 59" West, 152.30 feet to a point for corner;

- South 21° 13' 01" West, 134.40 feet to a point for corner;

- South 28° 29' 01" West, 95.80 feet to a point for corner;
 - South 23° 49' 41" West, 99.63 feet to a point for the Southwesterly corner of said 170.94 acre tract, said point also being in the North line of said 287.84 acre tract;
 THENCE South 48° 56' 38" East with the North line of said 287.84 acre tract, 327.54 feet to a point on the North bank of the Pedernales River, now inundated by the waters of Lake Travis;

THENCE with the North and West bank of said Pedernales River as follows:

- South 64° 00' 00" West, 232.43 feet to a point for corner;
 - South 32° 00' 00" West, 202.00 feet to a point for corner;
 - South 08° 00' 00" West, 455.00 feet to a point for corner;
 - South 10° 00' 00" East, 400.00 feet to a point for corner;
 - South 19° 00' 00" East, 408.00 feet to a point for corner;
 - South 36° 11' 04" East, 509.92 feet to a point for corner;
 - South 22° 08' 43" East, 461.36 feet to a point for corner in the centerline of a ravine now inundated by the waters of Lake Travis;

THENCE with the centerline of said ravine as follows:

- South 69° 39' 01" West, 625.00 feet to a point for corner;
 - North 75° 35' 59" West, 440.00 feet to a point for corner;
 - North 65° 50' 59" West, 620.00 feet to a point for corner;
 - North 14° 35' 59" West, 440.00 feet to a point for corner;
 - North 16° 17' 01" East, 501.00 feet to a point for corner;
 - North 53° 21' 31" West, 176.92 feet to a point for corner;
 - North 44° 08' 58" West, 240.27 feet to a point for corner;
 - North 57° 26' 22" West, 119.19 feet to a point for corner;
 - North 51° 05' 53" West, 206.28 feet to a point for corner;
 - North 75° 14' 25" West, 112.08 feet to a point for corner;
 - North 13° 16' 01" East, 25.00 feet to a point for corner in the South line of said 287.84 acre tract;

THENCE with the South line of said 287.84 acre tract as follows:

- North 76° 43' 59" West, 10.45 feet to a point for corner;
 - North 68° 03' 09" West, 164.71 feet to a point for corner;
 - North 65° 55' 57" West, 480.75 feet to a point for corner;
 - North 66° 01' 19" West, 1,163.01 feet to a point for corner;
 - South 82° 57' 07" West, 16.87 feet to a point for corner;
 - North 31° 52' 00" West, 15.44 feet to a point for corner;
 - South 71° 50' 15" West, 1,009.06 feet to a point for the Southwesterly corner of said 287.84 acre tract, and the Northeast corner of said 15.241 acre tract;
 THENCE South 00° 16' 35" East, 260.71 feet to a point for corner;
 THENCE South 65° 57' 27" East, 110.68 feet to a point for corner;
 THENCE South 67° 01' 21" East, 32.47 feet to a point for corner;
 THENCE South 29° 11' 37" West, 55.50 feet to a point for corner;
 THENCE South 39° 16' 53" West, 11.52 feet to a point for corner for a Northeasterly corner of said 1.781 acre tract;

THENCE with the East line of said 1.781 acre tract as follows:

- South 30° 02' 03" East, 30.83 feet to a point for corner;
 - South 06° 24' 39" East, 80.85 feet to a point for corner;

- South 20° 44' 41" West, 57.13 feet to a point for corner;
- South 38° 38' 12" West, 58.24 feet to a point for corner;
- South 52° 29' 45" West, 108.56 feet to a point for corner;
- South 55° 46' 45" West, 181.13 feet to a point for corner in the North line of said Paleface Ranch Road;

THENCE with the North line of said Paleface Ranch Road as follows:

- North 37° 34' 31" West, 128.95 feet to a point for corner;
- North 37° 26' 17" West, 62.78 feet to a point for the Southwest corner of said 1.781 acre tract, and the Southeast corner of said 15.241 acre tract;
- North 37° 26' 17" West, 369.15 feet to a point for corner;
- North 40° 03' 08" West, 63.66 feet to a point for corner;
- North 18° 09' 23" West, 14.01 feet to a point for corner;
- North 43° 54' 03" West, 15.90 feet to a point for corner;
- North 68° 55' 02" West, 8.93 feet to a point for corner;
- North 40° 57' 50" West, 130.58 feet to a point for corner;
- North 45° 28' 49" West, 410.55 feet to a point for corner;
- North 52° 38' 51" West, 242.60 feet to the POINT OF BEGINNING;

containing 482.50 acres of land, more or less.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) The general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 2526**.

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

Absent: Ogden.

SENATE BILL 705 WITH HOUSE AMENDMENT

Senator Nelson called **SB 705** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 705** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to long-term care consumer information and Medicaid waiver programs.

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

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.077 to read as follows:

Sec. 161.077. LONG-TERM CARE MEDICAID WAIVER PROGRAMS.

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

(1) reducing the number of forms used in administering the programs;

(2) revising program provider manuals and training curricula;

(3) consolidating service authorization systems;

(4) eliminating any physician signature requirements the department considers unnecessary;

(5) standardizing individual service plan processes across the programs; and

(6) any other initiatives that will increase efficiencies in the programs.

(c) The department shall ensure that actions taken under this section do not conflict with any requirements of the commission under Section 531.0218, Government Code.

SECTION 2. Effective September 15, 2009, Section 531.02191, Government Code, is amended to read as follows:

Sec. 531.02191. PUBLIC INPUT. In complying with the requirements of Section ~~Sections~~ 531.0218 ~~and 531.0219~~, the commission shall regularly consult with and obtain input from:

(1) consumers and family members;

(2) providers;

(3) advocacy groups;

(4) state agencies that administer a Section 1915(c) waiver program; and

(5) other interested persons.

SECTION 3. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0318 to read as follows:

Sec. 531.0318. LONG-TERM CARE CONSUMER INFORMATION MADE AVAILABLE THROUGH THE INTERNET. (a) The Internet site maintained under Section 531.0317 must include information for consumers concerning long-term care

services that complies with this section. The Internet site maintained by the Department of Aging and Disability Services must also include, or provide a link to, the information required by this section.

(b) The information for consumers required by this section must:

(1) be presented in a manner that is easily accessible to, and understandable by, a consumer; and

(2) allow a consumer to make informed choices concerning long-term care services and include:

(A) an explanation of the manner in which long-term care service delivery is administered in different counties through different programs operated by the commission and by the Department of Aging and Disability Services, so that an individual can easily understand the service options available in the area in which that individual lives; and

(B) for the Medicaid Star + Plus pilot program, information that allows a consumer to evaluate the performance of each participating plan issuer, including for each issuer, in an accessible format such as a table:

(i) the enrollment in each county;

(ii) additional "value-added" services provided;

(iii) a summary of the financial statistical report required under

Subchapter A, Chapter 533;

(iv) complaint information;

(v) any sanction or penalty imposed by any state agency, including a sanction or penalty imposed by the commission or the Texas Department of Insurance;

(vi) information concerning consumer satisfaction; and

(vii) other data, including relevant data from reports of external quality review organizations, that may be used by the consumer to evaluate the quality of the services provided.

(c) In addition to providing the information required by this section through the Internet, the commission or the Department of Aging and Disability Services shall, on request by a consumer without Internet access, provide the consumer with a printed copy of the information from the website. The commission or department may charge a reasonable fee for printing the information.

SECTION 4. (a) Effective September 15, 2009, Section 531.0219, Government Code, is repealed.

(b) Subject to Section 7 of this Act:

(1) effective September 15, 2009, the consolidated waiver program under Section 531.0219, Government Code, is abolished; and

(2) the Department of Aging and Disability Services, with the assistance of the Health and Human Services Commission, shall:

(A) before September 14, 2009, determine in which other Section 1915(c) waiver programs, as defined by Section 531.001, Government Code, each person receiving services through the consolidated waiver program is eligible for enrollment; and

(B) not later than September 14, 2009, transfer the person's enrollment without any break in service from the consolidated waiver program to an appropriate program described by Paragraph (A) of this subdivision for which the person is eligible.

(c) A person described by Subsection (b) of this section may not be placed on an interest list or any other waiting list for a Section 1915(c) waiver program instead of being enrolled in a program as required by Paragraph (B), Subdivision (2), Subsection (b), of this section.

SECTION 5. (a) Not later than January 1, 2010, the Health and Human Services Commission shall make the information required by Section 531.0318, Government Code, as added by this Act, available through the Internet.

(b) In developing the information required to be made available under this Act, the Health and Human Services Commission shall incorporate long-term care provider quality information reported through the Department of Aging and Disability Services Internet site, as well as other appropriate available information concerning the quality of services provided through the long-term care service delivery programs operated by that department.

SECTION 6. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 7. If before implementing any provision of this Act a state agency determines that the implementation of the provision could result in a reduction or elimination of federal funding, the agency affected by the provision may delay implementing that provision, including by continuing to operate the consolidated waiver program otherwise eliminated by this Act, until the agency is notified by the federal government that the implementation will not result in a reduction or elimination of federal funding.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 705**.

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

Absent: Ogden.

SENATE BILL 174 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 174** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 174** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to accountability of institutions of higher education, including educator preparation programs, and online institution resumes for public institutions of higher education.

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

SECTION 1. Section 21.041, Education Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The board shall propose a rule adopting a fee for the issuance and maintenance of an educator certificate that, when combined with any fees imposed under Subsection (d), is adequate to cover the cost of administration of this subchapter.

(d) The board may propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program, or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed under this subsection may not exceed the amount necessary, as determined by the board, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of educator preparation programs under this subchapter.

SECTION 2. Subchapter B, Chapter 21, Education Code, is amended by amending Section 21.045 and adding Sections 21.0451 and 21.0452 to read as follows:

Sec. 21.045. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS. (a) The board shall propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity ~~[and that includes]~~:

(1) results of the certification examinations prescribed under Section 21.048(a); ~~and~~

(2) performance based on the appraisal system for beginning teachers adopted by the board;

(3) achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and

(4) compliance with board requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom.

(b) Each educator preparation program shall submit data elements as required by the board for an annual performance report to ensure access and equity. At a minimum, the annual report must contain the performance data from Subsection (a), other than the data required for purposes of Subsection (a)(3), and the following information, disaggregated by sex and ethnicity:

- (1) the number of candidates who apply;
- (2) the number of candidates admitted;
- (3) the number of candidates retained;
- (4) the number of candidates completing the program;

(5) the number of candidates employed in the profession after completing the program; ~~and~~

(6) the number of candidates retained in the profession; and

(7) any other information required by federal law.

(c) The board shall propose rules establishing performance standards for the Accountability System for Educator Preparation for accrediting educator preparation programs. At a minimum, performance standards must be based on Subsection (a). The board may propose rules establishing minimum standards for approval or renewal of approval of:

(1) educator preparation programs; or

(2) certification fields authorized to be offered by an educator preparation program.

Sec. 21.0451. SANCTIONS UNDER ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS. (a) The board shall propose rules for the sanction of educator preparation programs that do not meet accountability standards and shall annually review the accreditation status of each educator preparation program. The rules:

(1) shall provide for the assignment of the following accreditation statuses:

(A) not rated;

(B) accredited;

(C) accredited-warned;

(D) accredited-probation; and

(E) not accredited-revoked;

(2) may provide for the agency to take any necessary action, including one or more of the following actions:

(A) requiring the program to obtain technical assistance approved by the agency or board;

(B) requiring the program to obtain professional services under contract with another person;

(C) appointing a monitor to participate in and report to the board on the activities of the program; and

(D) if a program has been rated as accredited-probation under the Accountability System for Educator Preparation for a period of at least one year, revoking the approval of the program and ordering the program to be closed, provided that the board or agency must provide the opportunity for a hearing before the effective date of the closure; and

(3) shall provide for the agency to revoke the approval of the program and order the program to be closed if the program has been rated as accredited-probation under the Accountability System for Educator Preparation for three consecutive years, provided that the board or agency must provide the opportunity for a hearing before the effective date of the closure.

(b) Any action authorized or required to be taken against an educator preparation program under Subsection (a) may also be taken with regard to a particular field of certification authorized to be offered by an educator preparation program.

(c) A permissive revocation under Subsection (a)(2) or required revocation under Subsection (a)(3) must be effective for a period of at least two years. After two years, the program may seek renewed approval to prepare educators for state certification.

(d) The costs of technical assistance required under Subsection (a)(2)(A) or the costs associated with the appointment of a monitor under Subsection (a)(2)(C) shall be paid by the sponsor of the educator preparation program [The executive director of the board shall appoint an oversight team of educators to make recommendations and provide assistance to educator preparation programs that do not meet accreditation standards. If, after one year, an educator preparation program has not fulfilled the recommendations of the oversight team, the executive director shall appoint a person to administer and manage the operations of the program. If the program does not improve after two years, the board shall revoke the approval of the program to prepare educators for state certification].

Sec. 21.0452. CONSUMER INFORMATION REGARDING EDUCATOR PREPARATION PROGRAMS. (a) To assist persons interested in obtaining teaching certification in selecting an educator preparation program and assist school districts in making staffing decisions, the board shall make information regarding educator programs in this state available to the public through the board's Internet website.

(b) The board shall make available at least the following information regarding each educator preparation program:

(1) the information specified in Sections 21.045(a) and (b);

(2) in addition to any other appropriate information indicating the quality of persons admitted to the program, the average academic qualifications possessed by persons admitted to the program, including:

(A) average overall grade point average and average grade point average in specific subject areas; and

(B) average scores on the Scholastic Assessment Test (SAT), the American College Test (ACT), or the Graduate Record Examination (GRE), as applicable;

(3) the degree to which persons who complete the program are successful in obtaining teaching positions;

(4) the extent to which the program prepares teachers, including general education teachers and special education teachers, to effectively teach:

(A) students with disabilities; and

(B) students of limited English proficiency, as defined by Section 29.052;

(5) the activities offered by the program that are designed to prepare teachers to:

(A) integrate technology effectively into curricula and instruction, including activities consistent with the principles of universal design for learning; and

(B) use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement;

(6) the perseverance of beginning teachers in the profession, as determined on the basis of the number of beginning teachers who maintain status as active contributing members in the Teacher Retirement System of Texas for at least three years after certification in comparison to similar programs;

(7) the results of exit surveys given to program participants on completion of the program that involve evaluation of the program's effectiveness in preparing participants to succeed in the classroom; and

(8) the results of surveys given to school principals that involve evaluation of the program's effectiveness in preparing participants to succeed in the classroom, based on experience with employed program participants.

(c) For purposes of Subsection (b)(7), the board shall require an educator preparation program to distribute an exit survey that a program participant must complete before the participant is eligible to receive a certificate under this subchapter.

(d) For purposes of Subsections (b)(7) and (8), the board shall develop surveys for distribution to program participants and school principals.

(e) The board may develop procedures under which each educator preparation program receives a designation or ranking based on the information required to be made available under Subsection (b). If the board develops procedures under this subsection, the designation or ranking received by each program must be included in the information made available under this section.

(f) In addition to other information required to be made available under this section, the board shall provide information identifying employment opportunities for teachers in the various regions of this state. The board shall specifically identify each region of this state in which a shortage of qualified teachers exists.

(g) The board may require any person to provide information to the board for purposes of this section.

SECTION 3. Subtitle A, Title 3, Education Code, is amended by adding Chapter 51A to read as follows:

CHAPTER 51A. ONLINE INSTITUTION RESUMES FOR INSTITUTIONS OF
HIGHER EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51A.001. DEFINITIONS. In this chapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "General academic teaching institution," "institution of higher education," "medical and dental unit," "public state college," and "public technical institute" have the meanings assigned by Section 61.003.

Sec. 51A.002. POWERS AND DUTIES OF COORDINATING BOARD RELATING TO INSTITUTION RESUMES; GENERAL REQUIREMENTS FOR INSTITUTION RESUMES. (a) The coordinating board, in consultation with each institution of higher education to which this chapter applies, shall develop and maintain online resumes for each of those institutions.

(b) The coordinating board shall:

(1) request from each institution of higher education to which this chapter applies any information the coordinating board considers necessary for the coordinating board to include information or calculate data required to be included in the institution's resume;

(2) establish for each institution of higher education to which this chapter applies a list of representative in-state and out-of-state peer institutions and maintain that list on the coordinating board's Internet website;

(3) ensure that each of an institution of higher education's online resumes:

(A) is available to the public on the coordinating board's Internet website, in a one-page format if possible, and is accessible through a link that appears in a prominent place on the coordinating board's Internet website home page;

(B) uses enhanced, user-friendly search capabilities to ensure that the information required to be included in the resume is easily accessible to the persons for whom the resume is designed; and

(C) includes a clearly identifiable link to information on the coordinating board's Internet website regarding the coordinating board's higher education accountability system; and

(4) ensure that the information provided in each resume is accurate and up to date and includes the most recent data available for out-of-state peer institutions.

(c) The coordinating board may modify, as the coordinating board considers necessary, national data regarding an institution's out-of-state peer institutions to ensure uniformity in the comparison of that data to data regarding the institution for which the resume is created and the institution's in-state peer institutions in a resume under this chapter.

(d) The coordinating board is not required to include in the resume any category of information that is unavailable to the coordinating board.

Sec. 51A.003. DUTIES OF INSTITUTIONS OF HIGHER EDUCATION RELATING TO INSTITUTION RESUMES. Each institution of higher education to which this chapter applies shall:

(1) submit to the coordinating board any information requested by the coordinating board as necessary for the coordinating board to include information or calculate data required to be included in the institution's resumes; and

(2) ensure that the institution's Internet website home page includes, in a prominent place, an accessible link to the institution's online resumes maintained on the coordinating board's Internet website.

[Sections 51A.004-51A.050 reserved for expansion]

SUBCHAPTER B. ONLINE INSTITUTION RESUMES FOR FOUR-YEAR GENERAL ACADEMIC TEACHING INSTITUTIONS

Sec. 51A.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to general academic teaching institutions, other than public state colleges.

Sec. 51A.052. INSTITUTION RESUME FOR LEGISLATORS AND OTHER POLICY MAKERS. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume that is designed for use by legislators and other interested policy makers.

(b) The resume required by this section must identify:

(1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and

(2) the institution's in-state and out-of-state peer institutions.

(c) For purposes of this section, information required to be included in the resume regarding the institution's in-state or out-of-state peer institutions must be listed in the form of the average of that information for those institutions unless otherwise prescribed by coordinating board rule.

(d) The resume must include the following information relating to the institution for the most recent state fiscal year for which the information is available and compare that information to the same information for the state fiscal year preceding the most recent state fiscal year for which the information is available and the state fiscal year preceding the most recent state fiscal year for which the information is available by five years:

(1) under the heading "ENROLLMENT," the total number of students enrolled in the institution during the fall semester that ended in the fiscal year covered by the resume;

(2) under the heading "COSTS," the average annual total academic costs for a resident undergraduate student enrolled in 30 semester credit hours:

(A) at the institution; and

(B) at the institution's in-state and out-of-state peer institutions;

(3) under the heading "STUDENT SUCCESS":

(A) the retention rate of first-time, full-time, degree-seeking entering undergraduate students:

(i) enrolled in the institution after one academic year and after two academic years; and

(ii) enrolled in the institution's in-state peer institutions after two academic years;

(B) the percentage of undergraduate students requiring developmental education who, after six years from entering the institution, graduated from or are still enrolled in:

(i) the institution; and

(ii) the institution's in-state peer institutions;

(C) the four-year and six-year graduation rates of full-time degree-seeking students:

(i) at the institution; and

(ii) at the institution's in-state and out-of-state peer institutions; and

(D) the average number of fall and spring semesters of enrollment attempted by a student to obtain a bachelor's degree:

(i) at the institution; and

(ii) at the institution's in-state peer institutions; and

(4) under the heading "FUNDING":

(A) the total amount of money appropriated by the legislature to the institution, including money appropriated for faculty and staff health coverage and retirement benefits; and

(B) the total amount of money from any source available to the institution in that state fiscal year.

Sec. 51A.053. INSTITUTION RESUME FOR PROSPECTIVE STUDENTS, PARENTS, AND MEMBERS OF THE PUBLIC. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume that is designed for use by prospective students of the institution, their parents, and other interested members of the public. A resume required for an institution under this section is not required to include information that the coordinating board considers to be substantially duplicative of information reported and available to the public through the Voluntary System of Accountability Program.

(b) The resume must identify:

(1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and

(2) the institution's in-state peer institutions.

(c) Except as otherwise provided by the coordinating board under Subsection (a), the resume must include the following information relating to the most recent state fiscal year for which the information is available:

(1) under the heading "ENROLLMENT":

(A) the total number of students enrolled in the institution during the fall semester that ended in the fiscal year covered by the resume; and

(B) a clearly identifiable link to the information described by Paragraph

(A) disaggregated by student ethnicity;

(2) under the heading "DEGREES AWARDED":

(A) the number of bachelor's degrees, number of master's degrees, number of doctoral degrees, and number of professional degrees awarded by the institution; and

(B) a clearly identifiable link to the information described by Paragraph

(A) disaggregated by student ethnicity;

(3) under the heading "COSTS":

(A) the average annual total academic costs for a resident undergraduate student enrolled in 30 semester credit hours at the institution;

(B) clearly identifiable links to information regarding:

(i) the rate or rates of tuition per semester credit hour charged by the institution;

(ii) any mandatory fees, as defined by the coordinating board, imposed by the institution; and

(iii) the amount and percentage by which the institution has increased tuition for a degree program or course level during the state fiscal year covered by the resume;

(C) the average cost of on-campus room and board per student; and

(D) the average cost to a resident undergraduate student enrolled in 30 semester credit hours for total academic costs and on-campus room and board, excluding the cost of books, supplies, transportation, or other expenses;

(4) under the heading "FINANCIAL AID":

(A) the percentage of undergraduate students enrolled in the institution who receive need-based grants or scholarships;

(B) the percentage of undergraduate students enrolled in the institution who receive need-based grants, scholarships, loans, or work-study funds;

(C) the average amount of an undergraduate student's need-based grant and scholarship package; and

(D) the average amount of an undergraduate student's need-based grant, scholarship, loan, and work-study package;

(5) under the heading "ADMISSIONS":

(A) the middle 50 percent test score range of first-time undergraduate students at the institution whose Scholastic Assessment Test (SAT) scores were in the 25th to 75th percentile of students' scores at that institution;

(B) the middle 50 percent test score range of first-time undergraduate students at the institution whose American College Test (ACT) scores were in the 25th to 75th percentile of students' scores at that institution; and

(C) the percentage of the students who applied for first-time undergraduate admission to the institution who were offered admission to the institution;

(6) under the heading "INSTRUCTION":

(A) the student/faculty ratio at the institution;

(B) the percentage of organized undergraduate classes offered by the institution in which fewer than 20 students are enrolled;

(C) the percentage of organized undergraduate classes offered by the institution in which more than 50 students are enrolled; and

(D) the percentage of teaching faculty members of the institution who are tenured or tenure-track;

(7) under the heading "BACCALAUREATE SUCCESS":

(A) four-year, five-year, and six-year graduation rates for full-time bachelor's degree-seeking students at the institution, and links to that information disaggregated by student ethnicity; and

(B) the average number of fall and spring semesters of enrollment attempted by a student to obtain a bachelor's degree; and

(8) under the heading "FIRST-TIME LICENSURE OR CERTIFICATION EXAMINATION PASS RATES," the first-time licensure or certification examination pass rates in the fields of education, law, pharmacy, nursing, and engineering of students enrolled in the institution or who have graduated from the institution.

[Sections 51A.054-51A.100 reserved for expansion]

SUBCHAPTER C. INSTITUTION RESUMES FOR LOWER-DIVISION INSTITUTIONS

Sec. 51A.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the following institutions of higher education:

(1) public junior colleges;

(2) public technical institutes; and

(3) public state colleges.

Sec. 51A.102. INSTITUTION RESUME FOR LEGISLATORS AND OTHER POLICY MAKERS. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume for the institution designed for use by legislators and other interested policy makers.

(b) The resume must identify:

(1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and

(2) the institution's in-state peer institutions.

(c) For purposes of this section, information required to be included in the resume regarding the institution's in-state peer institutions must be listed in the form of the average of that information for those institutions unless otherwise prescribed by coordinating board rule.

(d) The resume must include the following information relating to the institution for the most recent state fiscal year for which the information is available and compare that information to the same information for the state fiscal year preceding the most recent state fiscal year for which the information is available and the state fiscal year preceding the most recent state fiscal year for which the information is available by five years:

(1) under the heading "ENROLLMENT," the total number of students enrolled in the institution for course credit during the fall semester that ended in the fiscal year covered by the resume;

(2) under the heading "COSTS," the average annual total academic costs, which for a junior college must include those costs for an in-district and an out-of-district student, for a student enrolled in 30 semester credit hours toward a two-year degree or certificate:

(A) at the institution; and

(B) at the institution's in-state peer institutions;

(3) under the heading "STUDENT SUCCESS":

(A) the retention rate of first-time, full-time, credential-seeking entering undergraduate students:

(i) enrolled in the institution after two academic years; and

(ii) enrolled in the institution's in-state peer institutions after two

academic years;

(B) the percentage of undergraduate students requiring developmental education who, after three years from entering the institution, graduated from or are still enrolled in:

(i) the institution; and

(ii) the institution's in-state peer institutions;

(C) the three-year, four-year, and six-year graduation rates of full-time credential-seeking students:

(i) at the institution; and

(ii) at the institution's in-state peer institutions;

(D) the percentage of students who transferred to a general academic teaching institution or equivalent institution of higher education, as determined using the accountability system definition of a transfer student:

(i) from the institution; and

(ii) from the institution's in-state peer institutions; and

(E) the percentage of graduates from the preceding academic year who, as of the fall semester that ended in the fiscal year covered by the resume, were either employed or enrolled in a general academic teaching institution or equivalent institution of higher education for:

- (i) the institution; and
- (ii) the institution's in-state peer institutions; and
- (4) under the heading "FUNDING":

(A) the total amount of money appropriated by the legislature to the institution for that state fiscal year, including money appropriated for faculty and staff health coverage and retirement benefits;

(B) the total amount of money from any source available to the institution in that state fiscal year; and

(C) the tax rate per \$100 valuation of taxable property imposed by the junior college district, if the institution is a public junior college.

Sec. 51A.103. INSTITUTION RESUME FOR PROSPECTIVE STUDENTS, PARENTS, AND OTHER MEMBERS OF THE PUBLIC. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume that is designed for use by prospective students of the institution, their parents, and other interested members of the public.

(b) The resume must identify:

(1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and

(2) the institution's in-state peer institutions.

(c) For purposes of this section, information required to be included in the resume regarding the institution's in-state peer institutions must be listed in the form of the average of that information for those institutions unless otherwise prescribed by coordinating board rule.

(d) The resume must include the following information relating to the most recent state fiscal year for which the information is available:

(1) under the heading "ENROLLMENT":

(A) the total number of students enrolled during the fall semester that ended in the fiscal year covered by the resume:

(i) at the institution; and

(ii) at the institution's in-state peer institutions; and

(B) a clearly identifiable link to information described by Paragraph (A) disaggregated by student ethnicity;

(2) under the heading "DEGREES AND CERTIFICATES AWARDED":

(A) the number of degrees or certificates awarded for each level, type, or other category of degree or certificate specified by the coordinating board for purposes of this paragraph:

(i) by the institution; and

(ii) by the institution's in-state peer institutions; and

(B) a clearly identifiable link to the information described by Paragraph (A) disaggregated by student ethnicity;

(3) under the heading "COSTS," the average annual total academic costs, which for a junior college must include those costs for an in-district and out-of-district student, for a student enrolled in 30 semester credit hours toward a two-year degree:

(A) at the institution; and

(B) at the institution's in-state peer institutions;

(4) under the heading "FINANCIAL AID":

(A) the percentage of students who receive need-based grants or scholarships:

- (i) at the institution; and
- (ii) at the institution's in-state peer institutions;

(B) the percentage of students who receive need-based grants, scholarships, loans, or work-study funds:

- (i) at the institution; and
- (ii) at the institution's in-state peer institutions;

(C) the average amount of a student's need-based grant and scholarship package:

- (i) at the institution; and
- (ii) at the institution's in-state peer institutions; and

(D) the average amount of a student's need-based grant, scholarship, loan, and work-study package:

- (i) at the institution; and
- (ii) at the institution's in-state peer institutions; and

(5) under the heading "STUDENT SUCCESS":

(A) the retention rate of first-time, full-time, credential-seeking entering undergraduate students:

- (i) enrolled in the institution after two academic years; and
- (ii) enrolled in the institution's in-state peer institutions after two

academic years;

(B) the percentage of students requiring developmental education who, after three years from entering the institution, have graduated from or are still enrolled in:

- (i) the institution; and
- (ii) the institution's in-state peer institutions;

(C) the three-year, four-year, and six-year graduation rates of full-time degree-seeking students:

- (i) at the institution; and
- (ii) at the institution's in-state peer institutions;

(D) the percentage of students who transferred to a general academic teaching institution or equivalent institution of higher education, as determined using the accountability system definition of a transfer student:

- (i) from the institution; and
- (ii) from the institution's in-state peer institutions; and

(E) the percentage of graduates from the preceding academic year who, as of the fall semester that ended in the fiscal year covered by the resume, were either employed or enrolled in a general academic teaching institution or equivalent institution of higher education for:

- (i) the institution; and
- (ii) the institution's in-state peer institutions.

[Sections 51A.104-51A.150 reserved for expansion]

SUBCHAPTER D. ONLINE INSTITUTION RESUMES FOR MEDICAL AND DENTAL UNITS

Sec. 51A.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to medical and dental units.

Sec. 51A.152. INSTITUTION RESUME FOR LEGISLATORS AND OTHER POLICY MAKERS. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume designed for use by legislators and other interested policy makers.

(b) The resume must identify:

(1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and

(2) the institution's in-state and out-of-state peer institutions.

(c) For purposes of this section, information required to be included in the resume regarding the institution's in-state or out-of-state peer institutions must be listed in the form of the average of that information for those institutions unless otherwise prescribed by coordinating board rule.

(d) The resume must include the following information relating to the institution for the most recent state fiscal year for which the information is available and compare that information to the same information for the state fiscal year preceding the most recent state fiscal year for which the information is available and the state fiscal year preceding the most recent state fiscal year for which the information is available by five years:

(1) under the heading "ENROLLMENT":

(A) the total number of students enrolled in the institution during the fall semester that ended in the fiscal year covered by the resume;

(B) if applicable, the total number of students enrolled in the institution's medical school during that fall semester; and

(C) if applicable, the total number of physicians certified by the institution annually on September 1 as training in residency programs accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(2) under the heading "COSTS," the average annual total academic costs, including those costs identified by type of degree program if required by coordinating board rule, for a resident, full-time undergraduate student and for a resident, full-time graduate student:

(A) at the institution; and

(B) at the institution's in-state and out-of-state peer institutions;

(3) under the heading "STUDENT SUCCESS":

(A) if applicable, the percentage of medical school students who pass Part 1 or Part 2 of any examination administered or accepted for a medical license under Subtitle B, Title 3, Occupations Code:

(i) at the institution; and

(ii) at the institution's in-state and out-of-state peer institutions;

(B) if applicable, the percentage of medical school students who are practicing primary care in this state:

- (i) after graduating from the institution; and
- (ii) after graduating from the institution's in-state peer institutions;
- (C) the number of nursing degrees or allied health degrees awarded for

each level:

- (i) by the institution; and
- (ii) by the institution's in-state and out-of-state peer institutions;

and

(D) the estimated total amount of the institution's research expenditures for the most recent state fiscal year available; and

(4) under the heading "FUNDING":

(A) the total amount of money appropriated by the legislature to the institution, including money appropriated for faculty and staff health coverage and retirement benefits, for that state fiscal year; and

(B) the total amount of money from any source available to the institution for that state fiscal year.

Sec. 51A.153. INSTITUTION RESUME FOR PROSPECTIVE STUDENTS, PARENTS, AND OTHER MEMBERS OF THE PUBLIC. (a) The coordinating board shall maintain for each institution to which this subchapter applies an online resume that is designed for use by prospective students of the institution, their parents, and other interested members of the public.

(b) The resume must identify:

- (1) the institutional grouping to which the institution is assigned under the coordinating board's higher education accountability system; and
- (2) the institution's in-state and out-of-state peer institutions.

(c) For purposes of this section, information required to be included in the resume regarding the institution's in-state peer institutions must be listed in the form of the average of that information for those institutions unless otherwise prescribed by coordinating board rules.

(d) The resume must include the following information relating to the most recent state fiscal year for which the information is available:

(1) under the heading "ENROLLMENT," with clearly identifiable links to the information disaggregated by student ethnicity:

(A) the total number of students enrolled in the institution during the fall semester that ended in the fiscal year covered by the resume;

(B) if applicable, the total number of students enrolled in the institution's medical school during that fall semester; and

(C) if applicable, the total number of physicians certified by the institution annually on September 1 as training in residency programs accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association at the institution on the most recent September 1 for which the information is available;

(2) under the heading "COSTS":

(A) the average annual total academic costs, including those costs identified by type of degree program if required by coordinating board rule, for a resident, full-time student at the institution;

(B) clearly identifiable links to information regarding:

(i) the tuition per academic year charged by the institution under Section 54.051;

(ii) any mandatory fees, as defined by the coordinating board, imposed by the institution; and

(iii) the amount and percentage by which the institution has increased tuition for a degree program or course level during the five state fiscal years preceding the state fiscal year covered by the resume; and

(C) the average cost to a resident undergraduate student enrolled in 30 semester credit hours for tuition and fees;

(3) under the heading "FINANCIAL AID":

(A) the percentage of graduate students enrolled in the institution who receive need-based grants or scholarships;

(B) the percentage of graduate students enrolled in the institution who receive need-based grants, scholarships, loans, or work-study funds;

(C) the average amount of a graduate student's need-based grant and scholarship package; and

(D) the average amount of a graduate student's need-based grant, scholarship, loan, and work-study package;

(4) under the heading "STUDENT SUCCESS":

(A) if applicable, the percentage of medical school students who pass Part 1 or Part 2 of any examination administered or accepted for a medical license under Subtitle B, Title 3, Occupations Code:

(i) at the institution; and

(ii) at the institution's in-state peer institutions;

(B) if applicable, the percentage of medical school students who are practicing primary care in this state:

(i) after graduating from the institution; and

(ii) after graduating from the institution's in-state peer institutions;

(C) the number of nursing degrees or allied health degrees awarded for each level:

(i) by the institution; and

(ii) by the institution's in-state peer institutions; and

(D) the estimated total amount of the institution's research expenditures; and

(5) under the heading "FIRST-TIME LICENSURE OR CERTIFICATION EXAMINATION PASS RATES," the first-time licensure or certification examination pass rates in applicable fields of students who are enrolled in or have graduated from:

(A) the institution; and

(B) the institution's in-state peer institutions.

SECTION 4. The Texas Higher Education Coordinating Board shall create the online institution resumes required by Chapter 51A, Education Code, as added by this Act, and provide the resumes on the board's Internet website not later than February 1, 2010.

SECTION 5. 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 was read.

Senator Shapiro moved to concur in the House amendment to **SB 174**.

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

Absent: Ogden.

RECESS

On motion of President Pro Tempore Duncan, the Senate at 1:54 p.m. recessed until 3:30 p.m. today.

AFTER RECESS

The Senate met at 4:04 p.m. and was called to order by the President.

AT EASE

On motion of Senator Whitmire, the Senate at 4:04 p.m. stood At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 4:35 p.m. called the Senate to order as In Legislative Session.

(Senator Eltife in Chair)

SENATE BILL 203 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 203** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 203** (House committee printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION _____. (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 _____. (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 an advisory committee on health care quality, if established by the executive commissioner, 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.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 203**.

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

SENATE BILL 759 WITH HOUSE AMENDMENT

Senator Williams called **SB 759** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 759** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain standards for group-administered achievement tests used by school districts.

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

SECTION 1. Section 39.032, Education Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c) State and national norms of averages shall be computed using data that are not more than eight [~~six~~] years old at the time the assessment instrument is administered and that are representative of the group of students to whom the assessment instrument is administered.

(c-1) The standardization norms computed under Subsection (c) shall be:

(1) based on a national probability sample that meets accepted standards for educational and psychological testing; and

(2) [~~shall be~~] updated at least every eight [~~six~~] years using proven psychometric procedures approved by the State Board of Education.

(c-2) The eight-year limitation on data to compute norms under this section does not apply if only data older than eight years is available for an assessment instrument. The commissioner by rule may limit the exception created by this subsection based on the type of assessment instrument.

SECTION 2. Subsections (a), (b), and (d), Section 39.032, Education Code, are repealed.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 759**.

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

SENATE BILL 1804 WITH HOUSE AMENDMENT

Senator Zaffirini called **SB 1804** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1804** (House committee printing) in SECTION 1 of the bill, in added Section 32.0424(b)(1), Human Resources Code (page 2, line 12), between "employs" and the underlined comma, by inserting "or contracts with".

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 1804**.

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

SENATE BILL 1812 WITH HOUSE AMENDMENT

Senator Duncan called **SB 1812** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1812** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to notice to a life insurer of an adverse claim to policy proceeds by a person with a bona fide legal claim.

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

SECTION 1. Section 542.058, Insurance Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Subsection (a) [~~This section~~] does not apply in a case in which it is found as a result of arbitration or litigation that a claim received by an insurer is invalid and should not be paid by the insurer.

(c) A life insurer that receives notice of an adverse, bona fide claim to all or part of the proceeds of the policy before the applicable payment deadline under Subsection (a) shall pay the claim or properly file an interpleader action and tender the benefits into the registry of the court not later than the 90th day after the date the insurer receives all items, statements, and forms reasonably requested and required under Section 542.055. A life insurer that delays payment of the claim or the filing of an interpleader and tender of policy proceeds for more than 90 days shall pay damages and other items as provided by Section 542.060 until the claim is paid or an interpleader is properly filed.

SECTION 2. The change in law made by this Act applies only to a claim filed with a life insurer on or after the effective date of this Act. A claim filed with a life insurer before that date is governed by the law in effect on the date that the claim was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1812**.

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

SENATE BILL 1586 WITH HOUSE AMENDMENT

Senator Harris called **SB 1586** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1586** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the establishment of a shared database for deer breeder reporting requirements.

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

SECTION 1. Subchapter L, Chapter 43, Parks and Wildlife Code, is amended by adding Section 43.369 to read as follows:

Sec. 43.369. DEER BREEDER DATABASE. (a) In this section, "database" means a deer breeder database used by the department.

(b) The department in conjunction with the Texas Animal Health Commission, not later than June 1, 2010, shall develop and maintain a process for a database to be shared by both agencies. The database must include the reporting data required to be provided by each deer breeder:

(1) to the department under this subchapter; and

(2) to the Texas Animal Health Commission.

(c) To the extent possible, the department and the Texas Animal Health Commission shall share the database to eliminate the need for a deer breeder to submit duplicate reports to the two agencies.

(d) The Parks and Wildlife Commission and the Texas Animal Health Commission, by rule, shall provide incentives to deer breeders whose cooperation results in reduced costs and increased efficiency by offering:

(1) reduced fees for the deer breeder permit; and

(2) a permit with an extended duration.

(e) The Parks and Wildlife Commission and the Texas Animal Health Commission may adopt rules to implement this section.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 1586**.

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

SENATE BILL 2505 WITH HOUSE AMENDMENT

Senator Harris called **SB 2505** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2505** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to safety of children who participate in rodeos.

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

SECTION 1. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 768 to read as follows:

CHAPTER 768. CHILDREN PARTICIPATING IN RODEOS

Sec. 768.001. DEFINITIONS. In this chapter:

(1) "Bull riding helmet" means a rodeo helmet that is designed to provide substantial protection for a person's head and face during bull riding.

(2) "Child" means a person under 18 years of age.

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

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

(5) "Protective vest" means protective clothing that covers a person's chest and torso to prevent or mitigate injury to those areas.

(6) "Rodeo" means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:

(A) riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider;

(B) riding a bull;

(C) roping an animal, including roping as part of a team;

(D) wrestling a steer; and

(E) riding a horse in a pattern around preset barrels or other obstacles.

Sec. 768.002. PROTECTIVE GEAR REQUIRED FOR CHILDREN ENGAGING IN CERTAIN RODEO ACTIVITIES. (a) A child may not engage in, and a parent or legal guardian of the child may not knowingly or recklessly permit the child to engage in, bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a bull riding helmet and a protective vest.

(b) To satisfy the requirements of this section, a helmet or protective vest must meet the standards adopted under Section 768.004.

(c) In a cause of action in which damages are sought for injuries or death suffered by a child in connection with bull riding, the failure of the child or of the parent or legal guardian of the child to comply with this chapter does not constitute responsibility causing or contributing to the cause of the child's injuries or death for purposes of Chapter 33, Civil Practice and Remedies Code.

Sec. 768.003. RODEOS ASSOCIATED WITH SCHOOL. (a) This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children who attend the school are likely to participate.

(b) A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety, including the proper use of protective gear, for children planning to participate in the rodeo. The educational program may consist of an instructional video, subject to department approval.

(c) A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program under Subsection (b) not more than one year before the first day of the rodeo.

Sec. 768.004. RULES. (a) The executive commissioner by rule shall adopt standards for:

(1) bull riding helmets; and

(2) protective vests.

(b) For purposes of this section, the executive commissioner may adopt standards established under federal law or adopted by a federal agency or a nationally recognized organization.

(c) The executive commissioner shall adopt rules establishing requirements for the educational program under Section 768.003.

SECTION 2. (a) The change in law made by this Act applies only to a rodeo activity that occurs on or after January 1, 2010.

(b) The executive commissioner of the Health and Human Services Commission shall adopt the rules required by Section 768.004, Health and Safety Code, as added by this Act, not later than November 1, 2009.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 2505**.

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

SENATE BILL 702 WITH HOUSE AMENDMENTS

Senator Carona called **SB 702** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 702** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the towing and storage of vehicles.

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

SECTION 1. Subchapter C, Chapter 2303, Occupations Code, is amended by adding Section 2303.1016 to read as follows:

Sec. 2303.1016. VEHICLE STORAGE FACILITY EMPLOYEE AND TOWING OPERATOR; DUAL LICENSE. (a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

(1) meets the requirements established under:

(A) Section 2303.1015;

(B) Section 2308.153, 2308.154, or 2308.155; and

(C) any applicable rules adopted under this subchapter or Subchapter D,

Chapter 2308; and

(2) submits to the department:

- (A) an application on a department-approved form; and
- (B) the required license fee.

(b) A person holding a license issued under this section may:

- (1) work at a vehicle storage facility; and
- (2) perform towing operations.

(c) The fee for a license issued under this section may not be:

- (1) less than the fee for a license issued under Section 2303.1015 or Subchapter D, Chapter 2308; or
- (2) more than the sum of the fees for a license issued under Section 2303.1015 and a license issued under Subchapter D, Chapter 2308.

SECTION 2. Subchapter D, Chapter 2303, Occupations Code, is amended by adding Sections 2303.1511 and 2303.1551 to read as follows:

Sec. 2303.1511. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility where the vehicle is being stored.

(b) The report required by this section must be made by telephone or electronically or delivered personally or by facsimile.

Sec. 2303.1551. REQUIRED POSTING. (a) All storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

(b) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on request.

SECTION 3. Section 2308.002(11), Occupations Code, is amended to read as follows:

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

- (A) a motor vehicle owned and operated by a governmental entity, including a public school district;
- (B) a motor vehicle towing:
 - (i) a race car;
 - (ii) a motor vehicle for exhibition; or
 - (iii) an antique motor vehicle;
- (C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

SECTION 4. Subchapter D, Chapter 2308, Occupations Code, is amended by adding Section 2308.1521 to read as follows:

Sec. 2308.1521. VEHICLE STORAGE FACILITY EMPLOYEE AND TOWING OPERATOR; DUAL LICENSE. (a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

(1) meets the requirements established under:

(A) Section 2308.153, 2308.154, or 2308.155;

(B) Section 2303.1015; and

(C) any applicable rules adopted under this subchapter or Subchapter C, Chapter 2303; and

(2) submits to the department:

(A) an application on a department-approved form; and

(B) the required license fee.

(b) A person holding a license issued under this section may:

(1) work at a vehicle storage facility; and

(2) perform towing operations.

(c) The fee for a license issued under this section may not be:

(1) less than the fee for a license issued under this subchapter or Section 2303.1015; or

(2) more than the sum of the fees for a license issued under this subchapter and a license issued under Section 2303.1015.

SECTION 5. Section 2308.153(b), Occupations Code, is amended to read as follows:

(b) An applicant for an incident management towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States [~~be a licensed Texas driver~~]; and

(2) be certified by a [~~the National Drivers Certification Program of the Towing and Recovery Association of America or another certification~~] program approved by the department.

SECTION 6. Section 2308.154(b), Occupations Code, is amended to read as follows:

(b) An applicant for a private property towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States [~~be a licensed Texas driver~~]; and

(2) be certified by a ~~[the National Drivers Certification Program of the Towing and Recovery Association of America or another certification]~~ program approved by the department.

SECTION 7. Section 2308.155(b), Occupations Code, is amended to read as follows:

(b) An applicant for a consent towing operator's license must hold a valid driver's license issued by a state in the United States ~~[be a licensed Texas driver]~~.

SECTION 8. Subchapter D, Chapter 2308, Occupations Code, is amended by adding Section 2308.1551 to read as follows:

Sec. 2308.1551. TRAINING LICENSE. (a) The department may issue a training license to an applicant for a license under this subchapter if the applicant:

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

(2) meets the qualifications established by rule by the commission; and

(3) is engaged in the process of learning and assisting in the operation of a tow truck under the supervision of a licensed tow truck operator.

(b) Notwithstanding Subsection (a), an applicant for a license under Section 2308.153 may be supervised by an operator who holds a license issued under Section 2308.153, 2308.154, or 2308.155.

(c) A training license issued under this section expires on the 91st day after the date of issuance and may not be renewed.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a training license under this section.

SECTION 9. Section 2308.157(c), Occupations Code, is amended to read as follows:

(c) To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to incident management towing that is ~~[licensed or certified by the National Safety Council or another course]~~ approved and administered by the department under this section.

SECTION 10. Section 2308.158, Occupations Code, is amended to read as follows:

Sec. 2308.158. ALCOHOL AND DRUG TESTING OF TOWING OPERATORS. (a) A towing company shall establish an alcohol and [a] drug testing policy for towing operators. A towing company that establishes an alcohol and [a] drug testing policy under this subsection may adopt the model alcohol and drug testing policy adopted by the commission or may use another alcohol and drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model alcohol and drug testing policy for use by a towing company. The model alcohol and drug testing policy must be designed to ensure the safety of the public through appropriate alcohol and drug testing and to protect the rights of employees. The model alcohol and drug testing policy must:

(1) require at least one scheduled alcohol and drug test each year for each towing operator; and

(2) authorize random, unannounced alcohol and drug testing for towing operators.

SECTION 11. Section 2308.251(a), Occupations Code, is amended to read as follows:

(a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c); ~~or~~

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

SECTION 12. Subchapter F, Chapter 2308, Occupations Code, is amended by adding Section 2308.257 to read as follows:

Sec. 2308.257. REMOVAL OF CERTAIN UNAUTHORIZED VEHICLES IN RURAL AREAS. (a) This section applies only to an abandoned vehicle that has damaged a fence on private property in a rural area.

(b) A law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that is located on private property shall provide the towing company or tow operator with the name and telephone number of the property owner or the owner's agent if the owner or agent has provided the information to the law enforcement agency.

(c) A towing company or tow operator provided with information under Subsection (b) shall contact the property owner or the owner's agent before entering private property to tow a vehicle described by Subsection (a).

SECTION 13. Sections 2308.207 and 2308.256, Occupations Code, are repealed.

SECTION 14. (a) The changes in law made by this Act to Sections 2308.153, 2308.154, and 2308.155, Occupations Code, apply only to a license application filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect when the license application was filed, and the former law is continued in effect for that purpose.

(b) Not later than April 1, 2010, the Texas Commission of Licensing and Regulation shall adopt the model alcohol and drug testing policy required by Section 2308.158, Occupations Code, as amended by this Act.

(c) A towing company is not required to comply with the alcohol and drug testing policy required by Section 2308.158, Occupations Code, as amended by this Act, until January 1, 2010.

(d) Not later than April 1, 2010, the Texas Commission of Licensing and Regulation shall adopt rules as necessary to implement Sections 2303.1016, 2308.1521, and 2308.1551, Occupations Code, as added by this Act.

SECTION 15. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Sections 2303.1016, 2308.1521, and 2308.1551, Occupations Code, as added by this Act, take effect June 1, 2010.

Floor Amendment No. 1

Amend **CSSB 702** (House committee printing), in SECTION 1 of the bill, in proposed Section 2303.1016, Occupations Code, by striking Subsection (c) of that section (page 1, line 24, through page 2, line 6).

Amendment No. 2

Amend **CSSB 702** (81R30389), in SECTION 10 of the bill, in amended Section 2308.158(b)(1), Occupations Code (page 7, line 21), by striking "alcohol and".

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 702**.

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

SENATE BILL 833 WITH HOUSE AMENDMENT

Senator Carona called **SB 833** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 833** by inserting the following to be SECTION 2:

SECTION 2. Subchapter A, Chapter 431, Government Code, is amended by adding Section 431.0055 to read as follows:

Sec. 431.0055. DUAL OFFICE HOLDING. A position in or membership in the state military forces is not considered to be a civil office of emolument.

Amend SECTION 2 of SB 833 by renumbering SECTION 2 of the bill to be SECTION 3 and to read:

SECTION 3. SECTION 1 of 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 SECTION 1 of this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009. SECTION 2 of this Act takes effect January 1, 2010, but only if the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, authorizing an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices is approved by the voters. If that proposed constitutional amendment is not approved by the voters, SECTION 2 of this Act has no effect.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 833**.

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

SENATE BILL 1095 WITH HOUSE AMENDMENT

Senator Carona called **SB 1095** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1095** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the licensing and regulation of used automotive parts recyclers; providing penalties.

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

SECTION 1. Subdivision (6), Section 2302.001, Occupations Code, is amended to read as follows:

(6) "Salvage vehicle agent" means a person who acquires, sells, or otherwise deals in nonrepairable or salvage motor vehicles ~~[or used parts]~~ in this state as directed by the salvage vehicle dealer under whose license the person operates. The term does not include a person who:

(A) is a licensed salvage vehicle dealer or a licensed used automotive parts recycler;

(B) is a partner, owner, or officer of a business entity that holds a salvage vehicle dealer license or a used automotive parts recycler license;

(C) is an employee of a licensed salvage vehicle dealer or a licensed used automotive parts recycler; or

(D) only transports salvage motor vehicles for a licensed salvage vehicle dealer or a licensed used automotive parts recycler.

SECTION 2. Subsection (b), Section 2302.006, Occupations Code, is amended to read as follows:

(b) This chapter applies to a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler for the purpose of reuse or resale as a motor vehicle ~~[or as a source of used parts]~~; and

(2) is used for that purpose.

SECTION 3. Subchapter A, Chapter 2302, Occupations Code, is amended by adding Section 2302.008 to read as follows:

Sec. 2302.008. APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS. This chapter does not apply to a used automotive parts recycler licensed under Chapter 2309.

SECTION 4. Subsection (b), Section 2302.103, Occupations Code, is amended to read as follows:

(b) An applicant may apply for a salvage vehicle dealer license with an endorsement in one or more of the following classifications:

(1) new automobile dealer;

(2) used automobile dealer;

(3) ~~[used vehicle parts dealer]~~;

~~(4)~~ salvage pool operator;

(4) ~~(5)~~ salvage vehicle broker; or

(5) ~~(6)~~ salvage vehicle rebuilder.

SECTION 5. Subsection (d), Section 2302.107, Occupations Code, is amended to read as follows:

(d) A salvage vehicle agent may acquire, sell, or otherwise deal in, nonrepairable or salvage motor vehicles [~~or used parts~~] as directed by the authorizing dealer.

SECTION 6. Section 2302.202, Occupations Code, is amended to read as follows:

Sec. 2302.202. RECORDS OF PURCHASES. A salvage vehicle dealer shall maintain a record of each salvage motor vehicle [~~and each used part~~] purchased or sold by the dealer.

SECTION 7. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2309 to read as follows:

CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. SHORT TITLE. This chapter may be cited as the Texas Used Automotive Parts Recycling Act.

Sec. 2309.002. DEFINITIONS. In this chapter:

(1) "Insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," and "salvage vehicle dealer" have the meanings assigned by Section 501.091, Transportation Code.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Used automotive part" has the meaning assigned to "used part" by Section 501.091, Transportation Code.

(6) "Used automotive parts recycler" means a person licensed under this chapter to operate a used automotive parts recycling business.

(7) "Used automotive parts recycling" means the dismantling and reuse or resale of used automotive parts and the safe disposal of salvage motor vehicles or nonrepairable motor vehicles, including the resale of those vehicles.

Sec. 2309.003. APPLICABILITY OF CHAPTER TO METAL RECYCLERS.

(a) Except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) This chapter applies to a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts; and

(2) is used as a source of used automotive parts.

Sec. 2309.004. APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS. (a) Except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is a party.

(b) This chapter applies to a salvage vehicle dealer who deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

Sec. 2309.005. APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES. This chapter does not apply to an insurance company.

[Sections 2309.006-2309.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2309.051. USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD. (a) The advisory board consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission.

(b) The advisory board shall include members who represent used automotive parts businesses owned by domestic entities, as defined by Section 1.002, Business Organizations Code.

(c) The advisory board shall include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) The advisory board may not include more than one member from any one used automotive parts business entity.

(e) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2309.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2309.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2309.054. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Sec. 2309.055. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2309.056. MEETINGS. The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

[Sections 2309.057-2309.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2309.101. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 2309.102. RULES. (a) The commission shall adopt rules for licensing used automotive parts recyclers and used automotive parts employees.

(b) The commission by rule shall adopt standards of conduct for license holders under this chapter.

Sec. 2309.103. RULES REGARDING LICENSING AND STANDARDS OF CONDUCT. (a) The commission shall adopt rules for licensing applicants, including rules for denial of an application if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant, has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

(b) The commission by rule shall adopt standards of conduct for license holders under this chapter.

Sec. 2309.104. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2309.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Sec. 2309.106. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department shall inspect each used automotive parts recycling facility at least once every two years.

(b) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(c) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the inspection history;

(2) any history of complaints involving a used automotive parts recycler;

and

(3) any other factor determined by the commission by rule.

(d) A used automotive parts recycler shall pay a fee for each risk-based inspection performed under this section. The commission by rule shall set the amount of the fee.

(e) In conducting an inspection under this section, the department may inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Sec. 2309.107. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

[Sections 2309.108-2309.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2309.151. USED AUTOMOTIVE PARTS RECYCLER LICENSE REQUIRED. (a) Unless the person holds a used automotive parts recycler license issued under this chapter, a person may not own or operate a used automotive parts recycling business or sell used automotive parts.

(b) A used automotive parts recycler license:

- (1) is valid only with respect to the person who applied for the license; and
- (2) authorizes the license holder to operate a used automotive parts recycling business only at the one facility listed on the license.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) the required fees; and
- (3) any other information required by commission rule.

Sec. 2309.153. LICENSE REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must provide in a manner prescribed by the executive director:

- (1) a federal tax identification number;
- (2) proof of general liability insurance in an amount not less than \$250,000;

and

(3) proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality to obtain a permit.

Sec. 2309.154. USED AUTOMOTIVE PARTS EMPLOYEE LICENSE REQUIRED. (a) A person employed by a used automotive parts recycler may not in the scope of the person's employment acquire a vehicle or used automotive parts and may not sell used automotive parts unless the person holds a used automotive parts employee license issued under this chapter.

(b) The commission by rule shall adopt requirements for the application for and issuance of a used automotive parts employee license under this chapter.

Sec. 2309.155. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2309.156. LICENSE RENEWAL. (a) A license issued under this chapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) The commission by rule shall adopt requirements to renew a license issued under this chapter.

[Sections 2309.157-2309.200 reserved for expansion]

SUBCHAPTER E. LOCAL REGULATION

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) The requirements of this chapter apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts.

(b) This chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

[Sections 2309.202-2309.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or
- (2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Sec. 2309.253. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

- (1) violates the licensing requirements of this chapter;
- (2) deals in used parts without a license required by this chapter; or
- (3) employs an individual who does not hold the appropriate license

required by this chapter.

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

[Sections 2309.255-2309.300 reserved for expansion]

SUBCHAPTER G. CONDUCTING BUSINESS

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) A used automotive parts recycler who acquires ownership of a salvage motor vehicle shall obtain a properly assigned title from the previous owner of the vehicle.

(b) A used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, shall, before the 31st day after the date of acquiring the motor vehicle, submit to the Texas Department of Transportation a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(c) After receiving the title or document, the Texas Department of Transportation shall issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document.

(d) The recycler shall comply with Subchapter E, Chapter 501, Transportation Code.

Sec. 2309.302. RECORDS OF PURCHASES. A used automotive parts recycler shall maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Sec. 2309.303. REGISTRATION OF NEW BUSINESS LOCATION. Before moving a place of business, a used automotive parts recycler must notify the department of the new location. The used automotive parts recycler shall provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

[Sections 2309.304-2309.350 reserved for expansion]

SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2309.351. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined by Section 501.091, Transportation Code, or a minor component part.

(2) "Interior component part" means a motor vehicle's seat or radio.

(3) "Minor component part" means an interior component part, a special accessory part, or a motor vehicle part that displays or should display at least one of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a motor vehicle's tire, wheel, tailgate, or removable glass top.

Sec. 2309.352. REMOVAL OF LICENSE PLATES. Immediately on receipt of a motor vehicle, a used automotive parts recycler shall:

(1) remove any unexpired license plates from the vehicle; and

(2) place the license plates in a secure place until destroyed by the used automotive parts recycler.

Sec. 2309.353. DISMANTLEMENT OR DISPOSITION OF MOTOR VEHICLE. A used automotive parts recycler may not dismantle or dispose of a motor vehicle unless the recycler first obtains:

(1) a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683, Transportation Code; or

(2) a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

Sec. 2309.354. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) A used automotive parts recycler shall keep an accurate and legible record of each used component part purchased by or delivered to the recycler. The record must include:

(1) the date of purchase or delivery;

(2) the driver's license number of the seller and a legible photocopy of the seller's driver's license; and

(3) a description of the part and, if applicable, the make and model of the part.

(b) As an alternative to the information required by Subsection (a), a used automotive parts recycler may record:

(1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and

(2) the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) The department shall prescribe the form of the record required by Subsection (a) and shall make the form available to used automotive parts recyclers.

(d) This section does not apply to:

(1) an interior component part or special accessory part from a motor vehicle more than 10 years old; or

(2) a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

Sec. 2309.355. RETENTION OF COMPONENT PARTS. (a) A used automotive parts recycler shall retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) This section does not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

Sec. 2309.356. MAINTENANCE OF RECORDS. A used automotive parts recycler shall maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) A used automotive parts recycler shall surrender to the Texas Department of Transportation for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by the department.

(b) The Texas Department of Transportation shall provide a signed receipt for a surrendered certificate of title.

Sec. 2309.358. INSPECTION OF RECORDS. (a) A peace officer at any reasonable time may inspect a record required to be maintained under this subchapter, including an inventory record.

(b) On demand by a peace officer, a used automotive parts recycler shall provide to the officer a copy of a record required to be maintained under this subchapter.

(c) A peace officer may inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this subchapter.

(d) A used automotive parts recycler or an employee of the recycler shall allow and may not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

[Sections 2309.359-2309.400 reserved for expansion]

SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2309.401. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Sec. 2309.402. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A used automotive parts recycler may not operate heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the recycler.

SECTION 8. Section 501.091, Transportation Code, is amended by amending Subdivision (17) and adding Subdivision (20) to read as follows:

(17) "Salvage vehicle dealer" means a person engaged in this state in the business of acquiring, selling, ~~[dismantling,]~~ repairing, rebuilding, reconstructing, or otherwise dealing in nonrepairable motor vehicles, salvage motor vehicles, or, if incidental to a salvage motor vehicle dealer's primary business, used automotive parts. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than five ~~[three]~~ salvage motor vehicles in the same calendar year or, except as provided by Paragraph (C), a used automotive parts recycler. The term includes a person engaged in the business of:

(A) a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in that business;

(B) dealing in nonrepairable motor vehicles or salvage motor vehicles~~[-; regardless of whether the person deals in used parts];~~ or

(C) a used automotive parts recycler if the sale of repaired, rebuilt, or reconstructed nonrepairable motor vehicles or salvage motor vehicles is more than an incidental part of the used automotive parts recycler's business ~~[dealing in used parts regardless of whether the person deals in nonrepairable motor vehicles or salvage motor vehicles].~~

(20) "Used parts dealer" and "used automotive parts recycler" have the meaning assigned to "used automotive parts recycler" by Section 2309.002, Occupations Code.

SECTION 9. Subsection (d), Section 501.092, Transportation Code, is amended to read as follows:

(d) An insurance company may sell a motor vehicle to which this section applies, or assign a salvage vehicle title or a nonrepairable vehicle title for the motor vehicle, only to a salvage vehicle dealer, an out-of-state buyer, a buyer in a casual sale at auction, ~~[or]~~ a metal recycler, or a used automotive parts recycler. If the motor vehicle is not a salvage motor vehicle or a nonrepairable motor vehicle, the insurance company is not required to surrender the regular certificate of title for the vehicle or to be issued a salvage vehicle title or a nonrepairable vehicle title for the motor vehicle.

SECTION 10. Subsections (a) and (b), Section 501.095, Transportation Code, are amended to read as follows:

(a) If the department has not issued a nonrepairable vehicle title or salvage vehicle title for the motor vehicle and an out-of-state ownership document for the motor vehicle has not been issued by another state or jurisdiction, a business or governmental entity described by Subdivisions (1)-(3) may sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle only to a person who is:

(1) a licensed salvage vehicle dealer, a used automotive parts recycler under Chapter 2309, Occupations Code, or a metal recycler under Chapter 2302, Occupations Code;

(2) an insurance company that has paid a claim on the nonrepairable or salvage motor vehicle;

(3) a governmental entity; or

(4) an out-of-state buyer.

(b) A person, other than a salvage vehicle dealer, a used automotive parts recycler, or an insurance company licensed to do business in this state, who acquired ownership of a nonrepairable or salvage motor vehicle that has not been issued a nonrepairable vehicle title, salvage vehicle title, or a comparable ownership document issued by another state or jurisdiction shall, before selling the motor vehicle, surrender the properly assigned certificate of title for the motor vehicle to the department and apply to the department for:

(1) a nonrepairable vehicle title if the vehicle is a nonrepairable motor vehicle; or

(2) a salvage vehicle title if the vehicle is a salvage motor vehicle.

SECTION 11. Section 501.105, Transportation Code, is amended to read as follows:

Sec. 501.105. RETENTION OF RECORDS RELATING TO CERTAIN CASUAL SALES. Each licensed salvage vehicle dealer, used automotive parts recycler, or insurance company that sells a nonrepairable motor vehicle or a salvage motor vehicle at a casual sale shall keep on the business premises of the dealer or the insurance company a list of all casual sales made during the preceding 36-month period that contains:

(1) the date of the sale;

(2) the name of the purchaser;

(3) the name of the jurisdiction that issued the identification document provided by the purchaser, as shown on the document; and

(4) the vehicle identification number.

SECTION 12. Section 2302.253, Occupations Code, is repealed.

SECTION 13. Not later than January 1, 2010, the Texas Commission of Licensing and Regulation shall adopt rules under Section 2309.102, Occupations Code, as added by this Act.

SECTION 14. If there is a conflict between a provision of this Act and a provision of another Act of the 81st Legislature, Regular Session, 2009, that becomes law concerning the licensing or regulation of used automotive parts recyclers, this Act prevails regardless of the relative dates of enactment.

SECTION 15. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Sections 2309.151 and 2309.154, Occupations Code, as added by this Act, and Subchapter F, Chapter 2309, Occupations Code, as added by this Act, take effect September 1, 2010.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1095**.

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

SENATE BILL 531 WITH HOUSE AMENDMENTS

Senator Patrick called **SB 531** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 531** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0424 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.

Floor Amendment No. 2

Amend **SB 531** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION ____ . Section 32.024, Human Resources Code, is amended by adding Subsection (ii) to read as follows:

(ii) The department shall provide medical assistance reimbursement to a pharmacist who is licensed to practice pharmacy in this state, is authorized to administer immunizations in accordance with rules adopted by the Texas State Board of Pharmacy, and administers an immunization to a recipient of medical assistance to the same extent the department provides reimbursement to a physician or other health care provider participating in the medical assistance program for the administration of that immunization.

The amendments were read.

Senator Patrick moved to concur in the House amendments to **SB 531**.

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

SENATE BILL 1056 WITH HOUSE AMENDMENT

Senator Uresti called **SB 1056** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 1056** on third reading as follows:

(1) Strike SECTION 1 of the bill, amending Section 411.081(i), Government Code, and substitute the following:

SECTION 1. Section 411.081, Government Code, is amended by adding Subsections (f-1) and (j) and amending Subsection (i) to read as follows:

(f-1) In this subsection, "child" has the meaning assigned by Section 51.02, Family Code. Notwithstanding any other provision of this subchapter, on conviction of a child for a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03, Family Code, the convicting court shall immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies for criminal justice purposes, to an agency or entity listed in Subsection (j), or to the person who is the subject of the order.

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Youth Commission;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) the Texas Juvenile Probation Commission;
- (19) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, or the credit union commissioner;
- (20) the Texas State Board of Public Accountancy;
- (21) the Texas Department of Licensing and Regulation;
- (22) the Health and Human Services Commission;
- (23) the Department of Aging and Disability Services; ~~and~~
- (24) the Texas Education Agency;
- (25) the Guardianship Certification Board; and
- (26) a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code.

(j) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (f-1) to the following agencies or entities only:

(1) the Texas Youth Commission;
(2) the Texas Juvenile Probation Commission;
(3) the Department of State Health Services, a local mental health or mental retardation authority, or a community center providing services to persons with mental illness or retardation;

(4) the Department of Family and Protective Services;
(5) a juvenile probation department;
(6) a municipal or county health department;
(7) a public or nonprofit hospital or hospital district;
(8) a county department that provides services to at-risk youth or their families;

(9) a children's advocacy center established under Section 264.402, Family Code;
(10) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement; and

(11) a safe house providing shelter to children in harmful situations.

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

SECTION _____. Subsection (a), Section 411.0851, Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) or (f-1).

SECTION _____. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY.

SECTION _____. Subsection (a), Section 552.142, Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (f-1).

SECTION _____. Subsection (a), Section 552.1425, Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) or (f-1).

SECTION _____. The change in law made by this Act applies to a conviction that occurs on or after the effective date of this Act, regardless of whether the offense was committed before, on, or after the effective date of this Act.

SECTION _____. Notwithstanding Section 6 of this Act, a child, as that term is defined by Section 51.02, Family Code, who is convicted of a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03, Family Code, before the effective date of this Act may petition the court for an order of nondisclosure, and the court shall issue the order under Subsection (f-1), Section 411.081, Government Code, as added by this Act.

The amendment was read.

Senator Uresti moved to concur in the House amendment to **SB 1056**.

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

SENATE BILL 666 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 666** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 666** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the administration of charitable trusts.

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

SECTION 1. Subchapter A, Chapter 113, Property Code, is amended by adding Section 113.029 to read as follows:

Sec. 113.029. RELOCATION OF ADMINISTRATION OF CHARITABLE TRUST. (a) In this section:

(1) "Charitable entity" has the meaning assigned by Section 123.001.

(2) "Charitable trust" means a trust:

(A) the stated purpose of which is to benefit only one or more charitable entities; and

(B) that qualifies as a charitable entity.

(3) "Trust administration" means the grant-making function of the trust.

(b) Except as provided by this section or specifically authorized by the terms of a trust, the trustee of a charitable trust may not change the location in which the trust administration takes place from a location in this state to a location outside this state.

(c) If the trustee decides to change the location in which the trust is administered from a location in this state to a location outside this state, the trustee shall:

(1) if the settlor is living and not incapacitated:

(A) consult the settlor concerning the selection of a new location for the administration of the trust; and

(B) submit the selection to the attorney general; or

(2) if the settlor is not living or is incapacitated:

(A) propose a new location; and

(B) submit the proposal to the attorney general.

(d) The trustee may file an action in the district court or statutory probate court in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. The court may exercise its equitable powers to effectuate the original purpose of the trust.

(e) Except as provided by Subsection (b), the location in which the administration of the trust takes place may not be changed to a location outside this state unless:

(1) the charitable purposes of the trust would not be impaired if the trust administration is moved; and

(2) a district court or statutory probate court authorizes the relocation.

(f) The attorney general may bring an action to enforce the provisions of this section. If a trustee of a charitable trust fails to comply with the provisions of this section, the district court or statutory probate court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Costs of a proceeding to remove a trustee, including reasonable attorney's fees, may be assessed against the removed trustee. This provision is in addition to and does not supersede the provisions of Chapter 123.

(g) This section does not affect a trustee's authority to sell real estate owned by a charitable trust.

SECTION 2. Except as otherwise provided by a will, the terms of a trust, or this Act, the changes in law made by this Act apply to:

(1) a trust existing or created on or after September 1, 2009;

(2) the estate of a decedent who dies before September 1, 2009, if the probate or administration of the estate is pending on or after September 1, 2009; and

(3) the estate of a decedent who dies on or after September 1, 2009.

SECTION 3. This Act takes effect September 1, 2009.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 666**.

The motion prevailed by the following vote: Yeas 22, Nays 9.

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

Nays: Eltife, Estes, Fraser, Huffman, Jackson, Nichols, Patrick, Shapiro, Williams.

SENATE BILL 1760 WITH HOUSE AMENDMENT

Senator Watson called **SB 1760** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1760** (House committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 54.802, Education Code (page 1, line 23), between "PROGRAM." and "The board", insert "(a)".

(2) In SECTION 1 of the bill, at the end of added Section 54.802, Education Code (page 2, between lines 12 and 13), insert the following new subsection:

(b) Notwithstanding other law, for purposes of Subchapter I, Chapter 659, Government Code:

(1) the Texas Save and Match Program is considered an eligible charitable organization entitled to participate in a state employee charitable campaign under Subchapter I, Chapter 659, Government Code; and

(2) a state employee is entitled to authorize a payroll deduction for contributions to the Texas Save and Match Program as a charitable contribution under Section 659.132, Government Code.

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

SECTION _____. The Texas Save and Match Program is entitled to participate in the state employee charitable campaign conducted during the autumn of 2009 without regard to any limitation on the time during which an organization must apply to participate in the campaign.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1760**.

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

SENATE BILL 2279 WITH HOUSE AMENDMENT

Senator Ellis called **SB 2279** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Eltife in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 2279** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the dedication of certain civil penalties for violations of the Deceptive Trade Practices-Consumer Protection Act to provide civil legal services to the indigent.

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

SECTION 1. Section 402.007, Government Code, is amended to read as follows:

Sec. 402.007. PAYMENT TO TREASURY; ALLOCATION OF CERTAIN PENALTIES. (a) The attorney general shall immediately pay into the state treasury money received for a debt or penalty.

(b) Subject to Subsection (c), the comptroller shall credit to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent the net amount of a civil penalty that is recovered in an action by the attorney general in any matter actionable under Subchapter E, Chapter 17, Business & Commerce Code, after deducting amounts allocated to or retained by the attorney general as authorized by law, unless:

(1) another law requires that the penalty be credited to a different fund or account; or

(2) the judgment awarding the penalty requires that the penalty be paid to another named recipient.

(c) The total amount credited to the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent under Subsection (b) may not exceed \$10 million per state fiscal biennium.

SECTION 2. The change in law made by this Act applies to a civil penalty in an action by the attorney general in any matter actionable under Subchapter E, Chapter 17, Business & Commerce Code, that is received on or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 2279**.

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

SENATE BILL 52 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 52** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 52** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the penalties for the illegal use of a parking space or area designated specifically for persons with disabilities.

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

SECTION 1. Sections 681.011, (g), (h), (i), (j), and (k), Transportation Code, are amended to read as follows:

(g) Except as provided by Subsections (h)-(k), an offense under this section is a misdemeanor punishable by a fine of not less than \$250 or more than \$500.

(h) If it is shown on the trial of an offense under this section that the person has been previously convicted one time of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$500 [~~\$300~~] or more than \$800; and

(2) 10 hours of community service [~~\$600~~].

(i) If it is shown on the trial of an offense under this section that the person has been previously convicted two times of an offense under this section, the offense is punishable by:

(1) a fine of not less than ~~\$550~~ [~~\$300~~] or more than ~~\$800~~ [~~\$600~~]; and

(2) [~~not less than 10 or more than~~] 20 hours of community service.

(j) If it is shown on the trial of an offense under this section that the person has been previously convicted three times of an offense under this section, the offense is punishable by:

(1) a fine of not less than ~~\$800~~ [~~\$500~~] or more than ~~\$1,100~~ [~~\$1,000~~]; and

(2) 30 [~~not less than 20 or more than 50~~] hours of community service.

(k) If it is shown on the trial of an offense under this section that the person has been previously convicted four times of an offense under this section, the offense is punishable by a fine of ~~\$1,250~~ [~~\$1,000~~] and 50 hours of community service.

SECTION 2. Section 681.012, Transportation Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsection (b) to read as follows:

(a-1) A peace officer may seize a disabled parking placard from a person who operates a vehicle on which a disabled parking placard is displayed if the peace officer determines by inspecting the person's driver's license or personal identification certificate that the disabled parking placard does not contain the first four digits of the driver's license number or personal identification certificate number and the initials of:

(1) the person operating the vehicle; or

(2) a person being transported by the vehicle.

(a-2) A peace officer shall submit each seized parking placard to the department not later than the fifth day after the seizure.

(b) On submission to the department under Subsection (a) or (a-2), a placard is revoked. On request of the person from whom the placard was seized, the department shall conduct a hearing and determine whether the revocation should continue or the placard should be returned to the person and the revocation rescinded.

SECTION 3. (a) The change in law made by this Act applies only to an offense committed on or after September 1, 2009.

(b) An offense committed before September 1, 2009, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2009, if any element of the offense was committed before that date.

SECTION 4. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 52** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION _____. Section 504.201, Transportation Code, is amended by amending Subsection (d) and adding Subsection (i) to read as follows:

(d) Subject to Subsection(i), the [The] initial application for specialty license plates under this section must be accompanied by a written statement from a physician who is licensed to practice medicine in this state or in a state adjacent to this state or

who is authorized by applicable law to practice medicine in a hospital or other health facility of the Department of Veterans Affairs. If the applicant has a mobility problem caused by a disorder of the foot, the written statement may be issued by a person licensed to practice podiatry in this state or a state adjacent to this state. In this subsection, "podiatry" has the meaning assigned by Section 681.001. The statement must certify that the person making the application or on whose behalf the application is made is legally blind or has a mobility problem that 20 substantially impairs the person's ability to ambulate. The statement must also certify whether a mobility problem is temporary or permanent. A written statement is not required as acceptable medical proof if:

(1) the person with a disability:

(A) has had a limb, hand, or foot amputated; or

(B) must use a wheelchair; and

(2) the applicant and the county assessor-collector processing the application execute an affidavit attesting to the person's disability.

(i) If the initial application for specialty license plates under this section is made by or on behalf of a person with a mobility problem that substantially impairs the person's ability to ambulate, the written statement required by Subsection (d) may be issued by a person licensed to practice chiropractic in this state or a state adjacent to this state. In this subsection, "chiropractic" has the meaning assigned by Section 201.002, Occupations Code.

SECTION _____. Section 681.003, Transportation Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) Subject to ~~Subsections (e) and (f)~~ Subsection (e), the first application must be accompanied by a notarized written statement or written prescription of a physician licensed to practice medicine in this state or a state adjacent to this state, or authorized by applicable law to practice medicine in a hospital or other health facility of the Veterans Administration, certifying and providing evidence acceptable to the department that the person making the application or on whose behalf the application is made is legally blind or has a mobility problem that substantially impairs the person's ability to ambulate. The statement or prescription must include a certification of whether the disability is temporary or permanent and information acceptable to the department to determine the type of disabled parking placard for which the applicant is eligible. The department shall determine a person's eligibility based on evidence provided by the applicant establishing legal blindness or mobility impairment.

(f) If a first application for a disabled parking placard under this section is made by or on behalf of a person with a mobility problem that substantially impairs the person's ability to ambulate, the notarized written statement or written prescription required by Subsection (c) may be issued by a person licensed to practice chiropractic in this state or a state adjacent to this state. In this subsection, "chiropractic" has the meaning assigned by Section 201.002, Occupations Code.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 52** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Uresti, Eltife, Carona, and Wentworth.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 29, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 136 (93 Yeas, 50 Nays, 2 Present, not voting)

HB 383 (142 Yeas, 0 Nays, 1 Present, not voting)

HB 671 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 748 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 1012 (102 Yeas, 41 Nays, 2 Present, not voting)

HB 1043 (136 Yeas, 2 Nays, 3 Present, not voting)

HB 1259 (145 Yeas, 0 Nays, 2 Present, not voting)

HB 1787 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 2212 (144 Yeas, 0 Nays, 2 Present, not voting)

HB 2346 (118 Yeas, 26 Nays, 2 Present, not voting)

HB 2360 (114 Yeas, 25 Nays, 3 Present, not voting)

HB 2438 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 2450 (145 Yeas, 0 Nays, 2 Present, not voting)

HB 2609 (142 Yeas, 1 Nays, 3 Present, not voting)

HB 2619 (145 Yeas, 0 Nays, 2 Present, not voting)

HB 2642 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 2751 (145 Yeas, 0 Nays, 2 Present, not voting)

HB 2779 (144 Yeas, 0 Nays, 2 Present, not voting)
HB 2845 (140 Yeas, 0 Nays, 1 Present, not voting)
HB 3041 (139 Yeas, 0 Nays, 2 Present, not voting)
HB 3072 (143 Yeas, 0 Nays, 2 Present, not voting)
HB 3073 (144 Yeas, 0 Nays, 2 Present, not voting)
HB 3113 (145 Yeas, 0 Nays, 2 Present, not voting)
HB 3114 (143 Yeas, 1 Nays, 2 Present, not voting)
HB 3216 (141 Yeas, 1 Nays, 2 Present, not voting)
HB 3352 (93 Yeas, 49 Nays, 2 Present, not voting)
HB 3433 (141 Yeas, 0 Nays, 2 Present, not voting)
HB 3502 (143 Yeas, 2 Nays, 1 Present, not voting)
HB 3594 (143 Yeas, 0 Nays, 2 Present, not voting)
HB 3717 (144 Yeas, 0 Nays, 2 Present, not voting)
HB 3762 (142 Yeas, 0 Nays, 2 Present, not voting)
HB 3851 (143 Yeas, 0 Nays, 2 Present, not voting)
HB 3859 (91 Yeas, 54 Nays, 2 Present, not voting)
HB 3866 (144 Yeas, 1 Nays, 2 Present, not voting)
HB 4060 (144 Yeas, 0 Nays, 1 Present, not voting)
HB 4152 (144 Yeas, 0 Nays, 1 Present, not voting)
HB 4290 (144 Yeas, 0 Nays, 1 Present, not voting)
HB 4311 (132 Yeas, 0 Nays, 1 Present, not voting)
HB 4451 (144 Yeas, 1 Nays, 1 Present, not voting)
HB 4471 (145 Yeas, 0 Nays, 1 Present, not voting)
HB 4545 (141 Yeas, 0 Nays, 2 Present, not voting)
HB 4642 (143 Yeas, 0 Nays, 2 Present, not voting)
HB 4715 (139 Yeas, 0 Nays, 2 Present, not voting)
HB 4720 (138 Yeas, 0 Nays, 3 Present, not voting)
HB 4722 (142 Yeas, 0 Nays, 2 Present, not voting)
HB 4727 (143 Yeas, 0 Nays, 2 Present, not voting)
HB 4767 (144 Yeas, 0 Nays, 1 Present, not voting)
HB 4789 (139 Yeas, 0 Nays, 1 Present, not voting)
HB 4825 (145 Yeas, 0 Nays, 1 Present, not voting)
HB 4827 (144 Yeas, 0 Nays, 2 Present, not voting)
HB 4828 (144 Yeas, 0 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 548 (non-record vote)

House Conferees: Pickett - Chair/Callegari/Guillen/Merritt/Smith, Todd

HB 1659 (non-record vote)

House Conferees: King, Phil - Chair/Driver/Frost/Lewis/Vo

HB 2328 (non-record vote)

House Conferees: Guillen - Chair/Creighton/Leibowitz/Raymond/Riddle

HB 2644 (non-record vote)

House Conferees: Kent - Chair/Anchia/Frost/Marquez/Shelton

HB 2647 (non-record vote)

House Conferees: Kent - Chair/Button/Driver/Miklos/Vaught

HB 2649 (non-record vote)

House Conferees: Smith, Wayne - Chair/Anderson/Callegari/Harless/Homer

HB 2774 (non-record vote)

House Conferees: Truitt - Chair/Darby/Flynn/Hernandez/Hopson

HB 2854 (non-record vote)

House Conferees: Hughes - Chair/Anderson/Frost/Harper-Brown/Pickett

HB 2888 (non-record vote)

House Conferees: Martinez, "Mando" - Chair/Gonzalez Tourelles/Hardcastle/Swinford/Villarreal

HB 3224 (non-record vote)

House Conferees: Madden - Chair/Bohac/Miklos/Moody/Riddle

HB 3347 (non-record vote)

House Conferees: Truitt - Chair/Eiland/McClendon/Otto/Pitts

HB 3637 (non-record vote)

House Conferees: Hughes - Chair/Eiland/Lewis/Smithee/Turner, Sylvester

HB 4817 (non-record vote)

House Conferees: Gattis - Chair/Callegari/Creighton/Frost/Ritter

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

SB 328 (non-record vote)

House Conferees: Phillips - Chair/Fletcher/Gattis/Moody/Pena

SB 333 (non-record vote)

House Conferees: Jackson, Jim - Chair/Christian/Fletcher/Kent/Miklos

SB 408 (non-record vote)

House Conferees: Hughes - Chair/Anderson/Hunter/Jackson, Jim/Smithee

SB 472 (non-record vote)

House Conferees: Deshotel - Chair/Darby/Hopson/Solomons/Thibaut

SB 1009 (non-record vote)

House Conferees: Harper-Brown - Chair/Coleman/Davis, John/Marquez/Morrison

SB 1219 (non-record vote)

House Conferees: Deshotel - Chair/Allen/Eissler/Hochberg/Patrick

SB 1557 (non-record vote)

House Conferees: Gallego - Chair/Christian/Fletcher/Miklos/Moody

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

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

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1612 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1612** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1612** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the provision of information by health and human services agencies to assist children with velocardiofacial syndrome.

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

SECTION 1. Subchapter D, Chapter 117, Human Resources Code, is amended by adding Section 117.076 to read as follows:

Sec. 117.076. INFORMATION REGARDING VELOCARDIOFACIAL SYNDROME. (a) The commission shall ensure that each health and human services agency that provides intervention services to young children is provided with information developed by the commission regarding velocardiofacial syndrome.

(b) Each health and human services agency described by Subsection (a) shall provide the information regarding velocardiofacial syndrome to appropriate health care coordinators and therapists and to parents of a child who is known by the agency to have at least two of the following conditions:

(1) hypotonicity;

(2) communication delay;

(3) articulation disorder;

(4) resonance disorder;

(5) nasal regurgitation during feeding as an infant with no history of a cleft

palate;

(6) recurrent ear infections as well as diagnosis of cardiac anomaly, feeding disorder, cleft palate, or submucosal cleft palate; or

(7) fine motor or gross motor skills delay.

(c) The commission shall develop the information required under Subsection (a) using medically accurate, peer-reviewed literature. The information must include:

(1) an explanation of velocardiofacial syndrome symptoms, diagnosis, and treatment options;

(2) information on relevant state agency and nonprofit resources, parent support groups, and available Medicaid waiver programs; and

(3) a recommendation for follow-up with a health care provider for evaluation of the underlying etiology and an explanation that the existence of any of the conditions listed in Subsection (b) will not necessarily result in a diagnosis of velocardiofacial syndrome.

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

SECTION 2. This Act takes effect September 1, 2009.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1612**.

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

SENATE BILL 2569 WITH HOUSE AMENDMENT

Senator Lucio called **SB 2569** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2569** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the governing body of the Willacy County Navigation District.

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

SECTION 1. Chapter 404, Acts of the 53rd Legislature, Regular Session, 1953, is amended by adding Sections 1A, 1B, and 1C to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the board of navigation and canal commissioners of the district.

(2) "Commissioner" means a member of the board.

(3) "District" means the Willacy County Navigation District.

Sec. 1B. (a) The board shall divide the territory of the district into four numbered single-member districts for electing commissioners.

(b) The board may revise the single-member districts as necessary or appropriate.

(c) The board consists of five commissioners. One commissioner is elected from each single-member district, and one commissioner is elected from the district at large.

(d) Commissioners serve staggered four-year terms.

(e) The commissioner elected from the district at large serves as the presiding officer of the board.

Sec. 1C. The board shall hold an election to elect the appropriate number of commissioners on the uniform election date in November of each even-numbered year.

SECTION 2. (a) In this section, "board," "commissioner," and "district" have the meanings assigned by Section 1A, Chapter 404, Acts of the 53rd Legislature, Regular Session, 1953, as added by this Act.

(b) Not later than June 1, 2010, the board shall divide the territory of the district into four numbered single-member districts as required by Section 1B, Chapter 404, Acts of the 53rd Legislature, Regular Session, 1953, as added by this Act.

(c) A commissioner of the district who is serving on the day before the effective date of this Act shall serve until a successor qualifies following an election under Subsection (d) of this section.

(d) On the uniform election date in November 2010, the board shall hold an election to elect one at-large commissioner and four commissioners from single-member districts.

(e) The five commissioners elected under Subsection (d) of this section shall draw lots to determine which two commissioners shall serve a term expiring December 1, 2012, and which three commissioners shall serve a term expiring December 1, 2014.

(f) On the uniform election date in November 2012, the board shall hold an election to elect two commissioners to terms of four years.

(g) On the uniform election date in 2014, the board shall hold an election to elect three commissioners to terms of four years.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 2569**.

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

SENATE BILL 546 WITH HOUSE AMENDMENTS

Senator Fraser called **SB 546** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 546** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to energy efficiency goals and programs and demand reduction targets; creating an office of energy efficiency deployment in the state energy conservation office.

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

SECTION 1. Section 39.905, Utilities Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (a-2), (b-5), (d-1), (d-2), (d-3), (e-1), (h), (i), and (j) to read as follows:

(a) It is the goal of the legislature that:

(1) electric utilities will administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner but will not offer underlying competitive services;

(2) electric utilities will assist in building an infrastructure of trained and qualified energy service providers that will allow and encourage the participation of retail electric providers in the delivery of services and that will ensure that all customers, in all customer classes, will have a choice of and access to energy efficiency alternatives and other choices from the market, including demand-side renewable energy systems, that allow each customer to reduce energy consumption, peak demand, or energy costs;

(3) except as provided by Subsection (b)(8), each electric utility annually will provide, through a cost-effective portfolio of market-based standard offer programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers to acquire additional [cost-effective] energy efficiency for [residential and commercial] customers other than customers who operate a transmission-level industrial facility, equivalent to at least:

(A) 30 [40] percent of the electric utility's annual growth in demand, not including demand from transmission-level industrial facilities, [of residential and commercial customers] by January 1, 2012 [December 31, 2007];

(B) one-half of one [15] percent of the electric utility's peak [annual growth in] demand, not including demand from transmission-level industrial facilities, [of residential and commercial customers] by January 1, 2013; and

(C) one percent of the electric utility's peak demand, not including demand from transmission-level industrial facilities, by January 1, 2016 [December 31, 2008, provided that the electric utility's program expenditures for 2008 funding may not be greater than 75 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing; and

[(C) 20 percent of the electric utility's annual growth in demand of residential and commercial customers by December 31, 2009, provided that the electric utility's program expenditures for 2009 funding may not be greater than 150 percent above the utility's program budget for 2007 for residential and commercial customers, as included in the April 1, 2006, filing];

(4) each electric utility in the ERCOT region shall create specific programs sufficient to [use its best efforts to encourage and] facilitate the involvement of the region's retail electric providers in the widespread delivery of efficiency programs and programs for demand-side renewable energy systems [demand response programs] under this section;

(5) retail electric providers in the ERCOT region, and electric utilities outside of the ERCOT region, shall provide customers with energy efficiency educational materials; [and]

(6) notwithstanding Subsection (a)(3), electric utilities shall continue to make available, at 2007 funding and participation levels, any load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007;

(7) electric utilities will make their best efforts to ensure continuity in funding for market-based standard offer programs with proven demand at levels consistent with that demand;

(8) a customer who participates in a standard offer load management or demand response program is not precluded from participating in other load management or demand response programs during different intervals; and

(9) for an electric utility operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating Council on January 1, 2009, the utility may:

(A) continue to provide standard offer programs, limited and targeted market transformation programs, or programs that address the major barriers to energy efficiency as required by Subdivision (3); or

(B) provide energy efficiency programs and measures directly to a class of customers.

(a-1) ERCOT annually shall compute the sum of all measurable and verifiable demand response and load management capacity independently implemented by electric utilities, retail electric providers, and the independent organization certified under Section 39.151, including programs used to shift load off-peak or reduce local or systemwide peak demand.

(a-2) The commission shall determine whether the implementation of additional measures or programs is necessary to facilitate demand response. An additional demand response measure or program implemented under this subsection must not impede the proper functioning of the electricity market in ERCOT or increase net electricity costs for customers. To the extent that demand response programs can

satisfy the reasonable requirements of ancillary services, and consistent with reliability requirements, the commission shall ensure that demand response programs have the opportunity to compete with generation, including the provision of ancillary services.

(b) Subject to the limitations of Subsection (b-5), the [The] commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including:

(1) establishing an energy efficiency cost recovery factor for ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of this section;

(2) establishing an incentive under Section 36.204 to reward utilities administering programs under this section that exceed the minimum goals established by this section;

(3) providing a utility that is unable to establish an energy efficiency cost recovery factor in a timely manner due to a rate freeze with a mechanism to enable the utility to:

(A) defer the costs of complying with this section; and

(B) recover the deferred costs through an energy efficiency cost recovery factor on the expiration of the rate freeze period;

(4) ensuring that the costs associated with programs provided under this section are borne by the customer classes that receive the services under the programs; [and]

(5) ensuring that programs are implemented in a manner in which program incentives are passed on to end-use customers through rebates, discounts on products and services, and other direct benefits that reduce the costs of the products and services to the end-use customer;

(6) ensuring that standard offer programs operate at a scale sufficient to ensure that all eligible customers have access to the programs and program benefits under this section;

(7) establishing a minimum standard offer payment available to all eligible customers that may be reduced by the amount of other available state incentives equal to at least 70 percent of avoided cost as determined by the commission for the installation of demand-side renewable energy systems;

(8) on application by a utility, and when considered necessary by the commission, increasing or decreasing the demand reduction goals under Subsection (a) based on each utility's capacity to implement efficiency measures and demand response programs, and providing incentives under Section 36.204 to reward utilities administering programs under this section that exceed the minimum goals established under this section;

(9) without compromising the ability to achieve statewide energy efficiency goals, developing different standards for program offerings in remote regions of this state and for program offerings in regions of this state where the demand for energy efficiency services exceeds the local utilities' capacity to provide them, to allow a utility to partner with local governments and community organizations to provide energy efficiency services; and

(10) establishing standards for consumer disclosures by energy services companies that include the expected reduction of energy consumption, the anticipated payback period, and disclosure of any incentive received from the energy service provider from the state or federal government [the program rules encourage the value of the incentives to be passed on to the end use customer].

(b-5) Notwithstanding any other provision of this title, the average of the aggregate cost for programs under this section for individual utilities located in areas in which customer choice has been introduced may not exceed \$0.0010 per kilowatt hour for nontransmission level customers in any calendar year, regardless of whether the costs:

(1) are part of the utility's energy efficiency cost recovery factor under this section; or

(2) are included in the utility's most recent base rate case.

(d) The commission shall establish a procedure for reviewing and evaluating market-transformation program options described by this section [subsection] and other options. A market-transformation program that is launched as a pilot program may be continued for more than three years only if the commission determines that the pilot program is an appropriate means of addressing special market barriers that prevent or inhibit the measure or behavior addressed by the pilot program from being delivered or adopted through normal market channels, under the electric utility's standard offer programs [In evaluating program options, the commission may consider the ability of a program option to reduce costs to customers through reduced demand, energy savings, and relief of congestion. Utilities may choose to implement any program option approved by the commission after its evaluation in order to satisfy the goal in Subsection (a), including:

[(1) energy smart schools;

[(2) appliance retirement and recycling;

[(3) air conditioning system tune ups;

[(4) the use of trees or other landscaping for energy efficiency;

[(5) customer energy management and demand response programs;

[(6) high performance residential and commercial buildings that will achieve the levels of energy efficiency sufficient to qualify those buildings for federal tax incentives;

[(7) programs for customers who rent or lease their residence or commercial space;

[(8) programs providing energy monitoring equipment to customers that enable a customer to better understand the amount, price, and time of the customer's energy use;

[(9) energy audit programs for owners and other residents of single family or multifamily residences and for small commercial customers;

[(10) net-zero energy new home programs;

[(11) solar thermal or solar electric programs; and

[(12) programs for using windows and other glazing systems, glass doors, and skylights in residential and commercial buildings that reduce solar gain by at least 30 percent from the level established for the federal Energy Star windows program].

(d-1) In addition to the market-transformation programs described by Subsection (d), the commission may establish, and if established, each electric utility may implement, market-transformation incentive programs that:

(1) encourage the use of new building technologies and construction practices that are anticipated to be included in a new edition of the International Residential Code or International Energy Conservation Code;

(2) offer incentives for a building that meets federal Energy Star standards or exceeds by at least 15 percent the energy conservation standards of the most current edition of the International Residential Code or International Energy Conservation Code;

(3) offer increased incentives for a building that exceeds by at least 30 percent the energy conservation standards of the most current edition of the International Residential Code or International Energy Conservation Code; and

(4) encourage the testing of new building technologies and construction practices that integrate renewable energy into building designs.

(d-2) Each electric utility shall administer an energy efficiency program designed to also meet an energy savings goal calculated from its demand savings goal, using a 25 percent capacity factor. For purposes of this subsection, "capacity factor" is defined as the ratio of the utility's annual energy savings goal, in kilowatt hours, to the peak demand goal for the year, in kilowatts, multiplied by the number of hours in the year.

(d-3) A utility may work with municipalities or other governmental entities to establish building energy codes that promote greater energy efficiency than the minimum standards required by state or local law. If a utility and governmental entity develop a building energy code under this subsection, the utility may count not more than 50 percent of the savings in peak demand and energy savings that result in the first 12 months after the code is implemented toward the utility's goal for energy efficiency.

(e-1) The commission shall exempt costs related to marketing, information dissemination, and training from the requirements of Subsection (e).

(h) In this section, "demand-side renewable energy system" means an energy generation system that:

(1) uses distributed renewable generation, as defined by Section 39.916; or

(2) reduces the need for energy consumption by using a renewable energy technology or natural mechanism of the environment, including a geothermal heat pump or solar water heater.

(i) An electric utility that was not subject to this section on January 1, 2009, is subject to the energy efficiency goals of this section on the effective date of the utility's final rates as determined in the utility's first rate case filed with the commission on or after January 1, 2010.

(j) Notwithstanding any other law, this section shall apply to each electric utility, as defined by Section 31.002.

SECTION 2. Chapter 447, Government Code, is amended by adding Section 447.0025 to read as follows:

Sec. 447.0025. OFFICE OF ENERGY EFFICIENCY DEPLOYMENT. (a) The office of energy efficiency deployment is created in the state energy conservation office.

(b) The office of energy efficiency deployment shall design and implement a statewide campaign to educate consumers, utilities, and public entities about, and to promote the use of, energy efficiency and demand response programs available in the state. The office of energy efficiency deployment and the state energy conservation office may enter into contracts for professional services to carry out this statewide campaign.

(c) In designing and implementing a campaign under Subsection (b), the office of energy efficiency deployment shall collaborate with retail electric providers, transmission and distribution utilities, and energy service providers.

SECTION 3. (a) The Public Utility Commission of Texas shall conduct a study paid for by electric utilities regarding the feasibility of mechanisms to decouple electric utility revenues and earnings from the amount of electricity consumed by utility customers so that investor-owned electric utilities, electric transmission and distribution utilities, municipally owned electric utilities, and electric cooperatives may prevent fluctuations in retail electric energy consumption from affecting the ability of those types of utilities to recover fixed costs of service that do not ordinarily vary directly with changes in electric energy consumption or sales volume.

(b) The study must address:

(1) disincentives to the promotion of efficient use of electricity by better practices and better technology, including concerns regarding:

(A) a utility's lost revenues from electricity sales that may result from energy efficiency improvements or energy saving practices that reduce electricity consumption; and

(B) a utility's recovery of the utility's costs for programs promoting electric energy efficiency; and

(2) the effects of decoupling electric utility revenues and earnings from the amount of electricity consumed by customers, including the effect decoupling would have on low-income customers.

(c) In conducting the study, the Public Utility Commission of Texas may consider and evaluate mechanisms proposed or applied in other states for:

(1) allowing rates of return on energy efficiency investments in a manner like those for other capital investments;

(2) providing an increased rate of return on overall investments or on energy efficiency investments;

(3) providing financial incentives for meeting energy efficiency targets; and

(4) recovering energy efficiency program costs.

(d) The study may not be performed by a person:

(1) who performs services for an electric utility;

(2) who has performed services for an electric utility in the two years before the study begins; or

(3) who is in the process of bidding to perform services for an electric utility at the time the study begins.

(e) The Public Utility Commission of Texas shall report the conclusions of the study to the lieutenant governor, the speaker of the house of representatives, and each committee of the 82nd Legislature that has jurisdiction over electric utilities.

(f) The report must:

(1) include recommendations tailored by category to investor-owned electric utilities, electric transmission and distribution utilities, municipally owned electric utilities, and electric cooperatives;

(2) include recommendations on the use of a credit trading system to achieve increased energy efficiency; and

(3) state:

(A) whether decoupling will result in an increase in the installation of energy efficiency measures by consumers;

(B) whether decoupling will result in higher or lower energy bills for consumers;

(C) whether decoupling will result in higher or lower electricity rates;

(D) whether decoupling will result in lower risk to electric utilities; and

(E) whether electric utility rates of return should be reduced as a result of decoupling.

(g) The report and recommendations must be delivered not later than January 31, 2011, and must contain specific recommendations regarding transmission and distribution utility revenues and earnings in relation to electric energy efficiency, including legislative proposals.

SECTION 4. (a) The Public Utility Commission of Texas shall conduct a study paid for by electric utilities regarding the programs offered under Section 39.905, Utilities Code. The study must address:

(1) the effectiveness of the programs required by Section 39.905, Utilities Code, and whether the cost caps described by Subsection (b-5) of that section should be revised;

(2) the feasibility of increasing existing energy efficiency efforts to achieve a two percent reduction of electric utility peak demand, not including demand from transmission level industrial facilities, not later than January 1, 2021;

(3) an assessment of the cost impact, by customer class, on a dollar per kilowatt hour basis, necessary to achieve:

(A) a one percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2016; and

(B) a two percent reduction in electric utility peak demand, not including demand from transmission level customers, not later than January 1, 2021; and

(4) the level of free ridership on programs described by Section 39.905, Utilities Code.

(b) The study may not be performed by a person:

(1) who performs services for an electric utility;

(2) who has performed services for an electric utility in the two years before the study begins; or

(3) who is in the process of bidding to perform services for an electric utility at the time the study begins.

(c) Not later than December 15, 2012, the Public Utility Commission of Texas shall report the conclusions of the study to the lieutenant governor, the speaker of the house of representatives, and each committee of the 82nd Legislature that has jurisdiction over electric utilities.

SECTION 5. The Public Utility Commission of Texas shall conduct a study paid for by electric utilities regarding the potential for demand response and load management programs in this state. Not later than January 15, 2011, the commission shall submit to the legislature a report of the commission's findings. The report must:

(1) identify the types of demand response and load management programs that are most effective in:

- (A) reducing systemwide peak demand;
- (B) reducing local peak demand;
- (C) keeping downward pressure on electricity rates;
- (D) reducing emissions; and
- (E) facilitating the integration of renewable energy resources in the electric grid or otherwise improving the reliability of the grid;

(2) provide estimates of the economic and achievable potential in this state for each identified program in terms of:

- (A) peak demand reductions;
- (B) electricity rate reductions;
- (C) emissions savings; and
- (D) avoided costs of generation, transmission, and distribution;

(3) quantify the costs, effects on rates, potential cost savings, and other economic benefits of each identified program:

(A) for the electricity market in this state; and

(B) for consumers in this state, by customer class on a dollar per kilowatt hour basis;

(4) state whether each identified program would be most effective if administered by:

(A) the independent organization certified under Section 39.151;

(B) electric utilities;

(C) retail electric providers; or

(D) the independent organization certified under Section 39.151, electric utilities, or retail electric providers in combination;

(5) state whether residential elderly customers, critical care residential customers, or low-income residential customers would be unfairly affected by, or would experience any harmful health effects from, each identified program;

(6) identify potential barriers to the successful creation of, operation of, and participation in wholesale or retail demand response and load management programs;

(7) state whether the creation of additional demand response or load management programs would have an adverse effect on existing demand response and load management programs; and

(8) state whether demand response and load management programs would achieve reductions in statewide peak demand of five percent by January 1, 2016, and identify policies, goals, and programs that would facilitate the achievement of that goal.

SECTION 6. Section 39.905(b-2), Utilities Code, is repealed.

SECTION 7. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 546** (House committee report) in SECTION 1 of the bill, in amended Section 39.905(a)(3), Utilities Code (page 2, lines 2-5), by striking "programs or limited, targeted, market-transformation programs, incentives sufficient for retail electric providers and competitive energy service providers" and substituting the following:

programs, ~~[or]~~ limited, targeted, market-transformation programs, or other programs or incentives sufficient for retail electric providers and competitive energy service providers to address major barriers and

Floor Amendment No. 2

Amend **CSSB 546** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 39.9044, Utilities Code, is repealed.

Floor Amendment No. 1 on Third Reading

Amend **CSSB 546**, on third reading, in SECTION 1 of the bill, in Section 39.905(a)(3), Utilities Code, as amended by the bill and by the Swinford Amendment on second reading, by striking "programs, ~~[or]~~ limited, targeted, market-transformation programs, or other programs or incentives sufficient for retail electric providers and competitive energy service providers to address major barriers and" and substituting "programs, ~~[or]~~ limited, targeted, market-transformation programs, or other commission-approved programs or incentives sufficient for retail electric providers and competitive energy service providers to address major barriers to the achievement of energy efficiency goals under this section and".

Floor Amendment No. 2 on Third Reading

Amend **CSSB 546** (House committee printing) on third reading by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly.

SECTION _____. (a) In this section, "laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(b) The laboratory shall conduct a study of outdoor lighting fixtures used by state agencies. The study must examine:

- (1) types of outdoor lighting fixtures used by state agencies;
- (2) lighting technology that:

(A) achieves substantial energy efficiency compared to currently used technology; and

(B) has a life expectancy of at least 50,000 hours;

(3) price comparisons and return on investment standards for the lighting technologies studied; and

(4) usage considerations as determined by the needs of individual state agencies.

(c) At the laboratory's request, the Texas Facilities Commission shall provide assistance in conducting the study under this section.

(d) At the laboratory's request, a state agency that has considered a lamp as required by Section 2158.182, Government Code, as added by this Act, shall provide data for use in conducting the study under this section.

(e) Not later than September 1, 2010, the laboratory shall prepare a report regarding the results of the study conducted under this section, including the data collected and recommendations, and:

(1) submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the clerks of each of the standing committees of the senate and house of representatives with primary jurisdiction over state facilities; and

(2) publish the report on the laboratory's Internet website or otherwise make the report available to the public through the Internet.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 546** on third reading by adding the appropriately numbered SECTION as follows and renumbering all other SECTIONS accordingly:

SECTION _____. Chapter 214, Local Government Code, is amended by adding a new Section 214.9015 as follows:

Sec. 214.9015. ENERGY CONSERVATION REQUIREMENTS ON THE TRANSFER OF REAL PROPERTY. (a) A municipality may not impose a criminal penalty on the seller of real property for the failure to perform an energy audit.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **CSSB 546** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Whitmire, Harris, Estes, and Ellis.

SENATE BILL 537 WITH HOUSE AMENDMENT

Senator Carona called **SB 537** from the President's table for consideration of the House amendment to the bill.

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

Committee Amendment No. 1

Amend **SB 537** by striking proposed Subsection (b)(3)(A), Section 8A, Article 18.20, Code of Criminal Procedure, on line 23 of page 1, and substituting the following:

(A) a presiding judge of an administrative judicial region appointed pursuant to Section 74.005, Government Code;

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 537** before appointment.

There were no motions offered.

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

SENATE BILL 679 WITH HOUSE AMENDMENT

Senator Lucio called **SB 679** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 679** by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. Section 2306.6704(b-1), Government Code, is amended to read as follows:

(b-1) The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application:

(1) each [any] neighborhood organization [organizations] on record with the state or county in which the development is to be located and that has [whose] boundaries containing [contain] the proposed development site or has a boundary located not more than 1,000 feet from any boundary of the proposed development site;

(2) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(3) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(4) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(5) the state senator and state representative of the district containing the development.

SECTION _____. Section 2306.6705, Government Code, is amended to read as follows:

Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An application must contain at a minimum the following written, detailed information in a form prescribed by the board:

- (1) a description of:
 - (A) the financing plan for the development, including any nontraditional financing arrangements;
 - (B) the use of funds with respect to the development;
 - (C) the funding sources for the development, including:
 - (i) construction, permanent, and bridge loans; and
 - (ii) rents, operating subsidies, and replacement reserves; and
 - (D) the commitment status of the funding sources for the development;
- (2) if syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters;
- (3) from a syndicator or a financial consultant of the applicant, an estimate of the amount of equity dollars expected to be raised for the development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including:
 - (A) pay-in schedules; and
 - (B) syndicator consulting fees and other syndication costs;
- (4) if rental assistance, an operating subsidy, or an annuity is proposed for the development, any related contract or other agreement securing those funds and an identification of:
 - (A) the source and annual amount of the funds;
 - (B) the number of units receiving the funds; and
 - (C) the term and expiration date of the contract or other agreement;
- (5) if the development is located within the boundaries of a political subdivision with a zoning ordinance, evidence in the form of a letter from the chief executive officer of the political subdivision or from another local official with jurisdiction over zoning matters that states that:
 - (A) the development is permitted under the provisions of the ordinance that apply to the location of the development; or
 - (B) the applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied;
- (6) if an occupied development is proposed for rehabilitation:
 - (A) an explanation of the process used to notify and consult with the tenants in preparing the application;
 - (B) a relocation plan outlining:
 - (i) relocation requirements; and
 - (ii) a budget with an identified funding source; and
 - (C) if applicable, evidence that the relocation plan has been submitted to the appropriate local agency;

(7) a certification of the applicant's compliance with appropriate state and federal laws, as required by other state law or by the board;

(8) any other information required by the board in the qualified allocation plan; and

(9) evidence that the applicant has notified the following entities with respect to the filing of the application:

(A) each ~~any~~ neighborhood organization ~~organizations~~ on record with the state or county in which the development is to be located and that has ~~whose~~ boundaries containing ~~contain~~ the proposed development site or has a boundary located not more than 1,000 feet from any boundary of the proposed development site;

(B) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(C) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(D) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(E) the state senator and state representative of the district containing the development.

SECTION ____ . Section 2306.6710(b), Government Code, is amended to read as follows:

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(A) financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;

(B) quantifiable community participation with respect to the development, evaluated on the basis of written statements from each ~~any~~ neighborhood organization ~~organizations~~ on record with the state or county in which the development is to be located and that has ~~whose~~ boundaries containing ~~contain~~ the proposed development site or has a boundary located not more than 1,000 feet from any boundary of the proposed development site;

(C) the income levels of tenants of the development;

(D) the size and quality of the units;

(E) the commitment of development funding by local political subdivisions;

(F) the level of community support for the application, evaluated on the basis of written statements from the state representative or the state senator that represents the district containing the proposed development site;

(G) the rent levels of the units;

(H) the cost of the development by square foot;

(I) the services to be provided to tenants of the development; and

(J) whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014;

(2) uses criteria imposing penalties on applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement; and

(3) encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested.

SECTION _____. The changes in law made by this Act to Sections 2306.6704(b-1), 2306.6705, and 2306.6710(b), Government Code, as amended by this Act, apply only to an application for a low income housing tax credit submitted to the Texas Department of Housing and Community Affairs during an application cycle that begins on or after the effective date of this Act. An application submitted during an application cycle that began before the effective date of this Act is governed by the law in effect on the date the application cycle began, and the former law is continued in effect for that purpose.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 679** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; West, Duncan, Estes, and Williams.

SENATE BILL 78 WITH HOUSE AMENDMENT

Senator Nelson called **SB 78** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 78** (House committee report) as follows:

(1) In SECTION 1 of the bill, in Section 524.003, as amended and redesignated by the bill, Insurance Code (page 2, line 4), strike "health coverage products" and substitute "health insurance coverage".

(2) In SECTION 1 of the bill, in amended Section 524.053(a) as amended and redesignated by the bill, Insurance Code (page 3, lines 5 and 6), strike "~~[this state, including information about health savings accounts and compatible high deductible health benefit plans]~~" and substitute "~~[this state]~~, including information about health savings accounts and compatible high deductible health benefit plans".

(3) In SECTION 1 of the bill, in added Section 524.054(a), Insurance Code (page 4, line 1), strike "health coverage products" and substitute "health insurance coverage".

(4) In SECTION 1 of the bill, in added Section 524.054(b), Insurance Code (page 4, lines 4 and 6), strike "health coverage products" each place the phrase appears and substitute "health insurance coverage".

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 78** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Duncan, Deuell, Lucio, and Van de Putte.

SENATE BILL 2314 WITH HOUSE AMENDMENT

Senator Averitt called **SB 2314** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2314** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the adoption of rules by the Texas Water Development Board regarding supplemental funding resulting from federal economic recovery legislation.

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

SECTION 1. Section 15.604(b), Water Code, is amended to read as follows:

(b) The board shall adopt rules specifying the manner in which any additional state revolving fund hereafter established by the board, or any capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund, may be used to provide financial assistance to an eligible applicant [~~political subdivisions~~] for public works. Such rules shall require financial assistance to be provided for the purpose or purposes and on the terms authorized by the federal legislation or federal agency program under which the additional state revolving fund was established or the capitalization grant was awarded.

SECTION 2. Subchapter J, Chapter 15, Water Code, is amended by adding Section 15.6055 to read as follows:

Sec. 15.6055. RULEMAKING AUTHORITY FOR SPECIAL FEDERAL CAPITALIZATION GRANTS. (a) The board may adopt rules specifying the manner in which any special capitalization grant under the state water pollution control revolving fund, the safe drinking water revolving fund, or any additional state revolving fund received as a result of federal economic recovery legislation may be used to provide financial assistance to an eligible applicant for public works. The rules must require financial assistance to be provided for the purpose or purposes, and on the terms authorized by, the federal legislation or federal agency program under which the additional state revolving fund was established or the special capitalization grant was awarded.

(b) If the board determines that it is necessary to adopt rules to comply with the terms of a special capitalization grant or other source of federal funding, and that the procedures prescribed by Subchapter B, Chapter 2001, Government Code, for adopting rules do not allow for the adoption of the rules in a sufficiently prompt manner, the procedures prescribed by that subchapter do not apply to the adoption of the rules. In that case, the board shall:

(1) post notice of a meeting to adopt rules not later than 72 hours before the time the meeting is scheduled; and

(2) adopt the necessary rules at the meeting.

(c) The board shall file a rule adopted in the manner authorized by Subsection (b) and the board's written determinations made under that subsection in the office of the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002, Government Code.

(d) Not later than the 180th day after the date rules are adopted under Subsection (b), the board may readopt or amend the rules in accordance with the procedures prescribed by Subchapter B, Chapter 2001, Government Code. If the board does not readopt or amend the rules in that manner, the rules expire on the 180th day after the date the rules were adopted under Subsection (b).

(e) This section expires September 1, 2011.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 2314** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Duncan, Eltife, Uresti, and Watson.

SENATE BILL 968 WITH HOUSE AMENDMENTS

Senator West called **SB 968** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 968** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to interactive water features and fountains.

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

SECTION 1. Subchapter D, Chapter 341, Health and Safety Code, is amended by adding Section 341.0695 to read as follows:

Sec. 341.0695. INTERACTIVE WATER FEATURES AND FOUNTAINS. (a) In this section, "interactive water feature or fountain" means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation.

(b) An owner, manager, operator, or other attendant in charge of an interactive water feature or fountain shall maintain the water feature or fountain in a sanitary condition.

(c) The bacterial content of the water in an interactive water feature or fountain may not exceed the safe limits prescribed by the standards adopted under this chapter.

(d) Except as provided by Subsection (f), a minimum free residual chlorine of 1.0 part for each one million units of water used in an interactive water feature or fountain must be maintained.

(e) Water in an interactive water feature or fountain may not show an acid reaction to a standard pH test.

(f) The department may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.

(g) An interactive water feature or fountain that is supplied entirely by drinking water that is not recirculated is not subject to Subsections (d) and (e).

(h) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from an interactive water feature or fountain.

(i) A county, a municipality, or the department may:

(1) require that the owner or operator of an interactive water feature or fountain obtain a permit for operation of the water feature or fountain;

(2) inspect an interactive water feature or fountain for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided, if the requirement is imposed by a county or municipality, the following are met:

(A) the auditor for the county or municipality shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county or municipality refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(j) A county, a municipality, or the department may by order close, for the period specified in the order, an interactive water feature or fountain if the operation of the fountain or water feature violates this section or a permitting or inspection requirement imposed under Subsection (i).

SECTION 2. (a) Not later than the 30th day after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt emergency rules in accordance with Section 2001.034, Government Code, as necessary to implement Section 341.0695, Health and Safety Code, as added by this Act.

(b) An owner, manager, operator, or other attendant in charge of an interactive water feature or fountain is not required to comply with Section 341.0695, Health and Safety Code, as added by this Act, before the fifth day after the date rules are adopted under Subsection (a) of this section.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

Amendment No. 1

Amend **CSSB 968** under Sec. 341.0695, Health and Safety Code, by adding the following:

(i)(4) An owner, manager, operator, or other attendant in charge of a water park that is subject to standards for public pools and spas contained in Texas Administrative Code, Title 25, Part 1, Chapter 2654, Subchapter L, rule 265.181-265-.208 is exempt from this chapter.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 968** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Nichols, Carona, Van de Putte, and Patrick.

SENATE BILL 2468 WITH HOUSE AMENDMENT

Senator Gallegos called **SB 2468** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 2468** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION _____. Section 172.003(3), Local Government Code, is amended to read as follows:

(3) "Political Subdivision" means a county, municipality, special district, school district, junior college district, housing authority, or other political subdivision of this [the] state or any other state.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 2468** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Gallegos, Chair; Whitmire, Jackson, Duncan, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 216

Senator Shapleigh called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 216** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 216** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapleigh, Chair; Nelson, Nichols, Uresti, and Wentworth.

CONFERENCE COMMITTEE ON HOUSE BILL 2330

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2330** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2330** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Deuell, Van de Putte, Shapleigh, and Nichols.

CONFERENCE COMMITTEE ON HOUSE BILL 2591

Senator Hegar called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2591** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2591** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; West, Deuell, Eltife, and Harris.

CONFERENCE COMMITTEE ON HOUSE BILL 3983

Senator Watson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3983** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3983** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Eltife, Harris, Carona, and Shapleigh.

SENATE BILL 2478 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 2478** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 2478** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 8368.005, Special District Local Laws Code (page 2, line 6), strike "district" and substitute "territory described by Section 2 of the Act creating this chapter".

(2) In SECTION 1 of the bill, in added Section 8368.005, Special District Local Laws Code (page 2, lines 7 and 8), strike "to the creation of the district and".

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 2478**.

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

SENATE BILL 1620 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1620** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1620** (House committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter E, Chapter 14, Finance Code, is amended by adding Section 14.2015 to read as follows:

Sec. 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an examination by the commissioner or the commissioner's representative of a license holder or registrant under Subtitle B or C, Title 4, or Chapter 394 is confidential and may not be disclosed by the commissioner or an officer or employee of the Office of Consumer Credit Commissioner, including:

(1) information obtained from a license holder or registrant under Subtitle B or C, Title 4, or Chapter 394;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder or registrant for the purposes of an examination conducted under Subtitle B or C, Title 4, or Chapter 394;

(3) a report on an examination of a license holder or registrant conducted under Subtitle B or C, Title 4, or Chapter 394; and

(4) any written communications between the license holder or registrant, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination conducted under Subtitle B or C, Title 4, or Chapter 394.

(b) The commissioner or the commissioner's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the license holder or registrant consents to the release of the information or has published the information contained in the release; or

(3) if the commissioner determines that release of the information is required for an administrative hearing.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1620** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Eltife, Whitmire, Averitt, and Watson.

SENATE BILL 1093 WITH HOUSE AMENDMENT

Senator Carona called **SB 1093** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1093** (House committee printing) by adding the following SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION _____. Section 545.301(b), Transportation Code, is amended to read as follows:

(b) This section does not apply to an operator of:

(1) a vehicle that is disabled while on the paved or main traveled part of a highway if it is impossible to avoid stopping and temporarily leaving the vehicle on the highway; or

(2) a vehicle used exclusively to transport solid, semisolid, or liquid waste operated at the time in connection with the removal or transportation of solid, semisolid, or liquid waste from a location adjacent to the highway.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1093**.

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

SENATE BILL 1201 WITH HOUSE AMENDMENT

Senator Carona called **SB 1201** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1201** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to an affidavit required to be filed in a cause of action against certain licensed or registered professionals.

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

SECTION 1. The heading to Chapter 150, Civil Practice and Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B. 1573), Acts of the 79th Legislature, Regular Session, 2005, is reenacted to read as follows:

CHAPTER 150. LICENSED OR REGISTERED PROFESSIONALS

SECTION 2. Sections 150.001 and 150.002, Civil Practice and Remedies Code, as amended by Chapters 189 (H.B. 854) and 208 (H.B. 1573), Acts of the 79th Legislature, Regular Session, 2005, are reenacted and amended to read as follows:

Sec. 150.001. DEFINITIONS. In this chapter:

(1) "Licensed or registered professional" means a licensed architect, licensed professional engineer, registered professional land surveyor, registered landscape architect, or any firm in which such licensed or registered professional practices, including but not limited to a corporation, professional corporation, limited liability corporation, partnership, limited liability partnership, sole proprietorship, joint venture, or any other business entity.

(2) "Practice of architecture" has the meaning assigned by Section 1051.001, Occupations Code.

(3) "Practice of engineering" has the meaning assigned by Section 1001.003, Occupations Code.

Sec. 150.002. CERTIFICATE OF MERIT. (a) In any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who:

(1) is competent to testify;

(2) holds the same professional license or registration as the defendant; and

(3) is knowledgeable in the area of practice of the defendant and offers

testimony based on the person's:

(A) knowledge;

(B) skill;

(C) experience;

(D) education;

(E) training; and

(F) practice.

(b) The affidavit shall set forth specifically for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the licensed or registered professional in providing the professional service, including any error or omission in providing advice, judgment, opinion, or a similar professional skill [skill at least one negligent act, error, or omission] claimed to exist and the factual basis for each such claim. The third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor shall be licensed or registered in this state and actively engaged in the practice of architecture, engineering, or surveying.

(c) ~~(b)~~ The contemporaneous filing requirement of Subsection (a) shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor could not be prepared. In such cases, the plaintiff shall have 30 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.

(d) ~~(c)~~ The defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.

(e) [~~(b)~~] The plaintiff's failure to file the affidavit in accordance with this section [~~Subsection (a) or (b)~~] shall result in dismissal of the complaint against the defendant. This dismissal may be with prejudice.

(f) [~~(e)~~] An order granting or denying a motion for dismissal is immediately appealable as an interlocutory order.

(g) [~~(f)~~] This statute shall not be construed to extend any applicable period of limitation or repose.

(h) [~~(g)~~] This statute does not apply to any suit or action for the payment of fees arising out of the provision of professional services.

SECTION 3. The change in law made by this Act applies only to an action or arbitration filed or commenced on or after the effective date of this Act. An action or arbitration filed or commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2009.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1201**.

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

SENATE BILL 1967 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1967** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **SB 1967** (House committee printing) by adding the following SECTIONS to the bill, appropriately numbered, and renumbering existing SECTIONS accordingly:

SECTION _____. Section 521.001(a), Transportation Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Motorcycle" includes an enclosed three-wheeled passenger vehicle that:

(A) is designed to operate with three wheels in contact with the ground;

(B) has a minimum unladen weight of 900 pounds;

(C) has a single, completely enclosed, occupant compartment;

(D) at a minimum, is equipped with:

(i) seats that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, 49 C.F.R. Section 571.207;

(ii) a steering wheel used to maneuver the vehicle;

(iii) a propulsion unit located in front of or behind the enclosed occupant compartment;

(iv) a seat belt for each vehicle occupant certified by the manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, 49 C.F.R. Section 571.209;

(v) a windshield and one or more windshield wipers certified by the manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, 49 C.F.R. Section 571.205, and Federal Motor Vehicle Safety Standard No. 104, 49 C.F.R. Section 571.104; and

(vi) a vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, 49 C.F.R. Section 571.216; and

(E) is produced by its manufacturer in a minimum quantity of 300 in any calendar year.

SECTION _____. Section 521.085, Transportation Code, is amended to read as follows:

Sec. 521.085. TYPE OF VEHICLE AUTHORIZED. (a) Unless prohibited by Chapter 522, and except as provided by Subsection (b), the license holder may operate any vehicle of the type for which that class of license is issued and any lesser type of vehicle other than a motorcycle or moped.

(b) Subsection (a) does not prohibit a license holder from operating a lesser type of vehicle that is a motorcycle described by Section 521.001(a)(6-a).

SECTION _____. Section 661.001(1), Transportation Code, is amended to read as follows:

(1) "Motorcycle" means a motor vehicle designed to propel itself with not more than three wheels in contact with the ground, and having a saddle for the use of the rider. The term does not include a tractor or a three-wheeled vehicle equipped with a cab or occupant compartment, seat, and seat belt and designed to contain the operator in the cab or occupant compartment.

SECTION _____. Section 680.013, Transportation Code, is amended to read as follows:

Sec. 680.013. USE OF PREFERENTIAL LANE BY MOTORCYCLE. A motorcycle, including a motorcycle described by Section 521.001(a)(6-a), may be operated in a preferential lane that is not closed to all vehicular traffic.

Floor Amendment No. 2

Amend **SB 1967** (House committee printing), in SECTION 4 of the bill, added Section 542.4045, Transportation Code, by striking Subdivisions (1) and (2) (page 3, lines 5 through 10) and substituting the following:

(1) the offense is punishable by a fine of not less than \$500 or more than \$2,000, if a person other than the operator of the vehicle suffered bodily injury, as defined by Section 1.07, Penal Code, in the accident; and

(2) the offense is punishable by a fine of not less than \$1,000 or more than \$4,000, if a person other than the operator of the vehicle suffered serious bodily injury, as defined by Section 1.07, Penal Code, in the accident.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 1967**.

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

SENATE BILL 589 WITH HOUSE AMENDMENT

Senator Carona called **SB 589** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 589** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certain requirements for sunscreening devices that are placed on or attached to a motor vehicle; providing a penalty.

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

SECTION 1. Section 547.609, Transportation Code, is amended to read as follows:

Sec. 547.609. REQUIRED LABEL FOR SUNSCREENING DEVICES ~~[PERMITTED]~~. A sunscreening device must have a label that:

- (1) is legible;
- (2) contains information required by the department on light transmission and luminous reflectance of the device; ~~and~~
- (3) if the device is placed on or attached to a windshield or a side or rear window, states that the light transmission of the device is consistent with Section 547.613(b)(1) or (2), as applicable; and
- (4) is permanently installed between the material and the surface to which the material is applied.

SECTION 2. Section 547.613, Transportation Code, is amended by adding Subsection (a-1) and amending Subsections (b) and (e) to read as follows:

(a-1) A person in the business of placing or attaching transparent material that alters the color or reduces the light transmission to the windshield or side or rear window of a motor vehicle commits a misdemeanor punishable by a fine not to exceed \$1,000 if the person:

- (1) places or attaches such transparent material to the windshield or side or rear window of a motor vehicle; and
- (2) does not install a label that complies with Section 547.609 between the transparent material and the windshield or side or rear window of the vehicle, as applicable.

(b) Subsection (a) ~~[This section]~~ does not apply to:

- (1) a windshield that has a sunscreening device that:
 - (A) in combination with the windshield has a light transmission of 25 percent or more;
 - (B) in combination with the windshield has a luminous reflectance of 25 percent or less;
 - (C) is not red, blue, or amber; and
 - (D) does not extend downward beyond the AS-1 line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield;

(2) a wing vent or a window that is to the left or right of the vehicle operator [~~other than a windshield~~] if the vent or window has a sunscreening device that in combination with the vent or window has:

- (A) a light transmission of 25 percent or more; and
- (B) a luminous reflectance of 25 percent or less;

(2-a) a side window that is to the rear of the vehicle operator;

(3) a rear window, if the motor vehicle is equipped with an outside mirror on each side of the vehicle that reflects to the vehicle operator a view of the highway for a distance of at least 200 feet from the rear;

(4) a rearview mirror;

(5) an adjustable nontransparent sun visor that is mounted in front of a side window and not attached to the glass;

(6) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the vehicle operator's view of approaching traffic;

(7) a rear window wiper motor;

(8) a rear trunk lid handle or hinge;

(9) a luggage rack attached to the rear trunk;

(10) a side window that is to the rear of the vehicle operator on a multipurpose vehicle;

(11) a window that has a United States, state, or local certificate placed on or attached to it as required by law;

(12) a motor vehicle that is not registered in this state;

(13) a window that complies with federal standards for window materials, including a factory-tinted or a pretinted window installed by the vehicle manufacturer, or a replacement window meeting the specifications required by the vehicle manufacturer;

(14) a vehicle that is:

(A) used regularly to transport passengers for a fee; and

(B) authorized to operate under license or permit by a local authority;

(15) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes; or

(16) a commercial motor vehicle as defined by Section 644.001.

(e) It is a defense to prosecution under Subsection (a) [~~this section~~] that the defendant or a passenger in the vehicle at the time of the violation is required for a medical reason to be shielded from direct rays of the sun.

SECTION 3. (a) The change in law 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 was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) 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.

SECTION 4. This Act takes effect September 1, 2009.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 589**.

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

CONFERENCE COMMITTEE ON HOUSE BILL 72

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 72** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 72** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Wentworth, Carona, Hinojosa, and Eltife.

SENATE BILL 1273 WITH HOUSE AMENDMENTS

Senator Carona called **SB 1273** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **SB 1273** as follows:

Strike "or" from line 2, page 3, Subsection (F) of Section 31.03, Penal Code in SECTION 1 and strike proposed Subsection (G) from line 3 to line 10, page 3 in SECTION 1 of the bill.

Floor Amendment No. 2

Amend **SB 1273** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly

SECTION _____. Section 1956.001(10), Occupations Code, is amended to read as follows:

(10) "Regulated metal" means:

(A) manhole covers;

(B) guardrails;

(C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;

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

- (E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
- (F) unused rebar;
- (G) street signs;
- (H) drain gates;
- (I) safes;
- (J) communication, transmission, and service wire or cable;
- (K) condensing or evaporator coils, tubing, or rods for central heating or air conditioning units;
- (L) utility structures, including the fixtures and hardware;
- (M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; ~~and~~
- (N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;
- (O) catalytic converters not attached to a vehicle;
- (P) fire hydrants;
- (Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;
- (R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;
- (S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;
- (T) backflow valves; and
- (U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

SECTION _____. The heading to Section 1956.003, Occupations Code, is amended to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION _____. Section 1956.003, Occupations Code, is amended by adding Subsections (a-1), (f), (g), and (h) to read as follows:

(a-1) A county, municipality, or political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(f) A county, municipality, or political subdivision that issues a license or permit authorized under Subsection (b) shall issue a notice to an owner or operator of a metal recycling entity operating without the license or permit informing the owner or operator that the entity is operating without the required license or permit and that the owner or operator may be subject to criminal penalties if the owner or operator does not submit an application for the appropriate license or permit before the 15th day after the date the notice is received.

(g) A person commits an offense if the person owns or operates a metal recycling entity and does not submit an application for the appropriate license or permit before the 15th day after the date of receiving a notice under Subsection (f).

(h) An offense under Subsection (g) is a Class A misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under Subsection (g), in which event the offense is a state jail felony.

SECTION _____. Section 1956.015(d), Occupations Code, is amended to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. Except as provided by Subsection (b), the ~~[The]~~ department shall:

(1) maintain the confidentiality of information provided under this section;
and

(2) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section shall maintain the confidentiality of the information provided under this section [that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code].

SECTION _____. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Section 1956.016 to read as follows:

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities.

SECTION _____. Section 1956.032, Occupations Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate; and

(3) either:

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

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

(g) Notwithstanding Section 1956.002, a person attempting to sell regulated material who represents that they are a metal recycling entity shall provide a copy of the certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

SECTION _____. Section 1956.033(b), Occupations Code, is amended to read as follows:

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

(1) the place and date of the purchase;

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

(3) the identifying number of the seller's personal identification document;
 (4) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and

(5) the information required by Sections 1956.032(a)(2) and (3) [Section 1956.032(a)(3)].

SECTION _____. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the third anniversary of the date the record was made. The records must be kept in an easily retrievable format.

SECTION _____. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections [Subsection] (b) and (d), not later than 48 hours [the seventh day] after the [date of the] purchase or other acquisition of material for which a record is required under Section 1956.033, a metal recycling entity shall send an electronic transaction report to the department via the department's Internet website. The [by facsimile or electronic mail to or file with the department a] report must contain [containing] the information required to be recorded under Section 1956.033 [that section].

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

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone; and

(2) not later than 48 hours [the fifth day] after the purchase [date], submit to the department electronically via the department's Internet website [mail to] or file with the department a report containing the information required to be recorded under Section 1956.033.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

SECTION _____. Section 1956.037(a), Occupations Code, is amended to read as follows:

(a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than five days [72 hours], excluding weekends and holidays, before the disposal, processing, sale, or removal; ~~or~~

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business; or

(3) the entity:

(A) acquired the item more than 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal; and

(B) obtained a digital or video photograph of the seller of the regulated material and the regulated material purchased.

SECTION _____. Section 1956.038, Occupations Code, is amended to read as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

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

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); ~~or~~

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may not pay more than:

(1) \$150 in cash for a purchase of regulated metal; or

(2) \$1,000 in cash for a purchase of regulated material, other than regulated metal.

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or political subdivision may not adopt a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b), unless such a rule, charter, or ordinance was adopted before January 1, 2010.

SECTION _____. Section 1956.040, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A person commits an offense if the person knowingly violates Section 1956.021, Section 1956.023(d), Section 1956.036(a), or Section 1956.038. An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony.

(a-1) A person commits an offense if the person knowingly violates Section 1956.037 and has previously been found liable for a civil penalty under Section 1956.202(a-1). An offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony.

SECTION _____. Section 1956.103(a), Occupations Code, is amended to read as follows:

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; ~~or~~

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION _____. Section 1956.151, Occupations Code, is amended to read as follows:

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

(1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) sells, barter, or offers to sell or barter a certificate of registration;

(3) violates a provision of this chapter or a rule adopted under this chapter;

or

(4) violates Section 1956.021.

SECTION _____. Section 1956.202, Occupations Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsections (a-1) and [Subsection] (d), a person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than \$1,000 for each violation.

(a-1) A person who violates Section 1956.037 is liable to this state for a civil penalty of not more than \$10,000 for each violation.

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, Section 1956.023(d), Section 1956.036(a), or Section 1956.038.

SECTION _____. Section 31.03(e), Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(i) \$50 or more but less than \$500; or

(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or

(B) the value of the property stolen is less than:

(i) \$50 and the defendant has previously been convicted of any grade of theft; or

(ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if:

(A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, or any part thereof under the value of \$20,000, or less than 100 head of sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than \$20,000 and the property stolen is [insulated or noninsulated wire or cable that consists of at least 50 percent]:

(i) aluminum;

(ii) bronze; ~~or~~

(iii) copper; or

(iv) brass;

(5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:

(A) 10 or more head of cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or

(B) 100 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;

(6) a felony of the second degree if the value of the property stolen is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

SECTION _____. Section 1956.014(d), Occupations Code, is repealed.

SECTION _____. (a) Notwithstanding Subsection (c) of this section, the change in law 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 that date.

(b) 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.

(c) The enhancement of the punishment of an offense provided under Section 1956.003(h), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2010. For purposes of this subsection, an offense is committed before January 1, 2010, if any element of the offense occurs before that date. An offense committed before January 1, 2010, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION _____. This Act takes effect September 1, 2009.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1273** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Averitt, Duncan, Seliger, and West.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1237 ADOPTED

Senator Estes called from the President's table the Conference Committee Report on **SB 1237**. The Conference Committee Report was filed with the Senate on Monday, May 25, 2009.

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

Nays: Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 3218

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3218** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3218** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Deuell, Carona, Duncan, and Van de Putte.

CONFERENCE COMMITTEE ON HOUSE BILL 4102

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 4102** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 4102** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Shapiro, Williams, Patrick, and Ellis.

SENATE BILL 1742 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 1742** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1742** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the regulation of the discharge of firearms and certain other weapons by certain municipalities; providing a criminal penalty.

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

SECTION 1. Chapter 229, Local Government Code, is amended by adding Section 229.003 to read as follows:

Sec. 229.003. REGULATION OF DISCHARGE OF WEAPON BY CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality located wholly or partly in a county:

(1) with a population of 450,000 or more;

(2) in which all or part of a municipality with a population of one million or more is located; and

(3) that is located adjacent to a county with a population of two million or more.

(b) Notwithstanding Section 229.002 and except as provided by Subsection (c), a municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and more than 1,500 feet from:

(i) a residence or occupied building located on another property;
(ii) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment;
(iii) the property line of a residential subdivision; and
(iv) the property line of a multifamily residential complex; and
(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract;
(2) a center fire or rim fire rifle or pistol of any caliber discharged:
(A) on a tract of land of 50 acres or more and more than 1,500 feet

from:

(i) a residence or occupied building located on another property;
(ii) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment;
(iii) the property line of a residential subdivision; and
(iv) the property line of a multifamily residential complex; and
(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or
(3) discharged at a sport shooting range, as defined by Section 250.001, in a manner not reasonably expected to cause a projectile to cross the boundary of a tract of land.

(c) A municipality may adopt and enforce a regulation prohibiting or restricting excessive noise from the discharge of a firearm in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1742** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Nelson, Nichols, Deuell, and West.

SENATE BILL 1759 WITH HOUSE AMENDMENTS

Senator Watson called **SB 1759** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 1759** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the extended registration of a commercial fleet of motor vehicles.

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

SECTION 1. Section 502.001, Transportation Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Commercial fleet" means a group of at least 25 nonapportioned motor vehicles owned by a corporation, limited or general partnership, limited liability company, or other business entity and used for the business purposes of that entity.

SECTION 2. Subchapter A, Chapter 502, Transportation Code, is amended by adding Section 502.0023 to read as follows:

Sec. 502.0023. EXTENDED REGISTRATION OF COMMERCIAL FLEET MOTOR VEHICLES. (a) Notwithstanding Section 502.158(c), the department shall develop and implement a system of registration to allow an owner of a commercial fleet to register the motor vehicles in the commercial fleet for an extended registration period of not less than one year or more than eight years. The owner may select the number of years for registration under this section within that range and register the commercial fleet for that period. Payment for all registration fees for the entire registration period selected is due at the time of registration.

(b) A system of extended registration under this section must allow the owner of a commercial fleet to register:

(1) an entire commercial fleet in the county of the owner's residence or principal place of business; or

(2) the motor vehicles in a commercial fleet that are operated most regularly in the same county.

(c) In addition to the registration fees prescribed by Subchapter D, an owner registering a commercial fleet under this section shall pay:

(1) an annual commercial fleet registration fee of \$10 per motor vehicle in the fleet; and

(2) except as provided by Subsection (e), a one-time license plate manufacturing fee of \$1.50 for each fleet motor vehicle license plate.

(d) A license plate issued under this section:

(1) may, on request of the owner, include the name or logo of the business entity that owns the vehicle;

(2) must include the expiration date of the registration period; and

(3) does not require an annual registration insignia to be valid.

(e) In addition to all other applicable registration fees, an owner registering a commercial fleet under this section shall pay a one-time license plate manufacturing fee of \$8 for each set of plates issued that includes on the legend the name or logo of the business entity that owns the vehicle instead of the fee imposed by Subsection (c)(2).

(f) If a motor vehicle registered under this section has a gross weight in excess of 10,000 pounds, the department shall also issue a registration card for the vehicle that is valid for the selected registration period.

(g) The department shall adopt rules to implement this section, including rules on suspension from the commercial fleet program for failure to comply with this section or rules adopted under this section.

(h) The department and the counties in their budgeting processes shall consider any temporary increases and resulting decreases in revenue that will result from the use of the process provided under this section.

SECTION 3. Subsection (b), Section 501.0234, Transportation Code, is amended to read as follows:

(b) This section does not apply to a motor vehicle:

(1) that has been declared a total loss by an insurance company in the settlement or adjustment of a claim;

(2) for which the certificate of title has been surrendered in exchange for:

(A) a salvage vehicle title issued under this chapter;

(B) a nonrepairable vehicle title issued under this chapter;

(C) a certificate of authority issued under Subchapter D, Chapter 683;

or

(D) an ownership document issued by another state that is comparable to a document described by Paragraphs (A)-(C); ~~or~~

(3) with a gross weight in excess of 11,000 pounds; or

(4) purchased by a commercial fleet buyer who is a full-service deputy under Section 502.114 and who utilizes the dealer title application process developed to provide a method to submit title transactions to the county in which the commercial fleet buyer is a full-service deputy.

SECTION 4. Section 502.0022, Transportation Code, is repealed.

SECTION 5. The Texas Department of Transportation shall adopt the rules and establish the system required under Section 502.0023, Transportation Code, as added by this Act, not later than January 1, 2010.

SECTION 6. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 1759** (House committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 386.252, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than four percent may be used for the clean school bus program, five percent shall be used for the clean fleet program, and not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, not less than 20 percent is to be allocated each year to support research related to air quality

for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which \$216,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan, and the balance is to be allocated each year to a nonprofit organization or an institution of higher education based in Houston to be used to implement and administer the new technology research and development program under a contract with the commission for the purpose of identifying, testing, and evaluating new emissions-reducing technologies with potential for commercialization in this state and to facilitate their certification or verification; and

(3) for administrative costs incurred by the commission and the laboratory, three percent of the money in the fund.

(d) The commission may allocate unexpended money designated for the clean fleet program to other programs described under Subsection (a) after the commission allocates money to recipients under the clean fleet program.

SECTION _____. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 391 to read as follows:

CHAPTER 391. TEXAS CLEAN FLEET PROGRAM

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquified natural gas, hydrogen, propane, methanol, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Hybrid vehicle" means a vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(4) "Incremental cost" has the meaning assigned by Section 386.001.

(5) "Program" means the Texas clean fleet program established under this chapter.

Sec. 391.002. PROGRAM. (a) The commission shall establish and administer the Texas clean fleet program to encourage a person that has a fleet of vehicles to convert diesel-powered vehicles to alternative fuel or hybrid vehicles or replace them with alternative fuel or hybrid vehicles. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects for fleet owners.

(b) An entity that places 25 or more qualifying vehicles in service for use entirely in this state during a calendar year is eligible to participate in the program.

Sec. 391.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during a calendar year the entity:

(1) purchases the vehicle and the vehicle is a hybrid vehicle or is fueled by an alternative fuel;

(2) converts the vehicle to be a hybrid vehicle or to be fueled by an alternative fuel in a manner other than the manner described by Subdivision (3); or

(3) replaces the vehicle's power source with a power source that is fueled by an alternative fuel or that causes the vehicle to be a hybrid vehicle.

(b) A vehicle is not a qualifying vehicle if the vehicle:

(1) is a neighborhood electric vehicle, as defined by Section 551.301, Transportation Code;

(2) has been used as a qualifying vehicle to qualify for a grant under this chapter for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

Sec. 391.004. APPLICATION FOR GRANT. (a) An entity operating in this state that operates a fleet of at least 100 vehicles may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Sec. 391.005. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for setting priorities for projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A qualifying vehicle must be used on a regular, daily route and must have at least two years of useful life remaining.

(c) A qualifying vehicle must remain in the state for at least five years. The commission by rule shall create a monitoring program to ensure compliance under this subsection as well as penalties against the recipient of the grant if the vehicle is removed from the state before the fifth anniversary of the date the grant is awarded.

Sec. 391.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the initial cost of the alternative fuel vehicle and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 391.007. AMOUNT OF GRANT. The amount the commission shall award for each vehicle is:

(1) for a federally certified low-emission vehicle fueled by an alternative fuel, 50 percent of the incremental cost;

(2) for a federally certified ultra-low-emission vehicle or federally certified inherently low-emission vehicle fueled by an alternative fuel, 75 percent of the incremental cost;

(3) for a federally certified super-ultra-low-emission vehicle or federally certified zero-emission vehicle fueled by an alternative fuel, 85 percent of the incremental cost; or

(4) for a hybrid vehicle, 80 percent of the incremental cost.

Sec. 391.008. EXPIRATION. This chapter expires August 31, 2017.

SECTION _____. (a) In this section:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquified natural gas, hydrogen, propane, methanol, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(b) The commission shall conduct an alternative fueling facilities study to:

(1) assess the correlation between the installation of fueling facilities in nonattainment areas and the deployment of fleet vehicles that use alternative fuels; and

(2) determine the emissions reductions achieved from replacing a diesel-powered engine with an engine utilizing alternative fuels.

(c) From the emissions reductions determined under Subsection (b) of this section, the commission shall determine the amount of emissions reductions which are fairly attributable to the installation of an alternative fuel fueling facility and the combustion of the alternative fuel in the vehicles fueled by the alternative fuel fueling facility.

(d) In connection with the study conducted under this section, the commission shall seek approval for credit in the state implementation plan from the United States Environmental Protection Agency for emissions reductions that can be:

(1) directly attributed to an alternative fuel fueling facility; and

(2) achieved as a consequence of an alternative fuel fueling facility encouraging the use of alternatively fueled vehicles.

(e) The commission shall include in the commission's biennial report to the legislature the findings of the study conducted under this section and the status of the discussions with the United States Environmental Protection Agency regarding credit for emissions reductions in the state implementation plan which can be achieved as a result of the installation of alternative fuel fueling facilities.

(f) This section expires August 31, 2011.

SECTION _____. The Texas Commission on Environmental Quality shall adopt rules under Section 391.005, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1759** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Williams, Averitt, Huffman, and Uresti.

SENATE BILL 806 WITH HOUSE AMENDMENT

Senator Nelson called **SB 806** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 806** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The heading to Section 250.003, Health and Safety Code, is amended to read as follows:

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH; DISCHARGE.

SECTION _____. Section 250.003, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (d) to read as follows:

(a) A facility may not employ an applicant:

(1) ~~[a person]~~ if the facility determines, as a result of a criminal history check, that the applicant ~~[a person]~~ has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility serves;

(2) ~~[, and]~~ if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property.

(a-1) Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(d) In addition to the initial verification of employability, a facility shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility; and

(2) maintain in each employee's personnel file a copy of the results of the search conducted under Subdivision (1).

SECTION _____. Section 253.001, Health and Safety Code, is amended by amending Subdivisions (1), (2), and (3) and adding Subdivision (3-a) to read as follows:

(1) "Commissioner" means the commissioner of aging and disability ~~[human]~~ services.

(2) "Department" means the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services.

(3) "Employee" means a person who:

(A) works at a facility;

(B) is an individual who provides personal care services, active treatment, or any other personal services to a resident or consumer of the facility; and

(C) is not licensed by an agency of the state to perform the services the employee performs at the facility or is ~~is~~ ~~and~~ ~~(D) is not~~ a nurse aide employed by a ~~nursing~~ facility.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION _____. Chapter 253, Health and Safety Code, is amended by adding Section 253.0055 to read as follows:

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250, and the entry is subsequently removed from the nurse aide registry, the commissioner or the commissioner's designee shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

SECTION _____. Section 253.006, Health and Safety Code, is amended to read as follows:

Sec. 253.006. INFORMAL PROCEEDINGS. The executive commissioner ~~[department]~~ by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION _____. Subsection (a), Section 253.007, Health and Safety Code, is amended to read as follows:

(a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility has committed [commits] reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date the reportable conduct occurred, and a description of the reportable conduct.

SECTION _____. Section 253.0075, Health and Safety Code, is amended to read as follows:

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE ~~[AND REGULATORY]~~ SERVICES. On receipt of a finding of an employee's reportable conduct by the Department of Family and Protective ~~[and Regulatory]~~ Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry in accordance with Section 253.007.

SECTION _____. Section 253.008, Health and Safety Code, is amended to read as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH.
(a) Before a facility as defined in this chapter or an agency as defined in Section 48.401, Human Resources Code, [or a person exempt from licensing under Section 142.003(a)(19)] may hire an employee, the facility or agency [person] shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency [from a person exempt from licensing under Section 142.003(a)(19)].

(b) A facility or agency ~~[a person exempt from licensing under Section 142.003(a)(19)]~~ may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency ~~[from a person exempt from licensing under Section 142.003(a)(19)]~~.

(c) In addition to the initial verification of employability, a facility or agency shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the facility or agency is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency; and

(2) maintain in each employee's personnel file a copy of the results of the search conducted under Subdivision (1).

SECTION _____. Section 253.009, Health and Safety Code, is amended to read as follows:

Sec. 253.009. NOTIFICATION. (a) Each facility as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, [and each person exempt from licensing under Section 142.003(a)(19)] shall notify its employees in a manner prescribed by the Department of Aging and Disability Services [department]:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The executive commissioner [department] shall adopt rules to implement this section.

SECTION _____. Section 48.401, Human Resources Code, is amended to read as follows:

Sec. 48.401. DEFINITIONS. In this subchapter:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code; ~~[or]~~

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code; or

(C) an entity investigated by the department under Subchapter F or under Section 261.404, Family Code.

(2) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(3) "Employee" means a person who:

(A) works for an agency;

(B) provides personal care services, active treatment, or any other personal services to an individual receiving agency services or to an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code; and

(C) is not licensed by the state to perform the services the person performs for the agency.

(4) ~~[(3)]~~ "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.

~~[(4) "Executive director" means the executive director of the Department of Protective and Regulatory Services.]~~

(5) "Reportable conduct" includes:

- (A) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;
- (B) sexual abuse of an individual receiving agency services;
- (C) financial exploitation of an individual receiving agency services in an amount of \$25 or more; and
- (D) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

SECTION _____. Section 48.403, Human Resources Code, is amended to read as follows:

Sec. 48.403. FINDING. After an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, the department shall immediately forward the finding to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION _____. Subsection (c), Section 48.404, Human Resources Code, is amended to read as follows:

(c) If the employee notified of the violation accepts the finding of the department or fails to timely respond to the notice, the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee shall issue an order approving the finding and ordering that the department's findings be forwarded to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION _____. Section 48.405, Human Resources Code, is amended to read as follows:

Sec. 48.405. HEARING; ORDER. (a) If the employee requests a hearing, the department or its designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee by order may find that the reportable conduct has occurred. If the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee finds that reportable conduct has occurred, the commissioner [~~executive director~~] or the commissioner's [~~executive director's~~] designee shall issue an order approving the finding.

SECTION _____. Subsections (b) and (d), Section 48.406, Human Resources Code, are amended to read as follows:

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the finding, the department shall send a record of the department's findings to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to record in the employee misconduct registry under Section 253.007, Health and Safety Code.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall forward the finding of reportable conduct to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION _____. Section 48.407, Human Resources Code, is amended to read as follows:

Sec. 48.407. INFORMAL PROCEEDINGS. The executive commissioner [~~department~~] by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION _____. Section 48.408, Human Resources Code, is amended to read as follows:

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) When the department forwards a finding of reportable conduct to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services for recording in the employee misconduct registry, the department shall provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may send to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act.

SECTION _____. Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act related to the employee misconduct registry, the nurse aide registry, and records contained in those registries. The changes in law made by this Act apply only to reportable conduct that occurs on or after September 1, 2010. Reportable conduct that occurs 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.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 806**.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 29, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 10 (143 Yeas, 0 Nays, 1 Present, not voting)

HB 93 (86 Yeas, 57 Nays, 2 Present, not voting)

HB 130 (116 Yeas, 27 Nays, 1 Present, not voting)

HB 394 (140 Yeas, 0 Nays, 1 Present, not voting)

HB 461 (140 Yeas, 2 Nays, 1 Present, not voting)

HB 518 (144 Yeas, 0 Nays, 1 Present, not voting)

HB 556 (136 Yeas, 0 Nays, 1 Present, not voting)

HB 677 (129 Yeas, 2 Nays, 1 Present, not voting)

HB 719 (142 Yeas, 0 Nays, 1 Present, not voting)

HB 986 (140 Yeas, 0 Nays, 2 Present, not voting)

HB 1290 (99 Yeas, 43 Nays, 1 Present, not voting)

HB 1544 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 1770 (123 Yeas, 16 Nays, 1 Present, not voting)

HB 2425 (142 Yeas, 0 Nays, 1 Present, not voting)

HB 2515 (145 Yeas, 0 Nays, 2 Present, not voting)

HB 3095 (141 Yeas, 0 Nays, 1 Present, not voting)

HB 4586 (139 Yeas, 0 Nays, 1 Present, not voting)

HB 4765 (144 Yeas, 1 Nays, 1 Present, not voting)

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

HB 148 (non-record vote)

House Conferees: Smith, Todd - Chair/Branch/Hartnett/Hunter/Leibowitz

HB 269 (non-record vote)

House Conferees: Lucio III - Chair/Berman/Corte/Flores/Vaught

HB 666 (non-record vote)

House Conferees: Gutierrez - Chair/Geren/King, Susan/McReynolds/Moody

HB 764 (non-record vote)

House Conferees: Hartnett - Chair/Hughes/Hunter/Leibowitz/Martinez, "Mando"

HB 853 (non-record vote)

House Conferees: Laubenberg - Chair/Castro/Harper-Brown/Kleinschmidt/Leibowitz

HB 882 (non-record vote)

House Conferees: Rodriguez - Chair/Bolton/Harless/Hughes/Thompson

HB 1161 (non-record vote)

House Conferees: Geren - Chair/Chisum/Giddings/Hamilton/Thompson

HB 1343 (non-record vote)

House Conferees: Menendez - Chair/McClendon/Naishtat/Phillips/Pickett

HB 1796 (non-record vote)

House Conferees: Chisum - Chair/Cook/Dunnam/Veasey/Weber

HB 1914 (non-record vote)

House Conferees: McReynolds - Chair/Christian/England/Hodge/Madden

HB 3221 (non-record vote)

House Conferees: Hancock - Chair/Eiland/Martinez Fischer/Smithee/Taylor

HB 4409 (non-record vote)

House Conferees: Taylor - Chair/Eiland/Guillen/Hunter/Smithee

HB 4583 (non-record vote)

House Conferees: Pitts - Chair/Edwards/Hochberg/Morrison/Otto

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 1068 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1068** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1068** (House committee report) by adding a new Section 4 to read as follows and renumber the subsequent sections accordingly:

SECTION 4. Chapter 552, Subchapter C, Government Code is amended by adding Section 552.150 to read as follows:

Sec. 552.150. DUTIES OF GOVERNMENTAL BODIES WITHHOLDING OR REDACTING INFORMATION WITHOUT REQUESTING A DECISION FROM THE ATTORNEY GENERAL.

(a) A governmental body that redacts or withholds information in accordance with any exception recognized by this Chapter and does not request a decision from the attorney general shall provide the following to the requestor:

(1) A description of the information being withheld or redacted.

(2) Citation to the appropriate statutory authority which makes the information exempt.

(3) Instructions to the requestor informing the requestor about the requestor's right to appeal, including instructions on obtaining a review and opinion from the attorney general.

(b) Requestors shall have the right to request a review and opinion from the attorney general before being required to sue for a writ of mandamus pursuant to Section 552.321 or seek a declaratory judgment pursuant to 552.3215.

(c) Information and instructions required by this section to be provided to requestors shall be made on a form prescribed by the attorney general.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1068** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Carona, Eltife, Williams, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 3347

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3347** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3347** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Van de Putte, Ogden, West, and Williams.

SENATE BILL 2440 WITH HOUSE AMENDMENT

Senator Uresti called **SB 2440** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2440** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the Bexar Metropolitan Water District.

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

SECTION 1. (a) In this section:

- (1) "Board" means the district's board of directors.
- (2) "District" means the Bexar Metropolitan Water District.

(b) Following 18 months of review and audits by agencies of this state and by the Bexar Metropolitan Water District Oversight Committee, the legislature finds that:

(1) certain officials of the district have engaged in unethical conduct and unprofessional management practices;

(2) disagreements regarding the district's jurisdiction and the jurisdiction of other entities inside the district and distrust between management personnel and the board have prevented the district from improving services for existing customers and meeting the water supply needs of the growing population within the district's service area;

(3) the district has a history of noncompliance with regulations;

(4) the board has engaged in mismanagement of the district, allowing for financial improprieties;

(5) the district has provided unreliable service to the degree that the quality of life of the district's customers is impaired and the prospects for economic growth within the district are diminished; and

(6) to ensure the reliability, sustainability, quality, and affordability of water supply services to the district's customers, legislative action is necessary, including the appointment of a conservator to serve as an advisor to the board until the district has achieved sufficient rehabilitation to serve its customers in a professional, ethical, and reliable manner.

SECTION 2. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 8. (a) [-] The seven [five (5)] members of the Board of Directors are [shall hereafter be] elected to staggered two-year terms in an election held on the uniform election date in November. Directors shall be elected from numbered single-member districts established by the Board [for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six year terms expire]. At an election of Directors, the candidate from each single-member district who receives [The two (2) or three (3) persons, respectively, receiving] the greatest number of votes shall be declared elected to represent that

single-member district. Each Director shall hold office until his successor shall have been elected or appointed and shall have qualified. A Director may not serve more than three terms.[;]

(b) Such [~~such~~] elections shall be called, conducted and canvassed in the manner provided by the Election Code. [~~Chapter 25, General Laws of the Thirty ninth Legislature, Regular Session, 1925, and any amendments thereto;~~]

(c) The [~~the~~] Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office for the unexpired term for which they were appointed.[;]

(d) Any four [~~any three~~] members of the Board shall constitute a quorum for the adoption of passage of any resolution or order or the transaction of any business of the District.[;]

(e) A Director must [~~Directors succeeding the first Board, whether now or hereafter elected, shall] be a qualified voter of the single-member district from which the Director is elected [~~resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner].~~~~

SECTION 3. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C, 9A, 9B, 12A, 12B, 23A, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the District's Board of Directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Director" means a Board member.

(4) "District" means the Bexar Metropolitan Water District.

Sec. 8A. (a) To be eligible to be a candidate for or elected as a Director, a person must have:

(1) resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot; and

(2) viewed the open government training video provided by the attorney general and provided to the Board a signed affidavit stating that the candidate viewed the video.

(b) In this subsection, "political contribution" and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code. A Director or a candidate for the office of Director may not knowingly accept political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. For purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of Director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) A person who is elected or appointed to and qualifies for office as a Director on or after the effective date of this section may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

- (1) the enabling legislation that created the District;
- (2) the operation of the District;
- (3) the role and functions of the Board;
- (4) the rules of the Board;
- (5) the current budget for the Board;
- (6) the results of the most recent formal audit of the Board;
- (7) the requirements of the:
 - (A) open meetings law, Chapter 551, Government Code;
 - (B) open records law, Chapter 552, Government Code; and
 - (C) administrative procedure law, Chapter 2001, Government Code;
- (8) the requirements of the conflict of interest laws and other laws relating to public officials; and
- (9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(b) The Commission may create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. If the Commission creates an advanced training program under this subsection, a person who completes that advanced training program is considered to have met the person's obligation under Subsection (a) of this section.

(c) Each Director who is elected or appointed on or after the effective date of this section shall complete a training program described by Subsection (a) or (b) of this section at least once in each term the Director serves.

(d) The Board shall adopt rules regarding the completion of the training program described by Subsection (a) or (b) of this section by a person who is elected or appointed to and qualifies for office as a Director before the effective date of this section. A Director described by this subsection who does not comply with Board rules shall be considered incompetent as to the performance of the duties of a Director in any action to remove the Director from office.

(e) A Director may not:

- (1) accept or solicit a gift, favor, or service that:
 - (A) might reasonably influence the Director in the discharge of an official duty; or
 - (B) the Director knows or should know is being offered with the intent to influence the Director's official conduct;
- (2) accept other employment or engage in a business or professional activity that the Director might reasonably expect would require or induce the Director to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the Director's independence of judgment in the performance of the Director's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the Director's private interest and the interest of the District;
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Director's official powers or performed the Director's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the District.

(f) Not later than April 30 each year, a Director shall file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024, and 572.0252, Government Code. A copy of a financial statement filed under this section shall be kept in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as described by Section 21.022, Local Government Code;

(2) conviction of a felony;

(3) incapacity;

(4) failure to file a financial statement as required by Section 8B(f) of this

Act;

(5) failure to complete a training program described by Section 8B(a) or (b) of this Act; or

(6) failure to maintain residency in the District.

(b) If at least 10 percent of the voters in the District submit a petition to the Board requesting the recall of a Director, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the District.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the District voters voting at an election held under this section favor the recall of the Director, the Director is recalled and ceases to be a member of the Board.

(f) If a vacancy occurs on the Board after the recall of a Director under this section, the remaining members of the Board shall appoint a replacement. A Director appointed to fill a vacancy under this subsection serves until the next regularly scheduled Directors' election.

Sec. 9A. (a) The Board shall employ a general manager of the District or contract with a person to perform the duties of a general manager. The Board shall delegate to the general manager or contractor full authority to manage and operate the affairs of the District subject only to orders of the Board.

(b) The Board shall delegate to the general manager or contractor the authority to employ persons necessary for the proper handling of the business and operation of the District and to determine the compensation to be paid to employees, other than the general manager or contractor.

(c) The general manager or contractor annually shall complete a training program on state and federal laws related to the administration of the District. The training program must provide information regarding:

(1) nepotism;

(2) conflicts of interest;

(3) criminal penalties related to the conduct of elected officials;

(4) financial disclosure requirements;

- (5) equal employment;
- (6) disability accommodation;
- (7) labor relations; and
- (8) the acquisition and sale of property.

Sec. 9B. (a) The Board shall employ a chief financial officer of the District or contract with a person to perform the duties of a chief financial officer. The Board shall delegate to the chief financial officer or contractor the authority necessary to administer all financial affairs of the District, including:

- (1) maintaining the general accounting system for the District;
- (2) certifying the availability of funds for all proposed expenditures;
- (3) submitting to the Board a monthly statement of all receipts and disbursements in sufficient detail to show the financial condition of the District; and
- (4) preparing at the end of each fiscal year a complete financial statement and report.

(b) The Board shall require the chief financial officer of the District to furnish good and sufficient bond, payable to the District, in an amount determined by the Board to be sufficient to safeguard the District. The bond shall be conditioned on the faithful performance of that person's duties and on accounting for all funds and property of the District. The bond shall be signed or endorsed by a surety company authorized to do business in the state.

Sec. 12A. (a) All Board reimbursements and expenditures must be approved by the Board in a regularly scheduled meeting.

(b) At each regularly scheduled meeting of the Board, the Board shall review all expenditures made by the general manager.

Sec. 12B. (a) The Board shall adopt an annual budget.

(b) The budget must contain:

- (1) a message explaining the budget;
- (2) an outline of the proposed financial policies of the District for the next fiscal year, including any major changes from the current fiscal year;
- (3) a comparison of the actual and estimated revenue and expenditures for the current fiscal year and actual and estimated revenue for the two preceding fiscal years;
- (4) a statement of the water rates and collections for the preceding five years; and
- (5) a complete financial statement, including a statement of:
 - (A) the outstanding obligations of the District, with a schedule of payments and maturities;
 - (B) the amount of cash on hand to the credit of each fund of the District;
 - (C) the amount of money received by the District from all sources during the preceding fiscal year, with notations regarding each department, division, or office of the District;
 - (D) the amount of money available to the District from all sources during the following fiscal year;
 - (E) the amount of the balances expected at the end of the fiscal year for which the budget is being prepared;

(F) the estimated amount of revenue and balances available to cover the proposed budget; and

(G) the estimated revenue from fees that will be required.

(c) The Board shall conduct two public hearings not later than the 30th day before the date of the public hearing at which the Board will adopt the budget. At least one of the public hearings must be held at a location other than the District office. Notice of the hearings must be included in a water or sewer service bill of each ratepayer mailed at least 30 days before the date of the first hearing.

Sec. 23A. (a) The Board may not increase residential water or sewer service rates by more than 10 percent unless the Board holds a public hearing on the matter of the rate increase. The hearing must be attended by the Board and, if the District employs a general manager or chief financial officer, by the general manager and the chief financial officer.

(b) The Board may increase residential rates by more than 10 percent only if approved by a unanimous vote of the Board after the hearing held under Subsection (a).

(c) A motion by a Director to increase residential water or sewer service rates by more than 10 percent must read as follows:

"I move that we increase residential (water or sewer, as appropriate) rates by ___ percent. An average water bill in the District is \$ ___ for ___ gallons. With this increase, the average residential water bill will be \$ ___ for ___ gallons. We need to increase the rates because of the following: (insert justification for rate increase)."

Sec. 34. (a) After September 1, 2014, the Board annually shall have an audit conducted of the District's books and records that covers all matters relating to the fiscal affairs of the District. The audit must be conducted by an independent auditor who does not:

- (1) otherwise maintain any District accounts;
- (2) act as a financial advisor to the District; or
- (3) have any financial interest in the District.

(b) The Board may not select the same auditor for more than three consecutive annual audits.

Sec. 35. (a) The Commission shall appoint as conservator for the District an individual who, at the time of the individual's appointment:

- (1) may be, but is not required to be, a Commission employee;
- (2) has demonstrated a high level of expertise in water utility management;
- (3) is not a Director; and
- (4) has no financial interest in the District or any entity that has a contract with the District or that is likely to develop a contractual relationship with the District.

(b) The conservator's term expires on the earlier of:

- (1) the fifth anniversary of the date the conservator is appointed;
- (2) the date the Commission issues an order dissolving the conservatorship under Section 40; or

(3) the date the Commission enters an order dissolving the District under Section 42.

(c) If the Commission, after a reasonable period, determines that the conservator has not made satisfactory progress in performing the conservator's duties, the Commission shall appoint a new conservator to serve for the remainder of the conservator's term.

Sec. 36. A conservator appointed under Section 35 shall appoint an agency review team to assist the conservator in carrying out the duties described by Section 39. A person appointed under this section to the team must meet the same qualifications as those required for the conservator appointed under Section 35(a).

Sec. 37. (a) A conservator appointed under Section 35 and any person appointed by the conservator is entitled to receive a salary for performing those duties.

(b) The District shall pay the compensation of the conservator and any person appointed by the conservator.

Sec. 38. (a) A conservator appointed under Section 35 and any person appointed by the conservator is entitled to reimbursement of the reasonable and necessary expenses incurred by the conservator or appointee in the course of performing duties under Section 39.

(b) The District shall pay any reasonable and necessary expenses incurred by the conservator or appointee.

Sec. 39. (a) The conservator and the agency review team shall advise the Board on matters relating to the District's rehabilitation. The Board shall work cooperatively with the conservator and the agency review team to improve the Board's ability to manage and operate the District in a professional manner.

(b) In addition to the duties under Subsection (a), not later than June 1, 2010, the agency review team shall prepare a report evaluating the distinct water systems that make up the District and determine the following:

(1) the District's basis in or the intrinsic value of the infrastructure associated with each water system;

(2) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in each water system;

(3) the adequacy of the source of the water supply located in each water system's service area to supply the current and projected demands generated in that service area;

(4) the adequacy of the water storage facilities located in each water system's service area to supply the current and projected demands generated in that service area;

(5) the adequacy of the distribution system located in each water system's service area to supply the current and projected demands generated in that service area; and

(6) the ability of the District to serve its customers in a particular service area or a specific part of the service area based on the infrastructure and capacity of the District in that area.

(c) The conservator shall submit the report to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of each committee of the legislature having primary jurisdiction over water districts, and the Commission.

(d) The conservator and the agency review team shall develop bylaws for the District that separate the administrative and technical functions of the District. The Board shall consider and adopt rules and bylaws consistent with the bylaws developed by the conservator and the agency review team.

(e) The agency review team shall examine the service delivery in the several service areas of the District to determine whether the District is financially and practically able to provide continuous quality service in each area at reasonable rates. For any area the agency review team determines the District's ability to serve is inadequate or impractical, the agency review team shall recommend that the District divest the utility assets in that area.

(f) If the agency review team makes a recommendation under Subsection (e), the conservator shall appoint an agent to carry out the sale of the utility assets in that area. The agent shall bring an action in a district court in Bexar County for a determination of the fair market value of the assets to be sold. The fair market value shall be determined by a judge who was elected to that court from competent evidence of the value introduced by the parties. Competent evidence of value may include:

- (1) expert opinion testimony;
- (2) comparable sales;
- (3) anticipated marketing time and holding costs;
- (4) cost of sale; and
- (5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the sale.

(g) After the fair market value is determined under Subsection (f), the agent shall sell the assets to an appropriate entity in the best interest of the ratepayers. The agent shall conduct the sale in a manner consistent with the best interest of the ratepayers. Proceeds from the sale of the assets shall be applied to outstanding debt of the District, and if any proceeds remain after the retirement of all the District's debt, the remaining proceeds shall be distributed to the ratepayers as a rebate.

(h) This section expires September 1, 2014.

Sec. 40. (a) When the conservator reports to the Commission that the District has been sufficiently rehabilitated to provide reliable, cost-effective, quality service to its customers, the Commission shall evaluate the condition of the District and determine whether:

- (1) the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers; and
- (2) the conservatorship is no longer necessary.

(b) The Commission may issue an order dissolving the conservatorship if the Commission determines the conservatorship is no longer necessary.

Sec. 41. (a) The Commission may hold an election in the District on the question of dissolving the District and disposing of the District's assets and obligations if:

- (1) the conservator determines after an initial evaluation to be performed before the 60th day after the date of the effective date of the Act creating this section that the District cannot be rehabilitated and the dissolution of the District would be in the best interest of the ratepayers; or

(2) the conservator reports to the Commission at any time that the Board is unable or unwilling to comply with a request or recommendation of the conservator or agency review team.

(b) The Commission may hold an election under this section on a uniform election date following the 60th day after the date of preclearance under Section 5 of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c) of all provisions of the Act enacting this section that are subject to that preclearance. If the Commission determines that preclearance under Section 5 of the federal Voting Rights Act of 1965 is not required, the Commission may hold the election on a uniform election date that falls at least 60 days after the date the Commission makes that determination.

(c) The order calling the election must state:

(1) the nature of the election, including the proposition to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

(d) The Commission shall give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the District. The first publication of the notice must appear not later than the 35th day before the date of the election.

(e) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."

(f) If a majority of the votes in an election under this section favor dissolution, the conservator shall report the result to the Commission and the Commission shall find that the District is dissolved.

Sec. 42. (a) If a majority of the votes in an election held under Section 41 favor dissolution, the term of each person who is serving as a Director of the District on the date of the canvass of the election expires on that date. Not later than the 60th day after the date of the canvass of the election, the conservator shall assume all powers necessary for the purposes described by this section.

(b) The conservator shall transfer or assign the rights and duties of the District associated with the provision of water services, including existing contracts, assets, and liabilities of the District, to one or more appropriate entities in such a manner that service to the existing customers of the District is not interrupted.

(c) After the District has paid all its debts and has disposed of all its money and other assets as prescribed by this section, the conservator shall file a written report with the Commission summarizing the conservator's actions in dissolving the District.

(d) Not later than the 10th day after the date the Commission receives the report and determines that the requirements of this section have been fulfilled, the Commission shall enter an order dissolving the District and releasing the conservator from any further duty or obligation.

Sec. 43. If a majority of votes favor dissolution in an election held under Section 41, this Act expires on the date the Commission enters an order dissolving the District.

Sec. 44. If a majority of the votes in an election held under Section 41 do not favor dissolution, the conservator appointed under Section 35 continues to serve until the conservatorship expires under Section 35.

SECTION 4. (a) Subject to approval by the Legislative Audit Committee for inclusion in the annual audit plan, the state auditor shall conduct an annual audit of the Bexar Metropolitan Water District for the five years following the effective date of this Act. The scope of the audit shall be determined by the state auditor based on a risk assessment.

(b) The district shall reimburse the state auditor for the cost of the audit.

SECTION 5. (a) Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act.

(b) Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act. A director who is elected before the effective date of this Act is governed by the law in effect when the director was elected, and the former law is continued in effect for that purpose. A director elected to a six-year term before the effective date of this Act shall serve out the term to which the director was elected.

(c) For a numbered single-member district director's position that expires in 2010 or 2011, the district shall call and hold an election on a uniform election date in that year to elect the director for that position for a term that expires on the uniform election date in November 2013.

SECTION 6. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 2440** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Averitt, Hegar, Wentworth, and Van de Putte.

SENATE BILL 497 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 497** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 497** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to compensation paid to certain judges and justices.

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

SECTION 1. Subsection (b), Section 26.006, Government Code, is amended to read as follows:

(b) To receive a supplement under Subsection (a), a county judge must file with the comptroller's judiciary section [~~Office of Court Administration of the Texas Judicial System~~] an affidavit stating that at least 40 percent of the functions that the judge performs are judicial functions. [~~The office of court administration shall send the affidavit to the comptroller.~~]

SECTION 2. Subsection (a), Section 659.0125, Government Code, is amended to read as follows:

(a) Notwithstanding Section 659.012 or any other law, a district judge who presides over multidistrict litigation involving claims for asbestos-related or silica-related injuries is entitled to receive, in addition to all other compensation, expenses, and perquisites authorized by law, the maximum amount of compensation set by the Texas Judicial Council for a presiding judge under Section 74.051(b). The annual amount must be apportioned over 12 equal monthly payments and be paid to the judge by the comptroller's judiciary section [~~Texas Judicial Council~~] for each month during which the judge retains jurisdiction over the claims.

SECTION 3. Section 659.0445, Government Code, is amended by amending Subsection (b) and adding Subsections (d) and (e) to read as follows:

(b) The monthly amount of longevity pay under this section to which a judge or justice described by Subsection (a) is entitled:

(1) is equal to .031 multiplied by the amount of the judge's or justice's gross monthly salary earned during the month in which the judge or justice completes 16 years of service for which credit is established in the applicable retirement system [~~\$20 for each year of service credited in the applicable retirement system, subject to Subsection (e)~~]; and

(2) ~~[is calculated and]~~ becomes payable beginning with the month following the month in which the judge or justice completes 16 years of service for which credit is established in the applicable retirement system.

(d) The commissioners court of a county may provide longevity pay calculated in accordance with this section to a judge or justice described by Subsection (a) who:

(1) previously served as a statutory county court judge in the county;

(2) is not otherwise eligible for longevity pay under Subsection (b); and

(3) would be entitled to longevity pay under this section if the service credit the judge or justice earned as a statutory county court judge was established in the applicable retirement system.

(e) Notwithstanding any other law, longevity pay that is paid to a judge or justice under this section is not included as part of the judge's or justice's combined salary from state and county sources for purposes of the salary limitations provided by Section 659.012.

SECTION 4. Section 659.0445(c), Government Code, is repealed.

SECTION 5. The changes in law made by this Act apply to longevity pay payable to a judge or justice after the effective date of this Act, regardless of the date the judge or justice first becomes entitled to longevity pay.

SECTION 6. This Act takes effect September 1, 2009.

Floor Amendment No. 1

Amend **CSSB 497** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter A, Chapter 24, Government Code, is amended by adding Section 24.023 to read as follows:

Sec. 24.023. DISTRICT COURT AGREEMENT WITH CERTAIN CONSTITUTIONAL COUNTY COURTS. (a) A district court judge and a county court judge may enter into a written agreement granting the county court authority to hear the following matters, provided that the district court has jurisdiction of the matter:

(1) guilty pleas in felony cases;

(2) default judgments;

(3) uncontested civil cases in which a final judgment will be entered;

(4) uncontested family law cases in which a final judgment will be entered;

and

(5) civil and family law cases in which an agreed final judgment will be entered.

(b) Subsection (a) applies only to a county:

(1) that has two or more district courts each of which is composed of more than one county;

(2) that does not have a county court at law; and

(3) in which the county court retains original misdemeanor jurisdiction, and the county court judge is granted authority to consider those cases under the constitution or general law.

(c) A county court judge who enters into an agreement under Subsection (a) must be an attorney who is licensed to practice law in this state and who meets the qualifications for holding the office of district court judge.

(d) An agreement between a district court judge and a county court judge under this section may provide that final judgments must be approved by the district court judge.

(e) A county court judge has the same judicial immunity as the district court judge when presiding over cases as authorized by this section.

(f) All pleadings, documents, records, and other papers remain under the control of the district clerk. The district clerk may establish a separate docket for the cases considered by the county court judge.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 497** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Carona, Gallegos, Watson, and Duncan.

SENATE BILL 1757 WITH HOUSE AMENDMENT

Senator Watson called **SB 1757** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1757** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the disposal of unused pharmaceuticals so that they do not enter a wastewater system.

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

SECTION 1. Section 562.0061, Occupations Code, is amended to read as follows:

Sec. 562.0061. OTHER PRESCRIPTION INFORMATION. The board shall adopt rules specifying the information a pharmacist must provide to a consumer when dispensing a prescription to the consumer for self-administration. The information must ~~be~~:

- (1) be written in plain language;
- (2) be relevant to the prescription; ~~and~~
- (3) be printed in an easily readable font size; and
- (4) include the statement, "Do not flush unused medications or pour down a

sink or drain."

SECTION 2. (a) In this section, "commission" means the Texas Commission on Environmental Quality.

(b) The commission shall study and make recommendations regarding the methods to be used by consumers, health care providers, and others for disposing of unused pharmaceuticals so that they do not enter a wastewater system. In conducting the study, the commission shall consider:

(1) the methods currently used in this state by consumers, health care providers, and others for that purpose;

(2) alternative methods used for that purpose, including the methods used in other states; and

(3) the effects on public health and the environment of the various methods used for that purpose.

(c) In conducting the study, the commission may solicit input from:

(1) the Health and Human Services Commission;

(2) the Department of Public Safety of the State of Texas;

(3) pharmaceutical manufacturers;

(4) pharmacies;

(5) health care providers, including home health care providers;

(6) hospitals;

(7) clinics;

(8) long-term care facilities;

(9) entities that engage in medical waste processing and handling;

(10) solid waste management service providers;

(11) local governments;

(12) ranchers and farmers;

(13) end users of medication;

(14) water utilities and other water suppliers;

(15) the United States Postal Service;

(16) the United States Environmental Protection Agency; and

(17) any other entity the commission considers necessary.

(d) Not later than December 1, 2010, the commission shall submit a report of the results of the study to the legislature. The report must include:

(1) the commission's recommendations regarding the methods to be used by consumers, health care providers, and others for disposing of unused pharmaceuticals so that they do not enter a wastewater system; and

(2) an analysis of the feasibility of implementing the recommended disposal methods on a statewide basis.

(e) This section expires January 1, 2011.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1757** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Seliger, Deuell, Ellis, and Averitt.

CONFERENCE COMMITTEE ON HOUSE BILL 2374

Senator Lucio called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2374** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2374** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Seliger, Estes, Zaffirini, and Duncan.

CONFERENCE COMMITTEE ON HOUSE BILL 1659

Senator Patrick called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1659** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1659** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Huffman, Williams, Hegar, and Ellis.

CONFERENCE COMMITTEE ON HOUSE BILL 3637

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3637** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3637** before appointment.

There were no motions offered.

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

CONFERENCE COMMITTEE ON HOUSE BILL 2328

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2328** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2328** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Patrick, Van de Putte, Whitmire, and Averitt.

CONFERENCE COMMITTEE ON HOUSE BILL 2888

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2888** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2888** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Gallegos, Wentworth, Duncan, and Ellis.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 58**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 58** 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.

ZAFFIRINI
CARONA
HINOJOSA

VAUGHT
JONES
MADDEN

WATSON
WENTWORTH
On the part of the Senate

STRAMA
MCREYNOLDS
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the administration of the Juvenile Justice Case Management System.

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

SECTION 1. Section 58.403, Family Code, is amended to read as follows:

Sec. 58.403. JUVENILE INFORMATION SYSTEM. (a) Through the adoption of an interlocal contract under Chapter 791, Government Code, with one or more counties, the [The] commission [in partnership with local counties] may participate in and assist counties in the creation, operation, and maintenance of a [statewide] system that is intended for statewide use to:

- (1) aid in processing the cases of children under this title;
- (2) facilitate the delivery of services to children in the juvenile justice system;
- (3) aid in the early identification of at-risk and delinquent children; and
- (4) facilitate cross-jurisdictional sharing of information related to juvenile offenders between authorized criminal and juvenile justice agencies and partner agencies.

(b) The commission may use funds appropriated for the implementation of this section to pay costs incurred under an interlocal contract described by Subsection (a), including license fees, maintenance and operations costs, administrative costs, and any other costs specified in the interlocal contract.

(c) The commission may provide training services to counties on the use and operation of a system created, operated, or maintained by one or more counties under Subsection (a).

SECTION 2. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 58** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 488**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 488** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ELLIS
WATSON
PATRICK
CARONA
DAVIS

On the part of the Senate

HARPER-BROWN
PAXTON
LAUBENBERG
COHEN
CHISUM

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the operation of a motor vehicle in the vicinity of a vulnerable road user; providing penalties.

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

SECTION 1. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.428 to read as follows:

Sec. 545.428. VULNERABLE ROAD USERS. (a) In this section, "vulnerable road user" means:

(1) a pedestrian, including a runner, physically disabled person, child, skater, highway construction and maintenance worker, tow truck operator, utility worker, other worker with legitimate business in or near the road or right-of-way, or stranded motorist or passenger;

(2) a person on horseback;

(3) a person operating equipment other than a motor vehicle, including a bicycle, handcycle, horse-driven conveyance, or unprotected farm equipment; or

(4) a person operating a motorcycle, moped, motor-driven cycle, or motor-assisted scooter.

(b) An operator of a motor vehicle passing a vulnerable road user operating on a highway or street shall:

(1) vacate the lane in which the vulnerable road user is located if the highway has two or more marked lanes running in the same direction; or

(2) pass the vulnerable road user at a safe distance.

(c) For the purposes of Subsection (b)(2), when road conditions allow, safe distance is at least:

(1) three feet if the operator's vehicle is a passenger car or light truck; or

(2) six feet if the operator's vehicle is a truck other than a light truck or a commercial motor vehicle as defined by Section 522.003.

(d) An operator of a motor vehicle that is making a left turn at an intersection, including an intersection with an alley or private road or driveway, shall yield the right-of-way to a vulnerable road user who is approaching from the opposite direction and is in the intersection or in such proximity to the intersection as to be an immediate hazard.

(e) An operator of a motor vehicle may not overtake a vulnerable road user traveling in the same direction and subsequently make a right-hand turn in front of the vulnerable road user unless the operator is safely clear of the vulnerable road user, taking into account the speed at which the vulnerable road user is traveling and the braking requirements of the vehicle making the right-hand turn.

(f) An operator of a motor vehicle may not maneuver the vehicle in a manner that:

(1) is intended to cause intimidation or harassment to a vulnerable road user; or

(2) threatens a vulnerable road user.

(g) An operator of a motor vehicle shall exercise due care to avoid colliding with any vulnerable road user on a roadway or in an intersection of roadways.

(h) A violation of this section is punishable under Section 542.401 except that:

(1) if the violation results in property damage, the violation is a misdemeanor punishable by a fine of not to exceed \$500; or

(2) if the violation results in bodily injury, the violation is a Class B misdemeanor.

(i) It is a defense to prosecution under this section that at the time of the offense the vulnerable road user was acting in violation of the law.

(j) If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under either section or both sections.

SECTION 2. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 488** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1182

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas
May 28, 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 1182** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH

ORTIZ

CARONA

ANCHIA

DUNCAN

C. HOWARD

ELTIFE

EILAND

WHITMIRE

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to public information and open government.

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

SECTION 1. Subchapter C, Chapter 551, Government Code, is amended by adding Section 551.0415 to read as follows:

Sec. 551.0415. GOVERNING BODY OF MUNICIPALITY: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN. (a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality may receive from municipal staff and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

(1) expressions of thanks, congratulations, or condolence;

(2) information regarding holiday schedules;

(3) an honorary or salutory recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutory recognition for purposes of this subdivision;

(4) a reminder about an upcoming event organized or sponsored by the governing body;

(5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and

(6) announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

SECTION 2. Section 552.008, Government Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) may seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Subsection (b) is void to the extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.

(b-2) The member, committee, or agency of the legislature may seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court. A person may appeal a decision of the attorney general under this subsection to a Travis County district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

SECTION 3. The heading to Section 552.009, Government Code, is amended to read as follows:

Sec. 552.009. OPEN RECORDS STEERING COMMITTEE: ADVICE TO ATTORNEY GENERAL [~~COMMISSION~~]; ELECTRONIC AVAILABILITY OF PUBLIC INFORMATION.

SECTION 4. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.150 to read as follows:

Sec. 552.150. EXCEPTION: INFORMATION THAT COULD COMPROMISE SAFETY OF OFFICER OR EMPLOYEE OF HOSPITAL DISTRICT.

(a) Information in the custody of a hospital district that relates to an employee or officer of the hospital district is excepted from the requirements of Section 552.021 if:

(1) it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual, such as information that describes or depicts the likeness of the individual, information stating the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks; and

(2) the employee or officer applies in writing to the hospital district's officer for public information to have the information withheld from public disclosure under this section and includes in the application:

(A) a description of the information; and

(B) the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual.

(b) On receiving a written request for information described in an application submitted under Subsection (a)(2), the officer for public information shall:

(1) request a decision from the attorney general in accordance with Section 552.301 regarding withholding the information; and

(2) include a copy of the application submitted under Subsection (a)(2) with the request for the decision.

(c) This section expires September 1, 2013.

SECTION 5. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.151 to read as follows:

Sec. 552.151. EXCEPTION: INFORMATION REGARDING SELECT AGENTS. (a) The following information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, including under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) and regulations adopted under that Act, is excepted from the requirements of Section 552.021:

(1) the specific location of a select agent within an approved facility;

(2) personal identifying information of an individual whose name appears in documentation relating to the chain of custody of select agents, including a materials transfer agreement; and

(3) the identity of an individual authorized to possess, use, or access a select agent.

(b) This section does not except from disclosure the identity of the select agents present at a facility.

(c) This section does not except from disclosure the identity of an individual faculty member or employee whose name appears or will appear on published research.

(d) This section does not except from disclosure otherwise public information relating to contracts of a governmental body.

(e) If a resident of another state is present in Texas and is authorized to possess, use, or access a select agent in conducting research or other work at a Texas facility, information relating to the identity of that individual is subject to disclosure under this chapter only to the extent the information would be subject to disclosure under the laws of the state of which the person is a resident.

SECTION 6. Subsection (a), Section 552.263, Government Code, is amended to read as follows:

(a) An officer for public information or the officer's agent may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if:

(1) the officer for public information or the officer's agent has provided the requestor with the [required] written itemized statement required under Section 552.2615 detailing the estimated charge for providing the copy; and

(2) ~~the~~ charge for providing the copy of the public information specifically requested by the requestor is estimated by the governmental body to exceed:

(A) ~~(+) \$100~~, if the governmental body has more than 15 full-time employees; or

(B) ~~(2) \$50~~, if the governmental body has fewer than 16 full-time employees.

SECTION 7. Subsection (a), Section 552.274, Government Code, as amended by Chapters 329 (S.B. 727) and 716 (S.B. 452), Acts of the 79th Legislature, Regular Session, 2005, is reenacted to read as follows:

(a) The attorney general shall:

(1) biennially update a report prepared by the attorney general about the charges made by state agencies for providing copies of public information; and

(2) provide a copy of the updated report on the attorney general's open records page on the Internet not later than March 1 of each even-numbered year.

SECTION 8. Subsection (e-1), Section 552.301, Government Code, is amended to read as follows:

(e-1) A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

SECTION 9. Subsection (b), Section 552.323, Government Code, is amended to read as follows:

(b) In an action brought under Section 552.324 ~~[552.353(b)(3)]~~, the court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. In exercising its discretion under this subsection, the court shall consider whether the conduct of ~~[the officer for public information of]~~ the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.

SECTION 10. Section 552.324, Government Code, is amended to read as follows:

Sec. 552.324. SUIT BY GOVERNMENTAL BODY. (a) The only suit a governmental body ~~[or officer for public information]~~ may file seeking to withhold information from a requestor is a suit that:

(1) is filed in a Travis County district court against the attorney general in accordance with Section [Sections] 552.325; [and 552.353] and

(2) seeks declaratory relief from compliance with ~~[that challenges]~~ a decision by the attorney general issued under Subchapter G.

(b) The governmental body must bring the suit not later than the 30th calendar day after the date the governmental body receives the decision of the attorney general determining that the requested information must be disclosed to the requestor [being challenged]. If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general. If a governmental body wishes to preserve an affirmative defense for its officer for public

information as provided in Section 552.353(b)(3), suit must be filed within the deadline provided in Section 552.353(b)(3) [This subsection does not affect the earlier deadline for purposes of Section 552.353(b)(3) for a suit brought by an officer for public information].

SECTION 11. Subsection (b), Section 552.325, Government Code, is amended to read as follows:

(b) The governmental body, officer for public information, or other person or entity that files the suit shall demonstrate to the court that the governmental body, officer for public information, or other person or entity made a timely good faith effort to inform the requestor, by certified mail or by another written method of notice that requires the return of a receipt, of:

(1) the existence of the suit, including the subject matter and cause number of the suit and the court in which the suit is filed;

(2) the requestor's right to intervene in the suit or to choose to not participate in the suit;

(3) the fact that the suit is against the attorney general in Travis County district court; and

(4) the address and phone number of the office of the attorney general.

SECTION 12. Subsections (b) and (c), Section 552.353, Government Code, are amended to read as follows:

(b) It is an affirmative defense to prosecution under Subsection (a) that the officer for public information reasonably believed that public access to the requested information was not required and that ~~[the officer]~~:

(1) the officer acted in reasonable reliance on a court order or a written interpretation of this chapter contained in an opinion of a court of record or of the attorney general issued under Subchapter G;

(2) the officer requested a decision from the attorney general in accordance with Subchapter G, and the decision is pending; or

(3) not later than the 10th calendar day after the date of receipt of a decision by the attorney general that the information is public, the officer or the governmental body for whom the defendant is the officer for public information filed a petition for a declaratory judgment~~[a writ of mandamus, or both,]~~ against the attorney general in a Travis County district court seeking relief from compliance with the decision of the attorney general, as provided by Section 552.324, and the cause ~~[a petition]~~ is pending.

(c) It is an affirmative defense to prosecution under Subsection (a) that a person or entity has, not later than the 10th calendar day after the date of receipt by a governmental body of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with the decision of the attorney general, as provided by Section 552.325, and the cause is pending.

SECTION 13. Section 261.201, Family Code, is amended by adding Subsections (k) and (l) to read as follows:

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age,

information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and

(3) the identity of the person who made the report.

SECTION 14. The changes in law made by Section 552.150, Government Code, as added by this Act, apply in relation to a request for information made under Chapter 552, Government Code, before, on, or after the effective date of this Act.

SECTION 15. Section 552.151, Government Code, as added by this Act, applies in relation to:

(1) a request for public information under Chapter 552, Government Code, made before, on, or after the effective date of this Act; and

(2) information that on the effective date of this Act has not yet been disclosed that:

(A) was the subject of a request for information made before the effective date of this Act; and

(B) the attorney general determined before the effective date of this Act to be subject to disclosure under Chapter 552, Government Code.

SECTION 16. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Subsections (b-1) and (b-2), Section 552.008, Government Code, as added by this Act, take effect September 1, 2010.

The Conference Committee Report on **SB 1182** was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1206

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas

May 28, 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 1206** 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.

HINOJOSA
HEGAR
SELIGER
WHITMIRE
WILLIAMS

EDWARDS
MADDEN
MCREYNOLDS
S. TURNER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the release from the Texas Department of Criminal Justice of certain inmates who complete a rehabilitation program.

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

SECTION 1. Section 508.141, Government Code, is amended by adding Subsections (b-1), (d-1), and (d-2) and amending Subsection (d) to read as follows:

(b-1) If a parole panel requires, as a condition of release, that an inmate complete a specific department rehabilitation program before release, the department shall place the inmate in the program specified by the parole panel, except that the department may place the inmate in a different program with the approval of the parole panel.

(d) A parole panel may release an inmate on parole during the parole month established for the inmate, or during any applicable range of dates established under Subsection (d-1), if the panel determines that the inmate's release will not increase the likelihood of harm to the public.

(d-1) A parole panel that, as a condition of release, requires an inmate to complete a specific department rehabilitation program shall specify a range of dates, based on the date the inmate is likely to have completed the specified program, during which the department may release the inmate, if the inmate has:

- (1) successfully completed the program specified by the parole panel; and
- (2) satisfied all other conditions of release specified by the parole panel.

(d-2) The range of dates specified by the parole panel under Subsection (d-1) may not begin earlier than the 45th day before any applicable release date established for the inmate and must be a range of at least 30 days.

SECTION 2. The change in law made by this Act applies to any inmate who is confined in a facility operated by or under contract with the Texas Department of Criminal Justice on or after the effective date of this Act, regardless of when the inmate's period of confinement began.

SECTION 3. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 1206** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 4498**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas
May 27, 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 4498** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS
SHAPLEIGH
PATRICK
JACKSON
On the part of the Senate

HAMILTON
QUINTANILLA
GEREN
CHISUM
On the part of the House

The Conference Committee Report on **HB 4498** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2275**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2275** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
AVERITT
ESTES
ELTIFE
LUCIO
On the part of the Senate

RAYMOND
FLYNN
GONZALES
GUILLEN
MERRITT
On the part of the House

The Conference Committee Report on **HB 2275** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2310**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas
May 25, 2009

Honorable David Dewhurst
President of the Senate
Honorable Joe Straus
Speaker of the House of Representatives
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2310** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS
HARRIS
FRASER
WHITMIRE
WATSON

GEREN
GUTIERREZ
HAMILTON
JONES

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2310** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2591**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 2591** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR
DEUELL
HARRIS

THOMPSON
GUTIERREZ
HAMILTON
MENENDEZ

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2591** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 333**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas
May 29, 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 333** 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.

CARONA
ZAFFIRINI
WATSON
SHAPLEIGH
NICHOLS
On the part of the Senate

JACKSON
CHRISTIAN
FLETCHER
KENT
MIKLOS
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the retention by a county or municipality of certain court costs for maintaining and supporting a certified breath alcohol testing program.

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

SECTION 1. Subsection (b), Article 102.016, Code of Criminal Procedure, is amended to read as follows:

(b) The custodian of a municipal or county treasury in a county that maintains a certified breath alcohol testing program but does not use the services of a certified technical supervisor employed by the department may, to defray the costs of maintaining and supporting a certified breath alcohol [breath] testing program, retain \$22.50 of each court cost collected under Section 133.102, Local Government Code, [Article 102.075] on conviction of an offense under Chapter 49, Penal Code, other than an offense that is a Class C misdemeanor.

SECTION 2. (a) The change in law made by this Act applies only to a court cost collected on or after the effective date of this Act. A court cost collected before the effective date of this Act is governed by the law in effect when the court cost was collected, and the law is continued in effect for that purpose.

(b) Notwithstanding Subsection (a) of this section, the custodian of a municipal or county treasury may retain any amount retained under Subsection (b), Article 102.016, Code of Criminal Procedure, before the effective date of this Act to maintain and support a certified breath alcohol testing program.

SECTION 3. This Act takes effect September 1, 2009.

The Conference Committee Report on **SB 333** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 93**

Senator Van de Putte 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 93** 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.

VAN DE PUTTE
AVERITT
DUNCAN
OGDEN
ZAFFIRINI

On the part of the Senate

CASTRO
BRANCH
FARIAS
PITTS

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to tuition and fee exemptions for certain military personnel and their dependents or spouse and permitting those personnel to assign the exemption to a child.

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

SECTION 1. This Act shall be known as the "Hazelwood Legacy Act."

SECTION 2. Section 54.203, Education Code, is amended by amending Subsections (a), (b), (b-1), (d), (g), and (h) and adding Subsections (a-1), (a-2), (k), (l), and (m) to read as follows:

(a) The governing board of each institution of higher education shall exempt the following persons from the payment of tuition, [all] dues, fees, and other required charges, including fees for correspondence courses but excluding general deposit fees, student services fees, and any fees or charges for lodging, board, or clothing, provided the person [persons] seeking the exemption [exemptions were citizens of Texas at the time they] entered the service at a location in this state, declared this state as the person's home of record in the manner provided by the applicable military or other service, or would have been determined to be a resident of this state for purposes of Subchapter B at the time the person entered the service [services indicated and have resided in Texas for at least the period of 12 months before the date of registration]:

(1) all nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(2) all nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and all honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that the person ~~he~~ be discharged from service;

(3) all honorably discharged men and women of the armed forces of the United States who served during the national emergency which began on June 27, 1950, and which is referred to as the Korean War; and

(4) all persons who were honorably discharged from the armed forces of the United States after serving on active military duty, excluding training, for more than 180 days and who served a portion of their active duty during:

(A) the Cold War which began on the date of the termination of the national emergency cited in Subdivision (3) ~~of this subsection~~;

(B) the Vietnam era which began on December 21, 1961, and ended on May 7, 1975;

(C) the Grenada and Lebanon era which began on August 24, 1982, and ended on July 31, 1984;

(D) the Panama era which began on December 20, 1989, and ended on January 21, 1990;

(E) the Persian Gulf War which began on August 2, 1990, and ends on the date thereafter prescribed by Presidential proclamation or September 1, 1997, whichever occurs first;

(F) the national emergency by reason of certain terrorist attacks that began on September 11, 2001; or

(G) any future national emergency declared in accordance with federal law.

(a-1) A person who before the 2009-2010 academic year received an exemption provided by Subsection (a) continues to be eligible for the exemption provided by that subsection as that subsection existed on January 1, 2009, subject to the other provisions of this section other than the requirement of Subsection (a) that the person must have entered the service at a location in this state, declared this state as the person's home of record, or would have been determined to be a resident of this state for purposes of Subchapter B at the time the person entered the service.

(a-2) The exemptions provided for in Subsection (a) also apply to the spouse of:

(1) a member of the armed forces of the United States:

(A) who was killed in action;

(B) who died while in service;

(C) who is missing in action;

(D) whose death is documented to be directly caused by illness or injury connected with service in the armed forces of the United States; or

(E) who became totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs as a result of a service-related injury; or

(2) a member of the Texas National Guard or the Texas Air National Guard who:

(A) was killed since January 1, 1946, while on active duty either in the service of this state or the United States; or

(B) is totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs, regardless of whether the member is eligible to receive disability benefits from the department, as a result of a service-related injury suffered since January 1, 1946, while on active duty either in the service of this state or the United States.

(b) The exemptions provided for in Subsection (a) [~~of this section~~] also apply [~~and inure~~] to [~~the benefit of~~]:

(1) the children of members of the armed forces of the United States:

(A) who are or were killed in action;

(B) who die or died while in service;

(C) who are missing in action;

(D) whose death is documented to be directly caused by illness or injury connected with service in the armed forces of the United States; or

(E) who became totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs as a result of a service-related injury; and

(2) the [~~orphans or~~] children of members of the Texas National Guard and the Texas Air National Guard who:

(A) were killed since January 1, 1946, while on active duty either in the service of their state or the United States; or

(B) are totally disabled for purposes of employability according to the disability ratings of the Department of Veterans Affairs, regardless of whether the members are eligible to receive disability benefits from the department, as a result of a service-related injury suffered since January 1, 1946, while on active duty either in the service of this state or the United States.

(b-1) To qualify for an exemption under Subsection (a-2) or (b), the spouse or child [a person must be a citizen of Texas and] must be classified as a resident under Subchapter B on [have resided in the state for at least 12 months immediately preceding] the date of the spouse's or child's [person's] registration.

(d) The governing board of each institution of higher education granting an exemption under this section [~~exemptions~~] shall require every applicant claiming the [~~benefit of an~~] exemption to submit satisfactory evidence that the applicant qualifies for [he fulfills] the exemption [necessary citizenship and residency requirements].

(g) The governing board of a junior college district may establish a fee for extraordinary costs associated with a specific course or program and may provide that the exemptions provided by this section [~~Subsections (a) and (b)~~] do not apply to this fee.

(h) The governing board of each institution of higher education shall electronically report to the Texas Higher Education Coordinating Board the information required by Section 61.0516 relating to each individual receiving an exemption from fees and charges under Subsection (a), (a-2), or (b). The institution shall report the information not later than December 31 of each year for the fall semester, May 31 of each year for the spring semester, and September 30 of each year for the summer session.

(k) The Texas Higher Education Coordinating Board by rule shall prescribe procedures to allow a person who becomes eligible for an exemption provided by Subsection (a) to waive the person's right to any unused portion of the maximum number of cumulative credit hours for which the person could receive the exemption and assign the exemption for the unused portion of those credit hours to a child of the person. The procedures shall provide:

(1) the manner in which a person may waive the exemption and designate a child to receive the exemption;

(2) a procedure permitting the person to designate a different child to receive the exemption if the child previously designated to receive the exemption did not use the exemption under this section for all of the assigned portion of credit hours; and

(3) a method of documentation to enable institutions of higher education to determine the eligibility of the designated child to receive the exemption.

(l) To be eligible to receive an exemption under Subsection (k), the child must:

(1) be a student who is classified as a resident under Subchapter B when the child enrolls in an institution of higher education;

(2) make satisfactory academic progress in a degree, certificate, or continuing education program as determined by the institution at which the child is enrolled in accordance with the policy of the institution's financial aid department, except that the institution may not require the child to enroll in a minimum course load; and

(3) be 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed, except that the Texas Higher Education Coordinating Board by rule shall prescribe procedures by which a child who suffered from a severe illness or other debilitating condition that affected the child's ability to use the exemption before reaching that age may be granted additional time to use the exemption corresponding to the time the child was unable to use the exemption because of the illness or condition.

(m) For purposes of this section, a person is the child of another person if:

(1) the person is the stepchild or the biological or adopted child of the other person; or

(2) the other person claimed the person as a dependent on a federal income tax return filed for the preceding year or will claim the person as a dependent on a federal income tax return for the current year.

SECTION 3. Subsections (e) and (e-1), Section 54.203, Education Code, as amended by Chapters 443 (H.B. 125) and 1334 (S.B. 1640), Acts of the 80th Legislature, Regular Session, 2007, are reenacted and amended to read as follows:

(e) The exemption from tuition, fees, and other charges provided for by this section [in Subsection (a)] does not apply to a person who at the time of registration is entitled to receive educational benefits under federal legislation that may be used only for the payment of tuition and fees if the value of those benefits received in a semester or other term is equal to or exceeds the value of the exemption for the same semester or other term. If the value of federal benefits that may be used only for the payment of tuition and fees and are received in a semester or other term does not equal or exceed the value of the exemption for the same semester or other term, the person is entitled

to receive both those federal benefits [~~the federal benefit~~] and the exemption in the same semester or other term. The combined amount of the federal benefit that may be used only for the payment of tuition and fees plus the amount of the exemption received in a semester or other term may not exceed the cost of tuition and fees for that semester or other term. [~~A person is covered by the exemption if the person's right to benefits under federal legislation is extinguished at the time of the person's registration, except that a person may not receive an exemption from fees under this section if the person's right to benefits under federal legislation is extinguished because the person is in default of repayment of a loan made to the person under a federal program to provide or guarantee loans for educational purposes.~~]

(e-1) A person may not receive an exemption under this section if the person is in default on a loan made or guaranteed for educational purposes by the State of Texas.

SECTION 4. (a) Section 54.203, Education Code, as amended by this Act, applies beginning with tuition, dues, fees, and other charges for the 2009 fall semester. If a person who becomes eligible for an exemption in that semester under that section has paid the tuition, dues, fees, and other charges for that semester, the institution of higher education shall refund to the student the amount of those charges paid by the person in the amount of the exemption. Tuition, dues, fees, and other charges for a term or semester before the 2009 fall semester are covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) The Texas Higher Education Coordinating Board shall prescribe the procedures required by Subsections (k) and (l), Section 54.203, Education Code, as added by this Act, as soon as practicable after the effective date of this Act. For that purpose, the coordinating board may adopt the initial rules prescribing those procedures in the manner provided by law for emergency rules.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

The Conference Committee Report on **SB 93** was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 1063 by Hinojosa, In memory of Celestino Ramirez of Mission.

SR 1067 by Nelson, In memory of James Howard "Jim" Nelson.

SR 1068 by Fraser, In memory of Herbert Richard Custer of Katy.

HCR 253 (Fraser), In memory of former first lady, Lady Bird Johnson.

Congratulatory Resolutions

SR 1065 by Harris, Recognizing Jack E. Singley on the occasion of his retirement from the Irving Independent School District.

HCR 259 (Jackson), Congratulating James Alford Davis of Menard on the occasion of his 80th birthday.

Official Designation Resolution

SR 1066 by Harris and Davis, Proclaiming June 2009 as Texas Scottish History Month.

RECESS

On motion of Senator Whitmire, the Senate at 7:25 p.m. recessed, in memory of Richard "Ric" Williamson, until 9:30 a.m. tomorrow.

APPENDIX

BILLS AND RESOLUTIONS ENROLLED

May 28, 2009

SB 28, SB 68, SB 184, SB 223, SB 279, SB 343, SB 359, SB 390, SB 395, SB 397, SB 418, SB 420, SB 448, SB 449, SB 451, SB 470, SB 480, SB 521, SB 532, SB 571, SB 572, SB 575, SB 581, SB 646, SB 652, SB 671, SB 689, SB 698, SB 742, SB 743, SB 865, SB 876, SB 882, SB 883, SB 887, SB 904, SB 963, SB 970, SB 1024, SB 1050, SB 1112, SB 1127, SB 1153, SB 1166, SB 1171, SB 1204, SB 1211, SB 1225, SB 1326, SB 1382, SB 1409, SB 1436, SB 1437, SB 1439, SB 1441, SB 1472, SB 1515, SB 1571, SB 1598, SB 1599, SB 1609, SB 1650, SB 1672, SB 1685, SB 1705, SB 1715, SB 1723, SB 1728, SB 1729, SB 1732, SB 1774, SB 1798, SB 1803, SB 1820, SB 1824, SB 1853, SB 1932, SB 1984, SB 2085, SB 2135, SB 2141, SB 2148, SB 2153, SB 2228, SB 2230, SB 2240, SB 2248, SB 2258, SB 2262, SB 2325, SB 2340, SB 2381, SB 2385, SB 2420, SB 2424, SB 2435, SB 2469, SB 2512, SB 2517, SB 2524, SB 2550, SB 2553, SB 2554, SB 2565, SB 2577, SCR 42, SCR 78, SR 1012, SR 1032, SR 1033, SR 1034, SR 1035, SR 1053, SR 1054, SR 1055, SR 1056, SR 1057, SR 1059, SR 1060, SR 1061

SENT TO GOVERNOR

May 29, 2009

SB 252, SB 281, SB 291, SB 413, SB 414, SB 504, SB 576, SB 798, SB 801, SB 835, SB 873, SB 892, SB 909, SB 926, SB 927, SB 940, SB 1033, SB 1053, SB 1055, SB 1057, SB 1058, SB 1080, SB 1081, SB 1082, SB 1107, SB 1134, SB 1142, SB 1207, SB 1208, SB 1209, SB 1218, SB 1223, SB 1299, SB 1325, SB 1328, SB 1332, SB 1344, SB 1354, SB 1359, SB 1367, SB 1377, SB 1403, SB 1474, SB 1478, SB 1485, SB 1514, SB 1522, SB 1574, SB 1575, SB 1617, SB 1633, SB 1652, SB 1670, SB 1676, SB 1699, SB 1701, SB 1712, SB 1771, SB 1777, SB 1782, SB 1795, SB 1807, SB 1813, SB 1826, SB 1876, SB 1903, SB 1930, SB 1941, SB 1982, SB 1992, SB 1997, SB 2028, SB 2041, SB 2048,

SB 2058, SB 2067, SB 2072, SB 2073, SB 2093, SB 2178, SB 2182, SB 2217, SB 2244, SB 2312, SB 2344, SB 2412, SB 2438, SB 2445, SB 2454, SB 2462, SB 2465, SB 2467, SB 2485, SB 2495, SB 2501, SB 2510, SB 2511, SB 2518, SB 2519, SB 2522, SB 2534, SB 2552, SB 2558, SB 2580

SIGNED BY GOVERNOR

May 29, 2009

SB 1920

FILED WITHOUT SIGNATURE OF GOVERNOR

May 29, 2009

SB 61

VETOED BY GOVERNOR

May 29, 2009

SB 2038

VETO MESSAGE

The following Veto Message by the Governor was filed with the Secretary of the Senate:

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE EIGHTY-FIRST TEXAS LEGISLATURE, REGULAR SESSION:

Pursuant to Article IV, Section 14 of the Texas Constitution, I, Rick Perry, Governor of Texas, do hereby disapprove and veto Senate Bill No. 2038 of the 81st Texas Legislature, Regular Session, due to the following objections:

The plain words of a statute are the starting point for interpreting the law. Senate Bill No. 2038 would eliminate this fundamental principle. Citizens, judges and lawyers may debate the proper interpretation and application of those words but they may not debate what those words are. Senate Bill No. 2038 would abandon that basic and necessary premise. The reliability of the language found in the Texas codes would be subject to second guessing. Judges would no longer be able to apply the law simply by looking at its plain text. Senate Bill No. 2038 would likely result in an increase in litigation as lawyers would challenge the plain meaning of Texas statutes and compel courts to look to repealed codes and former session laws to determine what is Texas law.

The codification and revision process was established to make Texas law more accessible. Senate Bill No. 2038 would undermine the very purpose of the codification process by forcing both practitioners and ordinary citizens to locate and research old versions of our laws in order to determine if the current Texas codes really mean what they say.

Similar legislation, House Bill No. 2809, was vetoed in 2001. The concerns that existed then still exist today. Determining our state's laws should not be a burdensome process; Texans should be able to determine what our law says by simply reading the codes.

Since you remain gathered in regular session and continue to conduct formal business, I am delivering this disapproval message directly to you along with the official enrolled copy of the bill.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 29th day of May, 2009.

/s/Rick Perry
Governor of Texas

Attested by:

/s/Esperanza "Hope" Andrade
Secretary of State